

New Jersey Supreme Court Hears Insurers' Bid to Overturn a \$400M Decision

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New Jersey's highest court heard arguments Monday in the appeal of a ruling that the New Jersey Transit Corp.'s ("NJ Transit") insurers are required to insure \$400 million of water damage loss caused by Hurricane Sandy.

The matter stems from an insurance claim NJ Transit made after the super storm rocked the East Coast in 2012. NJ Transit claimed over \$400 million in losses as a result of damage to its tracks, bridges, tunnels and power stations. In response, its tower of property insurers took the position that a \$100 million flood sublimit applied to limit NJ Transit's recovery under its insurance tower, not the policy's \$400 million overall limits. NJ Transit filed a coverage action in state court. The trial court granted summary judgment to NJ Transit, holding that NJ Transit was entitled to full coverage of \$400 million under the tower's named windstorm coverage. The insurers appealed, again arguing that the flood sublimit applied to the claim.

The New Jersey Appellate Division affirmed the trial court's ruling that the named windstorm coverage applied. In doing so, the appellate court focused on the plain language of the policy. Specifically, the appellate court distinguished the definitions of the defined terms "named windstorm" and "flood." In doing so, the court noted that the definition of "named windstorm," which included the words "storm surge," was more specific than the definition of "flood," which merely used the word "surge." Accordingly, the court determined that the named windstorm limits applied, not the flood sublimit.

In addition, the court applied the efficient proximate cause doctrine to determine that the windstorm coverage pertained to the loss. The court found that the storm surge caused by Hurricane Sandy was a peril specifically insured against and because the hurricane's storm surge resulted in "an unbroken sequence" of events, the storm surge is "regarded as the proximate cause of the entire loss." Accordingly, the appellate court concluded that if NJ Transit's losses were caused both by "flood" and by a storm surge associated with a "named windstorm," and the efficient proximate cause doctrine is applied, NJ's Transit's coverage would not be restricted to the flood sublimit.

On Monday, the Supreme Court of New Jersey heard argument on the insurers' appeal of the Appellate Division's ruling. The Supreme Court justices referred to the policy's plain language as they probed the insurers' arguments. Several members of the court questioned the meaning of the provisions, expressing concern that the insurers' arguments could render the windstorm provision superfluous.

The Supreme Court's decision will help to clarify issues that have long been debated, specifically where to draw the line between flood and storm surge coverage in the context of a named storm. As always, close analysis of a property policy's coverage, particularly where there are overlapping or dovetailed coverages afforded under the policy, is key to obtaining a fair recovery.

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National Law Review, Volume XI, Number 7

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