

## **AIG Unit On Hook For Port Authority Asbestos Claims: Judge**

By **Jeff Sistrunk**

*Law360, Los Angeles (November 29, 2017, 9:19 PM EST)* -- An American International Group unit must defend the Port Authority of New York and New Jersey and several contractors against scores of asbestos claims brought by construction workers on the original World Trade Center, a New York judge ruled Wednesday, saying coverage is triggered for claims tied to alleged asbestos exposures at the building site.

New York Supreme Court Judge Eileen Bransten denied AIG unit American Home Assurance Co.'s request for a finding that certain underlying asbestos claims against the Port Authority, construction manager Tishman Realty & Construction Co. Inc., aluminum producer Alcoa Inc. and now-defunct Mario & DiBono Plastering Co. Inc. don't fall within the scope of a general liability policy it issued to the transportation agency in 1966.

American Home took the position that the policy's coverage is only triggered if a plaintiff's asbestos-related injury was actually diagnosed during the policy period, which spanned from 1966 to 1976. But Judge Bransten said that interpretation is inconsistent with the policy language, which establishes that coverage is triggered by claims of injuries "arising out of" building operations at the World Trade Center site, regardless of when those harms became apparent.

"Indeed, under the plain language of the policy, coverage is triggered if the injury 'arises out of' construction of the project, regardless of when the injury itself began," Judge Bransten wrote.

American Home issued the policy to the Port Authority for construction of the Hudson Tubes, through which Port Authority Trans-Hudson trains from New Jersey were carried into the World Trade Center station. The policy also extended coverage to the agency's contractors and subcontractors, including Tishman, Alcoa and DiBono, according to Wednesday's ruling.

Court papers state that Tishman served as the Port Authority's agent and construction manager. Alcoa was contracted to install an aluminum curtain wall on the exterior of the two WTC towers, and DiBono was a subcontractor that allegedly applied fireproofing insulation with asbestos on the exterior columns and beams of the first 39 stories of the first tower of the WTC, according to court documents.

For more than 25 years, American Home defended and settled asbestos injury claims against the Port Authority and the various contractors, according to the decision. But in March 2012, the insurer changed course and filed the instant suit in New York state court, seeking a declaration that it has no obligation

to cover claims involving injuries that were diagnosed after the policy period ended.

Generally speaking, the American Home policy provides that the insurer will pay "all sums" that the Port Authority and its fellow insureds become liable to pay because of bodily injuries arising out of operations on the WTC project during the policy period, according to the opinion. In ruling against American Home on the trigger issue, Judge Bransten found that nothing in the policy indicates that a claimant's injury has to occur during the policy period for coverage to be available.

"It is thus clear that it is the insureds' operations, not a plaintiff's injury, which must occur 'during the policy period' to trigger coverage," the judge wrote.

Moreover, American Home had agreed in the past to cover many claims against the Port Authority and others without any regard for whether the workers developed an asbestos-related disease during the policy period, Judge Bransten noted.

"Not a single claims handler testified that the policy provided coverage for the WTC asbestos claims only if some disease occurred or existed during the policy period," the judge wrote.

Judge Bransten also refused to find that all the underlying claims relating to exposures to DiBono's allegedly asbestos-containing fireproofing insulation constitute a single occurrence subject to a \$10 million coverage limit. The workers who filed those claims were purportedly exposed to the insulation at different times and in different locations around the WTC construction site, meaning there was more than one occurrence, the judge held.

"In sum, the WTC fireproofing claims do not arise from a single occurrence, because they lack the temporal and spatial relationship required to be a single unfortunate event," Judge Bransten wrote.

Finally, the judge determined that American Home must continue to cover the defense costs incurred by the Port Authority and the other insureds even after the policy's total liability limit has been exhausted, as the policy doesn't impose a cap on those costs.

An attorney for the Port Authority declined comment. Attorneys for the contractors and American Home did not immediately respond to requests for comment.

American Home is represented by Michael J. Garvey of Simpson Thacher & Bartlett LLP.

The Port Authority is represented by Robert M. Horkovich, Raymond A. Mascia, Jr. and Vivian C. Michael of Anderson Kill PC. Alcoa is represented by Paul C. Fuener, Peter N. Flocos and Michael J. Lynch of K&L Gates LLP. TTV is represented by Glenn A. Kaminska and Samuel P. Quatromoni of Ahmuty Demers & McManus.

The case is American Home Assurance Co. v. The Port Authority of New York and New Jersey et al., case number 651096/12, in the Supreme Court of New York.

--Editing by Alanna Weissman.