

All Risk

**New York Judge: Insurer Must Pay Real Estate Firm  
\$10 Million For Roof Damage**

NEW YORK -- An insurer that refused to pay for repairs to a vacant city building now owes its owner \$10 million in damages (Atlas Assurance Co. v. Newark Building Center, No. 119654/95, N.Y. Sup., N.Y. Co.).

New York County Supreme Court Justice Beatrice Shainswit ruled Jan. 15 for defendant Newark Center Building Co. in a case brought by Atlas Assurance Company of America, which at the time was doing business as GRE Insurance Group.

The dispute followed a January 1994 rain storm that damaged the company's Raymond Boulevard building in Newark, N.J.

Due to roof cracks resulting from extreme winter weather, the building received extensive water damage, the company claimed.

In accordance with its Atlas policy Newark Center sought coverage for water damage to the roof and interior. Additionally, the company filed a claim for abatement of contamination by sprayed-on asbestos fireproofing.

During the course of its claims submission, Newark Center attempted to have the damage estimated by an appraiser.

**Motion Of 'Desperation'**

Atlas, however, refused to proceed with the appraisal and sought a declaratory judgment that all damage to the building occurred at an unspecified period of time and was, therefore, excluded from coverage under their policy.

Attorneys for Newark Center filed a counterclaim alleging breach of contract.

Calling the plaintiff's position "one of desperation," the judge ruled in favor of Newark Center.

"This lawsuit by plaintiff insurance company is without the slightest merit," Judge Shainswit said. "Indeed, plaintiff's position borders so closely on the frivolous as to warrant serious consideration of defendant's charge of bad faith."

**The judge said that Newark Center was entitled to \$10 million - the policy limit - to cover the cost of asbestos abatement and restoration of fireproofing.**

**Newark Center Building Co. was represented by Jonathan Wilkofsky and Mark Friedman of Wilkofsky, Friedman, Karel & Cummins of New York.**

**Joseph Galvano of Galvano & Xanthakis of New York and Daniel P. Carter and Charles E. Wagner of Buckley, King & Bluso of Cleveland represented Atlas Assurance Company of America.**