



1 Cotton Wollan & Greengrass, New  
2 York, New York.

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4 Appeal from a judgment of the United States District  
5 Court for the Southern District of New York (Sweet, J.).  
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7 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**  
8 **AND DECREED** that the judgment of the district court be  
9 **AFFIRMED.**

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11 Jane Street Holding, LLC, appeals from the judgment of  
12 the United States District Court for the Southern District  
13 of New York (Sweet, J.), granting summary judgment in favor  
14 of defendant-appellee Aspen American Insurance Company. On  
15 appeal, Jane Street argues principally that the district  
16 court misconstrued the insurance policy at the center of  
17 this litigation. We assume the parties' familiarity with  
18 the underlying facts, the procedural history, and the issues  
19 presented for review.

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21 On October 29, 2012, Hurricane Sandy destroyed Jane  
22 Street's \$2.2 million generator in the basement of One New  
23 York Plaza. Aspen insured Jane Street against flood damage.  
24 The dispute is whether the policy insured Jane Street's  
25 property in the basement.

26  
27 The policy defined the "covered location" as Jane  
28 Street's corporate headquarters, specifically: "One New York  
29 Plaza, 33rd Floor, New York NY 10004." Jane Street  
30 submitted a claim, but Aspen refused to pay any more than  
31 \$50,000--the policy's sublimit for property not in a covered  
32 location. Jane Street sued Aspen for breach of contract,  
33 breach of fiduciary duty, and bad faith. The district court  
34 granted Aspen's motion for summary judgment as to all three  
35 causes of action, on the ground that the policy covered  
36 property only on the 33rd floor and did not extend to the  
37 basement where the generator had been located. Jane Street  
38 appeals the district court's judgment with respect to the  
39 breach of contract and bad faith claims.

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41 We review de novo both a district court's grant of  
42 summary judgment, see, e.g., Terwilliger v. Terwilliger, 206  
43 F.3d 240, 244 (2d Cir. 2000), and its interpretation of a  
44 contract, see, e.g., Capital Ventures Int'l v. Republic of  
45 Argentina, 552 F.3d 289, 293 (2d Cir. 2009). Summary  
46 judgment is appropriate only "if the movant shows that there  
47 is no genuine dispute as to any material fact and the movant

1 is entitled to judgment as a matter of law." Fed. R. Civ.  
2 P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317,  
3 323 (1986).  
4

5 The insurance policy defined the covered property as  
6 Jane Street's "business personal property in buildings or  
7 structures at a 'covered location' or in the open (or in  
8 vehicles) on or within 1,000 feet of a 'covered location.'"   
9 The contract's definition of a "covered location" explains  
10 that "if the Scheduled Locations Endorsement is added to  
11 this policy, 'covered location' means a location that is  
12 described on the Location Schedule." Jane Street and Aspen  
13 did include a Scheduled Locations Endorsement to the policy,  
14 and it describes the "Covered Location" as "One New York  
15 Plaza, 33rd Floor, New York NY 10004." The text preceding  
16 that location reads: "Coverage provided by the [policy]  
17 applies only to the 'covered locations' described below."  
18 Although the policy insured against "direct physical loss"  
19 to Jane Street's property "at locations that are not  
20 described on the Locations Schedule," the policy limited  
21 Aspen's obligations to \$50,000 "in any one occurrence for  
22 each unscheduled location."  
23

24 The plain meaning of the policy is that: property  
25 inside a building or structure that is on the 33rd floor of  
26 One New York Plaza is covered (along with property in the  
27 open, or in vehicles, on or within 1,000 feet thereof),  
28 while for all other property a \$50,000 limit applies.<sup>1</sup> Cf.  
29 T&G Knitwear Co. v. Home Ins. Co., 548 N.Y.S.2d 29, 30 (App.  
30 Div. 1989) (holding that an insurance policy's definition of  
31 a covered location as the second and third floors of a  
32 building rendered property in the sixth floor of the  
33 building "not in an insured location"). Jane Street's  
34 flood-damaged generator was located in One New York Plaza's  
35 (unscheduled) basement and not on the building's (covered)  
36 33rd floor. The policy required no more of Aspen than the  
37 \$50,000 payment that it tendered to Jane Street.  
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39 Having concluded that the policy did not entitle Jane  
40 Street to more than what Aspen has paid, we agree with the  
41 district court that Jane Street's claim of bad faith is

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<sup>1</sup>This straightforward interpretation applies with equal force to the policy's Flood Endorsement, which "cover[s] direct physical loss to *covered property at 'covered locations'* caused by 'flood'" (emphasis added).

1 without merit. See Sukup v. State of N.Y., 227 N.E.2d 842,  
2 844 (N.Y. 1967) (holding that, to support a claim of bad  
3 faith, the insured must demonstrate that "no reasonable  
4 carrier would, under the given facts" have denied coverage).  
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6 For the foregoing reasons, and finding no merit in Jane  
7 Street's other arguments, we hereby **AFFIRM** the judgment of  
8 the district court.  
9

10 FOR THE COURT:  
11 CATHERINE O'HAGAN WOLFE, CLERK  
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