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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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J. KUBO
CLERK

Attorney for Plaintiffs
CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CERTAIN UNDERWRITERS AT LLOYD'S,
LONDON, LONDON SUBSCRIBING TO
CERTIFICATE NO. WI 114064901,

Plaintiffs,

vs.

DYNAPOWER COMPANY LLC, a
Michigan limited liability company;
ELECTRONIC CONCEPTS, INC., a
Delaware corporation; and DOE ENTITIES
1-10,

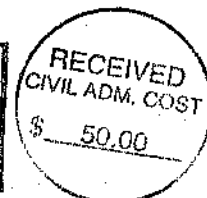
Defendants.

CIVIL NO. 13-1-3018-11 ECN.
(Other Non-Vehicle Tort)

COMPLAINT; DEMAND FOR JURY
TRIAL; SUMMONS

COMPLAINT

Plaintiffs CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING
TO CERTIFICATE NO. WI 11406901 (hereinafter "UNDERWRITERS") allege the
following:



SUMMONS
DENIED
LEGAL DOCUMENTS

THE PARTIES

1. Plaintiffs CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO CERTIFICATE NO. WI 114064901, are certain Lloyd's Syndicates in the business of issuing policies of insurance, with their principal places of business located in London, England.

2. Dynapower Company LLC ("Dynapower") is a Michigan limited liability company with its principal place of business at 85 Meadowland Drive, South Burlington, Vermont 05403.

3. Electronic Concepts, Inc. ("ECI") is a Delaware corporation with its principal place of business at 526 Industrial Way West, Eatontown, New Jersey 07724. (Dynapower and ECI are collectively referred to as "the Defendants.")

VENUE AND JURISDICTION

4. Venue and jurisdiction are proper in this circuit because the claim for relief arose in this judicial circuit.

FACTUAL BACKGROUND

5. UNDERWRITERS issued Certificate Number WI 114064901 ("the Certificate") to First Wind Holdings, LLC and/or First Wind Energy, LLC (collectively, "First Wind"). First Wind is the developer and operator of the Kahuku Wind Farm located at 56-1050 Kamehameha Highway in Kahuku, Hawaii ("the Kahuku Wind Farm"). Declaration 8 of the Certificate evidences coverage under the Certificate for the Kahuku Wind Farm. The Certificate has an effective period of March 23, 2011 to February 24, 2012.

6. The Certificate affords Operational Property Damage/Machinery Breakdown coverage (Section 4) and Operational Business Interruption coverage

(Section 5) for the Kahuku Wind Farm. Section 5 provides the following coverage to First Wind:

The Insurers shall subject to the terms conditions and exclusions of this Policy indemnify the Insured as specified in the Schedule for this Section in respect of the actual loss sustained as described herein if at any time during the Period of Insurance any or all of the Property Insured of the Operational Project suffers physical loss or damage indemnified under Section 4 of this Policy or which would have been indemnified but for the application of the Insured's Retained Liability thereby causing an interference or interruption of the Operational Project.

The Insured's Retained Liability under Section 5 is 30 continuous days.

7. In 2011, First Wind contracted with Xtreme Power Solutions LLC ("Xtreme"), a designer and manufacturer of energy storage and power management systems for power producers, utilities, and commercial end uses, for the manufacture of ten Dynamic Power Modules ("DPMs") for use at the Kahuku Wind Farm. The DPMs are critical components of First Wind's energy storage system, absorbing excess power or providing supplemental power, depending on the strength of wind gusts supplying the farm.

8. To complete the DPMs for First Wind, Xtreme purchased ten specially-designed inverters from Dynapower that contained capacitors manufactured by ECI. The ten inverters were installed in ten DPMs, which were housed in a building specially constructed by First Wind for the DPMs.

9. On March 1, 2011, the Kahuku wind farm went online. On April 22, 2011, one of the inverters caught fire, destroying one of the DPMs and damaging nearby equipment and fixtures.

10. On May 23, 2011, a second inverter caught fire. This fire destroyed a second DPM. First Wind suffered lost energy due to outages and derates following the May 23, 2011 fire.

11. Following the May 23, 2011 fire, First Wind submitted a claim to UNDERWRITERS under Section 5 (Operational Business Interruption) for business interruption losses that it suffered as a result of the May 23, 2011 fire.

12. UNDERWRITERS have made payments in excess of \$2,000,000 to First Wind under Section 5, reimbursing First Wind for its losses that it sustained following the May 23, 2011 fire.

