TRAUB LIEBERMAN

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Ninth Circuit Holds Property Damage Directly Caused By Fire

In *Stankova v. Metropolitan Property & Casualty Insurance Company*, 2015 U.S. App. LEXIS 8935 (9th Cir. May 29, 2015), the Ninth Circuit Court of Appeals, applying Arizona law, had the opportunity to address the concept of "direct causation" for the purpose of a homeowners insurance policy.

Appellant Magda Stankova ("Stankova") was insured under a policy that protected against fire damage, but excluded damage caused by flooding or earth movement. Approximately one month after a nearby wildfire, flooding and mudslides destroyed her house. Stankova's insurer, Metropolitan, denied coverage for the loss on the basis that the damage was not directly caused by the fire, but instead directly caused by flooding and earth movement, which were excluded perils. Stankova sued Metropolitan, Metropolitan prevailed on summary judgment, and the instant appeal ensued.

On appeal, the Ninth Circuit considered whether the destructive mudslide was "directly" caused by the preceding wildfire. In reversing the district court's ruling, the Ninth Circuit noted that Arizona has not adopted the "efficient proximate cause" theory of causation, but instead has adopted the following "definition of direct and proximate cause" set forth in an insurance treatise: "[f]ire insurance 'is intended to cover every loss, damage, or injury proximately caused by fire, and every loss necessarily following directly and immediately from such peril or from the surrounding circumstances, the operation and influence of which could not be avoided.'" *Liristis v. Am. Family Mut. Ins. Co.,* 61 P.3d 22, 27 (Ariz. Ct. App. 2002) (quoting 5 John A. Appleman & Jean Appleman, Insurance Law & Practice § 3082 (1970)). [Footnote omitted.]"

Applying this standard, the court concluded that the evidence "suggested that the fire caused damage to the house (by burning the surrounding vegetation), because otherwise the water would not have caused the earth to move." The court therefore held that a triable of issue of fact was presented as to whether the fire directly damaged the home, and that as such, the lower court's grant of summary judgment in favor of Metropolitan was in error.

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