Fields Howell

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This month we report on important developments in the ongoing World Trade Center litigation.

2nd Circuit Rules In Favor of Silverstein in WTC Litigation

The 2nd Circuit Court of Appeals has issued its decision on the appeal of developer Larry Silverstein's company in the long-running drama of the World Trade Center litigation, reversing the District Court's judgment that Silverstein was not entitled to further compensation. *World Trade Center Properties, LLC v. American Airlines, Inc.* (17 September 2015).

In April 2001, Silverstein's company, World Trade Center Properties, LLC, completed acquisition of a 99 year leasehold interest in the World Trade Center towers from the Port Authority of New York. After the September 11, 2001 attack that destroyed the towers, Silverstein made claims to the commercial property insurers which insured the towers. Those claims resulted in litigation against the property insurers, and those insurers ultimately settled with Silverstein for $4.1 billion.

Silverstein and the commercial property insurers then sued American Airlines, United Airlines, and their security companies ("the airline defendants"). The insurers sued to pursue their subrogation interests, and Silverstein sued claiming he had incurred additional loss that was not compensated by the subrogating insurers.

The subrogating property insurers ultimately settled with the airline defendants and their aviation liability insurers for $1.2 billion. But the airline defendants successfully obtained judgment against Silverstein. Silverstein alleged his loss on the leasehold interest exceeded $8 billion, but U.S. District Court Judge Hellerstein determined that Silverstein's leasehold loss was only $2.8 billion. Under New York law, Silverstein was not entitled to pursue additional damages against the airline defendants since his $2.8 billion loss was fully compensated by the $4.1 billion settlement with the subrogating insurers.

Silverstein appealed the District Court's judgment, and the 2nd Circuit has now reversed the judgment. The 2nd Circuit held that Judge Hellerstein was correct that under New York law, Silverstein is not entitled to recover losses against the airlines to the extent the same loss was compensated by the commercial property insurers. The Court of Appeals also held Judge

Hellerstein was correct that under New York's "lesser of two" rule, Silverstein was entitled to recover only the lesser of the diminution in value of the leasehold interests, or the cost of restoration.

But, the Court of Appeals held that Judge Hellerstein was in error in determining that Silverstein's loss on the leasehold interest was only $2.8 billion. The Court of Appeals held that a different loss methodology should have been used in determining Silverstein's loss for the diminution in value of the leasehold interest.

Judge Hellerstein determined the $2.8 billion loss based on the present value of the lease payments Silverstein was obligated to make to the Port Authority. The district court then determined the value of the leasehold interest before the loss was $2.8 billion and a zero value afterwards. The Court of Appeals held this methodology was not correct, because it agreed with Silverstein that the value of the leasehold interest after the loss could be negative.

On remand, Silverstein will be entitled to a new loss calculation, and will be entitled to pre-judgment interest at New York's statutory rate of 9% on any amount of loss that is determined to be above $4.1 billion. Whether Silverstein will be able to prove a loss above $4.1 billion is to be determined.

For questions or comments,
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