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United States District Court, E.D. New York.

NEW SEA CREST HEALTHCARE CENTER, LLC, and Shore View Nursing Home, Plaintiffs,
v.
LEXINGTON INSURANCE COMPANY, Defendant.

No. CV12-6414.
December 28, 2012.

Plaintiffs Request Trial By Jury

Complaint

Fensterstock & Partners LLP, [Blair C. Fensterstock](#), [Thomas A. Brown II](#), 100 Broadway, 8th Floor, New York, New York 10005, (212) 785 - 4100, Attorneys for Plaintiffs.

Plaintiffs New Sea Crest Healthcare Center LLC (“Sea Crest”) and Shore View Nursing Home (“Shore View”) (collectively, “Plaintiffs”), by and through their attorneys Fensterstock & Partners LLP, allege as follows:

PRELIMINARY STATEMENT

1. Sea Crest and Shore View (collectively, the “Facilities”) are two nursing homes located in Brooklyn, New York, that were essentially destroyed by Hurricane Sandy on October 29, 2012.
2. Both Nursing Homes purchased insurance from defendant Lexington Insurance Company (“Lexington”) that provided coverage for the damage they sustained. Sea Crest purchased insurance with a limit of liability of \$36,650,000, and Shore View purchased insurance with a limit of liability of \$32,500,000. Both policies’ Declarations pages indicated that the “Perils” covered were “ALL RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE INCLUDING FLOOD...”
3. Despite clear language obligating it to pay over \$69,000,000 to Plaintiffs, Lexington has unreasonably and in bad faith refused to pay anything for the damage to Sea Crest and has paid only \$1 million for the damage to Shore View.
4. In handling Plaintiffs’ claims, Lexington has repeatedly taken inconsistent positions, procrastinated in processing the claims, cited incorrect policy language in a bad faith effort to avoid coverage, made false statements, and generally acted in bad faith in complete disregard of its contractual, legal and moral obligations.
5. As a result of Lexington’s conduct, nearly 640 elderly, infirm residents of Shore View and Sea Crest have been prevented from returning to their homes and the owners of the homes have incurred devastating losses.
6. 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.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to [28 U.S.C. § 1332\(a\)](#) because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
8. This Court has jurisdiction over this action under [28 U.S.C. § 1332\(a\)\(1\)](#) because there is diversity of citizenship. Plaintiff Sea Crest is a New York Limited Liability Corporation and Plaintiff Shore View is a New York partnership. Both Facilities have their principal places of business in Brooklyn, New York. Upon information and belief, Defendant Lexington is a Massachusetts corporation with its principal place of business at 100 Summer Street in Boston, Massachusetts.

9. Venue is proper under 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims in this lawsuit occurred in Brooklyn, New York.

THE PARTIES

10. Plaintiff Sea Crest is a New York Limited Liability Corporation with its principal places of business in Brooklyn, New York.

11. Plaintiff Shore View is New York partnership with its principal places of business in Brooklyn, New York.

12. Upon information and belief, Defendant Lexington is a Massachusetts corporation with its principal place of business in Boston, Massachusetts.

FACTS

13. On or about October 29, 2012, Hurricane Sandy, also known as **Superstorm Sandy**, hit the tri-state area and caused unprecedented amounts of damage to vast portions of New York, New Jersey and Connecticut, especially to the coastal areas of those states.

14. As can be imagined from their names, Plaintiffs Shore View and Sea Crest are both located very close to the water. Shore View is located on the seaward side of the Belt Parkway in the Brighton Beach section of Brooklyn, just three blocks from the Atlantic Ocean. Sea Crest is located just steps from the beach facing the Atlantic Ocean in the Coney Island section of Brooklyn.

15. At the time the storm hit on October 29, Shore View had 320 beds and was operating at 91.9% capacity. Sea Crest also had 320 beds, and was 97% occupied.

16. Both Facilities were thriving and profitable nursing homes.

17. Both Shore View and Sea Crest were devastated by Hurricane Sandy. Both were forced to evacuate and cease their operations after the storm hit. Both incurred significant damage due to a surge of water, devastatingly high winds, and an influx of sand and debris.

18. As a result of the storm, the interior and exterior grounds of Sea Crest were covered in sand, which was contaminated by sewage and other pollutants. The building's electrical and mechanical equipment, telephone, fire panel, and switchboards were demolished by water, and the building's numerous glass doors were shattered. All sheetrock partitions on Sea Crest's first floor were irreparably destroyed by Sandy.

19. In addition, Sea Crest's kitchen and all the equipment located inside it was contaminated beyond repair.

20. Sea Crest's basement was also damaged. Its contents, now destroyed, included boilers, laundry facilities, a kitchen, offices, its electrical switchbox, communications center, all electrical equipment, a generator, supplies and food storage, computers, air conditioning equipment, and more.

21. On information and belief, the Department of Buildings deemed Sea Crest unsafe and indicated that the building should be closed.

22. In addition, Sea Crest's building exterior, grounds, parking areas, and cargo storage containers (and their contents) were all destroyed and covered in sand and debris. In particular, the building's exterior facade was damaged from the high winds. Many employee vehicles were awash in the parking lot, and were completely destroyed. The air-handling units, housed on the building's roof, were also destroyed.

23. Shore View was damaged by water and sand from Sandy. The water cascaded in through an air supply opening into the basement and blew out the boiler room's steel entry door. The storm surge filled the basement with water that reached approximately six feet deep, submerging and destroying Shore View's generators, custom made switchboxes, boilers, chillers, pumps, and oil tanks.

24. Shore View's basement floor was also covered with wet sand. The telephone room, electric room, and pump room were all severely damaged. Moreover, the water and sand contained sewage and other chemicals that have contaminated

everything they touched. Shortly after the storm, the Department of Buildings visited Shore View and posted signs on it that read "Unsafe Building - Do Not Enter."

25. In addition, both Shore View's and Sea Crest's wiring systems were completely destroyed as a result of the storm surge. Replacing the wiring system will be extremely expensive.

26. Both Shore View and Sea Crest were forced to evacuate all of their patients in the days immediately following **Superstorm Sandy**. The patients were moved to various other facilities throughout New York State at great cost.

27. Due to the incredible damage they suffered, neither Shore View nor Sea Crest has been able to operate since October 29, 2012 and will not be able to reopen for months, if ever.

28. In November 2012, the New York State Department of Health issued a Dear Administrator Letter, which required all the evacuated patients who had previously resided at Shore View and Sea Crest to be officially discharged, making their return to the Facilities less likely, and lending urgency to the need to repair both facilities as quickly as possible. This discharge will, at best, result in at least several additional months of business interruption, with potentially no patients to care for even after the facilities are repaired and ready to operate.

29. To protect against just such a catastrophic event, Plaintiffs purchased insurance from Lexington. Coverage under the policy Sea Crest purchased from Lexington (the "Sea Crest Policy") commenced on June 15, 2012, and coverage under the policy Shore View purchased from Lexington (the "Shore View Policy") (collectively, "Policies") commenced on June 1, 2012. A copy of the Sea Crest Policy is attached as Exhibit A, and a copy of the Shore View Policy is attached as Exhibit B.

30. Plaintiffs paid the Policies' premiums as required and were current on premium payments as of October 29, 2012.

31. The Policies were in full force and effect as of October 29, 2012.

32. Both Policies contain a provision referring to coverage for "Named Storms" and define a "Named Storm" as "a storm that has been declared by the National Weather Service to be a Hurricane, Typhoon, Tropical Cyclone, Tropical Storm, or Tropical Depression."

33. Hurricane Sandy was a "Named Storm" as defined in the Policies.

34. The Policy for Sea Crest provided the following coverage for a "Named Storm:"

\$36,650,000 Regardless of the number of Coverages, Locations or Perils involved including, but not limited to, all Flood, (however caused) wind, wind gusts, *storm surges*, tornados, cyclones, hail, or rain, the maximum amount [Lexington] will pay per Occurrence as respects all covered Loss or Damage arising out of a Named Storm In the event covered Loss or Damage by Flood arises out of a named Storm, the maximum amount [Lexington] will pay per Occurrence for all such Loss or Damage by Flood shall be the Sublimits of Liability for Flood as shown in Subparagraphs E.2.a. and E.2.b. above. However, if Flood is not covered, the maximum amount [Lexington] will pay per Occurrence for all such Loss or Damage by Named Storm shall exclude Loss or Damage by Flood. (emphasis added)

35. The Policy for Shore View has exactly the same language, except the coverage limit was \$32,500,000, rather than \$36,650,000.

