

Amtrak Gets Insurer Docs In Environmental Cleanup Suit

By Kelly Knaub

Law360, New York (February 22, 2016, 4:35 PM ET) -- A New York federal judge on Friday granted Amtrak's bid to force dozens of London insurers to produce documents in their suit seeking to dodge covering the government-backed railroad service for environmental cleanup and asbestos exposure liability, saying the documents were not kept confidential.

Chief U.S. Magistrate Judge Roanne L. Mann rejected the insurers' argument that their privilege logs were protected from disclosure even though those communications were shared with London brokers on the grounds that such a practice was standard and necessary in light of the London market's structure, saying such a fact doesn't determine whether that method of distribution comports with the law governing attorney-client privilege.

"The record contains no evidence whatsoever regarding the confidential treatment of the attorney reports or other communications through the London brokers, such as whether the attorney reports were stamped confidential or what precautions were taken to ensure that those communications remained confidential," Judge Mann said.

Dozens of Amtrak's insurers, led by Certain Underwriters at Lloyd's of London, sued the rail giant in August 2014, to avoid covering it for a slew of environmental claims, including at a train yard in the Queens borough of New York City that suffers from widespread contamination from train fuel and polychlorinated biphenyls, or PCBs, and two other environmental remediation projects involving PCB cleanup efforts at Manhattan's Penn Station and a former fueling facility in Wilmington, Delaware, as well as various lawsuits filed by employees over health hazards.

The judge rejected the insurers' argument that the use of the London brokers was a necessity, saying there was no evidence to show that this was the only method by which the insurers' U.S. lawyers could communicate with them, other than an ambiguous statement of a man who claims to be knowledgeable of the practices of the London insurance market since the 1980s in a declaration submitted by the insurers.

Judge Mann pointed out that while the declaration states that the insurers' U.S. counsel, Lord Bissell & Brook, would send attorney reports to servicing companies in the London market, the insurers offered no information to show whether the law firm retained the London brokers' services on behalf of the insurers nor was it clear that the law firm even knew that the servicing companies had included the London brokers in particular distribution chains.

The judge added that the lack of evidence regarding the necessity for the role played by the London brokers, along with the exact nature of their relationship with the attorneys or insurers, was “particularly troubling” in light of the dual agency of the London brokers, who represented Amtrak during the negotiation over and purchase of the insurance policies.

The insurers are asking the court to determine whether they are obligated to cover Amtrak under numerous liability policies issued in the 1970s and 1980s for a hodgepodge of claims, which total at least tens of millions of dollars, though their complaint omitted specifics due to confidentiality concerns.

The coverage dispute has been brewing for a decade, but sporadic negotiations failed to bear fruit and Amtrak in July 2014 terminated a standstill agreement between the parties, which had been designed to forestall coverage litigation.

The so-called London market insurers filed the instant suit, which also targets dozens of Amtrak’s other insurers that either issued or participated in the relevant policies, a month later.

In March, U.S. District Judge Frederic Block denied Amtrak’s bid to transfer the suit to the District of Columbia, saying Amtrak hadn’t convinced him that the insurers were impermissibly forum shopping in selecting a New York forum because, the railroad claimed, insurers perceive New York as a more favorable forum for coverage disputes.

Attorneys for the London market insurers did not immediately return a request for comment on Monday. An attorney for Amtrak declined to comment.

The London market insurers are represented by Martin R. Baach, Mark J. Leimkuhler and Joseph L. Ruby of Lewis Baach PLLC.

Amtrak is represented by Rhonda D. Orin and Daniel J. Healy of Anderson Kill & Olick LLP.

The case is *Certain Underwriters at Lloyd’s London et al. v. National Railroad Passenger Corp.*, case number 1:14-cv-04717, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Caroline Simson. Editing by Richard McVay and Emily Kokoll.
