

IN THE CIRCUIT COURT OF COOK COUNTY,
COUNTY DEPARTMENT, CHANCERY DIVISION

Jean Ware, *et al.*)
)
 Plaintiffs,)
)
 vs.) Case No.
)
 First Specialty Insurance Corporation,)
)
 Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, Jean Ware, *et al.*, for their Complaint for Declaratory Judgment against First Specialty Insurance Corporation, allege as follows:

NATURE OF THE ACTION

1. This action arises out of a dispute between Jean Ware *et al.* as assignees of Restoration Specialists, LLC (“Restoration”), L.G. Properties, Company, an Illinois corporation (“L.G. Properties”), Philip J. Pappas, Individually (“Pappas”), Jack Emery, Individually, and Michael Muldoon, as Special Administrator of the Estate of George Koutroumbis, Deceased (“plaintiffs”), and First Specialty Insurance Corporation (“First Specialty”).

2. First Specialty was the primary insurer for Restoration, L.G. Properties and Pappas (“defendants”), who owned, operated, managed, controlled, and maintained the property located at 713 W. Wrightwood, on June 29, 2003, when the rear porch system collapsed, causing the wrongful deaths of 13 individuals and the personal injuries of numerous others, including 29 individuals who filed suit against them. (*Ware vs. LG*

Properties, et al., No. 03 L 8084 Consolidated for discovery in the Circuit Court of Cook County, County Department, Law Division, “porch collapse”).

3. As detailed below, plaintiffs and defendants have entered into a settlement agreement in the porch collapse litigation and the matter has been dismissed. Restoration has contributed \$600,000.00 to the settlement; First Specialty has contributed \$1,000,000.00; and defendants’ excess insurer, Philadelphia Indemnity Insurance Companies, has contributed \$15,000,000.00.

4. Plaintiffs believe that First Specialty is obligated to contribute the aggregate limit of the insurance coverage available under the Commercial General Liability Policy Number IRG 49077 (\$2 million) (Athe subject policy@) issued to defendants for the injuries and deaths caused by the improperly constructed porch and its resultant collapse. First Specialty denies it is so obligated and it maintains that the porch collapse constituted a single occurrence under the policy, such that it only has to contribute the limit for a single occurrence, or \$1 million. First Specialty maintains this position even though there is no way of showing that the 13 wrongful deaths the 29 personal injuries from the collapses all occurred at the same time and for the same reason.

5. Plaintiffs, defendants and First Specialty have entered into an assignment of rights and a release which allows plaintiffs the right to seek a declaratory judgment action against First Specialty.

6. Accordingly, Ware *et al.*, seek a declaration that First Specialty is obligated to contribute the aggregate limit of the insurance coverage available under the subject

policy (\$2 million), as opposed to the \$1 million single occurrence limit it has so far contributed to the settlement of the consolidated claims

PARTIES

7. Plaintiff Jean Ware, Personal Representative of the Estate of Kelly McKinnell, Deceased is an Illinois citizen because Kelly was an Illinois citizen at the time of her death. McKinnell died of compressional asphyxia as a proximate result of the porch collapse. Dislocation of the cervical spine was a contributing factor in her death.

8. Plaintiff Rebecca Chelin is an Illinois citizen. She was standing on the third-floor porch when she heard a snapping noise. As a proximate result of the collapse, Rebecca fell to the ground and sustained a broken nose, cardiac bruising, sprained arms and abrasions and post traumatic stress disorder (APTSD=).

9. Plaintiff James Chiappetta is an Illinois citizen. He suffered blunt head trauma and acute neck and back injuries as a proximate result of the porch collapse.

10. Plaintiff Amy Chumley is a citizen of Indiana. She fell from the third-floor porch and as a proximate result of the fall, sustained a sprained right elbow and shoulder, aggravation of degenerative disc disease, abrasions to her knees, face and arms, PTSD, panic attacks, continued back pain and general soreness.

11. Plaintiff Derrick Cusick is a resident of New Jersey. He was standing on the third-floor porch when he heard a loud crack or snap. He and then went into a free

fall and landed upside down in the debris of the porch, suffering a left elbow contusion, a head injury, back strain and other contusions and lacerations.

