

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

LEXINGTON INSURANCE COMPANY,	)	
as subrogee of Shorenstein Properties, LLC	)	
d/b/a Shorenstein Realty Services, L.P.	)	
	)	Case No.1:10-cv-2719
Plaintiff,	)	
v.	)	Honorable Joan H. Lefkow
	)	
CROWN ENERGY SERVICES, INC. d/b/a	)	
Able Engineering Services	)	
	)	
Defendant.	)	

**MOTION OF CROWN ENERGY SERVICES, INC. D/B/A ABLE ENGINEERING SERVICES TO  
DISMISS BASED ON LACK OF JURISDICTION AND FOR FAILURE TO ADD INDISPENSABLE  
PARTIES AND/OR TO DISMISS COUNT I FOR FAILURE TO STATE A CAUSE OF ACTION**

Defendant, CROWN ENERGY SERVICES, INC. d/b/a Able Engineering Services by and through its attorney, LAW OFFICES LOWELL D. SNORF, III, moves pursuant to F.R.C.P 12 (b) 1, 12 (b) 7 and 19, to dismiss Plaintiff, LEXINGTON INSURANCE COMPANY, as subrogee of Shorenstein Properties, L.L.C. d/b/a Shorenstein Realty Services, L.P.’s (hereafter, ‘LEXINGTON’) June 10, 2010 First Amended Complaint. Based on the First Amended Complaint, with Exhibit 1, CROWN ENERGY also moves pursuant to F.R.C.P 12(b)(6) to dismiss Count I. On June 11, 2010 F.R.C.P. 4 (d)(1) service was completed on CROWN ENERGY SERVICES, INC. d/b/a Able Engineering Services , with the service waiver mailed to plaintiff’s counsel on June 21, 2010.

**I  
BACKGROUND AND PROCEEDINGS TO DATE**

On March 28, 2007 at 11:46 a.m., an electrical fire allegedly started within a Baltimore Aircoil Company HVAC (BAC) cooling tower 4 (CT4) by an energized north basin heater underneath CT4. The HVAC system is located on the roof of 500 West Monroe in Chicago. The fire allegedly damaged CT3 and CT4, model no. 32692C, installed in 1991 as original equipment at 500 West Monroe Street. 500 West Monroe Street is a 44 story building built in 1991. On March 28, 2007 the owner of 500 West Monroe Street was **SRI Monroe Street Venture, LLC, a Delaware limited liability company c/o Shorenstein L.P.** On March 28, 2007, the Trustee’s Deed confirms 500 West Monroe Street was owned by **SRI Monroe Street Venture, LLC, a Delaware limited liability company c/o Shorenstein L.P.** (Exhibit ‘A’, certified). As of the May 25, 2010 date of complaint filing, **SRI Monroe Street Venture, LLC**, was a Delaware limited liability company. On August 31, 2009 **SRI Monroe Street Venture, LLC**. was dissolved by the Delaware

Division of Corporations.

According to the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT** (see Doc. #9), on March 28, 2007 **CONTRACTOR: Able Engineering Services, Inc.** was to provide maintenance and engineering services to the **OWNER: Shorenstein Realty Services, L.P., as agent for the owners identified in the agreement.** Services were to be provided at 500 West Monroe. Page 22 of the agreement, also says the owner of 500 West Monroe Street Building was **SRI Monroe Street Venture, LLC a Delaware limited liability company** (see Doc. #9). The terms of the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT** ran from November 1, 2005 to October 31, 2007. On July 11, 2007 **SRI Monroe Street Venture, LLC, a Delaware limited liability company** sold 500 West Monroe Street to **BROADWAY 500 WEST MONROE FEE LLC, a Delaware limited liability company** (See Exhibit 'B', certified).

¶ 1 of the First Amended Complaint names **Lexington Insurance Company** as plaintiff. **Lexington** is a property and casualty insurance company domiciled in Delaware. In the amended complaint, **Lexington** also names its two subrogors. First, **Lexington** names **Shorenstein Properties, L.L.C.**, which is a Delaware Corporation with a principal place of business at 235 Montgomery Street, San Francisco, California. **Lexington** also names **Shorenstein Properties, L.L.C. d/b/a Shorenstein Realty Services, L.P.** **Shorenstein Realty Services, L.P.** is believably a private subsidiary of **Shorenstein Properties, L.L.C.** also operating out of 555 California Street, San Francisco, California, T.: (415) 421-7424. The complaint does not name **SRI Monroe Street Venture, LLC**, a Delaware limited liability company as a party, although on March 28, 2007 it was the owner of 500 West Monroe Street.

