

Insurance Responding to Disasters: Surfside Building Collapse, Wildfires, COVID

American College of Coverage Counsel
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Surfside Collapse



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**IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY**

**COMPLEX BUSINESS
LITIGATION DIVISION**

**IN RE: CHAMPLAIN TOWERS SOUTH
COLLAPSE LITIGATION.**

CLASS REPRESENTATION

CASE NO. 2021-015089-CA-01

CONSOLIDATED THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs Raquel Azevedo de Oliveira, as personal representative of the Estates of Alfredo Leone and Lorenzo de Oliveira Leone; Kevin Spiegel, as personal representative of the Estate of Judith Spiegel; Kevin Fang, as personal representative of the Estate of Stacie Fang; Raysa Rodriguez; and Steve Rosenthal bring their consolidated third amended class action complaint against Defendants 8701 Collins Development, LLC; Terra Group, LLC; Terra World Investments, LLC; John Moriarty & Associates of Florida, Inc.; NV5, Inc.; DeSimone Consulting Engineers, LLC; Champlain Towers South Condominium Association, Inc.; Morabito Consultants, Inc.; Becker & Poliakoff, P.A; Stantec Architecture Inc.; Geosonics, Inc.; Florida Civil, Inc.; and 8701 Collins Avenue Condominium Association, Inc. (collectively, "Defendants").

Plaintiffs, individually and on behalf of the class and subclasses defined herein, make the following allegations:

Contractor Controlled Insurance Program

Name of Insurer	Policy Type
Aspen Specialty Insurance Company	General Liability
Aspen Specialty Insurance Company	First Level Excess (Lead x 5)
Navigators Specialty Insurance Company	Second Level Excess (10 x 5)
Gemini Insurance Company (Berkley)	Third Level Excess (10 x 15)
Starr Surplus Lines Insurance Company	Fourth Level Excess (25 x 25)
Great American Insurance Company	Fifth Level Excess (25 x 50)
Endurance Assurance Corporation (Sompo)	Sixth Level Excess (25 x 75)

Master Insurance Program

Name of Insurer	Policy Type
Arch Insurance Company	General Liability
XL Specialty Insurance Company	First Level Excess (Lead x 10)
American Guarantee and Liability Insurance Company (Zurich)	Second Level Excess (25 x 10)
Starr Indemnity & Liability Company	Third Level Excess (25 x 35)
Endurance American Insurance Company (Sompo)	Fourth Level Excess (10 x 60)
Berkley National Insurance Company	Fifth Level Excess (25 x 70)
Houston Casualty Company	Sixth Level Excess (15 x 95)
The North River Insurance Company (Crum & Forster)	Seventh Level Excess (10 x 110)
Liberty Insurance Underwriters	Eighth Level Excess (25 x 120)

Rescuers ID woman buried alive

Miami-Dade Fire Rescue issues findings in report to newspaper reports

By Ben Winder Miami Herald

SURFSIDE — Five hours after Champlain Towers South collapsed early in the morning on June 24, 2021, rescue dogs picked up the scent of a live victim pinned underneath the parking garage.



Rescuers made out the voice of a woman, but the voice was faint that whistling among the rubble or movement in the spreading water in which the crew worked would take out the sound of the voice.

From the first rescuers, rescuers believed the woman said that she was trapped at the building's construction site with her husband. They heard her say she was trapped between a mattress or a bed, or between two walls.

Rescuers were unable to reach the woman, Miami-Dade Fire Rescue believes that the woman whose name was listed as Theresa Villanueva, a 46-year-old music industry executive, who had been visiting her parents before the collapse, which would ultimately claim its toll.

A report revealing that construction, first obtained by Sun Sentinel at CH24 Miami, is based on interviews with rescuers and other documentary evidence.

While firefighters and other first responders were able to pull four live people from the rubble in the hours after collapse — one of whom subsequently died — they were never able to rescue the majority of women, those believed to be trapped, despite continuing communication with her for several agonizing hours.

Her remains were ultimately discovered July 8, 2021. The bodies of her parents, Julie and Angela, were discovered over the following two days.

Villanueva began her music career in 2004, appearing around clubs in Miami under the name DJ Theresa. She traveled her early career into hip-hop around the world, including Nashville's Circuit Festival and Madison's...

