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Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

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7 Attorneys for Plaintiff
8 SANDISK CORPORATION

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 (SAN JOSE DIVISION)

PSG

CV 12-06081
Case No.

13 SANDISK CORPORATION, a
Delaware corporation,
14
15 Plaintiff,
16 v.
17 ZURICH AMERICAN INSURANCE
COMPANY, a New York corporation,
18 Defendant.

**COMPLAINT FOR BREACH OF
CONTRACT
DEMAND FOR JURY TRIAL**

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1 Plaintiff SanDisk Corporation, for its Complaint against Defendant Zurich
2 American Insurance Company, alleges as follows:
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4 **THE PARTIES**

5 1. SanDisk Corporation (“SanDisk”) is a corporation duly organized and
6 existing pursuant to the laws of the State of Delaware and with its principal place of
7 business located in Milpitas, California.
8

9 2. SanDisk is informed and believes that at all times relevant herein,
10 Zurich American Insurance Company (“Zurich”) is and was a New York
11 corporation and that it maintains its principal place of business in Schaumburg,
12 Illinois. SanDisk is informed and believes that Zurich American Insurance
13 Company is one subsidiary of the Zurich Financial Services Group, whose
14 employees, representatives and agents participated in the underwriting of the policy
15 and response to SanDisk’s claim.
16

17 **JURISDICTION AND VENUE**

18 3. The amount in controversy exceeds \$75,000, exclusive of interest and
19 costs.
20

21 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.
22

23 5. Venue in this Judicial District is proper under 28 U.S.C. § 1391.
24

25 **CLAIM FOR RELIEF**

26 (Breach of Contract)

27 6. SanDisk realleges and incorporates by this reference paragraphs 1
28 through 5, inclusive.

1 The Business of SanDisk

2 7. SanDisk is a global leader in flash memory storage solutions. Its flash
3 memory technology is integrated into mobile, computing, and consumer electronics
4 products from top electronics companies and sold at approximately 250,000
5 international retail outlets.

6
7 8. SanDisk manufactures its memory products at world-class
8 manufacturing facilities that produce more than two million products each day. In a
9 joint venture with Toshiba, SanDisk operates some of the largest, most advanced
10 manufacturing facilities in the world that are used to make NAND flash memory
11 chips. These include the fabrication facilities, or “fabs,” in Yokkaichi, Japan,
12 known as “FAB 3” and “FAB 4.” FAB 3 opened in 2005 and FAB4 opened in
13 2007. Each fab houses thousands of sophisticated tools, each being an integral part
14 of a state-of-the-art production process.

15
16 9. The fabrication process at these fabs is a highly specialized, integrated
17 process during which electronic circuits are gradually created on a silicon wafer.
18 The wafers are transported in pods along a track to each step in the production
19 process in clean room environments. An Automatic Material Handling System
20 (“AMHS”) directs the pods through the process using a system of controllers, and
21 each step is recorded and tracked. A photolithographic “printing” process is used to
22 build a chip layer by layer. Many layers are deposited across a wafer and then
23 removed in small areas to create transistors and interconnects. Together they will
24 form the active “on/off” part of the chip’s circuitry plus the connections between
25 them, in a three-dimensional structure. The process is performed dozens of time on
26 each wafer, with hundreds or thousands of chips placed grid-like on a wafer and
27 processed simultaneously. After creating layers on the wafers, the wafers are sorted
28 and tested to ensure that chip circuits meet specifications. The finished wafers are

1 then cut with a diamond saw, separating the microprocessors, and each functioning
2 die is assembled into a package that protects the die. This package delivers the
3 power and electrical connections when placed on a computer circuit board or other
4 device such as a cell phone. The entire fabrication process for a given batch from
5 start to a finished product takes approximately twelve weeks.

6 7 The Insurance Policy

8 10. On or about April 1, 2010, SanDisk and Zurich entered into The Zurich
9 Edge-Global insurance contract, known as Policy No. PPR5966360-02 (the
10 "Policy"). The Policy period extended from April 1, 2010 through April 1, 2011.
11 The policy limit is \$500,000,000. The annual policy premium paid by SanDisk was
12 \$2,239,259.

13
14 11. The Policy provided in pertinent part coverage for "direct physical loss
15 of or damage caused by" a Covered Cause of Loss to Covered Property, as defined
16 by the Policy, as well as for business interruption.

17 18 The Accidental Power Loss and Shut-Down of FABs 3 & 4

19 12. On December 8, 2010, at approximately 5:20 a.m., a loss of power
20 occurred at FABs 3 & 4 in Yokkaichi, Japan. SanDisk is informed and believes that
21 the power drop was due to the failure of a transformer unit at the Yokkaichi Power
22 Plant, which provides electricity to FABs 3 & 4. The power drop lasted 7/10s of
23 one second or 158 milliseconds.

24
25 13. The sudden drop in electrical power affected approximately 100% of
26 the tools in FAB 3 and 80% of the tools in FAB 4, for a total of approximately 3,300
27 tools. As a result, the highly integrated production system was disrupted and
28 production declined significantly.

1 14. Following the power drop, repairs and remedial steps were necessary to
2 resume full production. The repairs and remedial steps included a variety of
3 servicing from internal and external equipment experts. These measures included,
4 but were not limited to, parts replacement, physical adjustments, recalibration, and
5 requalification. Repairs and remedial steps continued for approximately four days.
6 Due to the 12-week manufacturing cycle and the integrated nature of the systems,
7 production declines continued through at least the end of February 2011.