12. Plaintiff Jonathan D=Augusta is a citizen of Illinois. He was standing on the third-floor porch when he heard a cracking noise. Then the porch collapsed. He fell into the rubble and was pinned upside down in the rubble until he was pulled out of the debris by firefighters. As a proximate result of the collapse, Jonathan sustained a separated left shoulder, broken right ankle, puncture wound to the left shin and lacerations to his back as well as depression and insomnia.

13. Plaintiff David Dermenjian is a citizen of Illinois. As a proximate result of the porch collapse he suffered a head injury that required 13-15 staples to his head.

14. Plaintiff Anjalee Desai is a citizen of Illinois. She suffered a left broken ankle as a proximate result of the porch collapse.

15. Plaintiff Benjamin Eisenberg is a citizen of Illinois. He was standing on the third-floor porch when it collapsed. As a proximate result of the collapse, Benjamin suffered injuries to his right arm.

16. Plaintiff Jeremy Farmer, Personal Representative of the Estate of Sam Farmer, Deceased is a citizen of Illinois because Sam was a citizen of Illinois. Farmer died of compressional asphyxia as a proximate result of the porch collapse.

17. Plaintiff Mia Fitzgerald, as Special Administrator of the Estate of Shea Fitzgerald, Deceased is a citizen of Illinois because Shea was a citizen of Illinois. Shea's death was proximately caused by the porch collapse.

18. Plaintiff Gilmore S. Haynie, Independent Administrator of the Estate of Margaret G. Haynie, Deceased is a citizen of Illinois because Margaret was a citizen of Illinois at the time of her death, which was proximately caused by the porch collapse.

19. Plaintiff Sarah Hoffman is a citizen of Illinois. She fell from the third floor porch when it gave way and accordingly suffered a blunt head trauma, right lacerated tibia resulting in significant scarring, PTSD and survivor=s guilt as a result of the collapse.

20. Plaintiff Dennis E. Hull is a citizen of Illinois. He was on the third-floor porch when it gave way. As a proximate result of the porch collapse, Dennis suffered severe abrasions, a broken rib, other internal injuries and blunt trauma from the fall.

21. Plaintiff Adam Hurder is a citizen of California. He was seated at a table on the third-floor porch prior to the porch collapse. He had stepped inside the building to get something to drink and as he started stepping out onto the porch, it gave way. Adam jumped back and saw his brother fall into a hole. He ran downstairs and started helping pull people out of the debris. He suffered minor cuts on his hands as a proximate result of the porch collapse.

22. Plaintiff Jordan Hurder is a citizen of Illinois. He was sitting at a table on the third-floor porch when it gave way. He suffered right shoulder injuries, skin abrasions, a broken rib, a lacerated right calf, muscle strain to his neck and back, shock and PTSD as a proximate result of the porch collapse.

23. Plaintiff Lyndsie Jackson, is an Illinois citizen. She was standing on the third-floor porch with her brother Robert and her close friend, Kelly Pagel, when the porch collapse occurred. She had invited both of them to the party and they both died as a proximate result of the porch collapse. Lyndsie sustained back abrasions and a sprained ankle as a result of the collapse and she was treated for acute stress reaction, pathological grief and eventual major depression as well as gastrointestinal symptoms secondary to stress and depression.

24. Plaintiff Robert V. Jackson, Special Administrator of the Estate of John T. Jackson, Deceased, is a Missouri citizen as his son John T. Jackson was a citizen of Missouri at the date of his death and his decedent's estate was opened in Missouri. Robert's death was proximately caused by the porch collapse.

25. Plaintiff Jennifer Johnson is an Illinois resident. She was standing on the third-floor porch when it gave way and as a result of the collapse, she suffered a left leg, ankle and foot injury in addition to PTSD, comprised of nightmares, fear of heights and crowds, depression, irritability, anger outbursts, lack of concentration and loss of appetite.

26. Plaintiff Muhammad Karimuddin, Special Administrator of the Estate of Muhammed Hameeduddin, Deceased is an Illinois resident because Muhammed was a citizen of Illinois at the time of his death. Karimuddin died of compressional asphyxia as a proximate result of the porch collapse.

