

Eugene Killian, Jr.
THE KILLIAN FIRM, P.C.
555 Route 1 South
Suite 430
Iselin, NJ 08830
732-912-2100
ekillian@tkfpc.com

*Attorneys for Plaintiff
Fox Paper Ltd.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>FOX PAPER LTD.,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>HANOVER INSURANCE COMPANY,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Docket No.:</p> <p><i>Civil Action</i></p> <p>COMPLAINT AND JURY DEMAND</p>
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Plaintiff, Fox Paper Ltd. ("Fox"), a New Jersey corporation having its principal place of business at 302 Campus Drive, Edison, New Jersey 08837, for its complaint against defendant Hanover Insurance Company ("Hanover"), alleges as follows:

The Parties

1. Hanover is in the business of selling insurance products throughout the United States, including in New Jersey and New York, for substantial premiums. According to Hanover's website, Hanover offers "innovative, flexible insurance and specialty solutions to help protect your business' [sic] property." Hanover's website also states that Hanover offers "trusted advice to help protect your business from the unexpected – bad weather, accidental damage, theft, liability

lawsuits, and more.” Hanover further claims that it offers “customized protection for all types of small businesses.”

2. Hanover is a New Hampshire corporation with its principal place of business in Massachusetts.
3. Fox is a small business that distributes party and catering disposables, such as paper and plastic plates, plastic silverware, and similar items. Such items are designed for a single use. Once such items are contaminated by “dirty” water or other fluids, cleaning them for reuse is not recommended and is not feasible. As an insurance company that offers its policyholders “customized protection,” Hanover should be aware of these facts.
4. Fox is a New York corporation with its principal place of business in New Jersey.

Jurisdiction and Venue

5. The Court has subject matter jurisdiction over this matter under 28 U.S.C. §1332 because there is complete diversity of citizenship between Fox and Hanover, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
6. Venue is proper in this District under 28 U.S.C. §1391(a)(2), because (A) Hanover “resides” in this District within the meaning of 28 U.S.C. §1391(c)(2), and (B) Hanover conducted a substantial part of its claim investigation with respect to the loss involved in this case within this District.

Facts Relevant to All Claims

7. For substantial premiums, Hanover sold Fox a Businessowners' Insurance Policy numbered OHY-815946-08 (the "Policy"), which covered Fox's business personal property (including inventory and equipment) located within a warehouse located at 43rd St. and 1st Avenue, 1 Bush Plaza, Brooklyn, New York (the "Warehouse"). Fox leased premises on the first floor of the Warehouse from the New York City Economic Development Corporation for its offices and to store its inventory.
8. The storm commonly known as "Superstorm Sandy" made landfall in the New York metropolitan area at approximately 8 P.M. on October 29, 2012, within the policy period of the Policy.
9. Superstorm Sandy buffeted Brooklyn, where the Warehouse is located, with wind gusts that, upon information and belief, exceeded 90 miles per hour, and rain. Cyclical wind forces oscillated around and through the Warehouse. The winds associated with Superstorm Sandy caused damage to the Warehouse, causing wind-driven rain to enter the Warehouse, destroying a substantial portion of Fox's business personal property. A portion of Fox's business personal property was also destroyed by flood waters, which Fox concedes is not covered by the Policy.
10. The damage caused by Superstorm Sandy was compounded by a second serious and major storm, a Nor'easter that struck the New York metropolitan area on November 7, 2012 with heavy rain, snow and wind, resulting, upon

information and belief, in additional damage to Fox's business personal property.

11. As a result of Superstorm Sandy and the subsequent Nor'easter, Fox's business personal property contained in the Warehouse was destroyed. The Policy values Fox's business personal property at \$1,567,044.
12. Fox duly notified Hanover of a claim relating to the damage, and complied with all applicable conditions precedent under the Policy. To the extent that certain conditions precedent, if any, have not been complied with, strict compliance is unnecessary since such compliance would have been futile given Hanover's treatment of the claim.
13. After conducting a perfunctory investigation of the loss, Hanover denied the claim by letter dated January 2, 2013, claiming that virtually all of the damage to Fox's business personal property had been caused by flooding, and was therefore not covered.
14. As part of its "investigation," Hanover retained the services of Halliwell Engineering Associates, a firm that provides litigation support to insurance companies and that, upon information and belief, has a corporate policy against accepting any engagements from policyholders in coverage disputes. Halliwell concluded that flooding in the Warehouse as a result of Superstorm Sandy was between 41 and 46 inches. Assuming that Halliwell's conclusions are correct, Hanover has never provided a reasonable explanation for why damage to inventory or equipment located above the flood line would not be covered.

15. In August 2013, counsel for Fox forwarded Hanover detailed engineering information and photographs showing (in part) damage to the Warehouse above the flood line, as well as evidence that water had entered the Warehouse from above. Fox has also provided Hanover with photographs showing water damage to cardboard boxes containing inventory above the alleged flood line in the Warehouse.
16. In response to the supplemental information provided by Fox, Hanover reopened its investigation of the claim, and retained a New Jersey lawyer, Stanley Kallmann, Esq., to conduct such investigation.
17. On August 7, 2014, Mr. Kallmann conducted an Examination Under Oath of Fox's principal, Laurence Fox. Mr. Fox believed that he was attending the examination to provide information to Hanover that might be needed to reach a fair and accurate adjustment of the loss. At the time Mr. Fox appeared for his examination, he was distraught and slightly confused, because his father was dying in the hospital, and he had just spent most of the night with his mother. Mr. Fox explained his father's situation to Mr. Kallmann at the outset of the deposition, in the presence of Joseph Denay of Hanover, who attended the examination.
18. Mr. Kallmann's "examination" of Mr. Fox consisted largely of badgering and sarcasm, and at one point Mr. Kallmann went so far as to refer to Mr. Fox as an "idiot" (page 77, line 7 of the transcript) because Mr. Fox was unable to identify a photograph with the specificity that Mr. Kallmann demanded.
19. Mr. Fox's father died on August 13, 2014.

