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A stylized illustration of a road surface with a large, irregular sinkhole. The sinkhole is depicted in shades of brown and tan, with a dark grey interior. Several yellow rectangular objects, possibly road signs or debris, are shown falling into the sinkhole. The road surface is light grey, and the background is a solid dark grey.

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The National Underwriter Company

AND THE VERDICT IS...

A LOOK AT SOME OF THE LEGAL DECISIONS IMPACTING INSURANCE ACROSS THE COUNTRY



Hotelier not Responsible for Poinsettia Fire

By Susan Oliver

A lawsuit that sought to place the blame for a costly and destructive wildfire on a San Diego County resort was adjudicated in favor of the resort — after the plaintiff could not produce any evidence to prove the resort was responsible for the fire.

On May 14, 2014, the Poinsettia Fire raged through Carlsbad, California, just north of San Diego. Fueled by unseasonably hot dry winds, the wildfire spread rapidly, scorching hundreds of acres.

The fire started in the native vegetation near the seventh fairway of the Omni Resort & Spa's golf course and ultimately caused property damage estimated at \$125 million — including major damage to neighboring commercial and residential properties.

A two-time victory

On Sept. 11, 2018, a San Diego appellate court upheld summary judgment in favor of Omni, which was blamed for the devastating Poinsettia Fire. The ruling was upheld in a 2-1 decision by a three-judge panel of the 4th District Court of Appeal.

Omni Hotels' legal team was able to prove the plaintiff, Axis Insurance, did not have any evidence to prove the resort caused the massive and unrelenting wildfire.

This ruling marked the second time Omni's law firm prevailed; the first win was two years ago when Omni prevailed on its motion for summary judgment before the trial court. The complaint, filed in October 2014, included several plaintiffs. After Omni prevailed on its summary

judgment motion, one plaintiff, Axis Insurance, decided to appeal on behalf of a local business owner.

An undetermined cause

The element of causation was the main legal issue before the trial and appellate courts. While it was undisputed the fire started on Omni's golf course, every expert agreed the cause was "undetermined." While it was undisputed, the cause of the fire was undetermined. Axis had two "theories" about how the fire started that could "presumably" be blamed on Omni: discarded smoking material; and an exhaust particle from an Omni golf cart.

The first theory suggested a smoking golfer illegally discarded a lit cigarette and started the fire. Even if that were true (and there was no evidence to suggest it was), there was no legal basis to hold Omni liable for a golfer illegally discarding a lit cigarette. The second theory suggested an exhaust particle emitted from the tailpipe of an Omni golf cart could

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have started the fire, but there was no evidence of that either.

In any event, Axis's fire causation expert did not have enough information to state if either theory was more likely than not the cause of the fire. In fact, all fire cause and origin investigators involved unanimously agreed that the cause of the fire was undetermined.

In order to survive summary judgment, Axis had the burden to produce evidence that Omni was the substantial cause of the fire damage incurred by Axis. Ultimately, Axis could not meet this burden and even its own expert admitted the theories advanced to explain the cause of the fire were only "possibilities" and the expert could not opine that one was more likely the cause of the fire over the other.

Unknown damages

Plaintiffs originally alleged \$125 million in damages, however little discovery was conducted on damages since the primary focus was on liability for purposes of Omni's motion for summary judgment. The only party that appealed the judgment was Axis, on a subrogation claim to get reimbursed for policy benefits paid to its insured — a business located a few miles from Omni that was damaged by the fire, although the amount was unknown.

Plaintiff fails to meet its burden

Axis alleged that Omni "must" be liable for the fire because it started on resort property — and then worked backwards trying to unearth evidence implicating Omni. Despite retaining various experts, sneaking onto Omni's property without authorization to take "samples" around the fire area for testing, and working with multiple plaintiffs' firms on multiple theories of recovery, the plaintiff simply could not provide any solid evidence to prove Omni had any responsibility for the fire damage.


The ruling further vindicated Omni and reaffirmed the original summary

The element of causation was the main legal issue before the trial and appellate courts. While it was undisputed, the cause of the fire was undermined.

judgment win. Ultimately, because Omni met its burden of showing Axis could not establish Omni's actions or inactions were a substantial factor in causing Axis's injuries — and Axis did not meet its countervailing burden of showing the existence of a triable issue of material fact, the summary judgement was affirmed in favor of Omni.

Despite Omni's immediate efforts to suppress the fire, it was an unfortunate act of nature and all parties involved deeply regret the damage this devastating wildfire caused the community.

The case is Axis Insurance Company v.

Omni Hotels Management, Super. Ct. No. 37-2014-00035106-CU-PO-CTL. 

Susan Oliver (soliver@tysonmendes.com) is a partner in the San Diego office of Tyson & Mendes, representing individuals and businesses in all types of complex civil litigation in state courts throughout California and in federal district courts. She was assisted by Tyson & Mendes attorney Dana Furman (dfurman@tysonmendes.com), an associate who focuses on general liability and wrongful death matters and also represented Omni in this matter.



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