

Affiliated Off Hook For \$30M Sandy Coverage Due To Mistake

By Kira Lerner

Law360, New York (September 16, 2014, 7:41 PM ET) -- A New York federal judge ruled Monday that Affiliated FM Insurance Co. sufficiently proved it mistakenly set a \$30 million coverage limit instead of \$10 million in Cammeby's Management Co. LLC's suit claiming it had been stiffed on coverage it was owed for Superstorm Sandy damage to a commercial complex it owns in Brooklyn.

After a July and August trial that ended in a jury finding insurance broker Alliant Insurance Services Inc. liable for negligence, U.S. District Judge Jed S. Rakoff said Monday — after reviewing additional submissions — that Affiliated met its burden of proof to establish a defense of mutual mistake.

Before entering a final judgment against Alliant, Rakoff asked for input from the parties on interest, which will be paid in addition to \$20 million in coverage owed.

"The court finds, as the jury did in its advisory verdict, that Affiliated has proved by clear and convincing evidence that Endorsement No. 3, which is a valid contract and which evidences the parties' agreement, contains a mutual mistake as to the amount of the coverage for the properties at issue in this case, and that the actual coverage sublimit is \$10 million," the order said.

Because the insurance companies' defenses were equitable in nature, Judge Rakoff said he, and not the jury, had to decide whether Affiliated FM met its burden to establish a defense of mutual mistake. However, Rakoff let the jury issue an advisory opinion.

The jury found that "Affiliated was not liable to Cammeby's for breach of contract," the order said.

The jury also found that Alliant's negligence was the cause of the mistake and that Alliant was liable to Cammeby's for \$20 million plus interest.

Judge Rakoff on Monday agreed with the jury's findings. According to the order, there was no breach of the insurance contract because the last endorsement of the contract should not have shown a limit of \$30 million.

The case dates to April 2013, when Cammeby's filed suit against Affiliated FM over the Sandy damage coverage.

Affiliated FM fired back in November, saying the suit should be dismissed because the two sides had agreed to a \$10 million flood sublimit. The insurance company produced documents that pointed to a

mutual agreement on the \$10 million, but Cammeby's pointed to one document — filed in relation to the finalizing of the insurance agreement — that noted the coverage was \$30 million.

In June 2013, Cammeby's filed an amended complaint adding claims against Alliant as the broker. According to the complaint, Alliant breached its duty to Affiliated FM by instructing it to cancel the additional \$20 million flood sublimit coverage for 25 properties, including the one in dispute.

In July, Judge Rakoff dismissed all of the counterclaims between the insurers.

Cammeby's is represented by Dennis D'Antonio and Joshua L. Mallin of Weg & Myers PC.

Affiliated is represented by Scott G. Johnson, Audrey E. Burnett and David Leichtman of Robins Kaplan Miller & Ciresi LLP.

Alliant is represented by Kenneth S. Fiorella, Mandie R. Forman, Paul Kovner, Tracey D. Mapou and Richard Gonzalez of Rubin Fiorella and Friedman LLP.

The case is Cammeby's Management Co. LLC v. Affiliated FM Insurance Co., case number 1:13-cv-02814, in the U.S. District Court for the Southern District of New York.

--Editing by Kelly Duncan.