

Storm Clouds Still Ahead As NJ Winds Down Sandy Suits

By **Martin Bricketto**

Law360, Jersey City (August 21, 2015, 7:26 PM ET) -- As New Jersey approaches three years since Superstorm Sandy, state courts have cleared nearly 73 percent of storm-related suits thanks in part to extra judicial attention, but the system could still see new big-dollar claims from policyholders that tried to negotiate out of court, attorneys said.

As of the beginning of August, 1,272 of the 1,748 Sandy suits that have been filed in New Jersey state courts are now closed, according to statistics provided by the judiciary. About 80 percent of the 476 cases that remain active are in Monmouth and Ocean counties, which saw the brunt of Sandy's impact when the storm made landfall on Oct. 29, 2012, and left more than \$36 billion in damages statewide.

While most of the state court Sandy cases have already been filed and resolved, there's still the potential for new suits with a lot of money at stake, according to some attorneys.

Those suits could come from insureds with financial wherewithal that have negotiated in vain with carriers — over certain areas of coverage or the applicability of policy limits or sublimits, for example — and finally feel like it's time to head to court, said Robert D. Chesler, a shareholder with Anderson Kill PC. Parties may have agreed to toll time restrictions on bringing suit as part of such talks, others said.

"I feel that a lot of the claims are taking a long time to make their way to court, and we haven't seen the end of this by a long shot," said Chesler, who handles insurance recovery work.

Some big Sandy cases with the courts are also still pending, including the suit that New Jersey Transit Corp. filed in Essex County against insurers in October for \$300 million in coverage.

Hundreds of cases remain open in Monmouth and Ocean counties, which abut New Jersey's coastline, but the clearance rates in those courts are about 72 percent and 71 percent, respectively. Monmouth has seen 419 cases with 301 cases closed, while Ocean has 904 cases with 642 closed.

Overall, state courts have seen fewer cases than attorneys such as Loren L. Pierce of McElroy Deutsch Mulvaney & Carpenter LLP expected.

"There was so much litigation after Hurricane Katrina, and I kind of expected that, and I know a number of carriers that we do work for had expected that onslaught of litigation, but to me, it didn't happen," said Pierce, who represents carriers. "It was much less than I anticipated."

Attorneys on both sides of the fence credited state courts for taking a proactive approach to Sandy litigation and working to move cases along.

Chief Justice Stuart Rabner instructed trial courts to expedite Sandy cases, and the system changed the case information statements that are attached to new complaints to create an indicator for the storm, said Kevin Wolfe, the assistant director for civil practice with the Administrative Office of the Courts. That enabled judges to hold accelerated case management conferences and place cases on a faster track, Wolfe said.

“Just being able to flag these cases in our case management system so that county civil staff and civil judges can address them on a timely basis, that’s a large part of why we’re able to resolve them so quickly,” Wolfe said.

In at least Ocean and Monmouth counties, there have been judges who were specifically designated to manage Sandy disputes and control the pace of those cases as they moved through the system, Wolfe said.

The judiciary’s case management efforts have paid off. In one of Pierce’s Sandy case in Middlesex County, she filed an answer for her client and received a notice to attend a settlement conference with the court’s assignment judge shortly after. She initially thought it was a mistake.

“These cases did not languish from what I saw,” Pierce said.

Charles A. Yuen, a partner with Scarinci Hollenbeck LLC who specializes in insurance recovery work, had a similar experience with Sandy cases in Monmouth County.

“By being attentive and keeping deadlines in place and showing interest, the [court] administration has been extremely helpful in getting cases moving and resolved,” Yuen said.

Mediation has also been heavily pushed in both New Jersey state and federal courts, which has helped foster settlements, Pierce said.

But while the state’s clearance rate for Sandy cases is laudable, the system could have done more to maximize judicial resources, said Goldberg Segalla LLP partner Jonathan M. Kuller, who represents insurers.

For example, the judiciary and Sandy litigants would have benefited from standardized case management orders, uniform preliminary discovery, easier judicial access and early referrals to mediation with experienced mediators, Kuller said, based on his experience in the U.S. District Court for the Eastern District of New York.

“We did a good job,” Kuller said. “Might there have been a way to do an even better job?”

One reason some cases may linger is the presence of bad faith or state Consumer Fraud Act allegations against carriers over the handling of Sandy claims, according to some attorneys.

“Many insurance companies believed that they could quickly dismiss bad faith and similar causes of action, thereby streamlining the litigation,” Chesler said. “However, courts have allowed these claims to go forward, which could lengthen these proceedings.”

The life of a case can also hinge on insurers determining the availability of reinsurance coverage, Yuen said.

“For some of the carriers, all they need to do is get their reinsurance file in order and they can settle,” he said.

Cases may also take time because of the fact-intensive nature of such litigation and warring expert reports on pivotal questions like whether property damage was caused by Sandy's wind or flood waters, Pierce said. Still, diligent judges and mediators can help break stalemates and avoid trials, she said.

“In my experience, the judges and mediators have pushed very hard to have each side closely examine the strengths and weaknesses of both the facts and expert opinions so that the parties will have a better understanding of the risks associated with moving forward with a trial,” Pierce said.

--Editing by Jocelyn Allison and Mark Lebetkin.

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