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A Brooklyn, New York jury determined that Nationwide Mutual Insurance Company and one of its agents, Salvatore Rizzo, had forged its customers handwriting and signatures on several insurance applications only to later deny a claim for the full policy limit when the building burned down.

In awarding the Plaintiffs $705,000.00, $305,000.00 above the policy limit, the jury which deliberated less than one hour, determined that the insurance applications submitted were all fraudulently prepared and signed by the Nationwide agent.

Jonathan Wilkofsky of Wilkofsky, Friedman, Karel & Cummins of New York City and San Francisco, California, was trial counsel for Plaintiffs. Brian Rudy of Feldman & Rudy of Long Island represented Nationwide and the agent during the six day trial in Supreme Court.

Plaintiffs Avdon, Trico and A.M.D. held $360,000.00 in mortgages on a small apartment building located on New Utrecht Avenue in Brooklyn which was destroyed by two fires on December 19th and 26th, 1989. The building which was in foreclosure at the time of the fires, was insured for $400,000.00 by virtue of a binder obtained by the principal of the mortgagees approximately two weeks prior to the fires.

Plaintiffs' claim in the amount of the policy limit, $400,000.00, was eventually denied in May of 1990 on the basis of alleged misrepresentations in the application for insurance.

The binder had been requested by the principal of the Plaintiffs upon his realization that the prior policy obtained by the owner of the building had lapsed due to non-payment. As the Plaintiffs' principal testified, he telephoned the agent on the policy inquiring about the status of insurance only to learn that the policy would have to be reissued as a result of the cancellation. The agent indicated that Nationwide would bind upon payment, which was received. Upon learning of the fire, Plaintiffs' principal telephoned the agent inquiring of the policy, whereupon it was faxed to him moments later.

Nationwide's defense was premised upon the fact that the application for insurance filed with Nationwide reflected incorrect and misleading information about the building.

Plaintiffs' principal testified that Plaintiffs were completely unaware of the existence of an application, had never assisted in preparing an application, never seen an application nor signed one.

Plaintiffs presented the testimony of a forensic document examiner who confirmed that the signatures on the offending applications were not that of Plaintiffs' principal. Plaintiffs also located and presented testimony of four other customers of the agent who similarly testified that they had never seen or assisted in preparing their applications, nor signed them. Plaintiffs further obtained by Court Order the transcript of a recording of a conversation between the Nationwide agent and a Nationwide investigator wherein the

confirmed that the applications were completed by the agent and were unsigned. The claim was nevertheless denied by Nationwide 10 days later.

Evidence of damages included the opinions of Nationwide experts for the cost of restoring the building, as well as evidence of actual cash value from the Defendants' own claims file.

The Appellate Division had recently ruled in the case that Plaintiffs' efforts to include a claim for violation of Section 349 of the General Business Law, which would have enabled Plaintiffs to recover attorneys' fees had been properly supported, however refused leave to amend Plaintiffs' complaint to include said claim upon adopting the minority rule in New York that Section 349 claims are subject to a three year statute of limitations. The other departments currently recognize a six year period. Leave for permission to appeal to the Court of Appeals was denied.

The claims manager at Nationwide who denied the claim was the same individual who had been involved in the matter of Riordan V. Nationwide, 756 F.Supp 732 (S.D.N.Y. 1990) affirmed in part, certified in part, 977 F.2d 47 (2d Cir. 1992) which stands as the only case in the history of New York where an insured was able to recover punitive damages and attorneys' fees. Mr. Wilkofsky represented the Plaintiffs in that matter as well.