

**JUDGE CHIN**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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SR INTERNATIONAL BUSINESS INSURANCE CO.  
LTD.,

Plaintiff,

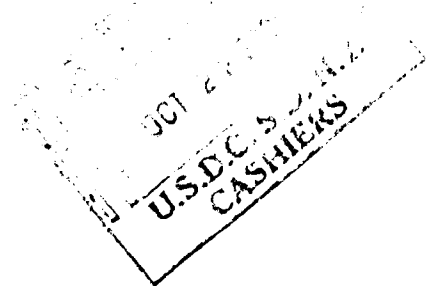
v.

Civ. No.

WORLD TRADE CENTER PROPERTIES LLC;  
SILVERSTEIN PROPERTIES INC.; SILVERSTEIN  
WTC MANAGEMENT CO. LLC; WESTFIELD, INC.;  
THE PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY; GMAC COMMERCIAL MORTGAGE  
CORPORATION; UBS WARBURG REAL ESTATE  
INVESTMENTS INC.; WESTFIELD WTC LLC;  
WESTFIELD CORPORATION, INC.; WESTFIELD  
AMERICA, INC.; 1 WORLD TRADE CENTER LLC;  
2 WORLD TRADE CENTER LLC; 4 WORLD  
TRADE CENTER LLC; 5 WORLD TRADE CENTER  
LLC; and WELLS FARGO BANK MINNESOTA,  
N.A., AS TRUSTEE FOR THE REGISTERED  
HOLDERS OF GMAC COMMERCIAL MORTGAGE  
SECURITIES, INC., MORTGAGE-BACKED PASS-  
THROUGH CERTIFICATES, SERIES 2001-WTC,

Defendants.

**COMPLAINT FOR  
DECLARATORY RELIEF**



Plaintiff SR International Business Insurance Co. Ltd. ("Swiss Re"), by its attorneys, Simpson Thacher & Bartlett, brings this Complaint to obtain an adjudication of the rights and obligations of the parties under certain first-party insurance coverage following the September 11, 2001 terrorist attack on the World Trade Center.

## INTRODUCTION

1. On or about July 16, 2001, an investor group led by Larry Silverstein entered into 99-year leases with the Port Authority of New York and New Jersey for certain buildings in the World Trade Center complex, including the twin towers. Swiss Re agreed to provide a share of approximately \$3.5 billion in property damage insurance coverage. Swiss Re's undertaking to insure was subject to the express condition that Swiss Re agree on the terms of coverage. At the time of the attack, certain policy wording had not yet been finalized (which is not unusual for large commercial risks with multiple insurers).

2. Swiss Re is prepared to honor its insurance obligations following the September 11 attack based upon insurance policy language provided by Mr. Silverstein's representatives at the time Swiss Re agreed to underwrite the property insurance for the World Trade Center. Indeed, Swiss Re has already communicated to Mr. Silverstein and his counsel that Swiss Re is ready to pay its proportionate share of a \$75 million advance to all of the insureds. However, the potential payment to the Silverstein group for years of lost rental income could erode coverage to which other insureds under the policy are entitled for purposes of rebuilding. Because there is insufficient insurance to both rebuild the World Trade Center and to fund years of rent interruption to the Silverstein group, Swiss Re seeks a judicial declaration of its rights and obligations to all of the insureds under the policy so that none of the insureds is prejudiced.

3. The Silverstein group through Mr. Silverstein has advanced what has been characterized in the press as the "audacious" theory that the Silverstein group is entitled to multiply by two the face value of insurance that Swiss Re and other insurers provided under the World Trade Center coverage. Specifically, Mr. Silverstein has characterized the September 11

terrorist attack as two separate insurance losses, allegedly entitling the insureds to twice the amount of insurance these insureds purchased.

4. Mr. Silverstein's "insurance maximization" strategy has been widely reported in the press:

Mr. Silverstein says that the assault constituted two distinct terrorist attacks, doubling his \$3.6 billion in insurance policies; the insurers say it was one coordinated attack. Experts call Mr. Silverstein's claim audacious. Why is he trying it? Perhaps because he thinks \$3.6 billion won't be enough. Financial documents connected to a Trade Center bond issue earlier this year warned that Mr. Silverstein's casualty insurance policy amounted to "significantly less" than the cost of rebuilding.

