

Robert M. Cavalier and Daniel S. Strick of LUCAS AND CAVALIER, LLC of Philadelphia, obtained a compulsory non-suit in favor of an insurance broker in the Court of Common Pleas in Chester County, Pennsylvania.

In Lutzwood Enterprises, Inc., et. al. v. Fanelli-Harley-Harper and Associates, Ltd. v. Pennsylvania Lumbermen's Mutual Insurance Company, plaintiffs, cabinet makers (buyers) entered into an installment land sale contract requiring plaintiffs to purchase building insurance. The provision in the contract regarding the insurance plaintiffs were required to purchase was ambiguous. Fanelli issued a Certificate of Insurance consistent with plaintiffs' request for insurance. Prior to the issuance of the Certificate of Insurance, a Pennsylvania Lumbermen's employee conducted a site inspection and discussed insurance coverages with plaintiffs. Within three months after the Certificate of Insurance was issued, three fires occurred which completely destroyed the building. After the fires Pennsylvania Lumbermen's issued an insurance policy limiting coverage to betterments and improvements made to the building by plaintiffs. The coverage issued post fires differed from the Certificate of Insurance which provided building replacement coverage to plaintiffs. Since plaintiffs did not make any betterments and improvements to the property before the fires occurred, Pennsylvania Lumbermen's denied coverage.

Included in the installment land sale contract was a liquidation of damages provision in the event plaintiffs failed to maintain insurance as required by the contract. The seller's insurer – who paid insurance benefits to the seller as a result of the fire and Pennsylvania Lumbermen's denial of coverage – sued the plaintiffs for breach of contract. Prior to the commencement of plaintiffs' trial against Fanelli, a confession of judgment was entered for \$600,000.00 against plaintiffs in favor of the seller's insurer. Fanelli successfully precluded evidence of the confession of judgment against plaintiffs at trial and of plaintiffs' \$200,000.00 joint tortfeasor (pre-suit) settlement with the Pennsylvania Lumbermen's.

As a result, of Pennsylvania Lumbermen's denial of coverage, plaintiffs sued Fanelli for professional negligence and breach of contract seeking \$1,000,000.00 for the replacement cost of the building, lost profits and lost rental income plus the recovery of attorney's fees and costs. Prior to trial, Fanelli secured a stipulation of dismissal of the claims for lost profits and lost rental income. Fanelli joined Pennsylvania Lumbermen's asserting it was negligent by issuing the incorrect insurance to plaintiffs and for the long delay in issuing the insurance policy with coverages inconsistent with the Certificate of Insurance.

After plaintiffs rested, Fanelli moved for a non-suit on the grounds plaintiffs failed to establish liability since the Certificate of Insurance was consistent with plaintiffs' request for insurance and plaintiffs suffered no damage. Fanelli's motion for non-suit was granted after a finding plaintiffs could not prove entitlement to damages from Fanelli before there was a determination as to plaintiffs' liability to the seller (or it's insurer). No appeal was taken and judgment has been entered in Fanelli's favor.