

DISTRICT COURT

VERDICT: \$250,000, trees burned in wildland fire.

A 10-2 Red Lodge jury determined that Rohnn Lampi is entitled to \$250,000 for trees burned in a fire started by Alan Speed 11/21/06.

Speed emptied fireplace ashes on a dirt road assuming them to be fully extinguished. A high wind blew still hot ash into nearby grass, and the Turkey fire ensued, burning through 400 acres. Lampi owned 40 acres of recreation property, mostly prairie on the eastern slope of the Beartooth mountainside southwest of Red Lodge, and the fire burned through 95% of it. His home was undamaged, having been protected by firefighters with retardant. The home was not an issue in the case. He lost 500 pine trees and 780 aspens. Tom Yelvington valued his lost trees at \$1.1 million, and opined that it would take \$1.2 million to restore them, even using smaller trees. Lampi demanded restoration. The parties disputed the applicable rule of damage. Jim Cancroft initially stated that the trees had no commercial value and suggested \$24,000 remediation. Lampi then sued. Judge Jones ruled that restoration would apply, following Sunburst (Mont. 2007). Cancroft completed a remediation plan of \$150,000 which was submitted to Lampi as an unconditional offer to restore the property, which Lampi rejected by demanding a money advance for the amount, and not restoration. Cancroft then did a cost comparison on Yelvington's report and estimated a loss of approximately \$330,000 if every tree were replaced. Cancroft did not believe all trees needed to be replaced or removed, and believed that the aspens should be allowed to return naturally. Yelvington estimated \$500,000 to restore the aspen grove. Jack Wicks testified that the 40 acres (excluding the house) was worth \$646,000 before the fire, \$193,800 less after the fire. Jones ruled that the jury could elect diminution in value, or, if it found that diminution failed to fully compensate Lampi, restoration to the pre-fire condition as close as reasonably feasible without requiring grossly disproportionate expenditures and with allowance for natural regeneration over a reasonable time. He denied Lampi's motion to exclude evidence of diminution. He denied Speed's motion for summary judgment that wildlands is limited to diminution only. Speed offered to restore the property in the range of \$150,000 and allow Lampi to continue to sue (not an offer of settlement). Jones granted Lampi's motion to exclude evidence of that offer.

Plaintiff's expert: arborist Tom Yelvington, Billings.

Defendant's experts: appraiser Jack Wicks, Billings; forester Jim Cancroft, Helena.

Demand, \$895,000; offer, \$350,000. Jury request, \$1.1 million; jury suggestion \$204,000. Ward Taleff, mediator.

Jury deliberated 1 hour 15 minutes 2nd day.

Lampi v. Speed, Carbon DV 08-17, 3/9/10.

Randall Bishop (Jarussi & Bishop), Billings, for Lampi; Randall Nelson (Nelson & Dahle), Billings for Speed (Safeco Ins.).

