

FOR IMMEDIATE RELEASE

May 22, 2001

For further information, please call:

Jonathan J. Wilkofsky, Esq.  
Wilkofsky, Friedman, Karel & Cummins  
(212) 285-0510 or Fax (212) 285 0531  
e mail: [info@wfkclaw.com](mailto:info@wfkclaw.com)

---

Baruch Fekete v. GA Insurance Company, Supreme Court, Kings  
County

After four hours of deliberation a Brooklyn, New York jury awarded the full amount of Plaintiff's building claim, demolition and debris removal claim, and twelve months of lost rents for a building collapse due to hidden damages caused by termites. The Plaintiff owned a 2-story fully occupied commercial property, with the first floor commercial space being occupied by his elderly father and with four apartments above on New Utrecht Avenue in Brooklyn. Plaintiff alleged that in July, 1998, he discovered cracks in an exterior wall, and further investigation disclosed that the structural stability of the building had been completely undermined by termites. Plaintiff's insurance policy with defendant, General Accident, contained exclusions for, among other things, collapse and termite damage, but covered collapse when caused by hidden damage caused by termites.

When General Accident (now CGU Insurance Company) refused to pay or deny the claim after seven months, Plaintiff brought the action seeking building damage in the amount of \$178,000.00, demolition and debris removal costs of \$48,832.00, and loss of

rental income.

At trial, Plaintiff called General Accident's Claims Adjuster as its first witness and established observations of extensive damage due to termites and decay, also a covered peril. Plaintiff also called an engineer, who confirmed that the building was in a state of collapse in that its structural stability had been substantially undermined and was in imminent danger of collapse. This definition was consistent with the Court's instruction to the jury on the definition of collapse in the State of New York. For purposes of insurance coverage in New York, a collapse has occurred when a building has been shown to have lost substantial structural integrity and is in imminent danger of collapse.

Defendant asserted a plethora of defenses, including late notice, claiming the building owner knew or should have known much sooner of the damage existing in the building. General Accident also asserted that the building was not in a state of collapse, and that even if it was in a state of collapse, the collapse was due to historical water damage. Defendant also claimed that, to the extent termites had caused damage to the building, the damage was open and obvious and not hidden, as required by the policy.

Plaintiff established, through the direct testimony of General Accident's own Claims Adjuster, as well as reports and admissions contained within the claims file, that defendant's own experts had concluded that the main beams in the building had been completely hollowed out by termites over a period of a long time. Plaintiff

further placed into evidence an underwriting inspection report performed by General Accident's own inspector three years prior to the loss, which confirmed the building to be in acceptable and good condition.

Photographic evidence confirming the existence of termite tubes and tunnels, as well as photographs of the building's main beams in a distressed and failed condition, were offered as well.

Plaintiff established that a firm specializing in wood analysis had been hired by General Accident and sent to the premises on three occasions to take samples and perform laboratory analysis to determine the cause of the deteriorated condition of the wood and the age of that condition. Defendant failed to call these witnesses at trial, despite nominating them as experts.

Plaintiff produced evidence that the building had visibly shifted in the weeks after its exterior cracks were first noticed, and that structural members of the building showed evidence of being substantially consumed by termites, with total loss of structural integrity. After giving General Accident extensive opportunity to inspect the building, plaintiff had the building demolished and the debris removed. The jury rejected General Accident's claim of late notice, finding that notice to the agent was reasonable, particularly in light of the fact that the agent had incorrectly informed the insured that there was no coverage for the events alleged.

After deliberation, the jury indicated that General Accident's

unexplained failure to call these witnesses, as well as the claimed absence of any opinions of its retained experts for many months after the loss, undermined the credibility of defendant's expert and his conclusions and awarded Plaintiff his full claims.

Plaintiff was represented by Jonathan J. Wilkofsky, Esq. of Wilkofsky, Friedman, Karel & Cummins. The trial lasted eight days.