Larry Silverstein Restates Resolve to Build W.T.C. Site, The New York Observer (October 22, 2001).

5. Due to the fact that there was no insurance policy in place at the time of the September 11 attack and Swiss Re had an absolute right to agree on policy terms as a condition to its affording any coverage, Swiss Re brings this Complaint to obtain an adjudication of the terms and conditions that govern its insurance obligations. In addition, Swiss Re seeks a declaration that the damage to the World Trade Center is one insurance loss and not multiple separate and unconnected losses as Mr. Silverstein is claiming in the media. Finally, there are several entities that may be entitled to the proceeds of the property insurance on the World Trade Center. Swiss Re cannot responsibly pay the proceeds over to Mr. Silverstein without regard for the interests of other entities. For this reason, Swiss Re is seeking a declaration from the Court apportioning any payments among the parties in interest.

#### **PARTIES**

6. Plaintiff SR International Business Insurance Co. Ltd. (previously defined as "Swiss Re"), an excess and surplus lines company, is chartered in the United Kingdom, with its principal place of business in the United Kingdom.

7. Defendant World Trade Center Properties LLC is a Delaware limited liability company with its principal place of business in New York.
8. Defendant Silverstein Properties Inc. is a New York corporation with its principal place of business in New York.
9. Defendant Silverstein WTC Management Co. LLC is a Delaware limited liability company with its principal place of business in New York.
10. Defendant Port Authority of New York and New Jersey (the "Port Authority") is a body corporate and politic created by compact between the States of New York and New Jersey with consent of the Congress of the United States, with its principal place of business in New Jersey.
11. Defendant GMAC Commercial Mortgage Corporation ("GMAC") is a California corporation with its principal place of business in New York.
12. Defendant UBS Warburg Real Estate Investments Inc. ("UBS Warburg") is a Delaware corporation with its principal place of business in New York.
13. Defendant Westfield, Inc. is a Delaware corporation with its principal place of business in California.
14. Defendant Westfield WTC LLC is a Delaware limited liability company with its principal place of business in New York.
15. Defendant Westfield Corporation, Inc. is a Delaware corporation with its principal place of business in California. Westfield Corporation, Inc. manages Westfield America, Inc.
16. Defendant Westfield America, Inc. is a Missouri corporation with its principal place of business in California.

17. Defendant 1 World Trade Center LLC is a Delaware limited liability company with its principal place of business in New York.

18. Defendant 2 World Trade Center LLC is a Delaware limited liability company with its principal place of business in New York.

19. Defendant 4 World Trade Center LLC is a Delaware limited liability company with its principal place of business in New York.

20. Defendant 5 World Trade Center LLC is a Delaware limited liability company with its principal place of business in New York.

21. Defendant Wells Fargo Bank Minnesota, N.A. (“Wells Fargo”) is a national bank with its principal place of business in Minnesota. Wells Fargo is the trustee for the registered holders of GMAC Commercial Mortgage Securities, Inc., Mortgage-Backed Pass-Through Certificates, Series 2001-WTC. GMAC has purported to assign insurance rights to Wells Fargo.

22. All defendants are parties in interest under the first-party property coverage procured by the lessees for Buildings 1, 2, 4 and 5 and the retail mall underneath the World Trade Center.

### **JURISDICTION AND VENUE**

23. This Court possesses subject matter jurisdiction pursuant to 28 U.S.C. § 1332, insofar as there is complete diversity of citizenship between the parties and the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and costs. Venue is properly placed in the Southern District of New York as a substantial part of the events giving rise to the claim occurred in this District.

24. The “Air Transportation Safety and System Stabilization Act,” Pub. L. No. 107-42, section 408(b)(3) (Sept. 22, 2001), which vests original exclusive jurisdiction in the

United States District Court for the Southern District of New York “over all actions brought for any claim . . . resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001,” also may provide a jurisdictional basis for this action.

