

KSLN Defeats Preliminary Injunction Motion  
Seeking to Force Property Insurer to Renew Policy Following Denial of Coverage for  
Superstorm Sandy Damages

In August, an insured under a commercial property policy moved for a preliminary injunction by order to show cause in Queens County seeking “continued” coverage and immediate payment of damages caused by Superstorm Sandy. Although the insurer had elected not to renew the policy, the state court nonetheless issued an *ex parte* temporary restraining order prohibiting the insurer from nonrenewing the policy and ordering “continuing” coverage under the policy.

Lisa Bauer of KSLN’s Coverage Group removed the case to the Eastern District of New York, completed the evidentiary hearing, and obtained a decision and order dissolving the TRO and denying the insured’ request for a preliminary injunction.

The Court held that the insured failed to establish the necessary element of irreparable harm finding that the theoretical possibility of incurring uninsured additional damage to the building or injuries to guests at the premises was too remote to merit issuance of an injunction preventing the insurer from exercising its right to not renew the policy.

In dissolving the TRO, the Eastern District rejected the notion that a court has the power to stall the expiration of a policy in accordance with the policy’s terms and the New York Insurance Law. Although the insurer had properly notified the insured of its decision to not renew the policy in accordance with New York Insurance Law § 3426, the insured argued that the insurer chose not to renew in “retaliation” for the insured’s dispute of the insurer’s denial of coverage for certain damages from Superstorm Sandy. The insured also argued that it was unable to obtain new coverage as a result of the nonrenewal.

In rejecting all of the insured’s arguments, the Court found that the insured failed to show a likelihood of success on the merits of its claim seeking a court-ordered renewal of the policy. The Court found that the policy did not “provide for renewal as a matter of right,” and that the decision not to renew could be based on “any reason or no reason at all.”

The Court also rejected the insured’s argument that its claim was denied and the non-renewal issued in “bad faith.” After hearing testimony from the insured and experts on the alleged damage to the three-apartment rental property in Rockaway Beach, the Court concluded the insured was unlikely to succeed on its claim for damages, as the damages were either pre-existing or caused by flood, an excluded cause of loss. The Court noted that even if certain damages were caused by both wind and water, the policy’s anti-concurrent causation clause unequivocally barred coverage for damages caused by water in any manner,.