27. Plaintiff Kenneth R. Koranda, Executor of the Estate of Robert A. Koranda, Deceased, is an Illinois citizen as his son Robert A. Koranda was domiciled in Illinois at the time of his death. Robert neck was broken as a proximate result of the collapse and he died of compressional asphyxia.

28. Plaintiff Alan J. Klinger is an Illinois citizen who was one the third-floor porch when it collapsed. He landed on top of a pile of uninjured persons and was able to walk away from the scene despite head trauma and other injuries including acute stress disorder.

29. Plaintiff Phyllis M. Kumpf, as Administrator of the Estate of Eric F. Kumpf, Deceased, is a New Jersey citizen as her son Eric was domiciled in New Jersey at the time of his death. Eric was standing on the third-floor porch when the porch collapsed. He suffered an anterior dislocation of the first cervical vertebra (C1) as well as hemorrhages, bruises, abrasions, lacerations, cerebral edema, fractured ribs, and other injuries from the porch collapse, all of which led to Eric's death from compressional asphyxia, with the dislocation of the cervical spine significantly contributing to the death.

30. Plaintiff Jason Lev is an Illinois citizen. He was buried in debris with other people under the collapsed porch and he could not see any light. Objects covered his face and chest and were around his neck. He could not move his arms and it was hard to breathe. He thought he was going to suffocate. He heard cries and moans and a girl crying and saying she could not breathe. Jason suffered a head injury, neck injury

bruised legs and other bumps and bruises as well as continue emotional injuries as a proximate result of the porch collapse.

31. Plaintiff Jennifer S. Levin is a citizen of Illinois who was on the third-floor porch when it gave way. Levin suffered general pain and injuries as a proximate result of the porch collapse as well as PTSD.

32. Plaintiff Meghan R. Limacher is an Illinois citizen. She was on the third-floor porch when it gave way. Limacher suffered a cerebral concussion, tongue laceration, metabolic acidosis and multiple abrasions on her arms and legs as a proximate result of the porch collapse as well as nightmares and night sweats.

33. Plaintiff J. Patrick Lupton, Personal Representative of the Estate of Eileen Lupton, Deceased, is a citizen of Illinois because Eileen was a citizen of Illinois at the time of her death. Lupton died of compressional asphyxia as a proximate result of the porch collapse.

34. Plaintiff Molly Nilan is a citizen of Illinois. She was standing on the third-floor porch when it gave way. Nilan suffered a broken thumb, eye injury and cracked teeth and severe psychological injuries as a direct result of having dead bodies removed from where they landed on top of her.

35. Plaintiff Thomas J. O=Connell is an Illinois citizen who was on the second-floor porch that collapsed. O=Connell suffered pain in his head and neck as a proximate result of the collapse.

36. Plaintiff Sean O=Dell is an Illinois citizen. He was on the second floor at the time of the collapse. As a proximate result of the collapse he suffered cuts to his head which required staples and left permanent scarring, a dislocated patella with form meniscus requiring open reduction surgery, a dislocated collarbone and body and bruises.

37. Plaintiff Elizabeth Pagel, Special Administrator of the Estate of Kelly Pagel, Deceased is an Illinois citizen because Kelly was domiciled in Illinois at the time of her death. Kelly died at 7:26 p.m. on Monday evening, June 30, 2003, approximately 43 hours after the collapse, from anoxic encephalopathy after sustaining a crushed chest injury suffered when the porch collapsed.

38. Plaintiff William Primack is an Illinois citizen. As a proximate result of the porch collapse he suffered head injury, contusions and multiple abrasions. He was later diagnosed with a torn right ACL, which he had treated by surgery.

39. Plaintiff Geoffrey C. Rapp is an Illinois resident. He suffered head injury that required stitches, abrasions on his legs, ankle instability with chronic posterior peroneal tendonitis and left anterior tibialis tendonitis and a contusion on his back as a proximate result of the porch collapse.

40. Plaintiff Alibe Robertson is an Illinois resident. She was on the third-floor porch when it gave way. As a proximate result of the porch collapse Alibe was trapped in rubble and unconscious for about 10 minutes. She needed 6 staples to close the laceration on top of her head and she suffered brachial plexus stretching, causing radioculopathy to her leg and arm.

