

Bond Case Briefs

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INVERSE CONDEMNATION - COLORADO

American Family Mutual Insurance Company v. American National Property and Casualty Company

Colorado Court of Appeals, Div. I - September 24, 2015 - P.3d - 2015 WL 5607602 - 2015 COA 135

Insurers brought subrogation action against Water Board and Colorado Department of Public Safety, alleging inverse condemnation and negligence, after embers from prescribed burn on Water Board land caused wildfire which resulted in significant property damage. The District Court dismissed the inverse condemnation claims for failure to state a claim. Insurers appealed.

The Court of Appeals held that:

- Insurers had standing to assert inverse condemnation claims;
- Alleged taking of insureds' property did not serve nor was intended to serve a public purpose;
- Insurers lacked good cause to conduct discovery in order to respond to motion to dismiss; and
- Any error by trial court in denying insurers' request to conduct discovery was not prejudicial.

Insurers had standing to bring inverse condemnation claims against Water Board and Colorado Department of Public Safety after embers from prescribed burn on Water Board land caused wildfire which resulted in significant property damage, where insurers had paid or expected to pay claim to their insureds as a result of damage caused by the wildfire such that they were subrogated to their insureds' claims to the extent of monies paid and to be paid, and insureds held right to pursue inverse condemnation claim, as they were the property owners at the time of the wildfire and had suffered injuries-in-fact to legally protected interests as a result of the wildfire.

Alleged taking of insureds' property by Water Board and Colorado Department of Public Safety arising out of prescribed burn on Water Board land which resulted in wildfire that caused significant property damage, did not serve nor was intended to serve a public purpose, as required for insurance carriers to maintain inverse condemnation claims in subrogation action. While the prescribed burn may have been for a public purpose and the alleged taking may have been a natural or probable consequence of that burn, damage to private property was not for a public purpose and in fact was the opposite of the intent of the prescribed burn.