

**PREMISES LIABILITY**

**MONDAY, AUGUST 23, 2010**

**Designer Claims Flood Caused 5-year Profit Dip**

**Verdict: \$1.7 million**

***Lizden Industries, Inc. v. Franco Belli Plumbing and Heating and Sons, Inc., 601420/06 (June 7)***

**Manhattan Supreme:** Justice Debra A. James

**Plaintiff Attorneys:** Robert Balsam and Daniel M. Felber of Balsam Felber & Goldfield

**Defense Attorney:** Karl E. Zamurs of Garcia & Stallone in Melville

**Facts & Allegations:** On March 2, 2005, plaintiff Lizden Industries Inc., a clothing manufacturer, experienced a flood of its premises, at 100 Vandam St., in Manhattan. The company claimed it suffered extensive loss of property and profits.

Lizden Industries sued the building's owner, Okanaga USA Co. Ltd.; an Okanaga USA employee who resided in the building, Kazuhide Yamazaki; and a company that was renovating the building's plumbing, Franco Belli Plumbing and Heating and Sons Inc. Lizden Industries alleged Franco Belli Plumbing was negligent in its renovation of the building's plumbing, that Yamazaki negligently misdirected Franco Belli Plumbing's workers and that Okanaga USA was negligent in its maintenance of the building's plumbing.

Yamazaki was dismissed via summary judgment. The judge noted that Yamazaki was not present when the flood occurred and therefore could not have been directing the work.

During the trial's second day, Lizden Industries and Franco Belli negotiated a settlement. Franco Belli's insurer agreed to pay \$595,000. The matter proceeded against Okanaga USA.

Plaintiff's counsel noted that Franco Belli's work was necessitated by the failure of a water heater located on the fifth floor, where Yamazaki resided. Rather than replacing the boiler, Yamazaki decided to tap the water-heating system that serviced the remainder of the building. Plaintiff's counsel claimed Franco Belli's workers were being guided by inaccurate drawings of the plumbing. The drawings had been provided by Yamazaki. As such, the new plumbing was not properly located, and a flood occurred when the system was activated. He contended the inaccurate drawings were a result of prior maintenance that altered the plumbing.

Defense counsel contended the flood was a result of the plumbers having failed to cap a pipe. The defense's expert engineer prepared an affidavit in which he opined that such an error would have constituted a deviation from standard plumbing procedures.

**Injuries/Damages:** Plaintiff's counsel claimed the flood damaged design property, prototype garments and presentations that were to be sent to QVC, the TV-shopping network, which was the company's largest client. A QVC employee contended that Lizden Industries had been one of the network's core vendors for 14 years. The witness claimed the garments destroyed by the flood had sold well in the past and were expected to result in future sales.

Plaintiff's counsel further claimed the flood interrupted Lizden Industries' business and stalled a plan to extend the company's relationships with QVC's networks in Germany and the United Kingdom. He contended that Lizden Industries endured two years of lost profits in the United Kingdom before it regained its footing and five years of lost profits in Germany. He claimed that the company has not been able to re-enter the German market.

Lizden Industries sought recovery of \$630,787 for its damaged property and \$2,051,720 in lost profits.

The defense's expert forensic engineer opined that the flood did not affect Lizden Industries' profits. Defense counsel also challenged the proposed value of the damaged property.

**Result:** The jury found that Okanaga USA and Franco Belli Plumbing were liable for the flood. Okanaga USA was assigned 75 percent of the liability, and Franco Belli Plumbing was assigned 25 percent. The jury determined that Lizden Industries' damages totaled \$1,711,976 (\$1,333,550, lost profits; \$378,426, property damage).