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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Aluminum Co. Wins $35.5M From Insurers Over Lost Business

By **Jeff Sistrunk**

Law360 (July 8, 2019, 10:40 PM EDT) -- A Delaware jury has found that a now-defunct aluminum producer's property insurers must pay $35.5 million to cover the company's losses from the disruption of its business following two major accidents at its Missouri smelting facility in 2015 and 2016.

Following a seven-day trial, the Delaware Superior Court jury determined on July 3 that a group of insurers for Noranda Aluminum Holding Corp. — which ceased operations nearly three years ago after filing for bankruptcy — are on the hook for "business interruption" or "time element" losses that Noranda suffered after a molten metal explosion and subsequent equipment failure hobbled its plant in New Madrid, Missouri.

The jury found that the 14 insurance companies — including Factory Mutual Insurance Co., XL Insurance America Inc. and Liberty Mutual Fire Insurance Co. Inc. — owe Noranda nearly $14.8 million for losses tied to a 2015 blast — dubbed the "casthouse explosion" — and more than $20.7 million for losses stemming from a 2016 equipment breakdown — known as the "potline freeze." It also rejected the insurers' argument that Noranda's facility would have ceased operations even if the two accidents hadn't occurred, which would have triggered an exclusion for "idle periods" and limited coverage.

"We obtained 95% of what we requested, so we were very pleased," David B. Goodwin of Covington & Burling LLP, who represents Noranda, told Law360 in a phone interview on Monday.

Counsel for the insurers did not immediately respond to requests for comment.

According to Noranda's January 2017 complaint, the insurers had collectively issued the aluminum company a $700 million property policy for a period spanning from May 2015 through May 2016. Factory Mutual provided 50% of the coverage, while its 13 fellow insurers provided the other 50%, the suit indicated.

In August 2015, a molten aluminum explosion rocked Noranda's New Madrid smelting facility, causing extensive damage and injuring 33 workers, according to a post-incident report by the Occupational Safety and Health Administration. The insurers paid Noranda's ensuing property damage claim in full, but covered only $5.64 million of the company's nearly $22 million business interruption claim, according to Noranda's suit.

Five months later, as the plant was still reeling from the blast, a switchgear failure caused two key smelting components, called potlines, to freeze up, resulting in significant damage, the complaint said. Noranda's insurers again paid the resulting property damage claim, but declined to pay any of its $22.8 million business interruption claim, according to the suit.

Noranda cited the insurance companies' refusal to pay its losses in full as one of the main reasons it filed for Chapter 11 bankruptcy protection in February 2016. The aluminum producer later sold the New Madrid plant to a Swiss company in November 2016, according to court filings.

Noranda is represented by Christine S. Haskett, David B. Goodwin, Rebecca A. Jacobs and Nicholas M. Lampros of Covington & Burling LLP, and David J. Baldwin and Carla Jones of Potter Anderson & Corroon LLP.

The insurers are represented by Jonathan D. Mutch, David E. Marder and Matthew P. Cardosi of Robins Kaplan LLP, and John L. Reed, Matthew Denn and Peter H. Kyle of DLA Piper.

The case is Noranda Aluminum Holding Co. v. XL Insurance America Inc. et al., case number N17C-01-152, in the Delaware Superior Court.

--Editing by Adam LoBelia.