

2. Martinez is an individual residing at 91 Maple Avenue, Metuchen, New Jersey 08840.

3. In her capacity as trustee, Martinez administers the Trusts Created by Marilyn M. Zawadsky Grantor Retained Interest Trust, Dated December 23, 1992 from 91 Maple Avenue, Metuchen, New Jersey 08840.

4. Bankers is an insurance company organized under the laws of Pennsylvania with a principal place of business in Philadelphia, Pennsylvania.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as the plaintiffs

6. and defendant are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. For purposes of Local Rule 201.1, the amount in controversy exceeds \$150,000.00, exclusive of interest and costs.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. §1391(a)(1) because the Zawadskys, the named insureds on the insurance policy at issue, reside within this district and within the Trenton vicinage.

9. Venue is also appropriate because the property at issue is located in this district and within the Trenton vicinage.

FACTUAL ALLEGATIONS

10. Bankers issued policy no. 267-93-21-18H (the "Policy") to the Zawadskys, with effective dates of June 15, 2012 to June 15, 2013.

11. The Policy named the Trust as an additional insured.

12. The Policy insured the Trust's interest in the property located at 1033 Ocean Avenue, Mantoloking, Ocean County, NJ 08738-1621 ("the Insured Dwelling").

13. The Policy also insured the Zawadskys' personal property at the Insured Dwelling ("the Insured Personal Property").

Wind Damage Resulting from Superstorm Sandy

14. On October 29, 2012, Superstorm Sandy devastated Mantoloking, New Jersey, and surrounding communities.

15. The winds from Superstorm Sandy reached up to 81 miles per hour in Mantoloking.

16. The peak winds from Superstorm Sandy arrived in Mantoloking several hours before the storm surge reached the Insured Dwelling.

17. The winds from Superstorm Sandy damaged the Insured Dwelling and the Insured Personal Property.

18. The winds from Superstorm Sandy blew out windows at the Insured Dwelling.

19. The winds from Superstorm Sandy caused soffit boards to separate from the framing of the home.

20. The wind from Superstorm Sandy caused the roof to detach and carried the roof several yards behind the Insured Dwelling onto the driveway to the west of the Insured Dwelling.

21. The Insured Dwelling has to be repaired and replaced as a result of the wind damage.

22. The wind damage resulted in a covered loss to the dwelling under the terms of the policy.

23. The cost to replace the entire Insured Dwelling exceeds \$2,954,560.00

24. The wind from Superstorm Sandy also caused damage to the Insured Personal Property.

25. The wind damage to the Insured Personal Property resulted in a covered loss under the terms of the Policy.

26. The value of the Insured Personal Property damaged as a result of the wind from Superstorm Sandy exceeds \$284,705.00.

27. The property damage resulting from the wind damage occurred, or became inevitable, before the storm surge reached the Insured Dwelling.

Pertinent Provisions of the Insurance Policy

28. The Policy provides multiple coverages to the Trust and the Zawadskys, including coverage for damage to the Insured Personal Property and coverage for damage to the Insured Dwelling.

29. Form “HOME ACE-0509” of the Policy, the “HOME CONTRACT,” states:

PROPERTY COVERAGES

1. Residences

a. For Dwellings, we cover:

- (1) The dwelling on the *residence premises* shown in the Declarations, including structures attached to the dwelling; and
- (2) Materials and supplies located on or next to the *residence premises* used to construct, alter or repair the dwelling or other structures on the *residence premises*.

(emphasis in original).

30. Form “HOME ACE-0509” of the Policy, the “HOME CONTRACT” states:

DEFINITIONS

...

16. *Residence premises* means:

- a. A one or two family dwelling, condominium, cooperative unit or apartment that you own or reside in; or
- b. The part of any other building where you reside;

and which is shown as a location in the Declarations.

(emphasis in original).

- 31. The “HOME DECLARATION PAGE” shows the Insured Dwelling as a location.
- 32. Form “HOME ACE-0509” of the Policy, the “HOME CONTRACT” states:

PROPERTY COVERAGES

...

3. Personal Property

- a. We cover personal property owned or used by an *insured person* while it is anywhere in the world.

(emphasis in original).

- 33. Form “HOME ACE-0509” of the Policy, the “HOME CONTRACT” states:

EXTRA BENEFITS

...

7. Rebuilding to Code

We will pay for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates the construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a covered loss.