Theresa Villanueva was rescued off of his 7th floor balcony at Champlain Towers South in Surfside, Florida, on June 24, 2021. She was rescued with her husband, Steve Rosenthal, and other former condo owners.

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Dubai developer to buy Surfside condo collapse site for \$120M

Associated Press

A billionaire developer from Dubai is set to purchase the site of a South Florida condominium that collapsed last June, killing 98 people, for \$120 million after an eight-hour deadline for next week's auction.

Michael Roy of Arroyo Young, said hundreds of potential buyers had shown interest in the property, but most were ultimately prepared to watch the strong market for 11 months.

Arroyo Young is the commercial real estate firm that was appointed to market the land as part of a class action lawsuit.

The auction for the 1.8-acre parcel in Surfside was scheduled for Tuesday.

Earlier this month, families of the victims received a \$997 million settlement with local officials, the developer of an adjacent building and others who they held responsible for the collapse of the 40-story, 12-story high-rise building during the early hours of June 24.

Most of the Champlain Towers South collapsed suddenly about 1:20 a.m. last June 24 as most of its residents slept.

Only three people survived the initial collapse.

No other survivors were found despite the ground-the-clock efforts of rescuers who dug through a 4-to-6-foot pile of rubble for two weeks.

Another three dozen people were in the portion of the building that remained standing.

Builder of collapsed Surfside condominium was a partner in Broward project that went bust

By Ron Hurtbise South Florida Sun Sentinel

Long after he built the Champlain Towers South in Surfside, developer Nathan Reiber became a partner in a company that converted a 377-unit apartment complex in Coconut Creek into condominiums.

While that project did not suffer the same tragic fate as the Surfside collapse, it did not end well for the investors or for the dozens of buyers who soon found themselves in foreclosure.

Reiber spent the latter part of his career as a partner in a business that was brought down by bankruptcy, foreclosure and accusations of underhanded financial dealing.

The South Florida Sun Sentinel looked at Reiber's corporate registrations, official records in Broward and Palm Beach coun-

ties, civil court filings and newspaper archives to determine whether Reiber, who died in 2014, developed any buildings in the two counties.

The investigation found no evidence that Reiber, who moved to Miami Beach in the 1970s and became immersed in business and civic life there for most of his remaining days, was involved in any construction projects in Broward or Palm Beach counties.

William M. Friedman, the architect of record for Reiber's three Champlain Towers projects, is credited in local newspaper archives as designing just a handful of low-rise buildings, mostly apartment houses, during the 1960s and 1970s. Several of those have already been replaced by newer structures.

Reiber's stint as a high-rise

Turn to Builder, Page 5

United in grief, bitter legal battles now divide Surfside collapse survivors and families

BY LINDA ROBERTSON AND JAY WEAVER
UPDATED FEBRUARY 23, 2022 2:38 PM



Steve Rosenthal was rescued off of his 7th floor balcony at Champlain Towers South in Surfside, Florida, on June 24, 2021. After losing almost everything in the collapse, he and other former condo owners are in a difficult legal battle. BY EMILY MICHOT | LINDA ROBERTSON

'Lives would have been saved'

Review of audio, video footage shows fire alarm didn't sound before Surfside tower collapse

By Sarah Blaskey and Nicholas Nehamas Miami Herald

When the pool deck at Champlain Towers South collapsed early on the morning of June 24, the building's fire alarm system quickly sent out a distress signal to its alarm company.

It was 1:15 a.m. — seven minutes before half of the 12-story tower came crashing down and killed 98 people.

But in that crucial seven-minute span between the pool deck collapsing and the tower falling, no klaxons, sirens or warnings seem to have gone off in the building's condo units, hallways or lobby, according to a review of audio and video footage and

interviews with more than a dozen residents and workers — raising questions about a possible failure or malfunction of the system.

"There was no alarm," said unit owner Iliana Monteaugudo. "That would've woken everyone up."

A Ring camera that turned on in the condo above Monteaugudo's just seconds before the tower collapsed picked up the sounds of small chunks of plaster falling from the ceiling — but no blaring alarms.