## **GENERAL ALLEGATIONS**

### **A. Defendants’ Real Estate Interests**

25. The World Trade Center is a complex of seven commercial buildings. The Port Authority owns Buildings 1 through 6 and the underlying land, the retail mall underneath the complex, and the ground beneath Building 7.

26. On or about July 16, 2001, the Port Authority entered into a 99-year lease with each of 1 World Trade Center LLC, 2 World Trade Center LLC, 4 World Trade Center LLC, and 5 World Trade Center LLC for Buildings 1, 2, 4 and 5 respectively (the tower leases). At the same time, the Port Authority also entered a 99-year lease with Westfield WTC LLC for the retail mall within and underneath the World Trade Center (the retail lease). Each tower lessee is indirectly 100% owned by World Trade Center Properties LLC, the managing member of which is Silverstein WTC Properties LLC. Larry Silverstein ultimately controls Silverstein WTC Properties LLC.

27. GMAC has provided a mortgage loan to the tower lessees secured by a mortgage on the tower leases and has purportedly assigned such loan to Wells Fargo in connection with the issuance of commercial mortgage-backed securities to institutional investors. UBS Warburg has provided a mortgage loan to the retail lessee, Westfield WTC LLC, secured by a mortgage on the retail lease.

**B. Swiss Re Underwrites The World Trade Center Property Coverage Based Upon The Policy Language Provided By The Lessee's Broker Plus Wording To Be Agreed**

28. The lessees through their insurance broker, Willis Limited ("Willis"), canvassed the world's insurance markets to place first-party property coverage for their leasehold. At the time, Willis projected that the replacement value of the two 110-story towers and Buildings 4 and 5, plus the retail space that the lessees had an obligation to insure under the leasehold, was \$3,944,653,200 and that the loss in rental income over a three-year period would be an additional \$1,105,935,000 for a total of at least \$5,050,588,200. Although Willis initially sought to cover the full amount of \$5,050,588,200, the lessees affirmatively chose to obtain insurance for less than *half* that amount -- \$2.32 billion. A week after executing their leases, the lessees sought to increase the amount of their insurance coverage to \$3.25 billion. Then, at the request of the lessees' bankers, the lessees raised the insurance limits again, to approximately \$3.5 billion. The amount of coverage ultimately purchased was far below the projected \$5.05 billion necessary both to replace the buildings and cover the group's rental income losses in the event of a catastrophic loss. The lessees instead bought insurance almost sufficient to rebuild without regard to any possible loss of rental income.

29. Swiss Re is one of the insurers that participated in the \$3.5 billion insurance program for the World Trade Center. Based upon the terms of signed placing slips, Swiss Re agreed to underwrite 22% of the lessees' coverage, excess of the primary \$10 million layer (the "Silverstein Coverage").

30. On June 25, 2001, Willis sent an underwriting submission and placing slip to Swiss Re to underwrite a portion of the first-party coverage of the lessees' interests. That underwriting submission contained the proposal of coverages, terms and conditions for insurance

for the lessees' interests in the World Trade Center. The placing slip specified the terms of the coverage the lessees were seeking.

31. The underwriting submission included a proposed policy form that Willis refers to as the "WilProp<sup>2000</sup><sub>sm</sub>." WilProp<sup>2000</sup><sub>sm</sub> contains proposed terms and conditions of coverage. Among other provisions, WilProp<sup>2000</sup><sub>sm</sub> contains a broad definition of "occurrence," so that losses attributable to any cause or series of causes would be subject to a single occurrence limit. Specifically, WilProp<sup>2000</sup><sub>sm</sub> provides:

"Occurrence" shall mean all losses or damages that are attributable directly or indirectly to one cause or to one series of similar causes. All such losses will be added together and the total amount of such losses will be treated as one occurrence irrespective of the period of time or area over which such losses occur.

