



# VERDICT SEARCH NEW YORK

Vol. XXII Issue 4

June 28, 2004

## VERDICT *of the* WEEK

### Insurance

**Garage collapsed,  
insurer refused to  
fund reconstruction**

**Verdict \$12,000,000**

*Seward Park Housing Corp. v.  
Greater New York Mutual  
Insurance Co.*

**New York County Supreme Court**

**Plaintiff's Attorneys** Mitchel H. Ochs,  
Steven S. Anderson, Thomas E. Chase and  
Jason A. Stern, Anderson Rottenberg &  
Ochs, New York

**Defense Attorneys** Dennis M. Perlberg,  
Speyer & Perlberg L.L.P., Melville, N.Y.;  
Robert J. Frisenda, Clark, Gagliardi & Miller  
P.C., White Plains, N.Y.

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# Asked & Answered

*Has a paralegal ever  
surprised you with his or  
her ability to perform a task?*

Answers on page 35



# VERDICTSEARCH

## NEW YORK

### NEW YORK COUNTY

## VERDICT *of the* WEEK

### INSURANCE

#### Denial of Claim

## Garage roof collapsed, insurer refused to fund reconstruction

**VERDICT (P)**      **\$12,000,000**

**CASE**                Seward Park Housing Corp. v. Greater New York Mutual Insurance Co., No. 600059/01  
**COURT**                New York Supreme  
**JUDGE**                Louis B. York  
**DATE**                 3/29/2004

**PLAINTIFF ATTORNEY(S)**      Steven S. Anderson, Anderson Rottenberg & Ochs, New York, NY  
 Mitchel H. Ochs  
 Jason A. Stern  
 Thomas E. Chase

**DEFENSE ATTORNEY(S)**      Dennis M. Perlberg (lead), Speyer & Perlberg L.L.P., Melville, NY  
 Robert J. Frisenda, Clark, Gagliardi & Miller P.C., White Plains, NY

**FACTS & ALLEGATIONS** In January 1999, winter storms and precipitation caused a buildup of snow and water on the roof of a 90,000-square-foot underground parking garage located on the premises owned by plaintiff Seward Park Housing Corp., a 1,700-unit residential cooperative in New York. The garage's roof, which was at ground level, also served as an outdoor parking lot, a playground and a garden—the parking lot and playground areas were paved; the garden area was supported by 2 to 3 feet of soil. After two weeks of greater-than-average precipitation, the garage's roof collapsed.

Seward Park filed a loss claim with its insurer, New York-based Greater New York Mutual Insurance Co. It sought recovery of the costs necessary to reconstruct the garage. The insurance policy excluded losses caused by hidden and/or latent defects or a collapse, unless the collapse resulted from a precipitation buildup. After a two-year investigation, Greater New York denied the claim. It claimed that the 40-year-old garage collapsed primarily as a result of hidden or latent construction defects, rather than, in part, by a precipitation buildup.

Seward Park sued Greater New York. It alleged that its claim was unfairly denied, and that the garage collapsed as a result of both construction defects and precipitation buildup.

Seward Park's expert forensic engineers conceded that missing capitals were partially responsible for the collapse, but they contended that the precipitation buildup triggered and partially caused the collapse.

Greater New York's expert forensic engineer contended that the non-reinforced columns compromised the garage's structural integrity and made its collapse inevitable.

**INJURIES/DAMAGES** Seward Park sought recovery of more than \$18 million for reconstruction of the garage, plus an additional \$1 million in income lost during the garage's unavailability.

Greater New York contended that Seward Park's replacement-cost estimate was excessive. It contended that Seward Park's estimate represented the cost of rebuilding, modernizing and improving the garage—not the cost of restoring the garage to its pre-collapse condition, as mandated by the policy. It estimated that the garage could have been properly restored for \$8.3 million, and that Seward Park sustained only \$225,000 in lost income.

**RESULT** The jury rendered a plaintiff's verdict. It awarded Seward Park \$12 million.

**TRIAL DETAILS**                Trial Length: 9 weeks  
 Jury Deliberations: 2 days

**PLAINTIFF EXPERT(S)**                Dov Kaminetzky, forensic engineering, New York, NY  
 Lewis Zickel, forensic engineering, New York, NY

**DEFENSE EXPERT(S)**                Glenn P. Rentschler, forensic engineering, Princeton Junction, NJ

**POST-TRIAL** Greater New York contended that Seward Park failed to provide an estimate of the cost necessary to restore the garage to its pre-collapse condition. It also contended that the jury's award included \$2.7 million for costs that were not covered by Seward Park's policy. Greater New York filed a motion for a \$2.7 million reduction or a dismissal of the damages award.

—Amy Bourne