

Westlaw Journal Insurance Bad Faith
***1 January 22, 2013**

Hurricane Sandy

INSURER OWES \$69 MILLION FOR HURRICANE SANDY DAMAGE, NURSING HOMES SAY
New Sea Crest Healthcare Ctr. v. Lexington Ins. Co.

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Two nursing homes in Brooklyn, N.Y., claim that their insurer acted in bad faith when it only paid \$1 million for extensive damage caused by Hurricane Sandy instead of the \$69 million they were entitled to under the policies.

New Sea Crest Healthcare Center LLC et al. v. Lexington Insurance Co., No. CV12-6414, *complaint filed* (E.D.N.Y. Dec. 28, 2012).

As a result of the insurer's bad-faith conduct, 640 elderly residents have been displaced from their homes and the facility owners "have incurred devastating losses," the lawsuit says.

New Sea Crest Healthcare Center and Shore View Nursing Home, both located near the Atlantic Ocean, sued Lexington Insurance Co. in the U.S. District Court for the Eastern District of New York.

The facilities say they were "essentially destroyed by Hurricane Sandy" last October. The damage was caused by a "surge of water, devastatingly high winds, and an influx of sand and debris," according to the complaint.

The lawsuit maintains that Sea Crest was insured under a Lexington policy with a liability limit of nearly \$37 million, and Shore View had a Lexington policy with a liability limit of more than \$32 million.

The declarations page of both policies indicate coverage included "all risks of direct physical loss or damage including flood," the suit says.

Even though it owes more than \$69 million in coverage, Lexington has not paid anything for the damage at Sea Crest and has only paid \$1 million for damage at Shore View, the complaint says.

"The devastation caused to Sea Crest and Shore View by Sandy was severe enough. Lexington's bad-faith refusal to honor its insurance obligations is only compounding that damage," the suit says.

The plaintiffs allege that Lexington has acted in bad faith by giving inconsistent positions on coverage, engaging in claim-processing delays and referring to incorrect policy language in an attempt to dodge its coverage obligations.

Specifically, they say, a Lexington agent initially indicated that the damage to both facilities would be covered in full. The insurer, however, later cited incorrect policy language and took other actions "to avoid paying the over \$69 million that it was contractually and legally obligated to pay," the suit says.

The facilities say they have racked up extensive costs removing sand and other detritus from their properties based on the Lexington agent's initial approval of coverage.

*2 The insurer allegedly denied coverage for Sea Crest because the damage was caused by a "flood" and the property is located within a "special flood hazard area."

If the two properties are covered by different flood provisions, as Lexington allegedly has claimed, the insurer "acted at worst fraudulently, and at best, negligently, when writing the Shore View and Sea Crest policies, perhaps violating its own underwriting guidelines and prevailing insurance regulations," the suit says.

Lexington charged both Sea Crest and Shore View the premium-to-coverage ratio, the suit says.

Sea Crest and Shore View claim that they have been unable to resume operations since the Oct. 29 storm and "will not be able to reopen for months, if ever."

The suit asserts breach of contract, bad faith, and negligent and fraudulent misrepresentation.

Sea Crest and Shore View seek compensatory damages and punitive damages.

Attorneys:

Plaintiffs: [Blair C. Fensterstock](#) and [Thomas A. Brown II](#), Fensterstock & Partners, New York, NY

Company: New Sea Crest Healthcare Center LLC

Company: Shore View Nursing Home

Company: Lexington Insurance Co.

Briefs and Other Related Documents (Back to Top)

[2012 WL 6761188 \(Complaint\)](#), [Trial Pleading \(December 28, 2012\)](#)

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