8
9 15. The Automated Material Handling System (the "AMHS"), which
10 controls the movement of the wafers, was also interrupted and was unable to
11 perform its intended functions without remedial measures. The AMHS, through the
12 use of controllers, records the state of each lot at all times and directs the transport
13 of the wafers in pods along a track to and from specialized cabinets called stockers
14 and to and from the manufacturing tools. Due to the interruption, the AMHS could
15 not properly perform these functions, and a "cold start" had to be performed. In
16 FAB 3, all wafers had to be relocated to the stockers and scanned to determine the
17 correct location. It took approximately 28 hours in FAB 3 to scan and reload all the
18 wafers.

19
20 16. As a result of the sudden drop in electricity, approximately 8,600
21 wafers that would have been available to SanDisk were scrapped.

22
23 17. At certain phases of the manufacturing process wafers must be
24 processed within a defined time period or else they will be scrapped. In order to
25 minimize scrap, the production priorities were shifted resulting in slowed
26 production. As a result, SanDisk was unable to produce 36,000 wafers compared to
27 SanDisk's share of the expected FAB output had the power drop not occurred.
28

1 18. As a result of receiving fewer wafers from the FABs, SanDisk was
2 unable to sell the expected level of product to its customers and lost profits from
3 sales and incurred other losses, including, but not limited to, costs involved with
4 reprogramming, restoring, servicing, and requalifying the highly sophisticated tools,
5 in an amount to be determined, but in excess of \$63,485,912, excluding the
6 applicable deductible.

7
8 19. The losses SanDisk suffered as a result of the system outages were
9 within the coverage provided by the Zurich Edge-Global Policy, including without
10 limitation, the provisions providing coverage at Section I (Insuring Agreement),
11 Section IV (Time Element), Section V (Special Coverages and Described Causes of
12 Loss), and Section VII(12) (Covered Cause of Loss).

13
14 20. On or around December 12, 2010, SanDisk, through its broker, Integro
15 Insurance Group, informed Zurich of the circumstances related to the power loss.

16
17 21. On or around September 17, 2012, Zurich, in breach of its obligations
18 under the policy, denied SanDisk's claim and informed SanDisk that, except for
19 \$102,719 provided as Professional Fees coverage, the majority of the losses
20 SanDisk suffered as a result of the interruption to its business were not covered by
21 its policy and denied payment to SanDisk.

22
23 22. SanDisk has performed each and every term and condition required of
24 SanDisk under the Policy.

25
26 23. As an actual and legal result of Zurich's breach of contract, SanDisk
27 has suffered damages in an amount to be proven at trial, but in excess of
28 \$63,485,912, less the applicable deductible.

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff SanDisk prays for judgment as follows:

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4 1. That judgment be entered against defendant Zurich for SanDisk's
5 actual damages as a result of Zurich's breach of the Policy;

6
7 2. That SanDisk recover its Investigative Costs incurred establishing the
8 existence and exact amount of its claim, according to proof;

9
10 3. That SanDisk be granted pre-judgment and post-judgment interest on
11 these amounts;

12
13 4. That SanDisk recover its attorneys' fees as permitted by law, equity or
14 contract;

15
16 5. That SanDisk recover its costs of this suit; and

17
18 6. That SanDisk be granted such other and further relief as the Court
19 deems just and proper.

20
21 Dated: November 29, 2012

22 SLATER HERSEY & LIEBERMAN-LLP

23
24 By


25 MARK K. SLATER

26 Attorneys for Plaintiff
27 SANDISK CORPORATION

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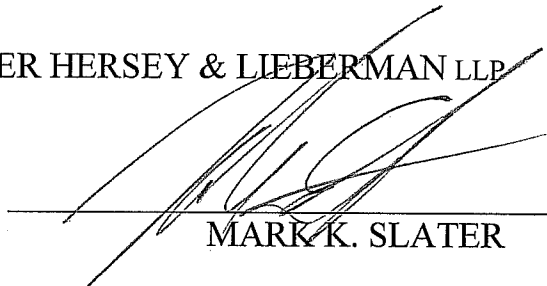
DEMAND FOR JURY TRIAL

Plaintiff SanDisk Corporation hereby demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: November 29, 2012

SLATER HERSEY & LIEBERMAN LLP

By



MARK K. SLATER

Attorneys for Plaintiff
SANDISK CORPORATION

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16 ZURICH AMERICAN INSURANCE
17 COMPANY, a New York corporation,
18 Defendant.

Case No. 12-06081PSG

CERTIFICATION OF
INTERESTED ENTITIES OR
PERSONS PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 7.1 AND
NORTHERN DISTRICT LOCAL
RULE 3-16

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1 This Certification as to Interested Entities or Persons is filed pursuant to
2 Federal Rule of Civil Procedure 7.1 and Northern District of California Local Rule
3 3-16.

4
5 Pursuant to Fed. R. Civ. P. 7.1, Plaintiff SanDisk Corporation ("SanDisk")
6 certifies that it does not have a parent corporation, and no publicly held corporation
7 owns 10% or more of its stock.

8
9 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other
10 than the named parties, there is no such interest to report.

11
12 These representations are made to enable the Court to evaluate possible
13 disqualification or recusal.

14
15 Dated: November 29, 2012

16 SLATER HERSEY & LIEBERMAN LLP

17
18 By


19 MARK K. SLATER

20 Attorneys for Plaintiff
21 SANDISK CORPORATION
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