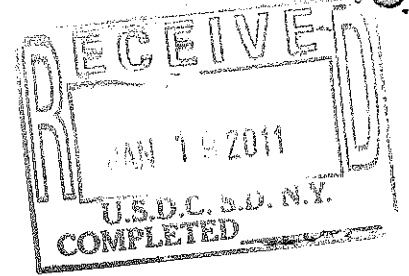


11 CV 0372

JUDGE COTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SUNHAM HOME FASHIONS, LLC, a New York limited liability company,

Plaintiff,

vs.

DIAMOND STATE INSURANCE COMPANY, a Delaware corporation,

Defendant.

CASE NO.:

COMPLAINT FOR
DECLARATORY JUDGMENT

This is an insurance coverage suit seeking to establish that: (1) Diamond State Insurance Company ("Diamond State" or the "Defendant") had and has a duty to defend Plaintiff Sunham Home Fashions, LLC ("Sunham") in the underlying litigation styled *Pem-America, Inc. v. Sunham Home Fashions, LLC*, United States District Court for the Southern District of New York, Case No. 03-CIV 1377 (hereinafter the "*Velvet Garden Action*"); and (2) the Defendant must reimburse Sunham for all the defense expenses therein, including but not limited to attorneys' fees and settlement costs.

THE PARTIES

1. Plaintiff Sunham is a limited liability company organized under the laws of the State of New York. Its principal executive offices and place of business are located in New York City. Sunham is a citizen of New York.

2. Defendant Diamond State is, and at all times mentioned herein was, an insurance company organized and existing under the laws of the State of Delaware, with its principal place of business located at Bala Cynwyd, Pennsylvania and admitted to transact insurance business in the State of New York. Diamond State is a citizen of Delaware and Pennsylvania.

JURISDICTION

3. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that complete diversity exists between the parties.

4. The amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs, and in addition to other and further relief, declaratory relief is sought.

VENUE

5. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1391(a)(1) & 1391(a)(3). Diamond State is a Delaware insurance company with its principal place of business in Pennsylvania, and actively sells insurance policies in New York. The Defendant Diamond State has sufficient contacts with New York to be subject to personal jurisdiction in this District.

6. Venue is proper in this District because this Complaint centers on the umbrella commercial liability insurance policy issued to Sunham for the policy period October 20, 2002 to October 20, 2003 (the "Diamond State Umbrella Policy") that was executed and paid for by Plaintiff in the Southern District of New York, where the Defendant actively sells insurance policies.

THE INSURANCE POLICIES

7. Lumbermens Mutual Casualty Company issued commercial general liability policy number 3MF 812 361-001 to Sunham, the named insured, effective October 20, 2002 through October 20, 2003 ("Lumbermens Primary Policy"). It was negotiated and issued to Sunham at its New York, New York office and has policy limits of \$1 million per occurrence and general coverage of \$2 million in the aggregate. A copy of the policy is attached as **Exhibit "1."**

8. Diamond State issued its commercial umbrella policy number MBU 0001934 to Kam Hing Enterprises, Inc, the named insured and Sunham's parent company, effective October 20, 2002 through October 20, 2003 ("Diamond State Umbrella Policy"). Sunham is named

therein as an additional insured. The policy has a \$5 million per occurrence and aggregate limit subject to a self-insured retention of \$10,000. A copy of the policy is attached as **Exhibit "2."**

9. The Lumbermens Primary Policy and the Diamond State Umbrella Policies each provide, in pertinent part, the following "personal and advertising injury" coverage and defense provisions:

a) The Lumbermens Primary Policy

CHANGES IN COVERAGE B. – PERSONAL AND ADVERTISING INJURY LIABILITY Policy Form C67426 (Ed. 0899)

1. Insuring Agreement

a. We will pay on those sums which the Insured becomes legally obligated to pay as damages because of . . . "advertising injury" to which this insurance applies.

We will have the right and duty to defend any "suit" seeking those damages

.....

B. Definitions

1. "Advertising Injury" means injury . . . arising out of solely out of one or more of the following offenses committed in the course of "your advertising activities":

.....

b) Infringement of copyrighted advertising materials;

.....

C. "Your Advertising Activities" means the promotion of your goods, products, services, name or image through printed or electronic media.

b) The Diamond State Umbrella Policy

1. Insuring Agreement

a. We will pay on behalf of the Insured that portion of the "ultimate net loss" in excess of the "retained limit" because of . . . "advertising injury" to which this insurance applies.