This Extra Benefit does not apply unless you repair, replace or rebuild the *residence premises* at the same location.

(emphasis in original).

- 34. Form “HOME ACE-0509” of the Policy, the “HOME CONTRACT” states:

LOSSES WE COVER

We cover risk of direct physical loss to property described in Part I of this policy, subject to Losses We Do Not Cover.

(emphasis in original).

35. Direct physical loss to property caused by wind is not excluded under the “LOSSES WE DO NOT COVER” portion of the Policy.

36. Direct physical loss to property caused by wind is not excluded under any other portion of the Policy.

37. The Insured Dwelling and the Insured Personal Property within it constitute Covered Property under the Policy.

38. The extraordinary wind from Superstorm Sandy and resultant damage to the Insured Dwelling and Insured Personal Property constitute a covered loss under the terms of the Policy.

Limits of Liability Under the Policy

39. The “HOME DECLARATION PAGE” of the Policy identifies the coverage limit for the Insured Personal Property as “\$1,198,000.00.”

40. The “HOME DECLARATION PAGE” of the Policy identifies the coverage limit for the Insured Dwelling as “\$1,712,000.00.”

41. The Policy also provides “**Full Replacement Cost Protection.**”

42. The “Full Replacement Cost Protection” applies in this case. It obligates Bankers to pay for the full replacement cost of the Insured Dwelling as of the date of the loss, even if that cost is greater than the limit of insurance for the Insured Dwelling.

43. The Policy provides for payment over and above policy limits for certain expenses relating to debris removal, tree removal, landscaping, land restoration, rebuilding to code and other matters.

44. The Policy pays for Additional Living Expenses and other costs resulting from Loss of Use of the Insured Dwelling.

Additional Insured Endorsement

45. The Policy contains an endorsement including, as an “ADDITIONAL INSURED” for the Mantoloking home, the “TRUSTS CREATED BY THE MARILYN M. ZAWADSKY GRIT DTD 12-23-92 CAROL MARTINEZ TRUSTEE.”

46. Thus, Martinez, in her capacity as Trustee, is an Additional Insured under the Policy with respect to the Insured Dwelling and the Insured Personal Property.

Bankers’ Refusal to Provide Coverage

47. The Plaintiffs have complied with all terms of the Policy.

48. Bankers is obligated under the Policy to pay the Plaintiffs for the full amount of the damages attributable to wind damage.

49. There are no conditions, exclusions or other provisions of the Policy that entitle Bankers to deny coverage to the Plaintiffs.

50. On November 7, 2012, the Plaintiffs tendered the claim for coverage to Bankers, based on Bankers’ obligations to pay the loss under the Policy.

51. The Plaintiffs reported to Bankers that they were seeking coverage for loss resulting from wind damage.

52. On November 8, 2012, an adjuster for Bankers, Harlan Hunter, contacted Mark Zawadsky, the son of Joseph and Marilyn Zawadsky, to schedule an inspection of the property.

53. During this phone call, Mr. Hunter stated that the claim had been reported as a water damage claim, not a wind damage claim.

54. During this phone call, Mark Zawadsky corrected Mr. Hunter, stating once again that Plaintiffs were making a wind damage claim, not a water damage claim.

55. The Plaintiffs scheduled an inspection of the Insured Dwelling for November 9, 2012.

56. On November 9, 2012, Mr. Hunter inspected the property.

57. On Saturday November 17, 2012, Corey Everett, a National General Adjuster for Bankers, sent an email to Mark Zawadsky, which, once again, incorrectly stated “the loss was originally reported to us as water damage.”

58. Mark Zawadsky emailed Mr. Everett within ten minutes of receiving this November 17, 2012 email, to once again correct this mistake. Mark Zawadsky’s email stated:

I made the report myself and when it was it (sic) was asked wind or water, I reported wind. That information was also given to Harlan Hunter and he said that he corrected the mistake.

59. Later that day Mark Zawadsky once again clarified:

I would only reiterate that when reporting the claim I was asked specifically was the claim being reported for wind damage or water damage and I stated wind, not water. A mistake was made in your loss notice.

60. Despite the Plaintiffs report of the loss for wind damage, both Mr. Hunter and Mr. Everett stated, prior to any engineer’s inspection, and in the case of Mr. Hunter prior to any inspection of the property at all, that the loss was reported as being for water damage.

61. Neither the Plaintiffs, nor anyone acting on the Plaintiffs’ behalf, ever stated to Bankers that the claim was being reported as water damage.