36. A plain reading of this language indicates that there is coverage for the damage suffered by Plaintiffs from **Superstorm Sandy** in the amounts of \$36,650,000 and \$32,500,000, respectively.

37. Plaintiffs understood this language to provide coverage for the damage they suffered from **Superstorm Sandy**.

38. As set forth below in Paragraph 40, Lexington's own representative stated that this language provided complete coverage to Plaintiffs for the damage they suffered from **Superstorm Sandy**.

39. Upon information and belief, Lexington performed its due diligence on the Facilities in preparing the Policies. Thus, Lexington was aware that Sea Crest was located within a FEMA Special Flood Hazard Area ("SFHA").

40. On or about October 30, 2012, Plaintiffs informed Lexington of the massive damage they had suffered and sought coverage under the Policies.

41. On or about November 13, 2012, Lexington dispatched F. Kevin Foster ("Foster"), an Executive General Adjuster, from McClarens Young International ("McLarens") as Lexington's authorized representative, to assess the damage. McLarens has

a long tradition of professional property loss adjusting dating to 1931, with expertise in, among other things, property and casualty losses.

42. Foster visited both Shore View and Sea Crest. He did so as Lexington's authorized representative.

43. On November 13, 2012, in the presence of no fewer than eight people, Foster, speaking on behalf of Lexington, indicated that the damage incurred by the Plaintiffs was fully covered under the Named Storm provision of the Policies up to their full coverage limits. To wit, he indicated that there would be coverage in the amount of \$36,650,000 for Sea Crest and in the amount of \$32,500,000 for Shore View. Notably, Foster also stated, "I represent the insurance company and when I speak I am speaking for them."

44. In reliance on this statement and the language in the Policies, Plaintiffs immediately began to incur expenses and make plans to repair and reopen the facilities, including removing the accumulated sand, drying the waterlogged areas, and disinfecting areas contaminated by pollutants.

45. After Foster's clear and explicit statements, Lexington began to act in bad faith and in complete disregard of its contractual obligations. It began to take inconsistent positions, cite the wrong policy language in communications with Plaintiffs, and otherwise do all that it could to avoid paying the over \$69,000,000 that it was contractually and legally obligated to pay.

46. First, Lexington, through AIG, its authorized representative on this matter, wrote two letters on November 16, 2012. One addressed Shore View and the other Sea Crest, yet both letters quoted from the Shore View policy and cited the wrong coverage amount for Sea Crest. A copy of the November 16, 2012 Sea Crest letter is attached as Exhibit C, and a copy of the November 16, 2012 Shore View letter is attached as Exhibit D.

47. In addition, the letters claimed that the loss and damage to both facilities was caused by a "Flood." The letters then both stated "Under this provision all loss and damage caused by Flood whether in connection with a Named Storm or not are subject to the aggregate Limit of Liability of \$1 million except there is No Coverage for loss by Flood to property located wholly or partly within a within a SFHA area as defined by FEMA." This was inconsistent with the position Foster took just three days earlier.

48. The Sea Crest letter provided no indication that Lexington would claim that it was located in a SFHA area and was entitled to no coverage, yet two weeks later, that is exactly what Lexington did.

49. By letter dated November 30, over a month after Sandy, Lexington suddenly claimed that there was no coverage for Sea Crest under its \$36,650,000 insurance policy because Sea Crest was located in a SFHA. A copy of the November 30, 2012 Sea Crest letter is attached as Exhibit E.

50. In bad faith, Lexington claimed that it had just learned where Sea Crest was located, as if it had written a \$36,650,000 policy without even determining the location of the insured property.

