

## Rail Co.'s \$5.6M Irma Costs Met Deductible, 11th Circ. Says

By **David Minsky**

Law360 (June 1, 2026, 9:39 PM EDT) -- The Eleventh Circuit revived a Florida railroad company's insurance dispute over coverage for \$5.6 million in costs to avoid Hurricane Irma damage, ruling claimed expenses for preventative maintenance exceeded the \$750,000 policy deductible even though it incurred no physical loss as a result of the storm.

U.S. Circuit Judge Elizabeth L. Branch wrote the three-judge panel **opinion** released Friday in favor of Florida East Coast Holdings Corp., saying the lower court correctly named the provisions offering coverage provided by five insurers, but wrongly concluded that the rail company's deductible was more than \$10.9 million.

"We disagree with this deductible calculation because the plain text of the policy leads to the conclusion that the deductible is \$750,000," Judge Branch said. "Because we conclude that this lower deductible applies, we vacate the district court's order granting summary judgment to the insurers, and we remand for the district court to determine the amount Florida East Coast is entitled to recover in light of the lower deductible."

FEC brought a lawsuit to the U.S. District Court for the Middle District of Florida in July 2021, naming Lexington Insurance Co., Aspen Specialty, Houston Casualty, Allied World and Ironshore Specialty as defendants. The rail company alleged breach of contract after the insurers denied coverage for the preventative maintenance expenses incurred shortly before Irma struck Florida in September 2017.



The rail company, which owns a 351-mile freight track system between Jacksonville to Miami, said it spent more than \$5.6 million to remove about 600 railroad crossing gates before the storm. FEC claimed **that's what the insurers expected** it to do.

Efforts were successful in preventing damage, although FEC said it lost revenue in the process of removing and reinstalling the gates because the rail line had to be shut down.

While FEC said multiple policy provisions provided overlapping coverage, the insurers argued that only the policy's protection provisions applied. The lower court agreed with the insurers and calculated FEC's deductible at 5% of the minimum value of the crossing gate system, leading to the \$10.9 million figure.

Judge Branch said the lower court ruled correctly on the protection provisions, but miscalculated the deductible. The judge said that the provisions instructed how to determine the appropriate deductible, but don't require the amount to be calculated as if damage occurred.

Referring to the deductible provisions, Judge Branch said the amount is based on \$750,000 or 5% of the value of the damaged property, whichever is greater. But because FEC claimed zero damages, the greater amount is \$750,000, according to the judge.

Judge Branch disagreed with FEC that it was covered under policy language to "reduce" the risk of loss. The judge cited the 2000 Florida Supreme Court decision [Auto-Owners Ins. Co. v. Anderson](#) , holding that each policy should be read as a whole "to give every provision its full meaning and operative effect," and the Florida Third District Court of Appeal's 2020 decision in the [Aleman v. Gervas](#)  case, holding that "the use of different language in different contractual provisions strongly implies that a different meaning was intended."

"Interpreting 'reduce' to mean minimizing loss after it occurs gives the word a different meaning than 'protect,' 'preserve,' and 'prevent,' which explicitly point to 'impending' loss," Judge Branch said. "Thus, the policy, read 'as a whole,' supports our conclusion that the two 'reduce' provisions do not cover Florida East Coast's preventative measures."

Counsel for the parties did not immediately respond to requests for comment Monday.

U.S. Circuit Judges William Pryor, Elizabeth L. Branch and Nancy Abudu sat on the panel for the Eleventh Circuit.

Florida East Coast Holdings is represented by Jonathan Y. Ellis of McGuireWoods LLP, and by Thomas E. Bishop and Frederick D. Page of Bishop Page & Mills PLLC.

The insurers are represented by Paul L. Fields Jr. and Stephen A. Kahn of Fields Howell LLP, and by Wayne Glaubinger, Eric. T. Krejci and Perry Goodman of Mound Cotton Wollan & Greengrass LLP.

The case is Florida East Coast Holdings Corp. v. Lexington Insurance Co. et al., case number 24-11479, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Leah Bennett.