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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Amtrak Wants $500M From Insurers For Sandy Coverage

By **Lisa Ryan**

Law360, New York (September 22, 2014, 4:42 PM ET) -- Amtrak has filed suit against a number of insurers in New York federal court to recoup the total $504 million in losses the rail giant claims to have suffered from Superstorm Sandy, telling the court it has only received $30 million in compensation from the insurers thus far.

The National Railroad Passenger Corp. told the court in its Wednesday complaint that the railroad operator, known as Amtrak, informed its more than one dozen insurers in December that it suffered an estimated $504 million in losses from Sandy and submitted more than $270 million in claims. But the insurers have only paid a small portion of that amount and have maintained that Amtrak isn't entitled to more than $125 million under their plans, the suit says.

"Amtrak seeks a declaration as to the meaning of certain policy provisions that are actively in dispute. Amtrak also seeks a judicial determination that defendants have breached their contractual obligations in connection with Amtrak's outstanding claim for losses following Superstorm Sandy," the complaint said.

The suit lists 17 insurers as defendants, including ACE Specialty Insurance Co., Federal Insurance Co., Lexington Insurance Co., Certain Underwriters at Lloyd's of London and more. Amtrak says the insurers have contractual obligations to cover the rail operator under more than 25 first-party all-risk property insurance policies they sold to Amtrak in 2011 for substantial premiums.

After Sandy made landfall in October 2012, inflicting more than $72 billion in damages across the Eastern Seaboard, Amtrak reached out to its insurers. According to the complaint, Amtrak's "critical physical assets" around New York City, including tunnels, bridges, track systems and power stations, had been substantially impacted by the storm.

The affected properties are "essential" to Amtrak's operation of trains along the Northeast Corridor, the business railroad in North America, and are also essential to other commuter rail services provided by the Long Island Railroad and New Jersey Transit, the complaint says.

In addition to rail damage because of excessive flooding and gale force winds from the storm, Amtrak suffered losses from business interruption when it was forced to shut down its services for several days after the storm, the suit says. In total, it says it lost around $504 million from the storm.

The rail operator says that while it informed the insurers of the damage in a timely fashion after the storm, the insurers engaged an adjuster of their own and have forced Amtrak to facilitate inspections at its facilities. But despite Amtrak's cooperation, it says it has been unable to recover more than "a token amount" of insurance proceeds.

Most of the insurers claim Amtrak is not entitled to receive more than $125 million under the various policies, but the "plain language of those policies calls for defendants to pay Amtrak's claim up to the limits of each policy," with the pre-occurrence limit set at $675 million, the complaint says.

Amtrak asked the court to declare that the insurers have breached their contracts and that the rail operator is entitled to full coverage up to the limits of each of the policies.

Steve Kulm, a spokesman for Amtrak, told Law360 on Monday that the insurers have refused to stand by the terms of their policies for the significant property damage that followed Sandy.

"The lawsuit is a first step toward resolving the deadlock with the insurance companies and providing a long-term permanent fix to the infrastructure damage for the benefit of the traveling public," Kulm said.

Counsel information for the insurers was not available Monday.

Amtrak is represented by Rhonda D. Orin, Daniel J. Healy, Finley T. Harckham and Marshall Gilinsky of Anderson Kill LLP.

The suit is National Railroad Passenger Corporation v. Ace Bermuda Insurance, Ltd. et al., case number 1:14-cv-07510, in the U.S. District Court for the Southern District of New York.

--Editing by Rebecca Flanagan.
