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NY Regulator Steps In To Resolve 9/11 Coverage War

By **Bibeka Shrestha**

Law360, New York (July 06, 2012, 8:09 PM ET) -- New York's insurance regulator recently asked insurers still battling claims stemming from the Sept. 11, 2001, terrorist attacks to turn over a wealth of data on payouts and reserves, saying it would expedite settlements, but experts disagree over whether that's actually the case.

The state Department of Financial Services noted in its letter sent to a slew of insurers that World Trade Center lessor Silverstein Properties' claims against American Airlines Inc. and United Air Lines Inc., private airline security companies and others remain in litigation and could drag on for many more years.

The DFS said it decided to step in because prolonged coverage disputes involving the parties had undermined public confidence in the insurance industry and slowed redevelopment of the World Trade Center site and surrounding neighborhoods.

"Litigation is never an efficient way to resolve disputes, especially when the delay slows an important public works project that would greatly benefit New Yorkers," New York Superintendent of Financial Services Benjamin Lawsky said in a statement Friday. "We look forward to receiving the requested information and working to see if a settlement, irrespective of the goals of the two sides, is possible that would potentially speed the completion of the Ground Zero project."

The letter requests details on each insurer's exposure to Sept. 11 claims; potential reinsurance coverage; total amounts paid to wrongful death plaintiffs, property damage plaintiffs and other insurers; and the time from notice of claim to actual payment for every Sept. 11 claim adjudicated through the court system, rather than through the Sept. 11 Victim Compensation Fund.

The DFS also asked insurers to disclose revenues from terrorism insurance and to outline how they benefited from the government's establishment of the victim compensation fund.

Finley Harckham, an Anderson Kill & Olick PC shareholder who represents policyholders, said on Friday that the department's move was more than welcome from the standpoint of policyholders.

According to Harckham, data that's collected could paint an unflattering picture of insurers by revealing profits from selling costly terrorism coverage following the Sept. 11 attacks.

"These questions that the insurance regulator is asking are going to show that the long-term impact of 9/11 is enormous profits for the insurance industry," Harckham said. "What it might do is give the department leverage."

But Randy Maniloff, a White and Williams LLP partner who represents insurers, questioned the usefulness of the data, stressing that insurance claims are based on the facts at issue, specific policy language and application of case law.

"I fail to see how answers to such questions — which could take countless hours to answer — will facilitate the settlement of open 9/11 claims," Maniloff said. "These questions may produce interesting historical data, but that's not the basis on which insurers are obligated to handle claims."

Whatever the result of the recent data call, this isn't the only time the New York insurance regulator has gotten involved in sprawling litigation over the Sept. 11 attacks.

The New York insurance regulator played a significant role in bringing about a resolution to a massive Sept. 11 claims dispute between Silverstein Properties and its first-party insurers, according to the DFS.

According to a May 2007 release, the state regulator helped Silverstein and seven insurers reach a $2 billion settlement following six years of legal battling. Silverstein and the insurers, including Travelers Cos. Inc., Zurich American Insurance Co. and Allianz Global Risks U.S. Insurance Co., signed confidentiality agreements to keep the specific amounts paid by each company confidential, according to the statement.

The massive deal was struck after then-New York Insurance Superintendent Eric Dinallo held dozens of meetings with the parties, and the governor at the time, Eliot Spitzer, got personally involved in negotiations, the statement said.

In its recent letter to insurers, the DFS said that it gets involved in coverage disputes from time to time and in connection with its regulatory oversight function, adding that the long-running litigation over Sept. 11, which now involves around 20 insurers, was not in the public interest.

The department stressed that it was committed to protecting the interest of those relying on the prompt and equitable resolution of insurance claims.

Harckham said he hoped the letter would pressure insurers to close out the remaining claims and stop delaying tactics.

According to the Insurance Information Institute, the Sept. 11 attacks led to insured losses of about $32.5 billion, or $40 billion in 2010 dollars — topped only by Hurricane Katrina, which brought losses worth $45 billion in 2010 dollars, the institute said.

Besides leading to massive claims, the 2001 terrorist attacks have also had long-lasting impacts on the insurance industry in general.

Before Sept. 11, insurers had provided terrorist coverage to commercial policyholders essentially for free because the risk of an attack was considered remote, the institute said. Now terrorism risk insurance — a product that hardly existed in the U.S. before Sept. 11 — is seen as essential coverage for millions of American businesses, the research group said.

Moreover, reinsurers backed away from providing terrorism coverage immediately the World Trade Center attacks, forcing the federal government to step in as a reinsurer of last resort for major terrorist attacks.

--Editing by Sarah Golin and Katherine Rautenberg.