62. Bankers, independent of the facts and information provided by the Plaintiffs and prior to inspection of the property by Bankers or an engineer working on Bankers’ behalf, internally reported the loss as a water loss because it was aware that the Policy included potentially applicable exclusions for water loss.

63. Bankers' investigation of this loss was biased by its premature decision that all damage to Plaintiffs' property was an excluded water loss.

64. The Plaintiffs coordinated with Bankers' engineer, Frank P. Villano, P.E. of LGI Forensic Engineering, P.C. ("LGI"), and scheduled an inspection of the Insured Dwelling, which occurred on November 26, 2012.

65. Mark Zawadsky emailed Mr. Everett on November 26, 2012, to report that the inspection took place.

66. On November 28, 2012, Mr. Everett emailed Mark Zawadsky and stated that he "anticipate[d] it will be two weeks before we receive the completed report from Frank Villano."

67. On January 2, 2013, Mark Zawadsky emailed Mr. Everett and asked for an update on the status of the Trust's claim.

68. On January 2, 2013, Mr. Everett responded to Mark Zawadsky's email and stated that he had "reached out to confirm when we can expect to receive [LGI's] report," but noted that "due to the volume of claims resulting from Sandy the engineers are backed up on their reporting."

69. LGI issued a report dated January 2, 2013 (the "LGI Report").

70. By letter dated January 15, 2013, Bankers responded to the Plaintiffs' November 7, 2012 tendering of a claim for coverage by refusing coverage of the claim.

71. As grounds in support of its refusal to provide coverage, Bankers claimed that the loss was caused by a storm surge.

72. In support of its refusal to provide coverage, Bankers relied on the LGI Report.

73. The LGI report stated that, "Meteorological [sic] data prepared by CompuWeather Forensic Services Division (11/30/12) for the subject storm event indicate that the maximum

sustained 3-second wind gusts were recorded between 81 mph and 90 mph with the maximum sustained wind speed (peak 1-minute wind speed) between 58 and 66 mph).”

74. The Plaintiffs retained Paul C. Beck, P.E. of PBA Engineering, P.C. (“PBA”) to investigate the loss.

75. Mr. Beck inspected the loss on March 15, 2013.

76. Mr. Beck prepared a report, dated April 18, 2013, based on his inspection (the “PBA Report”).

77. On May 13, 2013, the Plaintiffs informed Bankers that the PBA Report had established that the conclusions in the LGI report were unsupported by the facts.

78. The Plaintiffs noted in their May 13, 2013 letter that LGI’s theory – to wit, that the storm surge somehow caused the loss when it was at maximum storm tide, and that the wind caused subsequent damage when it was at its maximum wind strength – was factually impossible because the maximum wind strength occurred *before* the maximum storm tide.

79. The Plaintiffs’ May 13, 2013 letter provided the following facts, among others, to Bankers:

- The peak wind velocities, referenced in LGI’s report, were recorded at least six to eight hours *before* the surge could have eroded the dunes and reached the house;
- Winds were recorded at their strongest at 81 mph at 7:00 p.m. on October 29, 2012, but the tidal surges did not reach their peak of 6.9 feet until between 3:00 a.m. and 4:00 a.m. the following day, October 30, 2012;
- When the storm surge reached its peak between 3:00 a.m. and 4:00 a.m. on October 30, 2012, the wind velocity was already down to between 49 mph and 52 mph;

80. In light of the facts regarding the wind velocity and tidal surges related to Superstorm Sandy, the factual basis for LGI’s conclusions were demonstrably incorrect.

81. If the roof had failed after the storm surge reached the dwelling, as Bankers and LGI theorized, it would have fallen vertically (*i.e.* downward) as wind speeds were insufficient at that point to carry the roof away from the house.

82. Bankers concedes that the roof did not collapse vertically. LGI also concedes that the roof did not collapse vertically.

83. In fact, the losses to the dwelling and personal property occurred because, as the wind penetrated the interior of the Insured Dwelling, high pressure built up inside the dwelling, blowing the soffit material from the framing of the house. The wind force from inside and outside the dwelling weakened the roof to the point that it detached from the house and was carried several yards behind the Insured Dwelling onto the driveway to the west of the structure.

84. Despite being informed that the conclusions reached in the LGI report were factually unsupported, Bankers' refused to amend its coverage position and refused to pay or reimburse the Plaintiffs for their covered losses.