41. Plaintiff Melissa Shaw is an Illinois resident who was on the third-floor porch when it gave way. As a proximate result of the porch collapse Melissa suffered severe and permanent injuries to her extremities and underwent four surgeries for the injuries to her right arm alone. She experienced severe trauma, significant scarring and disfigurement and pain.

42. Plaintiff James A. Sheriff, Independent Administrator of the Estate of Katherine E. Sheriff, Deceased is a citizen of Illinois because Katherine was a citizen of Illinois at the time of her death as a proximate result of the porch collapse.

43. Plaintiffs Jay Sorkin and Bonnie Sorkin, as Special Administrators of the Estate of Julie Sorkin, Deceased are citizens of Illinois because Julie was a citizen of Illinois at the time of her death, which was proximately caused by the porch collapse. Sorkin was standing on the third-floor porch when it collapsed.

44. Plaintiff Cullan Stefanik is an Illinois resident. He was on the third-floor porch when it collapsed. As a proximate result of the porch collapse, Stefanik suffered injuries to his face and mouth, both of which required stitches, and he suffered a right leg hematoma.

43. Plaintiff Whitney Turner is an Illinois resident. Turner was on the third-floor porch when it gave way. As a proximate result of the porch collapse Whitney suffered lacerations to her back which resulted in a 6-day hospital stay. More significantly, Whitney also suffered PTSD from the porch collapse and this condition continues.

44. Plaintiff Alexis Tessler is a Michigan resident who was on the third-floor porch when it gave way. Tessler suffered back and neck pain as a proximate result of the porch collapse.

45. Plaintiff Natalie Brougham is a citizen of Illinois. She fell from the third-floor porch and was trapped in the rubble for about 30 minutes. She suffered a fractured nose and general injuries to her hip and shoulder as a proximate result of the porch collapse.

46. Plaintiff Henry J. Wischerath, Sr., as Personal Representative of the Estate of Henry J. Wischerath, Jr., a/k/a Jay Wischerath, Deceased, Wischerath is a New York citizen because Henry was a citizen of New York at the time of his death, which was proximately caused by the porch collapse.

47. Defendant First Specialty is a Missouri corporation with its principal place of business in Kansas. First Specialty sold the subject policy to the defendants in the underlying consolidated action through its producer Travis-Pederson, 300 South Wacker Drive, Suite 1100 in Chicago, Illinois. The named insured was Michael Aufrecht, and his mailing address was 2738 N. Pine Grove, Chicago, Illinois. An endorsement to the subject policy added Restoration Specialists, LLC as a Named Insured. Mr. Aufrecht was a partner of Phil Pappas who was the primary member of Restoration Specialists, LLC. The two men were partners in owning property. The subject policy provided insurance for 713 W. Wrightwood, Chicago, Illinois for the period beginning on February 1, 2003 and ending February 1, 2004.

FACTUAL BACKGROUND

48. In 1998, Pappas owned, operated, managed, maintained, and controlled L.G. Properties and Restoration Specialists, LLC (“Restoration”), both of which were incorporated in the State of Illinois.

49. In 1998, Pappas, L.G. Properties and Restoration leased properties to commercial and residential tenants at a building they owned at 713 W. Wrightwood, in the City of Chicago. This building, which was three-stories tall, had a porch system attached to the back of the building.

50. In 1998, Pappas, L.G. Properties and Restoration hired Jack Emery to manage 713 W. Wrightwood. They also hired George Koutroumbis to perform renovation work in this building; this included renovating the back porch system.

51. Neither Pappas, L.G. Properties, Restoration, Emery nor Koutroumbis obtained a Chicago building permit authorizing the renovation work on the rear porch system.

52. The renovated porch system, which was completed in 1998, lacked fundamental load bearing supports, including but not limited to lookouts and brackets, was not properly affixed to the building, was made of grossly inferior wood, was substantially bigger than the porch it replaced, and was substantially bigger than allowed by municipal law in that each level of the porch went from lot line to lot line, all in violation of the City of Chicago Building Code.

