

Jury Finds Insurers Owe Amtrak \$14.3M For Pollution Cleanup

By **Daniel Siegal**

Law360, Los Angeles (September 28, 2017, 9:23 PM EDT) -- Amtrak is entitled to coverage in its dispute with a group of London market insurers over environmental cleanup coverage, a New York federal jury found on Wednesday, awarding the train company \$14.3 million, Amtrak announced.

The trial between defendant Amtrak and a host of London insurers led by certain underwriters at Lloyd's of London alleging they didn't have to cover it for various environmental claims kicked off on Sept. 13. The jury returned after roughly a day of deliberations with a verdict in Amtrak's favor, according to a minute entry on the case docket. The jury verdict itself was not available in the case docket on Thursday evening.

Amtrak spokeswoman Christina Leeds told Law360 on Thursday that the company is "extremely pleased" with the verdict. Leeds said that the verdict holds that Amtrak is entitled to coverage the insurers had denied and awards Amtrak \$14.3 million for the costs it had incurred relating to environmental cleanup as of November 2016.

An attorney for the London market insurers did not immediately respond to a request for comment on Thursday.

Dozens of Amtrak's insurers had sued the passenger railroad service in August 2014 to avoid covering it for a slew of environmental claims. Claims involved the Sunnyside yard in Queens, New York, which has experienced widespread contamination from train fuel and polychlorinated biphenyls, and two other environmental remediation projects involving PCB cleanup efforts at Manhattan's Penn Station and a former fueling facility in Wilmington, Delaware. Various lawsuits have also been filed by employees over health hazards.

Between 1972 and 1986, the so-called London market insurers issued nearly 200 policies to Amtrak, extending coverage for sums the rail company becomes legally obligated to pay on account of bodily injuries or damage to a third party's property. The 1972-1974 policies provided coverage for any injury or damage arising out of the operation of a passenger train by Amtrak or on Amtrak's behalf, while the 1974-1986 policies stated that coverage applies to any injury or damage stemming from occurrences "caused by or growing out of" Amtrak's operations, according to court documents.

The London market insurers asserted that Amtrak is not entitled to coverage under their policies for multiple reasons, including that the company did not suffer any "loss" and that Amtrak's environmental

cleanup costs were excluded from the policy. Amtrak argued that exceptions to the exclusions existed for “sudden” and “accidental” damage.

In trial last week, U.S. District Judge Frederic Block denied a pair of summary judgment motions made by the parties earlier this year, siding with the insurers that “sudden” incidents must happen abruptly but disagreeing with their argument that everyday business operations cannot result in “accidents.” He said “such accidents are at the very heart of liability insurance.”

Judge Block also dismissed breach of contract claims against four excess carriers in the case — Yosemite Insurance Co., Allstate Insurance Co., Continental Insurance Co., and Eurinco Allgemeine Versicherungs AG — on the grounds there was “no reasonable prospect” the excess policies would be triggered.

However, he refused to dismiss the claims for declaratory relief against the companies, saying future cleanup costs may increase to the point where the policies would be triggered.

The London market insurers are represented by Aisha E. Bembry, Joseph L. Ruby and Mark J. Leimkuhler of Lewis Baach PLLC.

Amtrak is represented by Rhonda D. Orin, Daniel J. Healy, Vivian C. Michael, John M. Leonard and Stephen D. Palley of Anderson Kill PC.

The excess insurers are represented by Henry T.M. LeFevre-Snee and Mark W. Zimmerman of Clausen Miller PC.

The case is *Certain Underwriters at Lloyd’s London et al. v. National Railroad Passenger Corp. et al.*, case number 1:14-cv-04717, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Rick Archer. Editing by Nicole Bleier.