32. Swiss Re made a number of material changes to the placing slip to reflect the basis on which Swiss Re would provide coverage. The most significant was that Swiss Re was not prepared to let the agreement of another insurer bind Swiss Re to the terms of coverage as the pre-printed slip circulated by Willis provided. Swiss Re conditioned its undertaking to insure on having an absolute right of approval of the terms of coverage. Swiss Re inserted in handwriting next to a number of terms and conditions on the placing slip the phrase, "to be agreed by SRI." For example, Swiss Re modified the language of the pre-printed slip by striking the language stating, "Agreement of wording waived," and substituted in handwriting, "to be agreed by SRI." Subject to these and certain other modifications, Swiss Re executed on July 9, 2001 the slip to assume 22% of the excess property coverage for the World Trade Center lessees "subject to wording to be agreed."

33. Willis then circulated to Swiss Re a revised placing slip that incorporated Swiss Re's modifications, making Swiss Re's agreement to the terms of the insurance coverage a



condition of Swiss Re's obligation to insure. Swiss Re signed the revised placing slip on July 26, 2001.

34. At the time of the September 11 terrorist attack, certain policy wording had not yet been finalized and no policy was ever issued. However, Willis (on behalf of the lessees) had represented to Swiss Re in its underwriting submission that WilProp<sup>2000</sup><sub>sm</sub> would be the "starting point" for any Swiss Re policy.

### **C. The Attack On The World Trade Center**

35. Al-Qaeda is an organization led by Osama bin Laden bent on killing Americans and striking at United States interests.

36. On the morning of September 11, individuals believed to be members of the Al-Qaeda organization hijacked several commercial airplanes and piloted two of them into Buildings 1 and 2 of the World Trade Center. At approximately 8:45 a.m. on September 11, 2001, the first airplane crashed into Building 1. Less than 20 minutes later, a second airplane crashed into Building 2. As a result of the attack, Buildings 1 and 2 collapsed and Buildings 4 and 5 sustained significant structural damage.

### **D. The Lessees Unilaterally Attempt To Change The Terms Of Coverage**

37. Three days *after* the September 11 attack, a group of insurers led by Travelers issued a policy for the \$10 million primary layer of coverage. On September 24, the lessees through Willis claimed that this Travelers policy governed the coverage underwritten by Swiss Re, even though its terms differed materially from those in WilProp<sup>2000</sup><sub>sm</sub> and the signed slips.

38. In a September 24 e-mail to Swiss Re, Willis (on behalf of the lessees) attached a notice of loss and a policy issued by Travelers for the first layer of coverage. The

cover letter from Willis erroneously states that the Travelers policy provides the “relevant” wording for the Silverstein Coverage:

We . . . have our clients’ instructions to present a revised Notice of Loss and issue you the relevant Travelers’ wording, both of which are attached.

39. The Travelers policy does not include many of the terms agreed upon in the signed slips and WilProp<sup>2000</sup><sub>sm</sub>. Among a number of material differences is that the Travelers policy does not define the term “occurrence.”

40. The Travelers policy also adds new policyholders that were never named in WilProp<sup>2000</sup><sub>sm</sub> or the signed slips. According to the signed slips, the named insured is World Trade Center Properties LLC (the indirect owner of the tower lessees), and its affiliates. Loss payees, the mortgagees, and additional named insureds are also included in the coverage as follows:

Loss Payees and Mortgagees and Additional Named Assureds automatically included herein with advice to Underwriters waived and permission given to Willis, New York to issue evidence of insurance, if required.

Under WilProp<sup>2000</sup><sub>sm</sub>, the Port Authority, GMAC and Westfield, Inc. are additional named insureds. Under the Travelers policy, Silverstein Properties, Inc. and Silverstein WTC Management Co. LLC are also named insureds, and the retail lessee (Westfield WTC LLC), its affiliates (Westfield Corporation, Inc. and Westfield America, Inc.), and the tower lessees (1 World Trade Center LLC, 2 World Trade Center LLC, 4 World Trade Center LLC, and 5 World Trade Center LLC) are listed as additional named insureds.

41. Swiss Re is not a signatory to the Travelers policy and never agreed to the terms of the Travelers policy. As Swiss Re advised Willis shortly after receipt of the September 24 e-mail and as counsel for Swiss Re advised counsel for the Silverstein group by letter dated

October 15, 2001, Swiss Re never agreed that its coverage would be subject to the Travelers policy form.