Had alarms gone off on every floor at 1:15 a.m. — alerting residents in the doomed part of the tower to a crisis and perhaps giving them time to escape — at least some people may have survived, even if others lingered in their condos, thinking it was a false alarm, experts said.

"Obviously, seven minutes is a long time. If [the alarms] went off and people followed the directions, that could have been crucial."

Turn to Alarm, Page 10



Coast Guard boats patrol in front of the partially collapsed Champlain Towers South condo building July 1 in Surfside. Champlain Towers' alarm system had been replaced in 2017. MARK HUMPHREY/AP

Judge invalidates bogus claims in Surfside building collapse

BY CURT ANDERSON ASSOCIATED PRESS

Hundreds of bogus claims that sought a share of the \$1.1 billion settlement in the deadly collapse of a Florida condominium building were ruled as fraudulent and invalid by a judge Wednesday.

More than 450 presumably false claims, most seeking about \$50,000, were filed in the court settlement arising from the June 2021 collapse of the Champlain Towers South building in which 98 people died.

These claims “have no connection whatsoever” to the tragedy and appear to be “claims seeking to wrongfully capitalize on this tragedy at the expense of the true victims,” court-appointed receiver Michael Goldberg said in court documents.

During a brief hearing Wednesday, Miami-Dade Circuit Judge Michael Hanzman said none of the bogus claimants showed up to provide evidence under oath so their claims will be struck from the list of settlement beneficiaries.

“They had to submit the necessary documentation and they had to show up at the hearing,” the judge said.

The 457 false claims — out of 741 total — arrived mostly from western states, especially California, Oregon, Washington and Colorado, Goldberg said. They seem to be affiliated with a website called “hustlermoneyblog.com” that he said shows people how to file for damages in certain class-action settlements without providing proof.

The shaky claims from people insisting they were at the building and injured when it fell or owned units that suffered costly property losses were easily disproved with government records, first responder accounts and court documents, Goldberg said.

The apparent scammers could have been subjected to perjury charges based on submission of fraudulent claim forms, Goldberg added. There was no sign of a link to the Champlain Towers South settlement Wednesday on the website, which mostly contained information about credit card and bank account bonuses.

The \$1.1 billion settlement fund for families of the victims who died and those who lost their units and property was approved by the judge in June.

The money comes from 37 sources, including insurance companies, engineering firms and a luxury condominium building whose recent construction next door is suspected of

contributing to structural damage of Champlain Towers South. None of the parties admit any wrongdoing.

A billionaire developer from Dubai purchased the 1.8-acre (1-hectare) beachside site for \$120 million, contributing to the settlement.

Champlain Towers South had a history of maintenance problems, and questions have been raised about the quality of its original construction and inspections in the early 1980s. Other possible factors in the collapse are sea level rise caused by climate change, which could cause damage from saltwater intrusion.

A final conclusion on the cause is likely years away. The National Institute of Standards and Technology is overseeing the investigation.

Another hearing is set next week on how to divide up attorney fees and costs from the settlement. Estimates are the fees would reach about \$100 million combined.

Lawyers awarded \$70M+ fees in deadly Florida condo collapse

By Curt Anderson | AP

August 29, 2022 at 1:37 p.m. EDT

Lawyers who secured a \$1.1 billion settlement in the deadly collapse last year of a beachfront Florida condominium building were awarded more than \$70 million in fees Monday by a judge.

The total was less than the approximately \$100 million attorneys with the 17 law firms had requested, but there were no guarantees initially they would ever be paid in the days after the Champlain Towers South building fell June 24, 2021, killing 98 people.

Miami-Dade Circuit Judge Michael Hanzman said surviving family members and people who only lost units and property got far more in compensation than is typical in such large class-action cases — and this lawsuit was settled in only a year's time.

"That is a remarkable result. It is unprecedented," Hanzman said at a hearing. "They are not getting a meager recovery here. They are in essence being made whole, which never happens in these cases." Hanzman also remarked that the case "could have been an absolute disaster."

"It had so much potential to go off the rails," the judge said. "If things had not turned out well, they (attorneys) would have walked away with nothing."

Still, the judge said the full \$100 million in legal fees requested was too much. He noted not only that lawyers were not promised a dime initially when they took the Champlain Towers case but also that their swift settlement meant a reduction in the hours involved.

