

Lodge sues insurer for failure to cover economic losses due to fire

INSURANCE

Property

CONTRACTS

Breach

INSURANCE

Fire

MONTEREY COUNTY SUPERIOR COURT

Guest Services Inc. v. Confidential, Docket number:

Confidential, Monterey. Judge: Not Reported. Trial type:

Settlement. Settlement date: 10/2011.

SETTLEMENT: \$540,000

The Mediator was the Hon. William J. Cahill (Ret.) of JAMS.

COUNSEL

Plaintiff: Craig A. Miller, Levine & Miller, San Diego.

Defendant: Gary R. Selvin, Selvin Wraith Halman, Oakland.

FACTS/CONTENTIONS

According to plaintiff: The California Department of Parks and Recreation closed the Pfeiffer Big Sur State Park from June 21, 2008 to July 25, 2008 and from October 2008 to May 2009 due to damage to the trail system, bridges, guardrails, steps, platforms, and walkways caused by the Basin Complex Fire. The Park trails to the east of Highway 1, where plaintiff's Lodge is located, were continuously shut down from June 21, 2008 through May 2009. As a result, the Lodge, which is owned by the State, is physically located within the Park's borders, and is operated by plaintiff under a written Concession Contract with the State, lost a substantial number of guests and incurred economic loss.

Plaintiff tendered its insurance claim to defendant insurance company under a Commercial Property Policy that included Contingent Time Element coverage ("CTE" coverage). CTE coverage is specifically designed to protect policyholders against losses arising out of damage to property owned by other people or entities. In pertinent part, the policy covered actual loss sustained to property of the type insured at any locations of any direct suppliers or customers or costumer locations which provide patrons to insured locations.

During its handling of plaintiff's claim, defendant agreed that "the park does attract business to the Insured's lodging facilities" and acknowledged that "due to the park being closed (because of unsafe conditions created by the fires) the Insured's lodge was unable to attract the business it normally would have." Defendant also admitted that fire damage to the Park's bridges, retaining walls, steps, and guardrails would, in fact, trigger CTE coverage. However, defendant refused to compensate plaintiff because its investigation concluded that the fire damage to the Park was nominal and confined to non-covered property damage, such as trees, brush, and land. Defendant further contended that the CTE coverage did not apply because Pfeiffer State Park was "not a location that directly provided patrons to the Big Sur Lodge."

Plaintiff alleged that the Lodge existed to serve park visitors and enhance their experience and derived the majority of its patrons from the park. Accordingly, defendant breached the insurance contract when it failed to pay benefits. Plaintiff further alleged that defendant failed to adequately investigate the nature and extent of the damage to the Park's trails and this failed to learn that there was extensive damage to "property of the type insured." Thus, defendant breached the implied covenant of good faith and fair dealing.

Defendant contended that the Lodge did not derive its patrons from the Park. There was significant damage to property of the type insured. Plaintiff could not prove its damages because there was no way to determine whether Lodge patrons stayed away because of the fire conditions, as opposed to property damage to the Park's trails.