13. An investigation of the April 22, 2011 and May 23, 2011 fires identified the ECI capacitors contained in Dynapower's inverters to be the cause of the fires. The investigation determined, *inter alia*, the following:

- the fire patterns in the DPMs show that the fire started in the capacitor area of the cabinets;
- the materials used in the capacitors supplied by ECI were combustible;
- new capacitors manufactured by ECI were shown to have had manufacturing defects;
- the capacitors supplied by ECI were operating with a large spread in their operating temperatures;
- there were observable defects in the capacitors manufactured by ECI;
- the design of the Dynapower inverters was not "sufficiently robust" to operate in the environment and certain design steps should have been implemented; and
- the ECI capacitors used by Dynapower were not properly rated for this

application.

14. Paragraph 11 of the General Conditions Applying to Sections 2-5 of the Certificate provides, in relevant part:

Except as otherwise provided in these Sections . . . the Insurers may require from the Insured an assignment of all right of recovery against any party other than the Insured for loss or damage to the extent that payment therefore is made by the Insurers.

15. UNDERWRITERS have been assigned the right of recovery against any party or entity that may be liable to it for any losses resulting from May 23, 2011 pursuant to Paragraph 11 of the General Conditions Applying to Sections 2-5 of the Certificate, including First Wind's business interruption loss claim resulting from the May 23, 2011 fire.

FIRST CLAIM FOR RELIEF

(For Subrogation Against All Defendants)

16. UNDERWRITERS incorporate paragraphs 1 through 15 as if set forth in full in their First Claim for Relief for Subrogation.

17. UNDERWRITERS allege that the Defendants are legally responsible for the business interruption losses sustained by First Wind following the May 23, 2011 fire;

18. UNDERWRITERS also allege that Dynapower and ECI, as the manufacturers of the defective inverters and capacitors installed in the DPMs, respectively, (1) are strictly liable terms in the DPMs show that the fire started in the capacitor area of the under theories of products liability for defective manufacture and defective design for the business interruption losses suffered by First Wind as a result of the May 23, 2011 fire, (2) breached express and implied warranties that extended to First Wind, and (3) are liable to First Wind for the business interruption losses suffered by First Wind as a result of the May 23, 2011 fire due to their negligence, including

negligently designing and manufacturing the inverters and the capacitors installed in the inverters, respectively.

19. UNDERWRITERS allege that there may be other entities that designed, manufactured or marketed the inverters and capacitors described in paragraph 18 above but these entities are presently unknown and are identified as DOE ENTITIES 1-10.

20. UNDERWRITERS further allege that, as a direct and proximate result of the Defendants and/or DOE ENTITIES 1-10's defective design, defective manufacture, breach of express and implied warranties, and negligence, that First Wind suffered business interruption losses in an amount in excess of \$2,000,000.

21. To date, UNDERWRITERS have paid its insured, First Wind, under Section 5 of the Certificate, in excess of \$2,000,000 for its business interruption losses resulting from the May 23, 2011 fire.

22. UNDERWRITERS also allege that, under the terms of the Certificate and the Subrogation Agreement, UNDERWRITERS became subrogated to all of the rights of First Wind against Dynapower and ECI and are entitled to enforce all of the remedies available to First Wind against the Defendants. UNDERWRITERS seek recovery of the amounts they have paid to First Wind under the Certificate from the Defendants.

PRAYER FOR RELIEF

THEREFORE, UNDERWRITERS pray for judgment as follows:

1. An order awarding UNDERWRITERS actual damages in the sum proven at trial;
2. An order awarding UNDERWRITERS their costs of suit and reasonable attorneys' fees incurred herein;
3. An order awarding prejudgment interest;

4. For such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, November 13, 2013

A handwritten signature in black ink, appearing to read "Michael F. O'Connor", written over a horizontal line.

MICHAEL F. O'CONNOR
Attorney for Plaintiffs
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DEMAND FOR JURY TRIAL

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Plaintiffs CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO CERTIFICATE NO. WI 11406901 (hereinafter "UNDERWRITERS") by and through its attorneys, Ogawa Lau Nakamura & Jew, hereby demands a trial by jury of all issues so triable in this action, pursuant to Rule 38 of the Hawaii Rules of Civil Procedure.

DATED: Honolulu, Hawaii,

November 13, 2013
Michael F. O'Connor

MICHAEL F. O'CONNOR
Attorney for Plaintiffs
CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON