



## Insurance

## Silverstein Loses World Trade Center Appeal

Dan Ackman, 09.26.03, 5:00 PM ET

A federal appeals court in a ruling issued today, substantially affirmed the position taken by the insurance industry that **Silverstein Properties**, the leaseholder to the devastated World Trade Center, likely can claim no more than the \$3.5 billion insurance policy limit.

While the appeals court did allow for a jury trial concerning the interpretation of certain terms in the contracts with 22 insurers, the court largely upheld the insurers' claim that Silverstein itself advocated a definition that would preclude its theory that the attack on the buildings should be considered two "occurrences" allowing for two separate insurance claims. The decision leaves in doubt Silverstein's financial ability to rebuild the Ground Zero site. (See: [Trade Center Financing On Shaky Ground.](#))

The 62-page ruling was written by Chief **John M. Walker**, a relative of President **George W. Bush**, who was appointed by **President Reagan** and promoted to the appeals court by the first President Bush. It rejects the claim that most of the insurers, including **Swiss Re** (otc: [SWCEY - news - people](#)), which brought the initial lawsuit a month after the attacks, could be bound by a form they'd neither signed, nor necessarily seen. As a result, some insurers will be bound by the form advocated by **Willis Group Holdings** (nyse: [WSH - news - people](#)), Silverstein's insurance broker. That form, the court ruled, necessarily limits Silverstein to one occurrence and, therefore, one recovery.

Other insurers, including **Hartford Financial Services** (nyse: [HIG - news - people](#)), **Royal & Sun Alliance Insurance** (nyse: [RSA - news - people](#)) and **St. Paul Cos.** (nyse: [SPC - news - people](#)), will go to trial with the question for the jury being the interpretation on other forms that the appeals court found ambiguous. The appeals court wrote that a jury could "find that the cause of the destruction of the (World Trade Center) was either the individual impacts caused by each plane or a single coordinated terrorist attack." But the court did not decide the issue itself, as Silverstein had urged.

"We're delighted since the court has adopted the position Swiss Re has taken for two years," said **Barry Ostrager**, a partner in Simpson Thacher & Bartlett, and the lead lawyer for Swiss Re.

Silverstein said the three insurance companies whose case was considered by the appeals court accounted for only 3%, or \$112 million, of the total coverage. But under the appeals court ruling, none of the insurers will necessarily have to pay under the "two occurrence" theory. The court also said it agreed with the insurers' view of the history of the policy negotiations. Ostrager called Silverstein's view of that history a "post-9/11 fiction."

[Larry Silverstein](#), president of Silverstein Properties, has said his actual losses on Sept. 11, 2001, amount to \$8.2 billion, including \$5.7 billion for the twin 110-story towers, retail property at the site and buildings 4 and 5, which were also destroyed.

The conflict that started before Judge John Martin in the U.S. District Court in Manhattan continued after the appeals court ruling. Howard J. Rubenstein, a spokesman for Silverstein, said: "We are fully confident that a jury hearing all of the evidence will reject the insurers' attempts to avoid paying for the cost of rebuilding the World Trade Center." But no one claims that the insurance policies it had negotiated as leaseholder were meant to provide the full replacement value of the properties.

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