

Appellate Division Affirms NJ Transit's Entitlement to Full \$400 Million Program Limits for Sandy Water Damage

On November 18, 2019, the New Jersey Superior Court, Appellate Division, affirmed a trial court decision granting summary judgment to New Jersey Transit Corporation ("NJ Transit") that entitles the company to up to \$400 million in total property insurance coverage for substantial storm surge damage it sustained as a result of Superstorm Sandy in October 2012. Ken Frenchman appeared before the Court in October to present oral arguments on NJ Transit's behalf.

NJ Transit's excess property insurers attempted to argue that their coverage obligations were limited to a \$100 million sublimit for losses caused by "flood," despite that fact that the policies separately contained a definition for "named windstorm" that applied to Sandy, included the term "storm surge," and was subject to no sublimit. The Appellate Division's Opinion affirmed the trial court's decision that storm surge damage caused by Sandy fell within the "more specific" named windstorm definition, and not in the flood definition. It further held that the plain language of the policies indicates that the purpose of the named windstorm definition was to differentiate between water damage caused by non-named events and storm surge resulting from a named windstorm.

As an alternative ground, the Appellate Division affirmed the trial court decision based on New Jersey's efficient proximate cause doctrine, ruling that even if the water damage was caused both by flood and storm surge, storm surge was the proximate cause of the entire loss.

Finally, the Appellate Division affirmed the trial court's decision to dismiss Torus Specialty Insurance Company's counterclaim for reformation of the policy to reflect that storm surge was subject to the flood sublimit. The Court found that even viewing the evidence in the light most favorable to Torus, the evidence pertaining to the reformation counterclaim was "so one-sided" that NJ Transit was entitled to prevail as a matter of law.

The case is *New Jersey Transit Corp. v. Certain Underwriters at Lloyd's London et al.*, case numbers A-1026-17T1 and A-1027-17T1, in the Superior Court of New Jersey, Appellate Division.

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