(3) We have a duty to defend any "claims" or "suits" to which this insurance applies:

(a). But which are not covered by any "underlying insurance" shown in the Declarations of any other applicable primary policies that may apply;

b. This insurance applies to:

.....
(2) "Advertising injury" caused by an "offense" committed in the course of advertising your goods, products or service, but only if the "offense" was committed in the "coverage territory" during the policy period.

.....
IV. Definitions

1. "Advertising Injury" means injury arising out of one or more of the following "offenses":

.....
d. Infringement of copyright, title, or slogan;

(**Exhibit "2"** (Diamond State Umbrella Policy), pp. 5, 12 of 14.)

THE VELVET GARDEN ALLEGATIONS

10. Pem-America, Inc. ("Pem-America") filed the *Velvet Garden* Action on February 27, 2003, alleging that Pem-America's quilt design called "Velvet Garden" had been sold in the United States since 2001, and had become popular in consumer markets, consistently topping the charts for quilt sales. A copy of Complaint is attached as **Exhibit "3."**

RELEVANT RELATED LITIGATION

11. Pem-America and Sunham were also involved in two separate ongoing disputes over the copyrights to other quilt designs in 2003. Those cases were filed in the Southern District of New York, and were styled *Sunham Home Fashions, LLC v. Pem-America, Inc.*, U.S. District Court for the Southern District of New York, Case No. 02-CIV-6284 (the "*Garden Ridge* Action") and *Sunham Home Fashions, LLC v. Pem-America, Inc.*, U.S. District Court for the Southern District of New York, Case No. 02-CIV-7721 (the "*Anna* Action"). These cases concerned the designs for the "Garden Ridge" quilt and the "Anna" quilt, respectively.

12. While all three of the actions between Pem-America and Sunham were pending, a separate action was filed by a former employee of Pem-America, Nancy Lambert, who claimed that *she* was the designer and true owner of the "Velvet Garden" design. This action was captioned *Lambert v. Pem-America, Inc.*, U.S. District Court for the Northern District of Illinois, Case No. 03-C-3330 (the "*Lambert* Action"). A copy of the *Lambert* Action complaint is attached hereto as **Exhibit "4."**

13. After a series of cross-motions relating to consolidation of these cases, on January 25, 2005, Judge Keenan stayed the *Velvet Garden* Action pending resolution of the *Lambert* Action in Illinois.

THE INSURERS' RESPONSE TO TENDER OF DEFENSE

14. The defense of the underlying *Velvet Garden* Action was timely tendered to Sunham's insurers. Lumbermens, the primary insurer, initially denied that any claim alleged in the Complaint was covered. In May 2004 – after Sunham filed a declaratory relief action seeking a defense – Lumbermens reconsidered its coverage position and agreed that its “advertising injury” coverage for copyright was implicated by the Complaint's allegations. It then stipulated to provide a defense and pay a portion of independent counsel's fees. A copy of Lumbermens letter agreeing to defend is attached as **Exhibit “5.”**

15. Diamond State initially failed to respond to Sunham's tender of defense. After a year of silence a reservation of rights letter appeared in June 2004 in which Diamond State inaccurately stated that it had no defense obligations because it was merely an excess insurer that “followed form” to Lumbermens' policy. Diamond State's letter nonetheless acknowledged that Lumbermens was defending because its “advertising injury” coverage was potentially implicated, and expressly adopted Lumbermens' coverage position. Copies of Diamond State's reservation of rights letters are attached as **Exhibit “6.”**

SETTLEMENT DISCUSSIONS AND GLOBAL SETTLEMENT

16. Settlement discussions in the *Velvet Garden* Action predate any involvement by Sunham's insurers. In the summer of 2003, Pem-America made a settlement demand of \$2.5 million. Sunham countered with an offer of \$1.5 million, which was rejected as inadequate. Both Lumbermens and Diamond State were apprised of this settlement demand and offer, but neither carrier offered to fund the settlement.

17. On March 17, 2004, Sunham offered to allow judgment to be taken against it in the *Velvet Garden* Action in the amount of \$750,000 and executed an Offer of Judgment to that effect. This offer was also rejected by Pem-America, and the insurers were so informed. A copy

of the Offer of Judgment is attached as **Exhibit "7."**

18. In September 2007, an open settlement demand in the high six figures was on the table, and was communicated to Lumbermens and Diamond State. Neither carrier offered to fund or participate in such a settlement, although the demand was well within policy limits.