51. By letter dated November 27th, Lexington offered \$1 million of coverage to Shoreview under the Named Storm clause, and attached a proof of loss form for Shore View to fill out. This amount is patently inadequate and insufficient. Moreover, while the letter indicated that the \$1 million coverage could be claimed without prejudice to other claims, the attached proof of loss form in no way reflected that Shore View could still seek the additional coverage to which it is entitled. On the form, under "total amount of insurance," Lexington had typed "\$1,000,000," with no indication that further coverage could be sought up to the Policy limit. Lexington also listed that amount as the "Amount Claimed," which could have also precluded Sea Crest's claims for additional coverage in the future. Further, the proof of loss described the loss as a Named Storm loss, which could limit Sea Crest's ability to seek coverage under other Policy provisions. In doing so, in bad faith, Lexington purposely provided an inadequate proof of loss form that could have deprived Shore View of any ability to make additional claims.

52. Most recently, on December 19, 2012, Lexington wrote another letter, this time concerning Shore View and the paltry \$1,000,000 that Lexington concedes it must pay of the \$32,500,000 policy it wrote for Shore View. In that letter, Lexington made the false and absurd statement that the claim number referenced in a letter from Shore View's attorneys demanding payment was wrong, when in fact the numbers cited in both letters were identical. A copy of the December 19, 2012 Shore View letter is attached as Exhibit F.

53. Lexington charged Shore View and Sea Crest the same ratio of premiums to coverage. Sea Crest's premium is approximately \$79,000, which is approximately 1/464th of the coverage limit. Similarly, Shore View's premium is \$70,000, which is also approximately 1/464th of the Shore View Policy's coverage limit. Yet it now claims that the two buildings are covered by different "flood" provisions. This demonstrates that Lexington 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.

54. Lexington's sloppy, inconsistent conduct and its assertions of falsehoods demonstrate that its denial of insurance here is in bad faith.

55. Moreover, Lexington willfully, and in bad faith, disregarded numerous provisions of the policies it wrote and issued. Thus, while Lexington has improperly denied coverage under the "Named Storm" provisions of the policies, it has completely ignored the coverage provided to Plaintiffs under numerous other provisions of the Policies, including, but not limited to Debris Removal, Civil or Military Authority, Demolition, Equipment Breakdown, Ingress/Egress Coverage, Ordinary Payroll, and Service Interruption.

56. Plaintiffs have incurred significant expenses removing the sand and other debris from the Facilities.

57. Section E(4) of both Policies provides coverage for "Debris Removal," as follows:
The Company's total liability for Debris Removal per Occurrence for all Insured Locations sustaining covered direct physical loss or damage payable under this Policy shall not exceed the lesser of:

- a. 25% of the amount of covered direct physical loss or damage payable for all Insured Locations; or
- b. \$100,000

58. The evacuation of the Facilities was the result of an order issued by the city. Section V(c)(6) of both Policies provides coverage for such "Interruption by Civil or Military Authority." It provides:

This Policy is extended to cover the actual loss sustained during the period of time when access to the Insured's real or personal property is prohibited by an order of civil or military authority, provided that such order is a direct result of a Covered Cause of Loss to real property not insured hereunder. Such period of time begins with the effective date of the order of civil or military authority and ends when the order expires, but no later than the number of days shown in Section I., Subparagraph E.6. In no event shall the Company pay more than the Sublimit shown in Section I., Subparagraph E.6.

The mentioned time limit is coverage for 30 days after the interruption, and the sublimit was left blank.

59. Portions of the Facilities must be demolished as a result of the storm damage. Doing so will require compliance with applicable construction and safety laws. Section VI(C) of both Policies provides coverage for "Demolition," "in the event of direct physical loss or damage covered under this Policy that results in the enforcement of any law, ordinance, governmental directive or standard in effect at the time of loss or damage regulating the construction, repair or use and occupancy of the property." The coverage begins at \$1 million and can reach the policy limit.

60. Section I(E)(10) of both Policies provides coverage for "Equipment Breakdown" up to their respective limits - \$32,500,000 and \$36,600,000. As detailed above, boilers and many other kinds of the Facilities' equipment were damaged and destroyed.

