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A Kings County, New York jury awarded Goldex, Ltd. \$1.2 million on June 3, 1999 after only 30 minutes of deliberations. The award was almost \$100,000 more than the plaintiff had claimed at the beginning of the trial.

This action by an importer and exporter of wholesale film and battery products was against Commercial Union Insurance Company or breach of a policy of insurance. The matter arose when the warehouse and offices of the plaintiff insured were burglarized over the weekend of July 4, 1993, when it was alleged that \$764,000 of stock in the warehouse was stolen by a team of burglars. The insurance carrier, Commercial Union refused payment and the lawsuit ensued. Though the carrier in its answer denied the existence of the policy, denied the burglary, and denied plaintiff's interest in the property stolen, the primary defenses were fraud in the application for insurance, fraud in the presentation of the claim including an allegedly fraudulent invoice and the exaggeration of plaintiff's claim. It was also alleged that plaintiff was not able to establish the amount of the loss.

The evidence presented at trial included testimony of 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 by-passing of an extensive alarm system, as well as the method of removal of stock from the premises. Plaintiff additionally presented a forensic accountant, Bruce Rifkin, who testified in support of the claim for damages based upon a book-to-physical reconciliation of the inventory on hand as of the date of the loss. Plaintiff additionally presented evidence that the insurance company, its attorney and forensic accountant had hidden documents which confirmed that plaintiff's claim was in fact in excess of the amount originally claimed. The documents were actually discovered in the midst of trial.

Plaintiff was given the unusual opportunity to reopen to the jury on the eighth day of trial to explain the development and its impact upon the claim, and in summation plaintiff asked the jury to punish the insurance company by awarding the insurance company's estimate of damage which had been kept hidden for six years, and which was approximately \$100,000 in excess of plaintiff's claim. The jury's award was in the full amount acknowledged by the carrier in the hidden documents.

Further evidence included testimony by two underwriters on behalf of the carrier who testified that plaintiff had allegedly misrepresented the amount of stock to be held on hand and which was alleged to be the basis for the calculation of the premium. The jury found no evidence to support the contention and ultimately found that plaintiff's statement as to average inventory was a projection of the future which could not be the subject of a defense of misrepresentation in an application which can only relate to statements as to past or present facts.

During the course of the trial, plaintiff acknowledged submitting a "dummy" invoice to the carrier in support of the claim which did not represent a legitimate transaction. Immediately upon submission, the carrier denied liability, claiming fraud. Plaintiff satisfied the jury that the invoice was prepared as an accommodation to a customer, did not impact on the claim as it was not entered on the company's books, and was a "dummy" sales invoice, not a purchase invoice, so it would have tended to reduce plaintiff's claim if it had any impact at all. Finally, plaintiff established that within two weeks of submitting the invoice, plaintiff's forensic accountant brought the error to the carrier's attention and submitted the correct invoice.

In interviews after the verdict, the jury unanimously expressed their anger at the carrier's handling of the claim and the absence of a law in New York that would have permitted them to punish the carrier with an award for punitive damages.

The matter was tried by Jonathan Wilkofsky and Mark Friedman of Wilkofsky, Friedman, Karel & Cummins representing the plaintiff and Chalos and Brown of New York representing Commercial Union. This verdict represents the 23rd straight plaintiff's verdict by Mr. Wilkofsky, over the course of 18 years of representing victims of insurance company misconduct.