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Ace Loses Deductible Fight Over Oil Terminal's Sandy Damage

By Bibeka Shrestha

Law360, New York (January 03, 2014, 7:44 PM ET) -- A New York state judge held Thursday that a New York City fuel oil terminal owner that suffered nearly $2.28 million in Superstorm Sandy losses could pay a $250,000 deductible to receive flood coverage from Ace American Insurance Co.

Judge Mary Smith agreed with Castle Oil Corp. that the proper deductible for flood losses was $250,000, not $2.49 million, as Ace had argued when it turned down coverage for Castle Oil's losses at a Bronx terminal that supplies energy to New York City and receives, stores and ships petroleum products.

“To accept defendant's interpretation … would result in … no required response by defendant for this multimillion-dollar loss sustained by plaintiff,” Judge Smith said. “Manifestly, this could not have been plaintiff's intent, and said construction necessarily would render the flood damage sublimit of [$2.5 million] absolutely meaningless and the flood insurance plaintiff believed it had procured illusory.”

Castle Oil demanded coverage for the Sandy damage under a commercial property policy that provided $2.5 million in annual coverage for flood losses. Ace's policy required Castle to pay 2 percent of the “total insurable values at risk per location” or at least $250,000 to meet its deductible before the insurer would begin paying for flood losses.

At issue was whether the value of the terminal property — $124.7 million — or the $2.5 million available in flood coverage should be used to calculate Castle's deductible.

Ace argued that the deductible should be 2 percent of $124.7 million, the terminal property value, and that it did not owe coverage because Castle's Sandy losses did not exceed that amount.

But Castle focused on the fact that $2.5 million was the maximum that Ace would pay to cover flood losses at the terminal. It argued that $2.5 million was the “total insurable [value] at risk for flood loss” and that was the figure that should be used to determine the deductible. Since 2 percent of $2.5 million would be less than the $250,000 minimum, Castle argued that it would only have to pay $250,000 to satisfy its deductible before receiving flood coverage.

Siding with Castle, Judge Smith noted that the policy included a disclaimer that the $124.7 million figure was set forth for “premium purposes only," and it did not say that that amount would be used to calculate the deductible.

The judge stressed that the deductible should be calculated using the “values at risk,” which was necessarily the policy's flood sublimit of $2.5 million and not the total value of the property insured by the policy, she found.

Moreover, any ambiguities in the policy should be interpreted liberally in favor of the policyholder, she said.

The judge let slide that Castle Oil had brought a single breach of contract claim and only later asked for declaratory judgment on the deductible issue while bringing a partial summary judgment motion.

“It is apparent from the record at bar that the raised issue of how to properly apply the deductible policy provision is the crux of this matter,” Judge Smith said. “There certainly is no prejudice to defendant by the court's entertaining the issue …, defendant itself having pleaded its position regarding how the deductible properly is to be applied as an affirmative defense herein and its not having objected to plaintiff's motion on the ground that no such relief had been pleaded.”

Attorneys for the parties were not immediately available to comment on Friday.

Castle is represented by Finley Harckham and Peter Halprin of Anderson Kill PC.

Ace is represented by Charles Rocco and Venice Choi of Foran Glennon Palandech Ponzi & Rudloff PC.

The case is Castle Oil Corp. v. Ace American Insurance Co., case number 55812/13, in the Supreme Court of New York, Westchester County.

--Editing by Jeremy Barker.