61. As a result of Sandy, entry to and exit from the Facilities was impossible. Section V(C)(7) of both Policies provides extended coverage for "Ingress and Egress," stating:

This Policy is extended to cover the actual loss sustained during the period of time when ingress to or egress from the Insured's real or personal property is prohibited as a direct result of a Covered Cause of Loss to real property not insured hereunder. Such period of time begins on the date that ingress to or egress from real or personal property is prohibited and ends when ingress or egress is no longer prohibited, but no later than the number of days shown in Section I., Subparagraph E. 17. In no event shall the Company pay more than the Sublimit shown in Section I., Subparagraph E. 17.

Subparagraph E. 17 provides 30-day coverage; the Sublimit is blank.

62. In the wake of Hurricane Sandy, the Facilities' employees were unable to work and could no longer be compensated. In fact, as of November 5, 2012, the Facilities' employees were given layoff status and encouraged to apply for unemployment. This payroll is covered under the Policies. Section V(A) and Section I(E)(22) provide coverage for 180 days of "Ordinary Payroll," and defines ordinary payroll as "the entire payroll expense for all employees of the Insured except officers, executives, department managers, employees under contract, and other essential employees."

63. The Facilities lost their electric, gas, telecommunications and water services. Both Policies, under Section VI(O), provide coverage for "Service Interruption" as follows:

This Policy is extended to cover physical loss or damage to Insured Property and/or Time Element Coverage arising from a Covered Cause of Loss to: (1) incoming electrical, gas, water, or telecommunication equipment or outgoing sewer or (2) electrical, telecommunication, fuel, water, steam, refrigeration, or other service transmission lines, all situated outside the Insured Locations.

64. The Facilities have, and must continue to, take significant time to restore their business to the condition that would have existed before Sandy. Both Policies, under Section V(C)(8), provide coverage for "Extended Period of Indemnity," in relevant part, as follows:

Coverage is provided for such additional length of time as is required to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:

(a) the date on which the liability of the Company for the loss or damage would otherwise terminate; or

(b) the earliest date on which either normal conditions resume, or repair, replacement, or rebuilding of the property that has been damaged is actually completed.

65. Despite Foster's binding admission and the clear language of its own Policies, Lexington has formally denied coverage to Sea Crest through letters dated November 16, 2012 and November 30, 2012.

66. The November 30th letter attached a report from Halliwell Engineering Associates, which purports to indicate that Sea Crest is within a FEMA 100 Year Flood Zone.

67. Both Facilities were damaged by Hurricane Sandy to the full extent of the Policies' coverage limits.

68. If Plaintiffs cannot secure coverage for the full extent of their losses in Hurricane Sandy, they will not have the financial ability to repair the damaged Facilities and equipment, or compensate for the cleanup efforts, business losses or other losses. Plaintiffs' business is now at a standstill until repairs can be made. If the Facilities are not covered under the Policies, Plaintiffs cannot repair the Facilities and therefore, cannot ultimately regain the patients they have lost due to the storm or acquire new patients.

AS AND FOR A FIRST CAUSE OF ACTION

(Breach of the Sea Crest Policy)

69. Plaintiffs repeat and reallege the allegations in Paragraphs 1-68 as if fully set forth herein.

70. Plaintiffs and Defendant executed the Sea Crest Policy on or about June 15, 2012. The Sea Crest Policy is valid and binding on the parties.

71. Plaintiffs fulfilled their obligations under the Sea Crest Policy by making regular payments of the premiums to Lexington. They made each premium payment on time, and were up to date on payments at the time of the storm.

72. Defendant accepted the Sea Crest Policy premium payments from Plaintiffs with no protest.

73. The Sea Crest Policy requires Defendant to cover losses sustained as a result of, *inter alia*, a Named Storm, Debris Removal, Civil or Military Authority, Demolition, Equipment Breakdown, Ingress/Egress Coverage, Ordinary Payroll, and Service Interruption.

74. Defendant has denied coverage for the losses Sea Crest endured as a result of Hurricane Sandy, even though those losses qualify for coverage under all the above-listed clauses of the Sea Crest Policy.

75. Plaintiffs have been damaged as a result of Defendant's breach of the Sea Crest Policy in an amount not less than \$36,650,000. If Plaintiffs cannot secure coverage for the damage to Sea Crest in Hurricane Sandy, they will not have the financial ability to repair the damaged Facilities and equipment, or compensate for the cleanup efforts, business losses or other losses. Plaintiffs are in a Catch-22: business is now at a standstill until repairs can be made, and there can be no income to finance the repairs without functional Facilities. If Sea Crest is not covered, Plaintiffs will be unable to regain the patients they have lost due to the storm or acquire new patients.

