

## **Lack of Evidence Fatal to Personal Property Claim**

When a fire totally destroys a structure, it is always a daunting task to try and recreate, usually just from memory, the entire contents of the structure. In a typical house fire, there will usually be remnants of some items—box springs, appliances, televisions. But many contents items are totally destroyed and must be recalled from memory by the insured.

Most insureds have little or no documentation of their personal belongings—no photos, no receipts, and unhelpful credit card statements. Courts nearly universally hold that the insured bears the burden of proving the damages sustained with reasonable certainty. Speculation or conjecture is insufficient. Reasonable certainty does not mean mathematical precision, but it means more than guesswork.

*Nguti v. Safeco Insurance Company*, 2017 WL 2778821 (D. Md.) dealt with the legal issues that arise in such a situation and the pitfalls that an insured must avoid. Nguti's house sustained a fire. Safeco investigated the loss and ultimately denied coverage and accused Nguti of arson. A lawsuit followed.

Prior to the jury trial, Safeco asked the court to dismiss Nguti's personal property claim because he had failed to generate sufficient evidence to proceed to trial on actual damages. Nguti never adequately itemized his damages in his answers to Safeco's interrogatories and responses to requests for production of documents.

Nguti's public adjusting firm prepared an inventory of the damaged personal property, but did not include any information about the items' age, condition, value, or purchase price. The PA who personally worked on Nguti's claim testified that no evidence existed to place a monetary value on Nguti's property loss, and Nguti himself testified during his deposition that he could not put a dollar value on his lost property.

Based on this evidence—or really lack of evidence—the court granted Safeco summary judgment on the personal property claim because: “Simply put, there is no way to ensure that Nguti's damages are the product of anything more than guesswork.”

**Takeaway:** If the insured and the insured's PA cannot put a value on a personal property loss, they can't expect the court or jury to do it for them. While even the court in *Nguti* agreed that “ascertaining property loss may prove difficult,” it is still the insured's job to do it, and the PA must obtain sufficient information from the insured to be able to place a value on the loss that's based on more than guesswork.