CHICAGOLAWBULLETIN.COM

Serving Chicago's legal community for 158 years

WEDNESDAY, JANUARY 16, 2013

Chicago Daily Law Bulletin®

Volume 159, No. 11

Court affirms liability limit in porch collapse

Justices rule Lincoln Park deaths and injuries qualify as a single event

BY MARY KATE MALONE
Law Bulletin staff writer

A state appeals panel limited the amount of coverage an insurance company must provide in connection with a 2003 porch collapse that killed 13 people and injured 29 others in Lincoln Park.

The 1st District Appellate Court unanimously affirmed Cook County Associate Judge Franklin U. Valderrama's 2011 ruling, which stated that the collapse constituted a single occurrence under First Specialty Insurance Corp.'s coverage plan. The ruling caps coverage at $1 million.

After examining the policy language, the panel concluded, "we can see nothing in the policy which would support plaintiffs' contention that the collapse constituted multiple occurrences," Justice Bill Taylor wrote in the 15-page opinion.

First Specialty's policy limited its general liability coverage for a single occurrence at $1 million and the aggregate limit at $2 million.

Forty-two people, which included the families of the deceased victims and others who suffered injuries in the collapse, filed a lawsuit against First Speciality in Cook County Circuit Court in 2010, stating that First Specialty should pay $2 million.

Both parties agreed that the porch collapse qualified as the single cause of all the injuries. But the plaintiffs argued that because the injuries and deaths occurred at different times, First Speciality could not prove the incident constituted a single event under the insurance plan.

Both sides filed motions for summary judgment and Valderrama sided with First Specialty, determining that the event constituted a single occurrence.

The plaintiffs appealed.

In the appellate opinion, Taylor addressed an Illinois Supreme Court case that the plaintiffs used to justify their argument that the collapse did not necessarily qualify as a single occurrence.

The case, *Addison Ins. Co. v. Fay*, concerned insurance coverage related to the deaths of two boys who went fishing and were later found dead in a neighbor's excavation pit partially filled with water.

In that case, the Supreme Court held that the boys' deaths constituted two separate occurrences because the insurer did not prove that the boys' injuries "were so closely linked in time and space to be considered one event."

Robert P. Conlon

James W. Kienzle Jr.

But the porch collapse case remained different, Taylor wrote.

"Plaintiffs have conceded that all of their injuries were caused 'directly and solely' by a single incident — the porch collapse — instead of multiple incidents occurring over an open-ended period of time," Taylor wrote.

He wrote that other Illinois courts often determine the number of occurrences by examining the cause of the injuries — in this case, the single porch collapse — rather than the number of claims or injuries resulting from the event.

First Speciality was represented by Robert P. Conlon and James W. Kienzle Jr. of Walker, Wilcox, Matousek LLP. They declined to comment.

The 42 plaintiffs were represented by solo practitioner Leslie J. Rosen, who couldn't be reached for comment.

The plaintiffs already received $1 million from First Speciality, but went to court arguing that the circumstances warranted $2 million under First Specialty's plan.

Justices Nathaniel Howse Jr. and Stuart E. Palmer concurred in last week's opinion, which is *Jean Ware, et al. v. First Specialty Insurance Corp.* 2012 IL App (1st) 113340.