20. Hanover has evidenced no intention of fairly reviewing the evidence relating to this loss, and fairly adjusting the loss. Under such circumstances, and considering that Hanover has already denied the loss once, Hanover has forfeited any right to continue with its sham investigation.

First Count: Breach of Contract

21. Fox repeats all of the preceding allegations of this Complaint.
22. The conduct of Hanover in failing to adjust the loss fairly and accurately, and to pay for damage caused by covered perils, constitutes a breach of contract, as the result of which Fox has been damaged.

WHEREFORE, Fox requests the entry of judgment on this First Count as follows:

- A. Compensatory damages.
- B. Interest and costs of suit.
- C. Any other relief that the Court deems appropriate.

Second Count: Declaratory Judgment

23. Hanover repeats all of the preceding allegations of this Complaint.
24. As a result of Hanover's conduct, a justiciable controversy exists between the parties as to the extent of available insurance coverage under the Policy, entitling Fox to declaratory relief.

WHEREFORE, Fox requests the entry of judgment on this Second Count as follows:

- A. Declaring and adjudging that Hanover must compensate Fox under the Policy for damage to all business personal property that was maintained in the Warehouse above the flood line caused by Sandy.

- B. Declaring and adjudging that a fair and reasonable allocation must take place with respect to damage to Fox's business personal property caused by Covered Perils, and not flooding.
- C. Compensatory damages.
- D. Interest and costs of suit.
- E. Any other relief that the Court deems appropriate.

Third Count: Bad Faith

- 25. Fox repeats all of the preceding allegations of this Complaint.
- 26. Hanover has failed to conduct a fair and impartial assessment and adjustment of Fox's loss, instead seeking primarily to limit its own exposure. Hanover has deliberately disregarded any evidence that calls its precipitous coverage denial into question.
- 27. In hastily concluding that any damage to Fox's business personal property was caused exclusively by floodwaters, and only floodwaters; in demanding the submission of a proof of loss statement only after denying coverage for virtually all of Fox's loss; and in engaging in abusive behavior toward its policyholder, Hanover has engaged in the following improper and inappropriate acts and omissions, among others:
 - a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.
 - b. Failing to adopt and implement reasonable standards for the prompt investigation of a claim arising under insurance policies, instead leaping to self-serving conclusions in its own financial interest.

- c. Refusing to pay Fox's claim without conducting a reasonable investigation based upon all available information.
 - d. Failing to attempt in good faith to effectuate a prompt, fair and equitable settlement of Fox's claim.
 - e. Improperly compelling Fox to institute litigation to recover amounts due under the Policy.
 - f. Failing to promptly provide a reasonable explanation of the basis in the Policy in relation to the facts or applicable law for the denial of a large portion of Fox's claim.
28. No reasonably debatable basis existed for Hanover to refuse to conduct a proper allocation between loss caused by flood, and loss not caused by flood; or to refuse to pay for damage occurring to business personal property above the flood line in the Warehouse.
29. Hanover's acts and omissions in processing Fox's claim constitute a breach of the duty of good faith and fair dealing, as the result of which Fox has been damaged.

WHEREFORE, Fox requests the entry of judgment on this Third Count as follows:

- A. Compensatory damages.
- B. Consequential damages, including but not limited to attorneys' fees.
- C. Exemplary damages.
- D. Interest and costs of suit.
- E. Any other relief that the Court deems appropriate.

Fourth Count: Specific Performance

30. Fox repeats all of the preceding allegations of this Complaint.
31. Page 37 of 66 of the Policy's "Businessowners Coverage Form" (Form 391-1003 06 09) (the "BCF Form") contains a specific provision for the conduct of an appraisal "[i]f we and you disagree on the amount of the loss."
32. Upon information and belief, given Hanover's aggressive and superficial treatment of the claim to date, Hanover will oppose any effort to invoke the appraisal provisions of the Policy.
33. Fox has an absolute right to such an appraisal upon demand.

WHEREFORE, Fox requests the entry of judgment on this Fourth Count as follows:

- A. Ordering and adjudging that the appraisal provided for in the BCF Form take place immediately.
- B. Awarding Fox interest and costs of suit.
- C. Awarding Fox any other relief that the Court may deem appropriate.

Dated: October 28, 2014

THE KILLIAN FIRM, P.C.
Attorneys for Plaintiff

/s/ Eugene Killian, Jr.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury with respect to all issues in this action so triable as of right.

Dated: October 28, 2014

THE KILLIAN FIRM, P.C.
Attorneys for Plaintiff

/s/ Eugene Killian, Jr.

LOCAL RULE 11.2 CERTIFICATION

EUGENE KILLIAN, JR. certifies as follows:

I am a member of the The Killian Firm, P.C., the attorneys for plaintiff in this action. To the best of my knowledge, the matter in controversy is not the subject of any other action pending in any Court or of any pending arbitration or administrative proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 28, 2014.

/s/ Eugene Killian, Jr.