As defendant, plaintiff names **Crown Energy Services, Inc. d/b/a Able Engineering Services**, which is a California corporation with a principal place of business at 868 Folsom Street, San Francisco, California (Amended Complaint, ¶3).

From the March 28, 2007 H.V.A.C. loss, **Shorenstein Properties, L.L.C.** submitted four property claims to four separate insurance carriers. The property damage carriers paying **Shorenstein's** claims were **Underwriters at Lloyds, London, United Kingdom for Shorenstein Properties L.L.C.; SRI MONROE STREET VENTURE, L.L.C.; Munich Re for Shorenstein Properties L.L.C.; SRI MONROE STREET VENTURE, L.L.C.; Underwriters at Lloyds, London, United Kingdom for Shorenstein Properties L.L.C.; SRI MONROE STREET VENTURE, L.L.C.; and Lexington Insurance Company for Shorenstein Properties, L.L.C.; SRI MONROE**

**STREET VENTURE, L.L.C.** Coverage under the four property policies was primary and concurrent. The damage claims are identified below and in the four separate Proofs of Loss attached, as (Exhibit 'C', 'D', 'E' and 'F').

DATE	PROOF OF LOSS	POLICY NUMBER	AMOUNT CLAIMED
April 1, 2006	Underwriters at Lloyds, London, United Kingdom for Shorenstein Properties L.L.C.; SRI MONROE STREET VENTURE, L.L.C.	Policy # PP0600341	\$13,111.43  <b>EXHIBIT 'C'</b>
April 1, 2006	Munich Re for Shorenstein Properties L.L.C.; SRI MONROE STREET VENTURE, L.L.C.	Policy # PP0600339	\$38,142.36  <b>EXHIBIT 'D'</b>
April 1, 2006	Underwriters at Lloyds, London, United Kingdom for Shorenstein Properties L.L.C.; SRI MONROE STREET VENTURE, L.L.C.	Policy # PP0600335	\$187,135.95  <b>EXHIBIT 'E'</b>
April 1, 2006	Lexington Insurance Company for Shorenstein Properties, L.L.C.; SRI MONROE STREET VENTURE, L.L.C.	Policy # 7477659	\$238,389.74  <b>EXHIBIT 'F'</b>

Each of the policies believably contained a deductible, with the total deductible being \$100,000.00. How the \$100,000.00 deductible was prorated between the two **Underwriters at Lloyds's** policies, the **Munich Re** policy and **Lexington's** policy has not been disclosed. Including **Shorenstein's** \$100,000.00 deductible, the total damages for all four insurance carriers total \$576,779.00; however, the only complaint brought is for **Lexington's** 50% interest or \$238,389.74 and **Shorenstein's** \$100,000.00 deductible, CROWN ENERGY remains exposed to \$138,389.74 in the subrogation claims of **Underwriters** and **Munich Re**.

The principal place of business of **Shorenstein Properties, L.L.C.** and **Shorenstein Properties, L.P.** and **CROWN ENERGY** is San Francisco, California.

**II**  
**BASIS OF MOTIONS**

**Lexington Insurance Company** identifies itself as plaintiff, but alleges to be subrogating on behalf of **Shorenstein Properties, L.L.C.** and **Shorenstein Properties, L.P.** for contract and tort. The First Amended Complaint, Count I seeks redress for breach of contract, and apparently seeks damages beyond the amount identified in **Lexington's** Proof of Loss. Here, **Lexington's** Proof of Loss shows damage of \$238,389.74 (Exhibit 'F'); however, **Lexington's** First Amended Complaint seeks both **Lexington's** \$238,389.74 interest and **Shorenstein's** \$100,000.00 deductible. Since damages are sought beyond **Lexington's** \$238,389.74 claim, under F.R.C.P. 17 (a) **Shorenstein Properties, L.L.C.** and **Shorenstein Properties, L.P.** are also real parties in interest. If **Shorenstein Properties, L.L.C.** and **Shorenstein Properties, L.P.** are real parties in interest then their California citizenship becomes relevant and would need to be compared with that of **CROWN ENERGY**. Pursuant to F.R.C.P. 12 (b) 1 and 28 U.S.C. 1332 this court may lack subject matter jurisdiction over this lawsuit and this claim requires dismissal.

