



3 Trials Digest 8th 7 (Cal.Superior), 2004 WL 3133146

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Superior Court, Sacramento County, California.

Penn America Insurance Company vs. Mike's Tailoring

TOPIC:

Synopsis: Insurance carrier seeks declaratory relief on commercial insurance coverage

Case Type: Insurance; First Party Coverage; Property

DOCKET NUMBER: 02AS05721

STATE: California

COUNTY: Sacramento

Verdict/Judgment Date: March 3, 2004

JUDGE: Roland L. Candee

ATTORNEYS:

Plaintiff: **Daniel P. Costa**, Costa Law Firm, Sacramento.

Defendant: Stanley R. Parrish, Shepard & Haven, Sacramento.; Jennifer J. Schultz, Shepard & Haven, Sacramento.

SUMMARY:

Verdict/Judgment: Defendant

Verdict/Judgment Amount: Defense

Range: \$0

Trial Type: Bench

Trial Length: 4 days.

EXPERTS:

Plaintiff: Michael J. O'Connor, engineer/fire investigator, Engineering & Fire Investigations, Roseville, (916) 797-1503.

Defendant: Anthony Chance, plumbing expert, SOS Plumbing, Citrus Heights, (916) 765-7527.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Defendant: A sewage line under defendant Mike's Tailoring cracked. Defendant Milan Matosevich, dba Mike's Tailoring, is a well-established men's clothing store in Sacramento. Blockage resulted and

upstream pressure caused the clean-out plug in defendant's basement to blow off. Sewage flowed into the basement, destroying several hundred men's suits. Plaintiff Penn America Insurance Company denied coverage, citing an exclusion that precluded coverage for damage caused by water that backed up a sewer or drain. Defendant claimed that the predominant cause of loss was not excluded, but even if it was, the exclusion relied on by the insurer was not applicable when the blockage is within the insured premises, i.e., within the insured plumbing system.

#### CLAIMED INJURIES

NA

#### CLAIMED DAMAGES

According to Defendant: Approximately \$250,000 in damages to building, business personal property, and loss of income.

#### SETTLEMENT DISCUSSIONS

According to Defendant: None.

#### COMMENTS

According to Defendant: Plaintiff appealed the declaration in favor of coverage. Oral argument was held on November 17, 2004; no decision had been received as of the date of this report. The insurance carriers were Penn America (adjuster Frank Johann) and Robert Morse & Associates (adjuster Robert Nebeker).

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