



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**Dennis E. Teufel v. American Family Mutual Insurance Company
and Kerry V. Hanson
CV-17-0190**

PARTIES:

Plaintiff/Appellant/Respondent: Dennis E. Teufel

Defendant/Appellee/Petitioner: American Family Mutual Insurance Company

FACTS:

Dennis E. Teufel bought the Longlook Property--an undeveloped lot in Paradise Valley--and decided to build a residence on it. He purchased an American Family homeowners insurance policy, (the “**Longlook Policy**”), “that purportedly offered the best and broadest protection on the Gold Star Special Deluxe Form.” Teufel hired a general contractor who in turn hired an excavation subcontractor who did the hillside excavation work. The contractor completed the house. Instead of moving in, Teufel put the completed Longlook property on the market and sold it. The Longlook Property evidently experienced some rockslides while Teufel owned it. The **Longlook Policy** remained in place until Cetotor, Inc., bought the completed house in May 2011.

Teufel later purchased a new house at 82nd Place in Scottsdale, and a new homeowners insurance policy from American Family (the “**82nd Place Policy**”), and the **82nd Place Policy** remained in effect from January 2012 through January 2013.

Cetotor brought an action against Teufel in November 2012, alleging breach of contract, negligence, and fraud-based claims to the effect that the Longlook Property’s hillside was improperly excavated during construction and Teufel knew this when he sold the property. Teufel requested that American Family defend and indemnify him under the **Longlook Policy** and the **82nd Place Policy**. American Family denied coverage. Specifically, it denied it had any duty to defend the lawsuit and it denied that it had any obligation to indemnify Teufel for Cetotor’s claims because the policies excluded claims arising out of business activities and claims arising out of contracts, including the contract to sell the house to Cetotor.

Teufel sued American Family seeking damages and a declaration that it had a duty to defend. He moved for summary judgment on the declaratory-relief claim, and American Family filed a cross-motion for summary judgment, arguing that coverage was not triggered under the **Longlook Policy** and was excluded under several provisions of the **82nd Place Policy**. The superior court denied Teufel’s motion and granted American Family’s, finding no duty to defend on either policy, and concluding that the **Longlook Policy** did not provide coverage and that the **82nd Place Policy** excluded coverage under its contractual liability exclusion. (Teufel’s claims against Kerry V. Hanson, the insurance agent, were separately resolved.)

Teufel appealed, and American Family cross-appealed.

The Cetotor Lawsuit

Cetotor filed its original complaint against Teufel asserting claims for breach of contract and negligence. It filed an amended complaint adding fraud-related claims, specifically alleging that Teufel (1) negligently performed or supervised the hillside grading and slope cut; (2) breached his common-law duty to deliver the home free from defects; (3) breached the purchase contract; and (4) failed to disclose material facts, constituting fraud, fraudulent nondisclosure, and fraudulent concealment. Cetotor supported the fraud claims with allegations that Teufel experienced rockslides even before he put the Longlook Property on the market and was therefore aware of the construction defect before the house sold.

Cetotor’s amended complaint never alleged that the pre-2011 rockslides while Teufel owned the property were part of the same “occurrence” as the post-2011 rockslides that caused the damage—it only alleged that Teufel was aware of the defect because of the earlier rockslides. Teufel argues that the landslides before and after he sold the Longlook Property were part of one “occurrence” under the policies.

The Court of Appeals

With respect to the **Longlook Policy**, the Court of Appeals held that the insurer owed no duty as a matter of law. The policy provided coverage during the policy period, and the damage occurred after the policy expired. (This Court denied review of Teufel’s Cross-Petition for Review, which argued the **Longlook Policy** covered him for this risk.)

With respect to the **82nd Place Policy**, the Court of Appeals held that the duty to defend was not excused as a matter of law under exclusions for liability “under any contract” and liability “arising out of business pursuits.” The allegedly defective construction was unrelated to any contract between the insured and the party suing the insured, and the record did not compel the conclusion that the insured was engaged in a business pursuit when he engaged in the conduct at issue. The Court of Appeals therefore affirmed the entry of summary judgment for the insurer with respect to the **Longlook Policy** and reversed summary judgment for the insurer under the **82nd Place Policy**.

ISSUE PRESENTED:

Whether the Court of Appeals erred in ruling a contractual liability exclusion in a homeowners insurance policy does not apply to liability the insured would not have incurred without the contract.

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