

2012 WL 5901805 (D.N.J.) (Trial Pleading)  
United States District Court, D. New Jersey.

NATIONAL INTERSTATE INSURANCE COMPANY OF HAWAII, INC., Plaintiff,  
v.  
INTERNATIONAL MOTOR FREIGHT, INC., Defendant.

No. 12CV07101.  
November 15, 2012.

### **Declaratory Judgment Complaint**

Mound Cotton Wollan & Greengrass, 60 Park Place, Newark, New Jersey 07102, 973-494-0600, Attorneys for Plaintiff,  
National Interstate Insurance Company of Hawaii, Inc.

Plaintiff, National Interstate Insurance Company of Hawaii, Inc. (“National Interstate”), by and through its undersigned counsel, hereby files this Complaint for Declaratory Judgment against defendant, International Motor Freight (“IMF”), and in support thereof states as follows:

#### ***NATURE OF COMPLAINT***

1. Plaintiff seeks a declaratory judgment as to the rights and obligations of the parties under commercial insurance policy number HAT001013609 issued by National Interstate to IMF for the period October 12, 2012 to October 12, 2013 (the “Policy”) in connection with the claim submitted by IMF for property damage losses allegedly sustained as a result of the effects of **Hurricane Sandy**. A copy of the Policy is attached hereto as Exhibit A.

#### ***THE PARTIES***

2. National Interstate is an insurance company incorporated under the laws of the State of Ohio, with its principal place of business located at 3250 Interstate Drive, Richfield, Ohio.

3. IMF is a company incorporated under the laws of State of New Jersey, with its principal place of business located at 120 Tyler Street, Port Newark, New Jersey 07114.

#### ***JURISDICTION/VENUE***

4. This Court has subject matter jurisdiction over the instant action pursuant to [28 U.S.C. § 1332](#) because diversity of citizenship exists as between National Interstate, on the one hand, and IMF, on the other, and the amount in controversy exceeds \$75,000.

5. Venue is proper in this District pursuant to [28 U.S.C. § 1391](#) because defendant IMF has its principal place of business in this District, the insurance policy at issue was entered into in this District and the events giving rise to the insurance claim at issue occurred in this District.

#### ***THE POLICY***

6. The Policy’s Motor Carrier Coverage Form (Form CA00200310) provides, in pertinent part, the following regarding the payment of a claim by National Interstate:

#### **C. Limits of Insurance**

1. The most we will pay for "loss" in any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with property of like kind and quality.

\* \* \*

3. An adjustment for depreciation and physical condition will be made in determining the actual cash value in the event of a total "loss".
4. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

#### **D. Deductible**

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

7. The Policy contains the following definitions of "Accident" and "Loss" within the Motor Carrier Coverage Form (Form No. CA00200310):

#### **SECTION VI - DEFINITIONS**

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".

\* \* \*

- J. "Loss" means direct and accidental loss or damage.

8. The Policy also contains an Automobile Physical Damage Loss Limitation (Form No. PDL001 12/94) that provides as follows:  
It is hereby understood and agreed that the Company's maximum limit of liability resulting from any one occurrence is \$1,000,000.

All other terms and conditions remain unchanged.

#### ***THE CLAIM***

9. On or about, October 29, 2012, **Hurricane Sandy**<sup>1</sup> approached and/or made landfall in New Jersey.
10. **Hurricane Sandy** caused extensive coastal flooding throughout New Jersey, including the Port Newark area of New Jersey.
11. IMF maintains facilities at 120 Tyler Street, Port Newark, New Jersey.
12. At or about the time that **Hurricane Sandy** made landfall in New Jersey, IMF's fleet of motor vehicles was located at its Port Newark facility.
13. IMF has submitted a property damage claim for damage to its fleet of motor vehicles to National Interstate in connection with the **Hurricane Sandy** flooding and fires that resulted from **Hurricane Sandy's** flood waters (the "Claim").
14. National Interstate conducted an investigation into IMF's Claim and determined that the damage to IMF's motor vehicle

fleet was as a result of a single occurrence, **Hurricane Sandy**.

15. National Interstate issued a reservation of rights in connection with its investigation of the Claim on November 2, 2012.

16. In the November 2, 2012 reservation of rights letter, National Interstate advised IMF that the Claim is subject to the Policy's Automobile Physical Damage Loss Limitation and that any recovery for the Claim under the Policy is limited to no more than \$1,000,000.

17. On November 2, 2012, National Interstate spoke with IMF's insurance agent, Joanna Miller of Donald F. Lapenna Associates regarding the Automobile Physical Damage Loss Limitation.

18. After discussing National Interstate's position, Ms. Miller agreed to review National Interstate's position and provide a response on behalf of IMF.

19. On November 8, 2012, Ms. Miller advised that IMF disagreed with National Interstate's position with respect to the application of the Automobile Physical Damage Loss Limitation and the number of occurrences, and that IMF's loss likely exceeded \$1,000,000.

### ***CAUSE OF ACTION***

#### **(Declaratory Judgment)**

20. National Interstate repeats and realleges the allegations set forth in paragraphs 1 through 19 as if fully set forth herein at length.

21. National Interstate and IMF disagree as to the scope of coverage afforded by the Policy with respect to the Claim.

22. An actual justiciable controversy exists between National Interstate and IMF with respect to the parties' respective rights under the Policy.

23. There is no adequate remedy at law.

24. Based on the foregoing, National Interstate requests a declaration that: A) the Automobile Physical Damage Loss Limitation endorsement is applicable to the Claim; B) the Policy's definitions of an "Accident" and "Loss" along with the language of the Automobile Physical Loss Limitation endorsement limits IMF's total recovery to no more than \$1,000,000; and C) the loss and damage arising out of the Claim resulted from one occurrence, **Hurricane Sandy**.

**WHEREFORE**, National Interstate respectfully requests that the Court:

1. Declare the respective rights, duties and obligations of the parties under the Policy with respect to the Claim;

2. Grant judgment that:

a. The Automobile Physical Damage Loss Limitation endorsement is applicable to the Claim;

b. The Policy's definitions of an "Accident" and "Loss" along with the language of the Automobile Physical Loss Limitation endorsement limits IMF's total recovery to no more than \$1,000,000; and

c. The loss and damage arising out of the Claim resulted from one occurrence, **Hurricane Sandy**;

3. Afford such other relief as it deems just and proper.

MOUND COTTON WOLLAN

& GREENGRASS

Attorneys for Plaintiff

National Interstate Insurance Company

of Hawaii, Inc.

By s/ *Frank J. DeAngelis*  
Frank J. DeAngelis (FD9334)

Dated: November 15, 2012

**Appendix not available.**

Footnotes	
1	At this time it is unclear if the coastal flooding that allegedly damaged IMF's property was caused while Sandy was categorized as a hurricane or post-tropical storm. For ease of reference, Sandy will be referred to as <b>Hurricane Sandy</b> for identification purposes within this Complaint.