19. Lumbermens and Diamond State's apparent strategy as of September 27, 2007, was to not pay any amount to settle the underlying *Velvet Garden* Action, but instead to let the *Lambert* Action proceed to trial and to reevaluate liability based on the resulting verdict. This approach implicitly assumed that no settlement could be achieved in an amount less than the earlier pre-defense recognition offer of \$750,000.

20. The *Lambert* Action went to trial in Chicago in March 2008. Shortly after plaintiff's case opened, Pem-America indicated that it wanted to globally settle the issues between all the parties before the *Lambert* Action proceeded to final resolution. Judge Coar directed the parties to resolve the matter over lunch or be prepared to continue with testimony that afternoon. Authorized representatives for all parties then met and a settlement was negotiated and finalized.

21. The settlement resolved all the pending issues between the parties. Sunham's affirmative claims in the *Garden Ridge* and *Anna* Actions were credited against Pem-America's alleged damages in the *Velvet Garden* Action, reducing the agreed-upon settlement to \$600,000, \$150,000 less than the March 17, 2004 offer of judgment. A copy of the Settlement Agreement is attached as **Exhibit "8."**

22. Sunham has paid the entire \$600,000 to Pem-America pursuant to the terms of the settlement agreement.

INSURER RESPONSE TO SETTLEMENT

23. No representative from either Lumbermens or Diamond State elected to attend the trial of the *Lambert* Action, though they were aware of it, and there was no impediment to their doing so. The action itself was potentially determinative of liability in the pending lawsuits

between Pem-America and Sunham in New York.

24. Both insurers were promptly informed of the settlement. Lumbermens responded by telling Sunham it needed more time to evaluate the claim. Some seven months later, Lumbermens denied that it had any obligation to pay for the settlement on the grounds that Sunham's payment had been voluntary, and that in any event there was no coverage under its policy because of the intellectual property exclusion. This correspondence from Lumbermens is attached as **Exhibit "9."**

25. Diamond State elected not to respond to the notice of the settlement in any substantive way. After being informed of the fact and amount of the global settlement, Diamond State closed its file without ever communicating a definitive coverage position to Sunham, effectively denying coverage by avoiding the issue of whether it was obliged to pay for the settlement after Lumbermens refused to do so.

**DIAMOND STATE'S DUTY TO DEFEND AND INDEMNIFY SUNHAM FOR SUMS
INCURRED AND RECOVERIES FOREGONE IN SETTLEMENT**

26. Diamond State's assertion in its reservation of rights letter that its policy followed the form of the underlying Lumbermens policy was untrue.

27. Diamond State's policy is broader than the Lumbermens' policy, and provides coverage for "infringement of copyright" where Lumbermens' policy would only provide coverage for "infringement of copyrighted advertising materials." It also limits advertising to Sunham's and not its retailers as it defines "advertising injury" and "injury . . . arising solely out of [infringement of copyrighted advertising materials] committed in the course of your advertising activity" rather than "advertising of Sunham's products" as Diamond State's policy provides.

28. Because of its broader policy language, Diamond State was obligated to participate in the defense of the *Velvet Garden* Action from the inception of the case, where Lumbermens did not fully cover Sunham's defense fees incurred through independent counsel.

29. Thus, Diamond State was obliged to pay the shortfall between the rate charged by

underlying counsel and the rate reimbursed by Lumbermens for Sunham's independent counsel defense.

30. In its reservation of rights letter, Diamond State failed to identify any specific facts to support its statement that: "If the copyright infringement is proven [Diamond State's] policy will not provide coverage as the damages will not be "Advertising Injury" as that term is defined in the [Diamond State] policy."

31. Diamond State's terse analysis of the operative facts before it in its reservation rights letter was simply wrong. Its assertion that "although the complaint alleges copyright infringement, the pleading does not allege the copyright infringement was based on advertising materials, title or slogan" can only be maintained by a willful misreading of the underlying complaint. In making such a statement, Diamond State simply ignored the advertisements attached to the underlying complaint as well as the prayer for relief's express language requesting turnover of all of Sunham's *advertising* and *promotional materials* related to the allegedly infringing quilt designs.

32. In making such a pronouncement, Diamond State also ignored the abundant evidence in its possession (discussed herein) about actual advertising of Sunham's quilts in catalogs, in packaging inserts, at trade shows, and in store displays, all of which had previously been provided to it by Sunham's counsel in the underlying action.

33. Diamond State, in its reservation of rights letter, failed to assert any exclusions which it contended barred a defense.

34. Diamond State, as umbrella insurer, is in breach of its contractual obligations under the Diamond State Umbrella Policy by failing to defend Sunham when Lumbermens initially declined to do so and when it failed to pay the "shortfall" in defense fees Sunham suffered due to Lumbermens failure to pay the reasonable rate charged it by its independent counsel.

35. Pursuant to Section (B)(1)(a)(3) of Diamond State's Umbrella Policy, Diamond State has "a duty to defend any ... 'claims' or 'suits' to which this insurance applies . . . but

which are not covered by any ‘underlying insurance’ shown in the Declarations or by any other applicable primary policies that may apply”

36. In accordance with the policy, when the primary insurer (i.e., Lumbermens) denies coverage, Diamond State has an independent obligation to fully defend and pay a settlement which Lumbermens refused to reimburse, where the “advertising injury” offense alleged in the underlying *Velvet Garden* Action falls within the definition of such offense in the policy.

37. The advertising at issue in the underlying *Velvet Garden* Action – the catalog advertisements, packaging inserts, display at trade shows and in-store display – fall within the definition of “advertising injury” in the Diamond State Umbrella Policy. Diamond State’s duty to defend the underlying suit is triggered by Lumbermens’ denial of a defense under the Lumbermens Primary Policy.

38. Diamond State has failed to identify specific facts that would substantiate its failure to fully defend or reimburse Sunham for recoveries foregone by Sunham in the *Velvet Garden* Action.

THE VELVET GARDEN COMPLAINT ALLEGES ADVERTISING INJURY THAT TRIGGERS DIAMOND STATE’S DUTY TO DEFEND

THE THREE-PART TEST TO ESTABLISH “ADVERTISING INJURY” COVERAGE

39. To establish existence of a covered “advertising injury” claim under the pertinent language of the Diamond State policy, the following elements must be satisfied:

- (1) Allegations that fit within one or more of the offenses that are alleged to constitute an “advertising injury” – here, “infringement of copyright”;
- (2) An advertising activity; and
- (3) “Infringement of copyright... *committed in the course of* advertising [Sunham’s] goods, products, or services.”

**ELEMENT ONE – INFRINGEMENT OF COPYRIGHT – “ADVERTISING ACTIVITY”
– IS SATISFIED BY THE *VELVET GARDEN ACTION* ALLEGATIONS**

40. The *Velvet Garden* Complaint is a two-count complaint sounding in copyright infringement, an enumerated offense under Diamond State’s policy.

41. It alleges that Sunham infringed upon Pem-America’s copyrighted “Velvet Garden” quilt design by importing, distributing and selling the “Canterbury” and “Sage Garden” quilts.

**ELEMENTS TWO AND THREE – “INFRINGEMENT OF COPYRIGHT COMMITTED
IN THE COURSE OF ADVERTISING [SUNHAM’S] PRODUCTS”**

**Complaint Allegations Evidencing Advertising of the “Sage Garden” and “Canterbury”
Quilts by Sunham and Its Retailers**

42. The complaint in the *Velvet Garden* Action alleged that Sunham infringed on copyright of the “Velvet Garden” design by its advertising display of two substantially similar competing products named “Sage Garden” and “Canterbury.” Pem-America sought to enjoin the continued advertisement of the alleged infringing products, requested statutory damages, attorneys’ fees and costs, and in its prayer for relief specifically sought turnover of all packaging, advertising and promotional materials.

43. In support of its allegations, plaintiff in the *Velvet Garden* Action attached to the complaint a published advertisement of its own best selling “Velvet Garden” quilt, which appeared on the cover of Hecht’s 2001 and 2002 catalogs. Pem-America then attached two of Sunham’s competing catalog advertisements from 2003 that prominently displayed the “Sage Garden” and “Canterbury” quilts. One of Sunham’s advertisements was featured in the 2003 Kohl’s catalog, which was disseminated nationwide via direct mail. The other advertisement appeared in the equally widely-distributed Federated catalog.

44. Though denoted “photographs” in the allegations of the Complaint, a review of the exhibits themselves immediately reveals that they are indisputably advertisements from catalogs. Exhibit 4 is a full-color insert from the Federated catalog giving Sunham’s “Sage

Garden” priority of place, which lists the quilt with a sale price \$199.99 and provides a toll free number for ordering. Exhibit 5 is a Kohl’s catalog page for Sunham’s “Canterbury” quilt that tellingly bears the inscription “Now at Kohl’s!” across its face along with its \$179.99 sale price. A picture is still worth 1,000 words even in today’s economy, and appending copies of advertisements to the Complaint showing Sunham’s allegedly infringing quilts clearly puts the issue of “advertising” in play.

Extrinsic Evidence of Sunham’s As Well As Its Retailers’ Advertising

45. Testimony supporting the conclusion that these “photographs” were “advertisements” was offered in depositions and over the course of the multi-day preliminary injunction hearing in the underlying case, transcripts of which were supplied to Sunham’s insurers – Lumbermens and Diamond State; a copy of the pertinent excerpts of testimony supporting the preliminary injunction is offered as **Exhibit “10.”**

46. Pem-America’s opposition brief to Sunham’s expedited appeal below collected all the advertising Pem-America cited as evidence of infringing activities, including not only the Federated and Kohl’s advertisements referenced above, but photographs of “Sage Garden” on display in department stores and the packaging insert which accompanied each quilt as part of the “bed in a bag” packaging. A copy of the collected advertisements Pem-America referenced in its opposition is attached hereto as **Exhibit “11.”**

47. Evidenced produced to Diamond State from the preliminary injunction hearings in April-June 2003 established that, beginning in January 2003, a number of national department stores (including Federated, Kohl’s, Macy’s East, Bon Marché, and Burdines) marketed Sunham’s “Sage Garden” and “Canterbury” quilts through display. Kohl’s displayed and sold “Canterbury” in over 500 stores, and the Federated advertised and sold “Sage Garden” in 89 locations. A copy of the retailers’ advertisement of Sunham’s “Sage Garden” and “Canterbury” quilts is attached as **Exhibit “12.”**

48. The first witness at the preliminary injunction hearing – Larry Shapow, Vice President of Product Development of Pem-America – testified on direct examination that Pem-

America had in fact only become aware of Sunham's allegedly infringing designs when he came across advertisements for Sunham's "Sage Garden" and "Canterbury" quilts in Kohl's and Macy's catalogs which had been mailed to his home. A copy of relevant testimony by Larry Shapow at the preliminary injunction hearing is attached as **Exhibit "13."**

49. The documents produced to Diamond State by Sunham's underlying counsel included testimony from Sunham's National Sales Manager, Peter Peck, that he met with May Company representatives at the annual Mini-Market trade show in New York in February 2003 and discussed placement and pricing for a number of Sunham's quilts, including the allegedly infringing "Canterbury" design. A copy of the relevant testimony of Peter Peck at the preliminary injunction hearing is attached as **Exhibit "14."**

50. Peck further testified that they also discussed the Kohl's advertising circular that had run that week, in which Sunham's "Canterbury" quilt design was a featured advertisement, and that May Company expressed displeasure that the advertisement undercut prices for their luxury bed-in-a-bag products (which included, *inter alia*, the "Velvet Garden" quilt).

51. Samples of Sunham's "Sage Garden" and "Canterbury" quilts were displayed at this February 2003 trade show, and produced in advance of the trade show to the national buyer at Kohl's.

52. The appellate briefing from 2003 contained additional uncontroverted evidence that in-store advertising of Sunham's "Canterbury" and "Sage Garden" quilts was occurring at approximately 589 stores nationwide, in the form of full-color product inserts attached to packaging which depicted the alleged infringing design. These inserts were included in the packaging for each and every quilt sold. Prospective purchasers who examined the "bed in a bag" packaging for "Sage Garden" or "Canterbury" were thus treated to an attractive preview of what the quilt would look like spread out on their own beds. A copy of Sunham's in-store advertising of Sunham's "Sage Garden" quilt is attached as **Exhibit "15."**

53. Evidence produced to Diamond State in 2003 apprised it that Sunham's quilts were advertised via in-store displays at some 500 Kohl's stores. A copy of the Bombracher

email dated July 25, 2003, referencing in-store displays at 500 Kohl's stores is attached hereto as **Exhibit "16."** The role served by product displays of Sunham's quilts is easily comprehensible as a form of advertising in the same sense that the display of clothing in retail stores (e.g., in store windows, on mannequins, or in any other arrangement designed to catch the eye) has been held to constitute advertising – the goal in both cases is to make the product attractive to the prospective buyer passing by, to catch his eye so that he will buy.

54. Diamond State was provided with evidence of this advertising in 2003 when it received copies of appellate briefs referencing and attaching photographs of in-store displays of Sunham's "Sage Garden" and "Canterbury" quilts. Pem-America introduced these photographs into evidence at the preliminary injunction hearing as evidence of Sunham's alleged copyright infringement.

FIRST CAUSE OF ACTION

Declaratory Relief – Duty to Defend

55. Sunham, by this reference, incorporates each and every allegation set forth in the above paragraphs of this Complaint as though fully alleged herein.

56. By issuing and delivering the Diamond State '03 Umbrella Policy, Diamond State agreed to provide a defense for a suit seeking damage for "advertising injury," the offense as defined in its Policies, and the *Velvet Garden* Action falls within the definition.

57. Diamond State is obligated under the Diamond State '03 Umbrella Policy to pay attorneys' fees and costs incurred in the defense of the *Velvet Garden* Action. Diamond State has failed to provide a defense in the *Velvet Garden* Action.

58. Sunham has fully performed all of the obligations and conditions to be performed by it under the Diamond State '03 Umbrella Policy and/or has been excused from performing same as a result of Diamond State's breach of its duty to defend.

59. An actual bona fide controversy exists between Sunham, on the one hand, and Diamond State, on the other hand, that requires a judicial declaration by this Court of the parties'

respective rights and duties. Specifically, the parties disagree about whether Diamond State has a duty to defend Sunham in the *Velvet Garden* Action and to pay all of the attorneys' fees and costs it has incurred and will incur to defend that action.

60. Sunham seeks a determination of Diamond State's duty to defend it in the *Velvet Garden* Action and to pay defense expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sunham prays for judgment against Defendant Diamond State as follows:

1. That the Court declare that Diamond State has and had a duty to defend Sunham under the Policies it issued to Sunham against the claims asserted in the *Velvet Garden* Action;
2. That the Court issue judgment declaring Diamond State must promptly pay to Sunham all attorneys' fees, settlement costs, and other costs incurred by Sunham in defense of the claims asserted in the *Velvet Garden* Action, along with pre-judgment interest accruing thereon from the date of each invoice at the legal rate;
3. For total costs of the suit herein; and
4. For such other and further relief as the Court may deem just and proper.

Dated: January 18, 2011

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EXHIBITS TO SUNHAM COMPLAINT

1.	Lumbermens Mutual Casualty Company commercial general liability insurance policy number 3MF 812 361-001 issued to Sunham, LLC, effective October 20, 2002 through October 20, 2003
2.	Diamond State Insurance Company commercial umbrella insurance policy number MBU 0001934 issued to Kam Hing Enterprises, Inc., Sunham's parent company, effective October 20, 2002 through October 20, 2003
3.	Complaint filed February 27, 2003, styled <i>Pem-America, Inc. v. Sunham Home Fashions, LLC</i> , United States District Court for the Southern District of New York, Case No. 03-CIV 1377
4.	Complaint filed May 19, 2003, styled <i>Lambert v. Pem-America, Inc.</i> , U.S. District Court for the Northern District of Illinois, Case No. 03-C-3330
5.	Lumbermens' May 19, 2004 letter agreeing to defend Sunham in the <i>Velvet Garden</i> Action
6.	Diamond State's June 24, 2004, reservation of rights letter
7.	Sunham's March 17, 2004 Offer of Judgment in the <i>Velvet Garden</i> Action in the amount of \$750,000
8.	March 3, 2008 Settlement Agreement in the <i>Velvet Garden</i> Action
9.	Lumbermens' October 2, 2008 letter to Sunham denying any obligation to pay for the settlement
10.	Excerpts of testimony supporting the preliminary injunction in the <i>Velvet Garden</i> Action
11.	Collected advertisements Pem-America referenced in its opposition to Sunham's appeal
12.	Retailers' (Federated, Kohl's, Macy's East, Bon Marché, and Burdines) advertisement of Sunham's "Sage Garden" and "Canterbury" quilts
13.	Relevant testimony of Larry Shapow at the preliminary injunction hearing
14.	Relevant testimony of Peter Peck at the preliminary injunction hearing
15.	Sunham's in-store advertising of Sunham's "Sage Garden" quilt
16.	Bombracher email dated July 25, 2003, referencing in-store floor displays at 500 Kohl's stores