42. Swiss Re did not agree to final contract language for the World Trade Center property coverage before the loss and certainly did not agree to the Travelers policy language claimed by the Silverstein group to be applicable. Swiss Re's undertaking to provide insurance was based upon the Willis underwriting submission, including WilProp<sup>2000</sup><sub>sm</sub>, and the parties' express agreement that Swiss Re had an unequivocal right to approve the terms of coverage. In no event did Swiss Re agree to the Travelers policy language claimed by the Silverstein group to be applicable.

#### **E. The Lessees Seek Payment Under The Silverstein Coverage**

43. On October 8, 2001, the Silverstein and Westfield groups executed a joint "Preliminary Proof of Partial Losses No. 1" (the "Partial Proof of Loss"), seeking coverage for "business income losses" for the period from September 12, 2001 to March 31, 2002. The Silverstein group sought payment of \$136,758,297 to GMAC as the servicer of the leasehold mortgage loan on Buildings 1, 2, 4 and 5. The lessees have indicated that they intend to make future claims for these "business income losses." There is no policy wording that governs how to allocate insurance proceeds among the insureds.

44. Swiss Re has agreed to pay its proportionate share of a \$75 million advance to all of the insureds.

45. Payment of these amounts is subject to and erodes the \$3.5 billion per occurrence limit available for the loss to Buildings 1, 2, 4 and 5 and the retail mall arising out of the September 11 attack (the "World Trade Center Loss"). In light of the insufficient insurance available to cover both the property loss to the structures and the lessees' economic loss from lost rental income during a rebuilding period, payment of insurance proceeds to cover the

lessees' rental income losses adversely affects other insured interests such as defendants Port Authority, GMAC/Wells Fargo and UBS Warburg who may have priority in receiving the proceeds of available insurance procured by the lessees to cover Buildings 1, 2, 4 and 5 and the retail mall. Under no circumstances should Swiss Re be exposed to inconsistent obligations due to the conflicting interests of the insured parties.

**F. The Lessees' "Audacious" Bid To Double Their Coverage**

46. As reflected in Willis' underwriting submission materials, the lessees recognized that the World Trade Center was not adequately insured to cover both the replacement cost of the leased structures, and the loss of rental income. Nonetheless, at a meeting conducted with insurers on October 2, the lessees' representatives informed the insurers that the number of occurrences was an open "issue" and intimated that Mr. Silverstein might seek to increase the amount of insurance coverage by claiming more than one per occurrence limit for the loss. Thereafter, Mr. Silverstein made numerous public statements informing the media that the lessees are entitled to twice the face value of insurance coverage by claiming that the attack on the World Trade Center was two separate insurance losses. For example:

Mr. Silverstein said that he was entitled to \$3.6 billion in insurance to cover the losses in each terrorist attack, and that since there were two, he was counting on \$7.2 billion.

Trade Center Leaseholder Pledges to Rebuild, The New York Times (October 5, 2001).

Mr. Silverstein told insurers that he views the attack as two separate incidents, which would mean his group would be eligible for \$7 billion in property damage insurance. The group has coverage of \$3.5 billion "per incident."

No Insurance Yet, The Wall Street Journal (October 10, 2001).

Silverstein's insurance policies provide about \$3.6 billion in coverage "per incident." The developer is saying that each plane crash was a separate incident, entitling him to \$7.2 billion.

Silverstein Snags Super-Lawyer for Insurance Fight, New York Daily News (October 15, 2001).

Mr. Silverstein hopes to collect \$7 billion in damage insurance, but that depends on whether his insurance carriers agree that the terrorist attack amounted to two separate incidents. If it was only one incident for insurance purposes, Mr. Silverstein will get only \$3.5 billion in damage claims, probably not enough to finance his rebuilding plan.

Brookfield and Silverstein Hold Talks on Future of World Trade Center Site, The Wall Street Journal (October 16, 2001).