85. The Plaintiffs made an additional demand for payment of the claim on September 20, 2013.

86. This September 20, 2013 demand again noted that the factual basis for Bankers' denial of this claim was flawed.

87. To date, Bankers has continued to refuse to provide coverage to the Plaintiffs.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

88. The Plaintiffs re-allege and incorporate herein, as if fully set forth, the preceding paragraphs of this Complaint.

89. Bankers denied coverage to the Trust for the amount which it is owed under the Policy for all loss and damages of any kind resulting from the wind damage that occurred on October 29, 2012.

90. The Plaintiffs seek a judicial determination of the parties' rights and obligations under the Policy.

91. The Plaintiffs suffered and continue to suffer actual harm as a result of Banker's refusal to satisfy its obligations to the Trust under the Policy.

92. By reason of the foregoing, an actual and justiciable controversy exists between the Plaintiffs and Bankers regarding said insurer's obligations to pay amounts owed to the Plaintiffs for all loss and damages of any kind resulting from the wind damage that occurred on October 29, 2012.

93. The rights, status and other legal obligations of the Plaintiffs and Bankers, under 28 U.S.C. § 2201(a), the Federal Declaratory Judgment Act, are uncertain and insecure, and the entry of declaratory judgment by this Court will terminate the uncertainty and controversy which have given rise to this proceeding.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

94. The Plaintiffs re-allege and incorporate herein, as if fully set forth, the preceding paragraphs of this Complaint.

95. The Plaintiffs incurred damages covered by the Policy.

96. Bankers failed or refused to provide coverage under the Policy and refused to pay or reimburse the Plaintiffs for their covered losses.

97. By its actions, Bankers breached the terms and conditions of the Policy.

98. As a direct and proximate result of Bankers' breaches of the Policy, Bankers is liable to the Plaintiffs for an amount of damages to be determined at trial.

THIRD CLAIM FOR RELIEF
**(Breach of the Duty of Good Faith and Fair Dealing;
Bad Faith)**

99. The Plaintiffs re-allege and incorporate herein, as if fully set forth, the preceding paragraphs of this Complaint.

100. In addition to receiving repeated requests for payment of the claim, Bankers was or should have been aware of applicable facts and case law supporting the Plaintiffs' request for coverage under the Policy. Bankers still failed, and continues to fail, to provide coverage required under the Policy.

101. In evaluating its obligations under the Policy, Bankers failed to accord the interests of the Plaintiffs the same faithful consideration that it has given to its own interests.

102. Although the Plaintiffs' entitlement to payment of its claim is not fairly debatable, Bankers consciously disregarded the language of the Policy and/or unreasonably refused or unjustifiably failed to fulfill its contractual obligations.

103. Bankers lacked a reasonable basis for refusing to pay the undisputed portions of the Plaintiffs' claim, and knew or recklessly disregarded such lack of reasonable basis.

104. Bankers has not attempted in good faith to effectuate a prompt, fair and equitable settlement of the Plaintiffs' claim, for which liability is reasonably clear, has failed promptly to settle the undisputed amount of the Plaintiffs' claim under the Policy, and compelled the Plaintiffs to institute this litigation to recover amounts due under the Policy by wrongfully and in bad faith denying coverage under the Policy.

105. For the aforementioned reasons, Bankers breached the fiduciary duty of good faith and fair dealing owed to the Plaintiffs as insureds under the Policy.

106. At all relevant times, Bankers has been engaged in trade or commerce for profit through the business of selling policies of insurance and handling claims brought under such policies of insurance. The Plaintiffs have incurred substantial loss of money as the result of the unfair and deceptive acts and practices of Bankers as set forth in this complaint, which were conducted in violation of N.J.S.A. 17:29B-4(9)(a), (b), (c), (d), (f), (m), and (n).

107. Bankers' conduct, as described in this complaint, constitutes bad faith and unfair and deceptive insurance claims settlement practices, as defined by N.J.S.A. 17:29B-4(9)(a), (b), (c), (d), (f), (m), (n).

108. Bankers' conduct, as described in this complaint, demonstrates that it failed to conduct an objectively adequate investigation.

109. Bankers' conduct, as described in this complaint, demonstrates it denied benefits without "fairly debatable" reasons.

110. Bankers conduct, as described in this complaint, demonstrates that its decision not to settle was not an honest and intelligent one reached after the fair weighing of the facts.

