

Breach of Videotape Warranty Voids Coverage under Jeweler's Block Policy

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Washington, DC—Wiley Rein & Fielding LLP represented the insurer in a case of first impression in which a New York state trial court held that coverage was precluded by the insured's breach of a warranty in a jeweler's block policy requiring the insured to maintain security videotapes in the event of a loss. *Anjay Corp., et al. v. Those Certain Underwriters at Lloyd's of London*, No. 103409-2003 (N.Y. Sup. Ct., New York County Dec. 23, 2004). New York law has historically given full effect to "promissory warranties" such as the videotape warranty at issue in this case. Despite policyholder efforts to introduce a "substantial compliance" element into their interpretation, this case demonstrates that New York courts continue to give full effect to such warranties.

After a fire occurred at the insured's Mexican jewelry manufacturing facility, the insured made a claim for diamonds and gold that allegedly were missing. In granting the insurer's motion for summary judgment, the court held that breach of the videotape warranty materially increased the risk of loss under the policy. In so holding, the court agreed with the insurer that "maintaining a surveillance taping system might deter persons in facilities possessing insured jewelry from actions that might result in a claim under policy, thereby diminishing the risk of loss of insured property." The court continued: "[l]ogically, the preservation of surveillance tapes for review by the adjuster is essential in furtherance of this goal." The court rejected the policyholder's claim that, because the electricity failed on the day of the fire, breach of the videotape warranty was not material, reasoning that the circumstances leading up the fire, which were recorded, could have decreased the insured risk under the policy. The court also rejected the policyholder's claim that the insurer could not assert the videotape warranty because its adjuster failed to request the videotape during the first site visit after the loss. The court determined that the insurer (or its agent) took no action relating to the videotape warranty upon which the insured could have reasonably relied.

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