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# WWM SECURES SIGNIFICANT NUMBER OF OCCURRENCES RULING FROM THE ILLINOIS APPELLATE COURT IN WRIGLEYVILLE PORCH COLLAPSE COVERAGE LITIGATION

## BOB CONLON SUCCESSFULLY ARGUED FOR THE LIMITATION OF THE "TIME AND SPACE" TEST ADOPTED BY THE ILLINOIS SUPREME COURT IN *ADDISON INS. CO. V. FAY* TO CASES INVOLVING "ONGOING NEGLIGENT OMISSIONS"

On January 11, 2013, the Illinois Appellate Court, First District issued a significant ruling on the issue of number of occurrences under a comprehensive general liability policy. As explained below, the Court's ruling provides clarification and refinement of the Illinois Supreme Court's number of occurrences decision in *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446 (2009).

This case is a coverage dispute that arises out of the tragic porch system collapse in the Lincoln Park neighborhood of Chicago in June 2003 that took the lives of 13 young adults and severely injured 29 others. First Specialty Insurance Corporation ("FSIC") issued a comprehensive general liability insurance policy to the owner of the property at which the collapse occurred. The applicable coverage unit of the policy had a per occurrence Limit of $1,000,000 and a General Aggregate Limit of $2,000,000. Following the porch collapse, FSIC paid its $1,000,000 per occurrence limit towards the settlement of the underlying litigation against the property owner and agreed with its insureds and the underlying 42 plaintiffs to litigate the sole issue in the instant declaratory judgment action – whether the injuries resulting from the porch collapse arose out of one or multiple occurrences under the policy issued by FSIC to the property owner.

The 42 plaintiffs thereafter filed their declaratory judgment action against FSIC in the Circuit Court of Cook County, Illinois, Chancery Division. Following the submission of an extensive set of stipulated facts to the Court, the parties fully briefed cross-motions for summary judgment on the number of occurrences issues. On November 22, 2011, the Honorable Franklin U. Valderrama entered his Memorandum Opinion and Order granting FSIC's motion for summary judgment, finding that the porch collapse was only one occurrence under the policy language and Illinois law.

Plaintiffs' appealed the case to the Illinois Appellate Court.

On January 11, 2013, the First District, Fifth Division entered its unanimous Opinion affirming Judge Valderrama's decision. The 15-page Opinion was written by Justice William Taylor II. Justices Nathaniel R. Howse, Jr. and Stuart E. Palmer concurred.

The Court found that the language of the FSIC policy was unambiguous and indicated that the injuries and deaths resulting from the porch collapse constituted only one occurrence. The Court further ruled that, even if it were to accept plaintiffs' contention that the policy language was ambiguous and to look past the clear language of the policy, it would nevertheless reach the same conclusion. More specifically, the First District

found that the "cause theory" set forth fully in the Illinois Supreme Court's ruling in *Nicor, Inc. v. Associated Elec. & Gas Ins. Servs., Ltd*, 223 Ill. 2d 407 (2006) provides the appropriate analysis in the case to determine the number of occurrences under the policy and that application of the "cause theory" to the facts of the case "leads to the inescapable conclusion that the collapse constituted only one occurrence under the policy."

The Court, having found the "cause theory" provides the appropriate analysis, rejected plaintiffs' argument that Illinois law mandates application of the "time and space" test set forth as an extension to the "cause theory" in the Illinois Supreme Court's ruling in *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446 (2009). More specifically, the Court ruled that the "time and space" test is limited to cases "in which multiple injuries were sustained over time due to an ongoing negligent omission." The Court found that, as "Plaintiffs have conceded that all of their injuries were caused 'directly and solely' by a single accident' – the porch collapse – instead of multiple incidents occurring over an open-ended period of time…the time and space test is inapplicable here."

Finally, the Court found that, even if it were to apply the "time and space" test", it still would reach the same result. The Court ruled that, unlike in *Addison*, FSIC presented "more than sufficient evidence to conclude that the cause of plaintiffs' injuries was so closely linked in time and space as to be considered by the average person as one event." In so finding, the First District stated that Judge Valderrama "correctly noted, 'much was unknown as to the cause of the boys' deaths [in *Addison*]. That mystery, however, is not present in this case. All of the Plaintiffs' deaths and injuries can be directly traced to one cause: the porch collapse.'"

First Specialty Insurance Corporation was represented by Robert P. Conlon of Walker Wilcox Matousek LLP.

A copy of the Court's Opinion is attached here (PDF).

The Chicago Daily Law Bulletin's article on the ruling is attached here (PDF).