

AS PUBLISHED IN

The New York Jury Verdict Reporter

XVII/6-5 INSURANCE CASE — DENIAL OF CLAIM AFTER BURGLARY —
VERDICT FOR PLAINTIFF

Goldex, Ltd. v. Commercial Union Insurance Company 19672/94 9-day trial
Verdict 6/2/99 Kings Supreme

Judge: Herbert Kramer

Verdict: \$824,000 plus approximately \$400,000 in interest Jury: all female. A post-trial motion Is pending.

Pltf. Atty Jonathan J. Wilkofsky and Mark L. Friedman of Wilkofsky, Friedman Karel & Cummins, Manhattan David H. Fromm of Chalos & Brown, P.C.,
Manhattan

Deft. Atty David H. Fromm of Chalos & Brown, P.C., Manhattan

Facts: This action by an importer and exporter of wholesale film and battery products was brought against its own insurance carrier for breach of an insurance policy. The matter arose when warehouse and offices of Pltf.insured were allegedly burglarized over the July 4th weekend in 1993, when it was alleged that \$764,000 of stock in the warehouse was stolen. Deft. insurance carrier refused payment and this action ensued.

Deft. contended that its investigation revealed that the public adjuster that Pltf. had retained had recently been indicted for insurance fraud, that Pltf's owner did not call police until approximately 2 hours after the burglary was discovered, and that Pltf. had submitted a fake invoice in connection with this claim. Deft. also argued that Pltf. did not provide proof of the goods that Pltf. claimed had been stolen.

Evidence presented at trial included testimony by the lead detective who investigated the burglary, as well as a private investigator, who, using detailed photographs of the premises taken immediately after the burglary, established in detail the method for entry into the premises, and the bypassing of an extensive alarm system, as well as the method of removal of stock from the premises. Pltf. also presented a forensic accountant who testified in support of the claim for damages based on a book-to-physical reconciliation of the inventory on hand as of the date of the loss.

Evidence also included testimony by two underwriters on behalf of the Deft. carrier, who testified that Pltf had allegedly misrepresented the average amount of stock to be held on hand, which was allegedly to be the basis for the calculation of the premium. Pltf.'s owner admitted that a fake invoice had been submitted in connection with this claim and that documents identifying the goods allegedly stolen had been destroyed. The jury found that a legitimate burglary had occurred, that there was not a material

misrepresentation in applying for insurance, and that the phony invoice was not material or detrimental to Deft. Offer:

\$200,000; demand: \$740,000; amount asked of jury: \$824,000. Jury deliberation: 1 1/2 hours. Carrier: Commercial Union.

Pltf.

Expert:

Anthony Dellaventura, private investigator, Manhattan; Bruce Rifkin, forensic accountant, Manhattan and New Jersey.

Deft.

Expert:

Pat Collins, forensic accountant, Manhattan.