

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CONTINENTAL WESTERN INSURANCE
COMPANY, an insurance corporation,

Plaintiff,

vs.

Case No. 07-1201-JTM

DONNA ARD, ORLIN ARD, ART
BAKER, JEREMY CHRISTENSEN,
DONNA COONROD, JUDITH
ETHRIDGE, ROBERT ETHRIDGE,
GLENDA FOSTER, WAYNE FOSTER,
RAYMOND FRIEND, KATHY GODDEN,
KELLY GORDON, LARRY HARMON,
ANNA HENDRICKS, LIZ HENDRICKS,
DONALD HYSKO, PATRICIA HYSKO,
SHARON MANNER, GAIL MAYFIELD,
JUDY McCLAIN, CHRIS OSTROM,
JOHN PFISTER, JOYCE SHAUF, RUTH
SHEAHAN, LINDA WRIGHT, BRIAN
SCHRECK, KATHY SEILER, individually,
and on behalf of the Heirs-at-Law of
Gerard Seiler, deceased, and FEDERAL
INSURANCE COMPANY,

Defendants.

ORDER

This matter comes before the court on unopposed motions to dismiss from each of the following defendants: Brian Schreck (Dkt. No. 8), Judith Ethridge (Dkt. No. 17), Robert Ethridge (Dkt. No. 18), and Federal Insurance Company (Dkt. No. 34). For the following reasons, the court grants the motions.

Continental has filed this interpleader action alleging in its Amended Interpleader Complaint that: (1) it issued a commercial line policy to Mark Holding which has liability limits of \$500,000 for each occurrence; (2) the individual defendants were all injured in an accident which occurred on or about May 6, 2007, when a deck collapsed at a residence near Fall River, Kansas; (3) Continental's insured, Mark Holding, was involved in the construction of a deck and its attachment to the residence; (4) all of the individual defendants have or may have claims against the \$500,000 liability limits of Continental's policy; and (5) Continental does not know which of the defendants, if any, it may safely pay under its policy, because the limits of liability of the policy are not sufficient to settle the existing claims. Continental paid \$500,000 into the registry of the court, and prayed that each of the defendants be ordered to interplead and settle among themselves their rights and claims to the sum of \$500,000 due and payable under the policy.

Defendants Brian Schreck, Judith Ethridge and Robert Ethridge were all named as defendants in this action solely because each sustained personal injuries as a result of the deck collapsing, and thus would have a right to make a claim against the limits of the \$500,000.00 policy. Nevertheless, each of the defendants named in this paragraph voluntarily waived any claim each of them might have against the fund for personal injuries sustained as a result of the deck collapsing, and further voluntarily released Continental from any liability under its policy for the personal injuries sustained as a result of the deck collapsing.

Defendant Federal Insurance Company was named as a defendant in the action solely because it paid property damage benefits to its insureds, Brian Schreck and Donna Schreck, for the property damages sustained by them as a result of the deck collapsing, and because Federal

Insurance Company is one of the defendants who would have the right to make a claim against the \$500,000 limits of the plaintiff's policy for the property loss damages it paid to its insureds. Nevertheless, it voluntarily waived any claim it might have against the fund of \$500,000 for the property damages it paid to its insured as a result of the deck collapsing, and voluntarily released Continental from any liability to Federal Insurance Company under plaintiff's policy for the amount of property loss damages paid by Federal Insurance company to its insured as a result of the deck collapsing.

By reason of the voluntary, unopposed waiver by Schreck, the Ethridges, and Federal Insurance Company, there is no basis for them to be defendants in the action. Accordingly, defendants Brian Schreck, Judith Ethridge, Robert Ethridge, and Federal Insurance Company are dismissed from this action with prejudice.

IT IS ACCORDINGLY ORDERED this 27th day of December, 2007, that defendants Brian Schreck, Judith Ethridge, Robert Ethridge, and Federal Insurance Company's motions for an order of dismissal with prejudice (Dkt. Nos. 8, 17, 18, 34) are hereby granted.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE