

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

ESTATE OF JARED C. KELLNER,
by his Special Administrator, DAWN KELLNER
3740 Rivershire Drive #5
Greenfield, WI 53228,

and

DAWN KELLNER
3740 Rivershire Drive #5
Greenfield, WI 53228,

Plaintiffs,

v.

ADVANCE CAST STONE CO.,
a Wisconsin corporation
c/o Matt A. Gami, Registered Agent
W5104 Highway 144
Random Lake, WI 53075,

ABC INSURANCE CO., the fictitious name
for an unknown insurance company,

J.H. FINDORFF & SON INC.,
a Wisconsin corporation
c/o Daniel Petersen, Registered Agent
300 S. Bedford St.
Madison, WI 53703,

DEF INSURANCE CO., the fictitious name
for an unknown insurance company,

C.D. SMITH CONSTRUCTION, INC.,
a Wisconsin corporation
c/o Robert D. Baker, Registered Agent
889 E. Johnson St.
Fond du Lac, WI 54935,

Case No.

COMPLAINT

Wrongful Death: 30105
Personal Injury-Other: 30107

FILED AND
AUTHENTICATED
JAN 19 2011
JUNIN BARRETT
Clerk of Circuit Court

GHI INSURANCE CO., the fictitious name
for an unknown insurance company,

DIETZ DRAFTING & DESIGN, INC.
(f/k/a Dietz Engineering, Inc.),
a Wisconsin corporation
c/o John Dietz, Registered Agent
190 Gardner Ave., Suite 9
Burlington, WI 53105,

and

JKL INSURANCE CO., the fictitious name
for an unknown insurance company,

Defendants.

NOW COME the above-named plaintiffs, by their attorneys, Cannon & Dunphy, S.C., and as and for their claims for relief, allege and show to the Court as follows:

PARTIES

1. That at all times material hereto, Jared C. Kellner, date of birth, December 3, 1994, was the minor son of Dawn Kellner and resided with his mother at 3740 South Rivershire Drive #5, Greenfield, WI 53228; that on September 24, 2010, Dawn Kellner was appointed Special Administrator of the Estate of Jared C. Kellner for purposes of pursuing claims on behalf of the Estate in this litigation.

2. That at the present time, the plaintiff, Dawn Kellner, is an adult citizen and resident of the State of Wisconsin, who currently resides at 3740 South Rivershire Drive #5, Greenfield, WI 53228, and is the mother of the decedent, Jared C. Kellner.

3. That at the present time, the defendant, Advance Cast Stone Co. (hereinafter "Advance Cast Stone"), is a Wisconsin corporation, duly organized and existing under and

by virtue of the laws of the State of Wisconsin, with offices of its Registered Agent, Matt A. Garni, located at 812 S. 10th, Oostburg, WI 53070.

4. That at the present time, the defendant, ABC Insurance Co. (hereinafter "ABC"), is the fictitious name for an unknown insurance company, that is engaged in the business of writing and selling liability insurance; that on information and belief, prior to the date of this incident, June 24, 2010, ABC issued a policy of insurance to Advance Cast, which provided coverage to Advance Cast, its agents, servants and/or employees, for claims such as those hereafter set forth, and which policy of insurance was in full force and effect at the time of the incident described below; that in said contract of insurance, ABC reserved the right to settle or adjust any claims arising thereunder and to defend any lawsuits instituted by virtue of any such claims and has a direct interest in this litigation; that pursuant to Wis. Stat. § 807.12, ABC is being inserted in place of the real and proper insurance company defendant, which as soon as its identity is ascertained will be substituted in place of ABC.

5. That at the present time, the defendant, J.H. Findorff & Son, Inc. (hereinafter "Findorff"), is a Wisconsin corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with offices of its Registered Agent, Daniel L. Peterson located at 300 S. Bedford St., Madison, WI 53703.

6. That at the present time, the defendant, DEF Insurance Co. (hereinafter "DEF"), is the fictitious name for an unknown insurance company, that is engaged in the business of writing and selling liability insurance; that on information and belief, prior to the date of this incident, June 24, 2010, ABC issued a policy of insurance to Findorff, which

provided coverage to Findorff, its agents, servants and/or employees, for claims such as those hereafter set forth, and which policy of insurance was in full force and effect at the time of the incident described below; that in said contract of insurance, DEF reserved the right to settle or adjust any claims arising thereunder and to defend any lawsuits instituted by virtue of any such claims and has a direct interest in this litigation; that pursuant to Wis. Stat. § 807.12, DEF is being inserted in place of the real and proper insurance company defendant, which as soon as its identity is ascertained will be substituted in place of DEF.

7. That at the present time, the defendant, C.D. Smith, Inc. (hereinafter "C.D. Smith"), is a Wisconsin corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with offices of its Registered Agent, Robert D. Baker, located at 889 E. Johnson St., Fond du Lac, WI 54935.

8. That at the present time, the defendant, GHI Insurance Co. (hereinafter "GHI"), is the fictitious name for an unknown insurance company, that is engaged in the business of writing and selling liability insurance; that on information and belief, prior to the date of this incident, June 24, 2010, ABC issued a policy of insurance to C.D. Smith, which provided coverage to C.D. Smith, its agents, servants and/or employees, for claims such as those hereafter set forth, and which policy of insurance was in full force and effect at the time of the incident described below; that in said contract of insurance, GHI reserved the right to settle or adjust any claims arising thereunder and to defend any lawsuits instituted by virtue of any such claims and has a direct interest in this litigation; that pursuant to Wis. Stat. § 807.12, GHI is being inserted in place of the real and proper insurance company defendant, which as soon as its identity is ascertained will be substituted in place of GHI.

9. That at the present time, the defendant, Dietz Drafting & Design, Inc. (formerly known as Dietz Engineering, Inc.) (hereinafter "Dietz"), is a Wisconsin corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with offices of its Registered Agent, John D. Dietz, located at 190 Gardner Ave., Suite 9, Burlington, WI 53105.

10. That at the present time, the defendant, JKL Insurance Co. (hereinafter "JKL"), is the fictitious name for an unknown insurance company, that is engaged in the business of writing and selling liability insurance; that on information and belief, prior to the date of this incident, June 24, 2010, ABC issued a policy of insurance to Dietz, which provided coverage to Dietz, its agents, servants and/or employees, for claims such as those hereafter set forth, and which policy of insurance was in full force and effect at the time of the incident described below; that in said contract of insurance, JKL reserved the right to settle or adjust any claims arising thereunder and to defend any lawsuits instituted by virtue of any such claims and has a direct interest in this litigation; that pursuant to Wis. Stat. § 807.12, JKL is being inserted in place of the real and proper insurance company defendant, which as soon as its identity is ascertained will be substituted in place of JKL.

GENERAL ALLEGATIONS

11. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

12. That upon information and belief, Advance Cast Stone was hired by Milwaukee County to manufacture and install the precast concrete architectural panels at the O'Donnell Park Parking Structure.

13. That upon information and belief, Findorff was hired by Milwaukee County as the project construction manager and had overall responsibility for ensuring the O'Donnell Park Parking Structure followed engineering plans and for inspecting work for quality and workmanship, including all on-site changes made in the construction of the O'Donnell Park Parking Structure.

14. That upon information and belief, C.D. Smith was hired by Milwaukee County to provide cast-in-place concrete work for the construction of the O'Donnell Park Parking Structure, including the manufacture and installation of the parapet walls to which the precast concrete architectural panels were attached.

15. That upon information and belief, Dietz designed and/or engineered the precast concrete architectural panels at the O'Donnell Park Parking Structure.

16. That upon information and belief, the defendants, jointly and severally, were aware during the construction of the O'Donnell Park Parking Structure that the supplied precast concrete architectural panels and/or the parapet walls to which the panels were attached were defective, and that said panels were defectively installed.

17. That upon information and belief, the defendants, jointly and severally, concealed and/or misrepresented the deficiencies or defects in the construction of the O'Donnell Park Parking Structure.

18. That on June 24, 2010, Jared C. Kellner planned to attend Summerfest with his friend, Eric Wosinski, and Eric Wosinski's parents, Steven Wosinski and Amy Wosinski.

19. That at approximately 4:00 p.m. on June 24, 2010, Steven Wosinski parked his vehicle in the O'Donnell Park Parking Structure and proceeded along with his wife, Amy

Wosinski, and son, Eric Wosinski, and friend of the family, Jared Kellner, to exit the O'Donnell Park Parking Structure through the Lincoln Memorial Drive exit.

20. That as Steven Wosinski and Amy Wosinski were clearing the exit of the O'Donnell Park Parking Structure with their son, Eric Wosinski, and Jared Kellner walking a short distance behind them, Steven Wosinski heard a strange and startling, that caused him to turn around.

21. That as Eric Wosinski and Jared Kellner were exiting the parking structure, a 13 ½ ton precast concrete architectural panel fell off the parking structure of the O'Donnell Park Parking Structure.

22. That the concrete panel crushed and tragically killed Jared Kellner and caused injuries to Dawn Kellner, as well as the Wosinski family.

23. That the negligence of the defendants, as alleged herein, was a cause of the severe personal injuries sustained by Jared C. Kellner, that resulted in his death, and damages including conscious pain and suffering, severe emotional distress, fear of impending death, pecuniary loss, and all damages allowed under Wisconsin law, all to the damage of his Estate in an amount to be determined at a trial of this matter.

24. That as a result of the causal negligence of the defendants, as alleged herein, and the injuries and death of Jared C. Kellner, Dawn Kellner has suffered the loss of her son's society and companionship, medical expenses, funeral expenses paid for by collateral sources, and all damages allowed under Wisconsin law, including but not limited to wrongful death damages, all to her damage in an amount to be determined at a trial of this matter.

FIRST CLAIM FOR RELIEF AGAINST THE DEFENDANT
ADVANCE CAST STONE CO. – NEGLIGENCE

25. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

26. That upon information and belief, the defendant Advance Cast Stone Co. owed a duty to the Plaintiffs to use reasonable care to design, construct, supervise and observe the construction of, and otherwise furnish safe materials for the construction of, the O'Donnell Park Parking Structure.

27. That upon information and belief, the defendant Advance Cast Stone Co., by and through its agents, servants and/or employees, breached its duty of reasonable care and was negligent in that it, among other things:

- a. Failed to properly design and/or engineer the precast concrete architectural panels used in the construction of O'Donnell Park Parking Structure;
- b. Supplied precast concrete architectural panels that contained defects in the material used in the construction of O'Donnell Park Parking Structure and concealed such deficiencies or defects;
- c. Failed to properly manufacture the precast concrete architectural panels used in the construction of the O'Donnell Park Parking Structure and concealed such deficiencies or defects;
- d. Failed to properly install the precast concrete architectural panels used in the construction of the O'Donnell Park Parking Structure and concealed such deficiencies or defects;
- e. Made modifications to the precast concrete architectural panels on the job site that were in violation of the plans and specifications, and that created a high risk of failure;
- f. Failed to ensure that the O'Donnell Park Parking Structure followed engineering plans;

- g. Failed to properly inspect the parapet walls and the precast concrete architectural panels used in the construction of the O'Donnell Park Parking Structure for quality and workmanship including any changes made thereto;
- h. Failed to properly supervise the construction of the O'Donnell Park Parking Structure;
- i. Knew that the precast concrete architectural panels and/or the parapet walls to which the panels were attached at the O'Donnell Park Parking Structure were defective;
- j. Concealed and/or misrepresented the deficiencies or defects in the construction of the O'Donnell Park Parking Structure including, but not limited to, the precast concrete architectural panels and the parapet walls to which the panels were attached;
- k. Failed to properly train, instruct and supervise its employees as to the safe and proper manner in which to construct and install the precast concrete architectural panels to the parapet walls; and
- l. Was otherwise negligent.

28. That the negligence of Advance Cast Stone Co. was a cause of the injuries and damages sustained by the plaintiffs.

SECOND CLAIM FOR RELIEF AGAINST THE DEFENDANT
ADVANCE CAST STONE CO. – PUNITIVE DAMAGES

29. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

30. That upon information and belief, at all times material hereto, the defendant Advance Cast Stone Co. acted maliciously toward Plaintiffs and/or in an intentional disregard of the Plaintiffs' rights, such as to subject Advance Cast Stone Co. to punitive damages.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANT
J.H. FINDORFF & SON, INC. – NEGLIGENCE

31. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

32. That upon information and belief, the defendant J.H. Findorff & Son, Inc. owed a duty to the Plaintiffs to use reasonable care to design, construct, supervise and observe the construction of, and otherwise furnish safe materials for the construction of, the O'Donnell Park Parking Structure.

33. That upon information and belief, the defendant J.H. Findorff & Son, Inc., through its agents, servants and/or employees, breached its duty of reasonable care and was negligent in that it, among other things:

- a. Failed to properly supervise the installation of the precast concrete architectural panels used in the construction of the O'Donnell Park Parking Structure;
- b. Allowed modifications to be made to the precast concrete architectural panels on the job site that were in violation of the plans and specifications, and that created a high risk of failure;
- c. Failed to ensure that the O'Donnell Park Parking Structure followed engineering plans;
- d. Failed to properly inspect work for quality and workmanship, including changes made in the construction of the O'Donnell Park Parking Structure;
- e. Failed to properly supervise the construction of the O'Donnell Park Parking Structure;
- f. Knew that the precast concrete architectural panels and/or the parapet walls to which the panels were attached at the O'Donnell Park Parking Structure were defective;

- g. Concealed and/or misrepresented the deficiencies or defects in the construction of the O'Donnell Park Parking Structure including, but not limited to, the precast concrete architectural panels and the parapet walls to which the panels were attached;
- h. Failed to properly train, instruct and supervise its own employees as well as the employees of all other defendants as to the safe and proper manner in which to construct and install the precast concrete architectural panels to the parapet walls; and
- i. Was otherwise negligent.

34. That the negligence of J.H. Findorff & Son, Inc. was a cause of the injuries and damages sustained by the plaintiffs.

**FOURTH CLAIM FOR RELIEF AGAINST DEFENDANT
J.H. FINDORFF & SON, INC. – PUNITIVE DAMAGES**

35. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

36. That upon information and belief, at all times material hereto, J.H. Findorff & Son, Inc. acted maliciously toward Plaintiffs and/or in an intentional disregard of the Plaintiffs' rights, such as to subject J.H. Findorff & Son, Inc. to punitive damages.

**FIFTH CLAIM FOR RELIEF AGAINST DEFENDANT C.D. SMITH
CONSTRUCTION, INC. – NEGLIGENCE**

37. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

38. That upon information and belief, the defendant C.D. Smith Construction, Inc. owed a duty to the Plaintiffs to use reasonable care to design, construct, supervise and observe the construction of, and otherwise furnish safe materials for the construction of, the O'Donnell Park Parking Structure.

39. That upon information and belief, the defendant C.D. Smith Construction, Inc., through its agents, servants and/or employees, was negligent in that it, among other things:

- a. Failed to properly design and/or engineer the parapet walls to which the precast concrete architectural panels were attached at the O'Donnell Park Parking Structure;
- b. Constructed the parapet walls at the O'Donnell Park Parking Structure to which the precast concrete architectural panels were attached out of defective materials and concealed such deficiencies or defects;
- c. Failed to properly manufacture the parapet walls at the O'Donnell Park Parking Structure to which the precast concrete architectural panels were attached and concealed such deficiencies or defects;
- d. Permitted modifications to be made to the precast concrete architectural panels on the job site that were in violation of the plans and specifications, and that created a high risk of failure;
- e. Failed to ensure that the parapet walls and the precast concrete architectural panels at the O'Donnell Park Parking Structure followed engineering plans;
- f. Failed to properly inspect the parapet walls and the precast concrete architectural panels at the O'Donnell Park Parking Structure for quality and workmanship including any changes made thereto;
- g. Knew that the precast concrete architectural panels and/or the parapet walls to which the panels were attached at the O'Donnell Park Parking Structure were defective;
- h. Concealed and/or misrepresented the deficiencies or defects in the construction of the O'Donnell Park Parking Structure including, but not limited to, the precast concrete architectural panels and the parapet walls to which the panels were attached;
- i. Failed to properly train, instruct and supervise its employees as to the safe and proper manner in which to construct and install the precast concrete architectural panels to the parapet walls; and
- j. Was otherwise negligent.