Defendant also moves this court pursuant to F.R.C.P 12(b)7 and 19 to dismiss because plaintiff has not included all subrogation carriers claiming an interest in this lawsuit. **Underwriters at Lloyds**, 1 Lime Street London, England EL 3M 7HA, also found at 181 West Madison Street Suite 3870 Chicago, Illinois Tel.: (312) 407-6200 apparently issued two insurance policies covering **Shorenstein's** damaged property. Under F.R.C.P 12(b)(7) **Underwriters at Lloyds** cannot be made parties to this action. Under 28 US 1332, **Underwriters at Lloyds** issued two policies either through England or Illinois, making **Underwriters at Lloyds** two separate plaintiffs. Plaintiff also fails to include party plaintiff **Munich Re Insurance Company of America, Inc.** **Munich Re Insurance Company of America, Inc.** is found at American Re Plaza P.O. Box 5241, 555 College Road East, Princeton New Jersey 08543-5241 Tel.: (609) 243-4200. **Munich Re Insurance Company of America, Inc.** is a Delaware Insurance Company. Because **Lexington Insurance Company** and **Munich Re Insurance of America, Inc.** are Delaware Insurance Companies, 28 U.S.C 1332 jurisdiction may be lacking. **Underwriters of Lloyds and Munich Re** retained separate subrogation counsel claiming \$238,389.74 in damages (see Exhibit 'F')<sup>1</sup>.

Pursuant to F.R.C.P. 12 (b) 6, Count I of **Lexington's** First Amended Complaint fails to state a cause of action

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<sup>1</sup> As a matter of courtesy, the law firm name and author are deleted from Exhibit 'G' but is included with the court's copy.

for a breach of written contract claim against **CROWN ENERGY**. Plaintiff does not make the fundamental allegations to plead breach of contract. At ¶1 of plaintiff's complaint, **Lexington Insurance Company** is the named plaintiff. Count I of plaintiffs' first amended complaint is based on the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT** between **Shorenstein** and **Able**, see ¶30, including Exhibit "1". Neither **Lexington Insurance Company** nor **Lexington Insurance Company as subrogee of Shorenstein Properties, L.L.C. d/b/a Shorenstein Realty Services, L.P.** have no standing to sue **CROWN ENERGY** for breach of contract. That entity entitled to bring an action for breach of contract is **SRI Monroe Street Venture, LLC**, who is not a named complaint party. Accordingly, **Lexington** has no right to subrogate on the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT**. **Lexington Insurance's** subrogation rights are independent of the service agreement between **Shorenstein Realty Services, L.P.** and **Able Engineering Services, Inc.** **Lexington** is not a party to that agreement.

Again, on **March 28, 2007** the owner of 500 West Monroe Street was **SRI Monroe Street Venture, LLC**, a Delaware limited liability company.

Based on the express terms of the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT**, specifically section 4.1, only the owner, **SRI Monroe Street Venture, LLC**, has the right to enforce the agreement. Section 4.1 of the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT** states:

4.1 Owner. The "owner" is the entity identified as such in the Agreement (i.e. SRI Monroe). Contractor shall report to Owner's Agent, also identified as such in the Agreement (i.e. Shorenstein), and follow the instructions of Owner's Agent, **except with respect to the provisions of this Agreement, which pertain directly to Owner.**

(Exhibit "B," Section 4.1)

Pursuant to ¶ 14.2, **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT** does not have rights to enforce the engineering services agreement. **Shorenstein Realty Services, L.P.** was not the owner of 500 West Monroe. **Shorenstein Realty Services, L.P.** signed the **ENGINEERING SERVICES AGREEMENT** for **SRI Monroe Street Venture, L.L.C.** for administrative convenience of the parties. ¶4.1 and ¶ 14.2 provides contract enforcement rights to **SRI Monroe Street Venture, L.L.C.** and not **Shorenstein Realty Services, L.P.** and not **Lexington Insurance Company**.

Further, ¶ 14.6 says the **Shorenstein Realty Services, L.P. ENGINEERING SERVICES AGREEMENT** shall not be deemed to confer any rights to any person or entity other than the parties hereto. Under ¶15.4, the definitions of **Owner Parties**, do not include **Lexington Insurance Company** as a party. Pursuant to F.R.C.P. 12(b)(6) defendants ask that Count I be dismissed.

Concurrently, with this motion, defendant has filed its memorandum in support of defendant's motion to dismiss the first amended complaint based on lack of jurisdiction, for failure to add indispensable parties and to dismiss Count I for failure to state a cause of action.

WHEREFORE, for the reasons set forth in this motion, the accompanying Memorandum of Law, defendant respectfully requests that this Honorable Court dismiss plaintiff's complaint for lack of jurisdiction and/or for failure to add indispensable parties and/or to dismiss Count I pursuant to F.R.C.P. 12(b)(6).

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Respectfully Submitted,  
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