

New Jersey Supreme Court Upholds \$400 Million Award for Superstorm Sandy Damages

In New Jersey Transit Corp. v. Certain Underwriters at Lloyd's London,¹ New Jersey's highest court upheld an appellate decision² finding that New Jersey Transit Corporation ("NJT") was entitled to full coverage under its property insurance policy for damages caused by Superstorm Sandy.

In July 2012, NJT secured a multi-layered "all risks" property insurance program from eleven insurers for the policy period of July 1, 2012, to July 1, 2013. The policies covered all perils and damage to NJT's property unless specifically excluded. The primary layer, issued by Lexington Insurance Company, provided the first \$50 million of coverage. The second layer provided coverage up to \$100 million, the third layer provided an additional \$175 million, and the fourth layer provided coverage of \$125 million, for a total of \$400 million in coverage.

The excess layer insurers included Certain Underwriters At Lloyd's, London, Torus Specialty Insurance Company, and several other carriers. All participating insurers' policies included a standard policy form and separate endorsements, some of which were included in all policies and some of which were unique to specific insurers.

Each policy included sublimits of coverage for 27 different losses, including a \$100 million "per occurrence" sublimit for losses caused by flood. The term "flood" was defined in certain excess policies issued by Lloyd's London and Torus Specialty as:

[A] temporary condition of partial or complete inundation of normally dry land from:

1. The overflow of inland or tidal waters outside the normal watercourse or natural boundaries[;]
2. The overflow, release, rising back-up, runoff or surge of surface water; or
3. The unusual or rapid accumulation or runoff of surface water from any source.

The excess layer policies issued by Lloyd's London also included a definition for the term "named windstorm." "Named Windstorm" was defined as "wind or wind-driven water, storm surge and flood associated with, or which occurs in conjunction with, a storm or weather disturbance which is named by the National Weather Service or any other recognized meteorological authority."

¹New Jersey Transit Corp. v. Certain Underwriters at Lloyd's London, No. 083801, 2021 WL 261989 (N.J. Jan. 27, 2021).

²New Jersey Transit Corp. v. Certain Underwriters at Lloyd's London, 221 A.3d 1180 (N.J. App. Div. 2019).

The excess layer issued by Torus Specialty also included a definition of “named windstorm,” defining the term as “direct action of wind including ensuing storm surge when such wind/storm surge is associated with, or occurs in conjunction with, a storm or weather disturbance which is named by the National Oceanic and Atmospheric Administration’s (NOAA) National Hurricane Center or similar body until sustained wind speeds drop below the parameter for naming storms.” The term “storm surge” was defined as “water driven inland from coastal waters by high winds and low atmospheric pressure.”

On October 29, 2012, Superstorm Sandy struck New Jersey, resulting in significant damage to NJT’s properties. NJT submitted a claim under its property insurance program. The primary policy paid the full \$50 million policy limits, but the excess carriers only offered to pay an additional \$50 million, on the ground that the claimed losses were subject to the \$100 million flood sublimit in the policies. NJT argued that it was entitled to the full \$400 million in coverage because none of the sublimits in the policies applied to losses caused by a “named windstorm.”

NJT filed an action against the excess insurers in New Jersey state court, seeking a declaration that the insurers were obligated to pay the full \$400 million policy limits for NJT’s damages. NJT and the excess insurers filed motions for summary judgment, and the trial court found in favor of NJT. On appeal, the excess carriers argued that the inundation of NJT’s properties met the definition of “flood” as defined in the two policies at issue. Therefore, NJT’s damages were subject to the \$100 million flood sublimit.

The appellate court disagreed because the excess policies separately defined the term “named windstorm” to include “wind driven water” and “storm surge.” Although the definition of “flood” included the term “surge,” the court, applying basic principles of insurance policy interpretation, concluded that because “named windstorm” more specifically encompassed wind driven water or storm surge, that definition controls. The appellate court further concluded that if the excess carriers had intended that damage from a “storm surge” would be subject to the flood sublimit, the policies could have stated so in plain language.

The [New Jersey Transit Corp](#) decision illustrates the significance of defined policy terms and the importance of understanding how policy sublimits may apply to a particular loss. As hurricanes continue to increase in number and severity, policyholders in coastal areas should carefully review their insurance programs to ensure that they have sufficient coverage in place in the event of a loss. Click here to view [SDV’s Hurricane Season Policyholder’s Handbook](#).

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