47. Mr. Silverstein's media campaign aside, the attack on the World Trade Center constitutes one occurrence for purposes of Swiss Re's obligations under which Swiss Re will pay 22% of the total excess coverage for the resulting loss. The occurrence language of the WilProp<sup>2000</sup><sub>sm</sub> policy making "all losses or damages that are attributable directly or indirectly to one cause or to one series of similar causes" and providing that "[a]ll such losses will be added together and the total amount of such losses will be treated as one occurrence irrespective of the period of time or area over which such losses occur" clearly limits Swiss Re's obligation for the destruction of the World Trade Center to the face amount of its undertaking to insure.

48. Under the terms of the leases, if the lessees do not rebuild Buildings 1, 2, 4 and 5 and the retail space, the Port Authority and the lenders are entitled to priority in recovering any insurance proceeds and, thus, Mr. Silverstein would likely obtain only a fraction of the total insurance recovery.

**AND AS FOR A FIRST CAUSE OF ACTION  
(declaration of terms of insurance coverage)**

49. Swiss Re repeats and realleges each and every allegation contained in paragraphs 1 through 48 as if fully set forth herein.

50. An actual case or controversy exists between Swiss Re and Defendants regarding the terms of the first party property insurance coverage for the lessees.

51. Pursuant to 28 U.S.C. § 2201, Swiss Re is entitled to a declaration that WilProp<sup>2000</sup><sub>sm</sub>, as supplemented by the signed slips, provides the terms for the Silverstein Coverage underwritten by Swiss Re.

52. The Silverstein Coverage should be construed in accordance with the terms, conditions and exclusions that are expressly referenced in WilProp<sup>2000</sup><sub>sm</sub> and the signed slips.

**AND AS FOR A SECOND CAUSE OF ACTION  
(declaration of number of occurrences)**

53. Swiss Re repeats and realleges each and every allegation contained in paragraphs 1 through 52 as if fully set forth herein.

54. An actual case or controversy exists between Swiss Re and Defendants regarding the number of occurrences that gave rise to the World Trade Center Loss.

55. Pursuant to 28 U.S.C. § 2201, Swiss Re is entitled to a declaration that the World Trade Center Loss arose out of one occurrence and constitutes one insurance loss.

**AND AS FOR A THIRD CAUSE OF ACTION  
(declaration of respective rights to potential insurance proceeds)**

56. Swiss Re repeats and realleges each and every allegation contained in paragraphs 1 through 55 as if fully set forth herein.

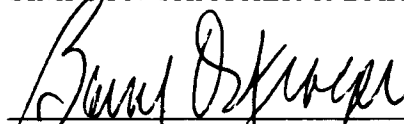
57. An actual case or controversy exists between Swiss Re and Defendants regarding the respective rights of each defendant to the insurance proceeds, if any, to be paid by Swiss Re.

58. Pursuant to 28 U.S.C. § 2201, Swiss Re is entitled to a declaration of which of the Defendants, if any, are entitled to, and their pro rata share of, any moneys which may be paid by Swiss Re for the World Trade Center Loss under the Silverstein Coverage.

WHEREFORE, Swiss Re demands judgment as follows:

- A. On its First Cause of Action: Declaring that WilProp<sup>2000</sup><sub>sm</sub>, as supplemented by the signed slips, provides the terms for the Silverstein Coverage underwritten by Swiss Re.;
- B. On its Second Cause of Action: Declaring that the World Trade Center Loss arose out of one occurrence and constitutes one insurance loss;
- C. On its Third Cause of Action: Declaring which of the Defendants, if any, are entitled to any moneys which may be paid by Swiss Re for the World Trade Center Loss and the pro rata share to which each defendant is entitled;
- D. On all Causes of Action: Awarding Swiss Re its attorneys' fees, costs and disbursements in prosecuting this action to the extent permitted by law; and
- E. Awarding Swiss Re such other and further relief as this Court deems just and proper.

SIMPSON THACHER & BARTLETT



Barry R. Ostrager (5379)  
Mary Kay Vyskocil (8315)  
Seth A. Ribner (5728)  
425 Lexington Avenue  
New York, New York 10017-3954  
Tel.: (212) 455-2000  
Fax: (212) 455-2502

*Attorneys for Plaintiff  
SR International Business  
Insurance Co. Ltd.*