

JUDGE GRIESA OFFICE COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Hewlett-Packard Company,

04 CV 02791  
Index No.

Plaintiff,

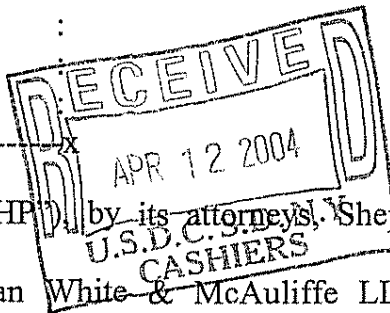
- against -

COMPLAINT

Factory Mutual Insurance Company,

JURY TRIAL  
DEMANDED

Defendant.  
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Plaintiff Hewlett-Packard Company ("HP") by its attorneys, Sheppard Mullin Richter & Hampton LLP and Heller Ehrman White & McAuliffe LLP, states its complaint against Defendant Factory Mutual Insurance Company ("FM") for damages, declaratory judgment and other relief as follows:

**HP'S LOSS**

1. This is an insurance coverage action arising from FM's failure to compensate HP for its property, extra expense, and business interruption loss suffered as the result of computer sabotage committed by of one of HP's former employees, Hock-Beng Lim ("Lim"). As described more fully below, Lim's sabotage destroyed a database that constitutes covered property under the "all risks" policy issued by FM to HP, which, in turn, resulted in a substantial business interruption loss.

2. HP is in the business of manufacturing and marketing a variety of information technology products, including desktop computers, printers, and high-end servers.

3. Until September 2001, Lim was employed as an engineer at HP in the Always-On Infrastructure Solutions Division (“AISD”). Lim was involved in various activities related to the benchmark testing of the HP 9000 Superdome Enterprise Server (the “Superdome”), a high-end UNIX-based server. The benchmark testing was to be performed in accordance with the guidelines of the Transaction Processing Performance Council in order to establish the number of online transactions that the server could process each minute – which translates into the average cost per transaction to the end user. The results of this type of benchmark testing are used to market servers, such as HP’s Superdome, because the results of the benchmark tests are critical to a potential customer’s purchasing decision.

4. On or about, January 18, 2001, Lim intentionally and maliciously sabotaged and destroyed a database that HP had built to conduct a benchmark test that would have established the superiority of the Superdome in the marketplace. In addition, Lim committed a series of additional acts of sabotage that precluded HP from rebuilding the database.

5. As a result of Lim’s sabotage, HP suffered a property, extra expense, and business interruption loss in excess of \$87 million.

### **THE PARTIES**

6. HP is a Delaware corporation with its office and principal place of business at 3000 Hanover Street, Palo Alto, California 94304.

7. FM is Rhode Island corporation and maintains its headquarters in Johnston, Rhode Island. FM is licensed and/or authorized to sell insurance to insureds located in California. FM is the successor to Allendale Mutual Insurance Company and a member of the FM Global group of companies.

### **JURISDICTION AND VENUE**

8. The jurisdiction of this Court is based upon 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds the sum \$75,000, exclusive of interests and costs.

9. The insurance policy at issue contains a choice of law and choice of forum clause that states the “policy will be governed by the State of New York, U.S.A. Unless otherwise agreed to by the parties, any disputes arising hereunder will be exclusively subject to the State of New York, U.S.A. jurisdiction.” Therefore:

- a. This court has personal jurisdiction over FM; and
- b. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391 (a), (c).

### **INSURANCE COVERAGE FOR HP’S PROPERTY**

10. HP purchased from FM a Spectrum Insurance Policy, which is an “all risks” property policy, Policy Number UR396, with a policy period of May 1, 1999 to May 1, 2002 (the “FM Insurance Policy”). Specifically, the FM Insurance Policy states: “This policy insures against all risks of physical loss or damage to property described herein, except as hereinafter excluded.”

11. The FM Insurance Policy covers, among other things, loss(es) to HP's Real Property and Personal Property, including Electronic data processing "Media" ("EDP"), Time Element Loss and Extended Period of Indemnity (the phrases used in the FM Insurance Policy to refer to a business interruption loss), and Extra Expense.

12. "Personal Property" is defined in the FM Insurance Policy to include, among other things, all of HP's personal property "including improvements and betterments in which the insured has an insurable interest," "personal property of officers and employees," and personal property of others that is in HP's care, custody, or control.

13. The FM Insurance Policy expressly provides coverage for damage to "Electronic data processing 'Media,'" which is defined as "data, programs or any other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment."