40. That the negligence of C.D. Smith Construction, Inc. was a cause of the injuries and damages sustained by the plaintiffs.

**SIXTH CLAIM FOR RELIEF AGAINST DEFEDANT
C.D. SMITH CONSTRUCTION, INC. – PUNITIVE DAMAGES**

41. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

42. That upon information and belief, at all times material hereto, C.D. Smith Construction, Inc. acted maliciously toward Plaintiffs and/or in an intentional disregard of the Plaintiffs' rights, such as to subject C.D. Smith Construction, Inc. to punitive damages.

**SEVENTH CLAIM FOR RELIEF AGAINST DEFENDANT
DIETZ DRAFTING & DESIGN, INC. – NEGLIGENCE**

43. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

44. That upon information and belief, the defendant Dietz Drafting & Design, Inc. owed a duty to the Plaintiffs to use reasonable care to design, construct, supervise and observe the construction of, and otherwise furnish materials for the construction of the O'Donnell Park Parking Structure.

45. That upon information and belief, the defendant Dietz Drafting & Design, Inc., through its agents, servants and/or employees, breached its duty to reasonable care and was negligent in that it, among other things:

- a. Failed to properly design and/or engineer the precast concrete architectural panels used in the construction of the O'Donnell Park Parking Structure;

- b. Permitted modifications to be made to the precast concrete architectural panels on the job site that were in violation of the plans and specifications, and that created a high risk of failure;
- c. Allowed the improper installation of the precast concrete architectural panels used at the O'Donnell Park Parking Structure and concealed such deficiencies or defects;
- d. Failed to ensure that the O'Donnell Park Parking Structure followed engineering plans;
- e. Knew that precast concrete architectural panels used in the construction of O'Donnell Park Parking Structure were defective;
- f. Concealed and/or misrepresented the deficiencies or defects in the construction of the O'Donnell Park Parking Structure; and
- g. Was otherwise negligent.

46. That the negligence of Dietz Drafting & Design, Inc. was a cause of the injuries and damages sustained by the plaintiffs.

EIGHTH CLAIM FOR RELIEF AGAINST DEFENDANT
DIETZ DRAFTING & DESIGN, INC. – PUNITIVE DAMAGES

47. Reallege and incorporate herein by reference the allegations of the preceding paragraphs.

48. That upon information and belief, at all times material hereto, Dietz Drafting & Design, Inc. acted maliciously toward Plaintiffs and/or in an intentional disregard of the Plaintiffs' rights, such as to subject Dietz Drafting & Design, Inc. to punitive damages.

WHEREFORE, the plaintiffs demand judgment against the defendants, jointly and severally, as follows:

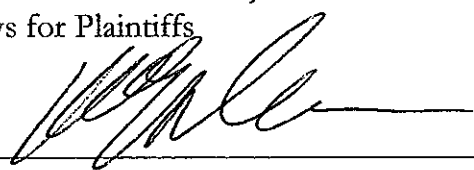
- a. For compensatory damages on behalf of the Estate of Jared C. Kellner, in an amount to be determined at a trial of this matter;
- b. For compensatory damages on behalf of Dawn Kellner in an amount to be determined at a trial of this matter;
- c. For punitive damages on behalf of the Plaintiffs in an amount to be determined at a trial of this matter;
- d. For all Wrongful Death damages allowed under Wisconsin Law; and
- e. For all costs, disbursements and actual attorney's fees, and all interest due and owing pursuant to sec. 628.46, Wis. Stat.

**PLEASE TAKE NOTICE THAT THE PLAINTIFFS DEMAND A TRIAL
IN THE ABOVE-ENTITLED ACTION.**

Dated in Brookfield, Wisconsin this 19th day of January, 2011.

CANNON & DUNPHY, S.C.
Attorneys for Plaintiffs

By: _____


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Allan M. Foeckler
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