

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

D.K. PROPERTY, INC.,

Plaintiff,

-against-

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.,

Defendant.

**SUMMONS**

Index No.:

Date Purchased: February 8, 2017

To the above named Defendant:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve upon plaintiff's attorney an answer to the complaint within twenty (20) days after service of this summons, exclusive of the day of service (or within thirty (30) days if this summons is not personally delivered to you within the State of New York) and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is, pursuant to CPLR § 503(a) and (c), that Plaintiff maintains its business in New York County.

Dated: February 8, 2017  
New York, New York

Respectfully submitted,

HOGUET NEWMAN  
REGAL & KENNEY, LLP

By: 

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*Attorneys for Plaintiff*

SUPREME COURT OF THE STATE OF NEW YORK  
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NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA.,

**COMPLAINT**

Defendant.

Plaintiff D.K. Property, Inc. (“DK Property”), by and through its undersigned attorneys, Hoguet Newman Regal & Kenney, LLP, alleges against Defendant National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) as follows:

**NATURE OF ACTION**

1. This action is for breach of contract and breach of the implied covenant of good faith and fair dealing arising out of National Union’s unjustified refusal to provide coverage under an insurance policy it sold to DK Property.

2. DK Property is a real estate holding and management company formed for the purposes of owning, managing, operating, and serving as landlord of the building and real property located at 40 Prince Street, New York, New York 10012 (“40 Prince Building”).

3. In or around October 2014, construction commenced at a building located at 38 Prince Street, New York, New York, 10012 (“38 Prince Building”), the real property directly abutting against the eastern exterior wall of the 40 Prince Building. Because of that construction project on the 38 Prince Building, DK Property’s building, the 40 Prince Building, has suffered structural movement and damage.

4. Fortunately, DK Property purchased a property insurance policy, Policy No. BB014917749-02, from National Union (the “Policy”), providing insurance coverage for all “direct physical loss or damage to” 40 Prince Street.

5. DK Property has made a claim for coverage under the Policy (the “Claim”).

6. National Union has breached the Policy by failing to provide full coverage for the Claim and blatantly disregarding of the rights of DK Property by: (a) refusing to acknowledge coverage even though its liability is clear; (b) unreasonably delaying its investigation and handling of the Claim; and (c) unreasonably requesting information despite being provided voluminous engineering reports and backup documentation demonstrating the damage suffered at 40 Prince Street.

**THE PARTIES**

7. DK Property is a corporation organized under the laws of the State of New York with its principal place of business located at 40 Prince Street, New York, New York, 10012.

8. Upon information and belief, Defendant National Union is a corporation organized under the laws of the State of Pennsylvania with a principal place of business in New York, New York.

**JURISDICTION AND VENUE**

9. National Union is licensed to do business in New York, and it transacts business in New York.

10. National Union is subject to jurisdiction in New York pursuant to CPLR §§ 301 and/or 302(a)(1) because National Union principal place of business is in New York and because National Union contracted to insure persons, property, and risks located within New York.

11. Venue is proper in this Court pursuant to CPLR § 503(a) in that DK Property is located in New York County.

### **FACTUAL BACKGROUND**

#### **A. The Policy**

12. In consideration of a \$54,807 premium fully paid to cover the type of loss at issue here, National Union sold the Policy to DK Property for the policy period of December 1, 2014 to December 1, 2015.

13. On the Declarations Page of the Policy, DK Property is listed as the “Named Insured” and the 40 Prince Street is listed as the “Designated Premises.”

14. The “Building and Personal Property Coverage Form” of the Policy provides that National Union “will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.” As set forth on the Policy’s definitions and Declarations Page, “Covered Cause of Loss” refers to the causes of loss set forth in the “Causes of Loss – Special Form,” which provides that “Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.”

#### **C. Damages Suffered By DK Property**

15. In or around October 2014, construction commenced at the 38 Prince Building, the real property directly abutting against the eastern exterior wall of the 40 Prince Building. Because of that construction project at the 38 Prince Building, DK Property’s building, the 40 Prince Building, has suffered structural movement and damage.

16. Specifically, the owners/contractors working at the 38 Prince Building demolished the rear wall of the 38 Prince Building, which provided lateral support to the west

exterior wall of the 38 Prince Building, which directly abuts against the east exterior wall of the 40 Prince Building. By so doing, the owners/contractors of the 38 Prince Building removed a structure that provided lateral support to the eastern exterior wall of the 40 Prince Building.

17. The construction and removal of the lateral support damaged the 40 Prince Building through movement, bulging and cracks in the eastern foundation and east exterior wall of the 40 Prince Building, as well as other areas throughout the 40 Prince Building.

**D. DK Property's Coverage Claim**

18. DK Property promptly notified National Union of the damage to the 40 Prince Building and otherwise complied with all terms and conditions of the Policy.

19. DK Property also provided National Union with substantial documentation of the cause and extent of the damage to the 40 Prince Building including, but not limited to, providing National Union with: (a) correspondence between the representatives of 38 Prince Street Building and DK Property; (b) drawings related to the work at the 38 Prince Street Building; (c) a pre-construction inspection report; (d) various reports, plans, and documents prepared by DK Property's engineer; (e) crack monitoring reports; (f) optical monitoring plans; and (g) weekly tiltmeter reports.

20. Rather than admit coverage, National Union retained an engineer, Thornton Tomasetti, to conduct an "investigation" as to the cause of loss.

21. In addition to providing substantial documentation confirming the nature and extent of the damage to the 40 Prince Building, National Union, through Thornton Tomasetti, inspected the 40 Prince Building on several occasions.

22. Nonetheless, National Union refuses to take a position on coverage and continues to demand additional information – information generally outside of DK Property’s care, custody, and control – even though National Union’s liability is clear.

23. Furthermore, National Union is now raising inapplicable exclusions without a basis in law or fact.

24. To date, National Union has refused to acknowledge coverage.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**

25. DK Property repeats and realleges paragraph 1 through 24 of the Complaint as if fully set forth herein.

26. The Policy constitutes a valid contract of insurance coverage between DK Property and National Union.

27. Under the Policy, Liberty Mutual is required to indemnify DK Property, up to the Policy’s limit of liability, for all “direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.”

28. The damages suffered by DK Property at the 40 Prince Street Building, caused by the construction at the 38 Prince Street Building, is covered under the Policy and is not otherwise excluded.

29. DK Property has complied with all terms, conditions, or prerequisites set forth in the Policy, or has been excused from compliance with such terms, conditions, or prerequisites as a result of National Union’s breach and/or other conduct.

30. National Union breached its obligations under the Policy by refusing to acknowledge coverage from the DK Property’s losses.

31. As a result of National Union's breach of its obligation under the Policy, DK Property has suffered and continues to suffer damages in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

32. DK Property repeats and realleges paragraph 1 through 31 of the Complaint as if fully set forth herein.

33. New York law imposes on National Union an implied covenant of good faith and fair dealing in the Policy.

34. National Union has breached the implied covenant of good faith and fair dealing in one or more of the following ways: (a) by arbitrarily, and with reckless disregard for the rights of DK Property, refusing to acknowledge coverage and effectuate prompt, fair, and equitable settlement of DK Property's claim for coverage; (b) knew or recklessly disregarding that it was acting unreasonably in failing to honor its obligations under the policy; (c) ignoring the voluminous backup documentation provided by DK Property demonstrating the nature, extent, and cause of damage; and (d) forcing DK Property to sue for coverage.

35. DK Property has been damaged by National Union's breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial.

36. DK Property is entitled to consequential damages flowing from National Union's violation of the implied covenant of good faith and fair dealing, including, without limitation, prejudgment interest on the amount owed under the Policy, and the attorneys' fees, costs, and disbursements incurred by DK Property in enforcing its rights as a consequence of National Union's bad faith conduct.

37. Consequential damages for bad faith breach of the Policy were reasonably contemplated by DK Property and National Union at the time they entered into the Policy.

**WHEREFORE**, DK Property respectfully demands judgment against National Union as follows:

- (a) On the First Claim for Relief: An award against National Union of compensatory, direct and consequential damages in an amount to be determined at trial;
- (b) On the Second Claim for Relief: An award against National Union of compensatory, direct and consequential damages, including, without limitation, attorneys' fees and costs, in an amount to be determined at trial;
- (c) On all Counts: (i) pre- and post-judgment interest; (ii) costs, disbursements and attorneys' fees; and (iii) such other and further relief as this Court deems just an proper.

**Jury Trial Demanded**

DK Property demands a trial by jury on all Counts so triable.

Dated: February 8, 2017  
New York, New York

Respectfully submitted,

HOGUET NEWMAN  
REGAL & KENNEY, LLP

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