14. The FM Insurance Policy also provides coverage to HP for business interruption losses suffered in conjunction with a covered property loss including an EDP loss. Specifically, the FM Insurance policy provides Time Element coverage for "Actual Loss Sustained by the Insured during a Period of Interruption directly resulting from physical loss or damage of the type insured against under this policy to property not excluded" under the policy. "Actual Loss Sustained" is computed by calculating "Gross Earnings" "Less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services" "Plus all

other earnings derived from the operation of business.” The “Extended Period of Indemnity” clause states that the “policy will cover the Actual Loss Sustained by the Insured due to consequential reduction in sales...[d]irectly resulting from the interruption of business...[f]or such additional time as would be required with due diligence and dispatch to restore the Insured’s business to the condition that would have existed had no loss occurred” beginning on the date when business interruption coverage would otherwise end but “no more than 180 days from that date.”

15. The FM Insurance Policy also covers “Extra Expense incurred by the Insured during a Period of Restoration directly resulting from physical loss or damage of the type insured against under [the] policy to property not excluded by [the] policy and used by the Insured.”

16. The FM Insurance Policy has a \$10 million deductible for each occurrence of covered loss under the policy.

17. The FM Insurance Policy contains various sub-limits of liability. The sub-limit applicable to an EDP loss is \$50 million (i.e., for damage to electronic data), but this sub-limit does not apply to a business interruption loss resulting from an EDP loss.

18. HP paid all premiums due under the FM Insurance Policy.

19. HP has complied with any and all applicable conditions precedent under the FM Insurance Policy.

### **ADJUSTMENT OF HP'S CLAIM**

20. On September 10, 2001, HP identified Lim as a potential saboteur of a database that HP had built to conduct benchmark tests for the Superdome. Lim's role was confirmed by HP during the weeks that followed.

21. On October 4, 2001, HP gave notice to FM of its loss resulting from Lim's sabotage. HP executed a Sworn Statement in Proof of Loss, which it submitted to FM on December 17, 2001.

22. FM investigated HP's claim from approximately February 1, 2002 through June 30, 2003. On June 30, 2003, FM denied coverage, maintaining that HP's loss was below the \$10 million per occurrence deductible.

### **COUNT I** **DECLARATORY RELIEF**

23. The allegations of paragraphs 1 through 23 are incorporated by reference as if set forth fully and completely herein.

24. An actual and justiciable controversy presently exists between HP and FM concerning the obligations of FM to pay for the property, extra expense, and business interruption loss suffered by HP as a result of Lim's sabotage that destroyed the database that HP had built to conduct a benchmark test for the Superdome. HP contends that FM has such an obligation; FM disputes HP's claim. HP also contends that the \$50 million sub-limit for an EDP loss does not apply to a business interruption loss resulting from an EDP loss; FM disputes this claim, as well.

25. HP is entitled to a declaration, pursuant to N.Y. C.P.L.R. § 3001 and/or other laws, that: (a) FM is obligated under the FM Insurance Policy to pay HP for the property, extra expense, and business interruption loss HP suffered as a result of Lim's sabotage, less a single \$10 million deductible; and (b) the \$50 million sub-limit in the FM Insurance Policy for an EDP loss does not apply to a business interruption loss resulting from an EDP loss.

**COUNT II**  
**BREACH OF CONTRACT**

26. The allegations of paragraphs 1 through 26 are incorporated by reference as if set forth fully and completely herein.

27. FM is obligated to indemnify HP for any property, extra expense, and business interruption loss covered by the FM Insurance Policy, including an EDP loss and business interruption loss resulting therefrom. HP suffered a property, extra expense, and business interruption loss as a result of Lim's sabotage of the database that HP had built to conduct a benchmark test for the Superdome, for which HP is entitled to be paid under the FM Insurance Policy.

28. HP timely notified FM of its loss and submitted a Proof of Loss. FM denied HP's claim on June 30, 2003. FM's refusal to provide coverage for HP's loss constitutes a breach of FM's obligations under the FM Insurance Policy.

29. Accordingly, HP is entitled to a judgment for damages in an amount to be determined at trial, but which amount net of the deductible is at least \$77 million.

**JURY DEMAND**

30. HP demands a jury trial on all causes of action.

WHEREFORE, HP demands judgment to be entered in its favor and against FM, as follows:

(a) For a declaration that under the FM Insurance Policy: (i) FM is obligated to pay HP for the property, extra expense, and business interruption loss HP suffered as a result of Lim's sabotage, less a single \$10 million deductible; and (ii) the \$50 million sub-limit for an EDP loss does not apply to a business interruption loss resulting from an EDP loss.

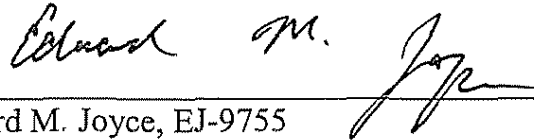
(b) Damages as a result of FM's breach of the FM Insurance Policy in an amount to be determined, but which amount net of the deductible is at least \$77 million;

(c) Pre-judgment and post-judgment interest; and

(d) For such other relief as the Court deems just and proper.

DATED: April 9, 2004

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