AS AND FOR A SECOND CAUSE OF ACTION

(Breach of the Shore View Policy)

76. Plaintiffs repeat and reallege the allegations in Paragraphs 1-75 as if fully set forth herein.
77. Plaintiffs and Defendant executed the Shore View Policy on or about June 1, 2012. The Sea Crest Policy is valid and binding on the parties.
78. Plaintiffs fulfilled their obligations under the Shore View Policy by making regular payments of the premiums to Lexington. They made each premium payment on time, and were up to date on payments at the time of the storm.
79. Defendant accepted the Shore View Policy premium payments from Plaintiffs with no protest.
80. The Shore View Policy requires Defendant to cover losses sustained as a result of, *inter alia*, a Named Storm, Debris Removal, Civil or Military Authority, Demolition, Equipment Breakdown, Ingress/Egress Coverage, Ordinary Payroll, and Service Interruption.
81. Defendant has denied coverage for the losses Shore View endured as a result of Hurricane Sandy, save for \$1 million in coverage under the Named Storm clause, even though Shore View's losses qualify for full coverage under all the above-listed clauses of the Shore View Policy, including the Named Storm clause.
82. Plaintiffs have been damaged as a result of Defendant's breach of the Shore View Policy in an amount not less than \$31,500,000. If Plaintiffs cannot secure full coverage - not just the \$1 million they have been granted - for the damage to Shore View in Hurricane Sandy, they will not have the financial ability to repair the damaged Facilities and equipment, or compensate for the cleanup efforts, business losses or other losses. Plaintiffs are in a Catch-22: business is now at a standstill until repairs can be made, and there can be no income to finance the repairs without functional Facilities. If Shore View is not covered, Plaintiffs will be unable to regain the patients they have lost due to the storm or acquire new patients.

AS AND FOR A THIRD CAUSE OF ACTION

(Breach of Sea Crest Policy's Covenant of Good Faith and Fair Dealing)

83. Plaintiffs repeat and reallege the allegations in Paragraphs 1-82 as if fully set forth herein.
84. The Sea Crest Policy contained an implied covenant among the parties of good faith and fair dealing.
85. Defendant breached this duty of good faith and fair dealing by acting in bad faith in denying coverage under the Sea Crest Policy despite its clear language providing coverage and through its conduct detailed above.
86. Lexington did so despite the binding admission by their own representative that the policies provided complete coverage to Sea Crest.
87. In doing so, Defendant caused Plaintiffs to be deprived of the benefits of the Sea Crest Policy - the coverage they need for the losses incurred as a result of Hurricane Sandy.
88. As a result, Plaintiffs are unable to repair Sea Crest or service patients there. If they are forced to expend the money for the events and losses the Sea Crest Policy covers, Plaintiffs will be unable to remain financially viable. Thus, with the lack of coverage from Defendant, Plaintiffs are currently unable to repair Sea Crest and may be left with no way to get their business up and running.

AS AND FOR A FOURTH CAUSE OF ACTION

(Breach of Shore View Policy's Covenant of Good Faith and Fair Dealing)

89. Plaintiffs repeat and reallege the allegations in Paragraphs 1-88 as if fully set forth herein.

90. The Shore View Policy contained an implied covenant among the parties of good faith and fair dealing.
91. Defendant breached this duty of good faith and fair dealing by acting in bad faith in denying coverage under the Shore View Policy despite its clear language providing coverage and through its conduct detailed above.
92. Lexington did so despite the binding admission by their own representative that the policies provided complete coverage to Shore View.
93. In doing so, Defendant caused Plaintiffs to be deprived of the benefits of the Shore View Policy - the coverage they need for the losses incurred as a result of Hurricane Sandy.
94. As a result, Plaintiffs are unable to repair Shore View or service patients there. If they are forced to expend the money for the events and losses the Shore View Policy covers, Plaintiffs will be unable to remain financially viable. Thus, with the lack of additional coverage from Defendant, Plaintiffs are currently unable to repair Shore View and may be left with no way to get their business up and running.