53. At approximately 12:30 a.m. on June 28, 2003, the third-floor porch at 713 W. Wrightwood, collapsed onto the second-floor porch of the building. The second-floor porch subsequently collapsed onto the first-floor porch. The debris from the porches rested in the cement basement stairwell as well as the first floor level. Debris was also strewn about the area.

54. At the time the porches collapsed, the tenants of the second and third-floor apartments of the privately-owned three-flat building were hosting a party and guests were standing on the attached porches. The plaintiffs listed in paragraphs 5-46 were all guests at the party and present at the time of the porch collapses.

55. But for the medical record of Kelly Pagel, who died at Illinois Masonic Hospital on June 30, 2003, approximately 43 hours after the porch collapse, after her family disconnected her life support, none of the autopsy reports indicate when any of the plaintiffs' decedents actually died or whether they survived for some time after the porch collapse.

56. No evidence was adduced in the underlying litigation to show that the individuals were injured at the same time.

57. It can reasonably be inferred that all of the plaintiffs and decedents did not become injured simultaneously. For example, Lyndsie Jackson's injuries, PTSD and depression, occurred some time after watching her brother, Robert, and her friend, Kelly Pagel, both of whom she invited to the party, die. Sara Hoffman falls in the same

category. She suffers depression and survivor's guilt. That injury did not arise at the moment of the porch collapse. Or even the same day or week.

58. The parties agree that the plaintiffs' claims fall within the coverage of the subject insurance policy and that the damages exceed the aggregate policy limits.

THE APPLICABLE INSURANCE POLICY TERMS

59. In June of 2003, the defendants were named insureds on a primary commercial general liability policy issued by First Specialty, Policy No. IRG49077. A copy of the policy is attached to this Complaint as Exhibit 1. This policy covered 713 W. Wrightwood and the Declarations page provided that in return for the payment of the premium and subject to all the terms of this policy, First Specialty agreed to provide defendants with commercial general liability coverage insurance as stated in the policy.

60. The insurance applied to bodily injury arising out of the ownership, maintenance or use of 713 W. Wrightwood.

61. The policy provided the following limits of coverage:

GENERAL AGGREGATE LIMIT (Other Than Products/Completed Operations)	\$2,000,000
* * * *	
PERSONAL & ADVERTISING INJURY LIMIT	\$1,000,000
EACH OCCURRENCE LIMIT	\$1,000,000

62. "Occurrence" was defined in the subject policy, at Section V, paragraph 13,

as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

63. Section III, paragraph 1 of the policy provided that the “limits of insurance” shown in the Declarations and the rules of the policy fix the amount the insurer will pay no matter how many claims made or suits brought per occurrence.

COUNT I – DECLARATORY JUDGMENT

64. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 63.

65. As set forth above, First Specialty issued defendants the subject general liability policy which covers the claims arising out of the porch collapse at 713 West Wrightwood on June 29, 2003.

66. Defendants satisfied all conditions precedent to coverage and assigned their claims to plaintiffs.

67. First Specialty has denied that more than one occurrence is at issue and that it is obligated to pay its aggregate limit to the settlement of plaintiffs’ claims, which exceed the aggregate limit.

68. An actual and justiciable controversy exists between plaintiffs and First Specialty regarding the interpretation, application and meaning of the term “occurrence” in the subject policy.

69. Accordingly, plaintiffs are entitled to a declaratory judgment of this Court of its rights and the obligations of First Specialty under the subject policy.

70. Declaratory relief from this Court will resolve all outstanding issues between plaintiffs and First Specialty under the subject policy.

WHEREFORE, plaintiffs seek judgment in their favor as follows:

- (a) Entry of an order declaring that under Illinois law, the facts of the underlying porch collapse do not allow for the conclusion that the plaintiffs' and their decedents' injuries were so closely linked in time and space so as to be considered one event.
- (b) A finding that plaintiffs' claims are subject to the general aggregate limit rather than the lower per-occurrence limit.
- (c) The award of such other relief as the Court deems just and appropriate.

Respectfully submitted,

Leslie J. Rosen

Leslie J. Rosen
LESLIE J. ROSEN ATTORNEY AT
LAW
30 N. LaSalle Street
Suite 4020
Chicago, IL 60602
(312) 994-2435
Atty. No. 31585