

SCHWARTZ KELLY, LLC BEATS INSURANCE COMPANY AT TRIAL FOR \$1.0 MILLION

August 2005

In 1999, our client's insurer filed suit to rescind an excess liability policy after being put on notice that the insured faced thousands of asbestos claims. Even though it collected the premiums for the policy, when confronted with the losses the carrier claimed it never voluntarily accepted asbestos risks and must have been duped during the application process into providing coverage.

During a seven-day bench trial last month, both the insurer's Director of Underwriting and its surplus lines agent testified. The witnesses admitted on cross-examination that the insurer knew about the asbestos claims shortly after it issued the policy in 1986 but took no action to assert its rescission claim until 13 years later. They conceded that the insured disclosed that it was an industrial insulator in business since the 1960s and probably used asbestos. They admitted that the insured's application attached a "loss summary" and that the application would not have been processed without it. The insurance company claimed it never received the "loss summary" but the Court concluded that the disclosure was sufficient. The Court also ruled that the 13-year delay in seeking rescission was unreasonable and ordered the insurer to honor its one-million dollar policy.

Schwartz Kelly, LLC remains committed to maximizing our clients' insurance resources when confronted with insurable losses and recalcitrant insurance companies.

Gregory J. Schwartz, Esq.

Vanessa M. Kelly, Esq.



Schwartz Kelly, LLC

Counselors at Law

50 Beaver Avenue
Annandale, New Jersey 08801

908.735.2377

(fax) 908.735.2388

www.schwartzesq.com

gschwartz@schwartzesq.com

vkelly@schwartzesq.com

