

could have liability only if what he said may be interpreted as a statement to the effect that the Nationwide policy covers flood, so you don't need a separate policy. This contention seems erroneous. If the intermediary was providing information or advice to the customer, then if he is wrong, he is wrong. "You don't need insurance of type X." is the sort of advice insurance intermediaries routinely give their customers.

Fourth, whether Nationwide was liable for what the intermediary said depends on the connection between Nationwide and the intermediary. It does not depend upon what is in the Nationwide policy. // Quinn

Summary of Decision

After a fire caused extensive damage to a large commercial building, the building's owner hired a private security service for several months to protect the property from vandalism and further fire damage, since the sprinkler system was inoperable. At issue in this insurance coverage dispute was whether the owner's fire insurance policy obligated the insurer to pay the \$79,350.50 cost of the security service. Although the policy did not expressly cover loss mitigation expenses, the insured argued that such coverage was implicit in a clause stating that after a loss the insured must "[t]ake all reasonable steps to protect the Covered Property from further damage, and *keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim.*"

The Massachusetts Appeals Court agreed, affirming summary judgment for the insured. While acknowledging the policy does not contain a direct promise to pay the insured for expenses incurred in protecting the property, the court found the most "natural," "commonsense," and "obvious" interpretation of the language on which the insured relied is that such expenses will be paid. The court pointed out that the sentence immediately following the sentence requiring the insured to keep a record of expenses incurred in protecting insured property from further damage states, "This will not increase the Limit of Insurance." "If such expenses were not to be paid," the court observed, "there would be no need to state, in effect, that such amounts could only be paid if in doing so the limits of insurance would not be exceeded." Moreover, the fact that language relied upon was located in the "Loss Conditions" portion of the policy, under the heading, "Duties [of the insured] In The Event Of Loss Or Damage," rather than in the insuring agreement, did not, in the court's view, alter the unambiguous, albeit implicit, meaning of the policy. The court characterized as "far fetched" the insurer's explanation that the purpose of requiring the insured to keep a record of expenses is to enable the insured to prove that it took appropriate steps to protect the property. "The insured can prove what steps it took by evidence far more direct than showing how much such efforts cost," the court noted. // DiMugno

Property Insurance/ Loss Mitigation

Massachusetts Court Finds Coverage for Cost of Protecting Fire Damaged Property from Vandalism and Further Damage Implicit in Fire Insurance Policy

Coverage Found Implicit in Policy "Condition" Requiring Insured to Take Reasonable Steps to Protect Policy

American Commercial Finance Corp. v. Seneca Insurance Co., 66 Mass.App.Ct. 830, 850 N.E.2d 1114 (Mass.App. 2006)

Case at a Glance

Implicit in a fire insurance policy provision requiring the insured to take all reasonable steps to protect the covered property from further damage and to keep a record of expenses necessary to protect the covered property was the insurer's obligation to reimburse expenses the insured incurs to protect the property from vandalism and further damage after a fire damaged the property. This is so even though the provision appeared in the section of the policy describing the insured's duties after loss, not the section describing the policy's coverage.