111. As a direct and proximate result of Bankers' breach of the duty of good faith and fair dealing, Bankers is liable to the Plaintiffs for an amount of damages to be determined at trial.

FOURTH CLAIM FOR RELIEF
(Breach of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"))

112. The Plaintiffs re-allege and incorporate herein, as if fully set forth, the preceding paragraphs of this Complaint.

113. In addition to receiving repeated requests for payment of the claim, Bankers was or should have been aware of applicable facts and case law supporting the Plaintiffs' request for coverage under the Policy. Bankers still failed to, and continues to fail to, provide coverage required under the Policy.

114. Bankers forced the Plaintiffs to institute litigation to obtain coverage for the claim.

115. Bankers is a "person" as defined by N.J.S.A.56:8-1(d).

116. The Policy is "merchandise" within the definition of N.J.S.A. 56:8-1(c).

117. The Policy is and has been the subject of "advertisement" and "sale" within the definition of N.J.S.A. 56:8-1(a) & (e).

118. Bankers is violating and has been violating the New Jersey Consumer Fraud Act's prohibition against "any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate," N.J.S.A. 56:8-2.

119. As part of its fraudulent practices, Bankers engaged in a pattern and practice of knowingly and intentionally making numerous false representations to its representatives and/or agents with the intent to deceive and fraudulently induce reliance by the Plaintiffs.

120. The Plaintiffs purchased the Policy to have adequate coverage for their property. Bankers' misleading statements, therefore, were material to the Plaintiffs' decision to purchase the Policy from Bankers, and further proximately caused the Plaintiffs to have insufficient coverage.

121. In this manner, Bankers provides illusory coverage and has sold a product that does not live up to the policyholders' expectations.

122. Bankers' conduct, as described in this complaint, demonstrates that it knowingly omitted material facts regarding this loss, e.g. the date and time of the wind damage as compared with the storm surge, in Bankers' performance of its obligations under the insurance contract with the intent that the Plaintiffs rely on such omission. Bankers' conduct further demonstrates that it knowingly misstated the details of the Plaintiffs' claims reports, to make it appear falsely that the Plaintiffs had admitted that their losses resulted from water rather than wind. This misstatement was part of a concerted course of action by Bankers to treat the Plaintiffs' loss as caused by water, not wind, and to cause its agents and contractors to reach that conclusion without regard to the actual facts.

123. As a direct and proximate result of Bankers' breach of the New Jersey Consumer Fraud Act, Bankers is liable to the Plaintiffs for an amount of damages to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Joseph P. Zawadsky, Marilyn M. Zawadsky, and Carol Martinez, as trustee for the trusts created by Marilyn M. Zawadsky Grantor Retained Interest Trust, Dated December 23, 1992, respectfully request that this Court:

(A) Enter judgment against Defendant and in favor of the Plaintiffs, award Plaintiffs damages of every kind based on Defendant's breaches of the Policy, of the duty of good faith and fair dealing, and the New Jersey Consumer Fraud Act, including incidental, compensatory, consequential, exemplary, punitive, multiple and other damages, even if all such damages exceed the Defendant's policy limits, pre-suit interest, prejudgment interest, post-judgment interest, attorneys' fees and costs in bringing this action, and all other forms of damages;

(B) Enter a declaration against Defendant and in favor of Plaintiffs, establishing Defendant's duty to reimburse Plaintiffs for all loss and damages of any kind resulting from the wind damage that occurred on October 29, 2012; and

(C) Enter judgment against Defendant and in favor of Plaintiffs, awarding Plaintiffs such other and additional relief (legal, equitable or otherwise) as this Court deems just and proper.

JURY DEMAND

Plaintiffs Joseph P. Zawadsky, Marilyn M. Zawadsky, and Carol Martinez, individually and as trustee for the trusts created by Marilyn M. Zawadsky Grantor Retained Interest Trust, Dated December 23, 1992, hereby demand a jury trial for all claims and issues so triable.

Respectfully submitted,

By: /s/ Nicholas M. Insua

Dated: April 9, 2014

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Retained Interest Trust, Dated December 23, 1992.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

I hereby certify that to the best of my knowledge, information and belief, the matter in controversy in this action is not the subject of any other action pending in any court or of a pending arbitration proceeding.

BY: /s/ Nicholas M. Insua
Nicholas M. Insua
McCarter & English, LLP
Attorneys for Plaintiffs

Dated: April 9, 2014