Some survivors also questioned the higher amount as too generous given the scope of the tragedy, even as they acknowledged the extraordinary outcome.

"No one should be profiting from the death of 98 humans," said Marin Langerfeld, who lost his sister and her husband in the collapse.

"This is the most difficult thing that has happened to our family's lives," added Kevin Spiegel, whose wife Judith died. "We will always carry this around."

The settlement money comes from 37 sources, including insurance companies, engineering firms and a luxury condominium building whose recent construction next door is suspected of contributing to structural damage of Champlain Towers South. None of the parties admit any wrongdoing.

A billionaire developer from Dubai purchased the 1.8-acre (1-hectare) beachside site for \$120 million, contributing to the settlement. It's not clear yet what structure will rise on the site.

Hearings before Hanzman and a second judge on the wrongful-death claims have taken place over the past five weeks. Michael Goldberg, the court-appointed receiver overseeing the case, said checks should be distributed to those families who lost loved ones beginning in mid-September. Those who lost only property will receive the full assessed value for their units, with taxes and other costs forgiven.

One of the plaintiffs' lead lawyers, Harley Tropin, said the \$100 million was the absolute ceiling for attorney fees and that the group was satisfied with whatever was awarded.

"It was an honor to be chosen to try to get a result on behalf of these victims. There's no victory lap here," Tropin said. "The victims come first. We're good."

Champlain Towers South had a history of maintenance problems, and questions have been raised about the quality of its original construction and inspections in the early 1980s. Other possible factors in the collapse are sea level rise caused by climate change, which could cause damage from saltwater intrusion.

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Wildfire Insurance – Risk & Trends

- Over the last decade, fire season has increased by more than one month in certain areas of the county.
- The adequacy and affordability of property insurance has become an issue for certain industries, including housing builders, timber companies, farmers, wineries, campground operators, and grape growers.
- California recently introduced wildfire safety regulation to help drive down the cost of insurance by recognizing and rewarding policyholders' wildfire safety and mitigation.



Smoke-Related Damage



Disputes can arise over whether smoke damage from a nearby fire is covered loss.

- *Oregon Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, 2016 WL 3267247, at *2 (D. Or. June 7, 2016), vacated on parties' request, 2017 WL 1034203 (D. Or. Mar. 6, 2017) (court found theater that canceled outdoor performances because of poor air quality sustained covered business income loss; its property suffered “direct physical loss of or damage to” because the smoke rendered it “uninhabitable” and “unusable for its intended purpose”).
- *Hoopes Vineyard LLC v. U.S. Fire Ins. Co.*, 21:cv-09755 (N.D. Cal. Dec. 17, 2021) (the amount of coverage for a winery's claim that smoke degraded the quality and value of its wine was driven by the timing and location of the tainted grapes, i.e., in the field or already harvested).

Causation & Anti-Concurrent Causation



- Mudslides, building collapses, and water, smoke or soot damage can follow a fire. Some of these risks may be excluded by a policy.
- Under some policies and certain states' laws, where there are multiple causes of a loss, some that are covered and others that are not, the entire loss may be deemed covered. To avoid this outcome, insurers may insert "anti-concurrent cause" provisions into their policies to limit coverage where any involved cause of a loss is not covered.
 - *Miller v. American Family Mut. Ins. Co.*, 104 F. Supp.3d 1232 (Dist. Colo. 2015) (where water used to extinguish fire damaged a building's foundation, an earth movement exclusion did not bar coverage because it was ambiguous in application to an otherwise covered man-made event; the ACC provision limited coverage only for earth movement caused in part by natural causes unrelated to the fire).
 - *Stankova v. Metro. Prop. & Cas. Ins. Co.*, 788 F.3d 1012 (9th Cir. 2015) (mudslide after fire was deemed caused by the wildfire, and therefore was covered).
 - *Encompass Ins. Co. v. Berger*, No. CV 12-08294-MWF PJWX, 2014 WL 4987978, (C.D. Cal. Oct. 7, 2014) (the wildfire was the efficient proximate cause of most loss; only those expenses associated with foundation damage emanating solely from preexisting soil conditions were excluded from coverage).

COVID-Related Insurance Disputes

- Where things stand