AS AND FOR A FIFTH CAUSE OF ACTION

(Negligent Misrepresentation)

95. Plaintiffs repeat and reallege the allegations in Paragraphs 1-94 as if fully set forth herein.
96. Foster expressly represented to Plaintiffs that he was representing and acting on behalf of Lexington.
97. In his representative capacity, Foster indicated to Plaintiffs that Shore View and Sea Crest would be fully covered to their respective Lexington Policy limits.
98. As the insurance adjustor for the Sea Crest and Shore View Policies, Foster had a special relationship of trust with Plaintiffs.
99. Foster's statement was incorrect because Lexington subsequently denied full coverage.
100. Plaintiffs reasonably relied on Foster's statement at the time it was made. In particular, relying on the statement that coverage would be provided for such expenses, Plaintiffs engaged vendors to begin cleanup and repair jobs for both Shore View and Sea Crest.
101. As a result of Plaintiffs' reasonable reliance on Foster's statement, Plaintiffs have incurred significant cleanup and repair costs which they reasonably believed would be covered by the Policies.

AS AND FOR A SIXTH CAUSE OF ACTION

(Fraudulent Misrepresentation)

102. Plaintiffs repeat and reallege the allegations in Paragraphs 1-101 as if fully set forth herein.
103. The premiums on the Shore View Policy and the Sea Crest Policy are nearly identical. For both policies, the coverage is approximately 464 times the premium.
104. In presenting the Sea Crest Policy to Plaintiffs, Lexington misrepresented the extent of coverage that would be available in a situation like Hurricane Sandy.
105. In particular, Lexington omitted, despite having done its due diligence to learn the details to prepare the Sea Crest Policy, misrepresented that Sea Crest was located within the FEMA SFHA.
106. This information was material to the level and extent of coverage under the Sea Crest Policy.
107. Lexington misrepresented the fact of the FEMA SFHA location intentionally to mislead and defraud Plaintiffs into paying an increased premium and receiving purported lower coverage than that to which they should be entitled. By

providing the same premium-to-coverage ratios for both policies, Lexington represented that the coverage for both Shore View and Sea Crest would be the same. As such, Lexington concealed its knowledge that Sea Crest was in a FEMA SFHA.

108. Plaintiffs justifiably relied on this misrepresentation. In reliance on the misrepresentation, Plaintiffs executed the Sea Crest Policy.

109. As a result, Plaintiffs were damaged in that they were denied the full coverage they should receive under the Sea Crest Policy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant Lexington as follows:

A. On Plaintiffs' First Cause of Action for Breach of the Sea Crest Policy as against Defendants, an amount to be determined at trial, but in any event not less than \$36,650,000 for coverage under the Policy; and

B. On Plaintiffs' Second Cause of Action for Breach of the Shore View Policy as against Defendants, an amount to be determined at trial, but in any event not less than \$31,500,000 for coverage under the Policy; and

C. On Plaintiffs' Third Cause of Action for Breach of the Sea Crest Policy's Covenant of Good Faith and Fair Dealing, an amount to be determined at trial, but in any event not less than:

i. \$10 million in compensatory damages; and

ii. \$5 million in punitive damages.

D. On Plaintiffs' Fourth Cause of Action for Breach of the Shore View Policy's Covenant of Good Faith and Fair Dealing, an amount to be determined at trial, but in any event not less than:

i. \$10 million in compensatory damages; and

ii. \$5 million in punitive damages; and

E. On Plaintiffs' Fifth Cause of Action for Negligent Misrepresentation, an amount to be determined at trial, but in any event not less than \$10 million in compensatory damages; and

F. On Plaintiffs' Sixth Cause of Action for Fraudulent Misrepresentation, an amount to be determined at trial, but in any event not less than:

i. \$68,150,000 in compensatory damages; and

ii. \$5 million in punitive damages; and

G. For such other and further relief that the Court deems just and proper.

Dated: New York, New York

December 28, 2012

FENSTERSTOCK & PARTNERS LLP

By: <<signature>>

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Attorneys for Plaintiffs

Appendix not available.

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