# CHAPTER 65

## INSURANCE DIVISION; FIRE INSURANCE COMPANIES

### 65.01 STANDARD FIRE POLICY.

HISTORY. 1895 c. 175 s. 53; 1897 c. 254; R.L. 1905 s. 1640; 1919 c. 331 s. 1; 1913 c. 405 s. 1; 1913 c. 421 s. 1; G.S. 1913 s. 3318; 1923 c. 410; G.S. 1923 s. 3512; M.S. 1927 s. 3512; 1943 c. 86 s. 1.



#### 1. Generally

A "lightning clause" attached as a rider to the policy contained the following words: "and in no case to include loss or damage by cyclone, tornado or windstorm". This limitation applied to and varied the lightning clause rider only and did not vary the contract as contained in the policy. Russell v German Fire Ins. Co. 100 M 528, 111 NW 400.

Where fire consumed the interior of an adjacent brick building, leaving an unsupported brick wall standing which wall fell upon plaintiff's building, the jury might rightfully find that it was the fire leaving the wall unsupported and not the wind that was the proximate cause of the loss. Russell v German Fire Ins. Co. 100 M 528, 111 NW 400.

Plaintiff in Rockford, Illinois, on October 14 addressed a letter to the defendant insurance company asking that his policy be canceled. That night, about 1:30 a. m. October 15, a fire caused damage to the property insured. On October 24 the defendant wrote plaintiff that the cancelation was effected and sent plaintiff their check for the insurance rebate.

The trial court correctly held that the policy was still in effect at the time of the fire and that the recovery might be had thereunder. Hutchins v U. S. Ins. Co., 170 M 273, 212 NW 451.

The deed to the property run to two persons "for the survivor or either". One of such persons insured a building on the premises in his name only. Upon his death, the survivor asked the company to transfer the policy to her. She was told that the transfer was unnecessary and that she was protected under the old policy. She paid two assessments. The building burned. It was held that the company was estopped to deny the contract of insurance. Forney v Farmers Mut. Ins. Co. 181 M 8, 231 NW 401.

The provisions of the accident and health insurance code apply to the accident or disability insurance even when that form of insurance is combined in a policy that also carries life insurance. Joyce v New York Life, 190 M 69, 250 NW 674, 252 NW 427.

Jury found that the insurance company knew of the existence of an actively operating still in the building on which it wrote the insurance. Ordinarily, the doctrine of estoppel might apply, but since the operation of an illegal still is against the law and against public policy, the court will not protect those engaged in the crime and the plaintiff cannot recover. Vos v Albany Mut. Fire Ins. Co. 191 M 197, 253 NW 549.

The insurer was liable on policy of insurance on property in the village burned while the fire truck was illegally out of the village answering a fire call. OAG Feb. 25, 1929.

Protection against direct loss caused by riot, civil commotion, aircraft damage, explosion, wind and hail, and sprinkler leakage, cannot be included in a fire policy. 1936 OAG 270, Jan. 6, 1936 (252j).

The policy contained the usual phrase relating to vacancies and the dwelling having become vacant by a tenant leaving without notice before the fire, the court below properly charged the jury that if house became vacant by means not within his control, the plaintiff could recover. The additional words "by any means whatever within the control of the assured" do not qualify the words "or become vacant or unoccupied". Moriarity v Home Fire Ins. Co. 53 M 549, 55 NW 740.

A provision against vacancy is not affected by Laws 1895, Chapter 175, Section 53. Doten v Aetna Ins. Co. 77 M 474, 80 NW 630.

Since the evidence showed that 400 tons of ice were stored therein, the trial court did not err in refusing to submit the issue of vacancy to the jury and in holding as a matter of law that the icehouse was not vacant. Romayne v Twin City Ins. Co. 193 M 1, 258 NW 289.

Evidence sufficient to sustain a finding that the plaintiff made all reasonable exertions to save the property after the fire. Boak Fish v Manchester Fire Assurance, 84 M 419, 87 NW 932.

In action to recover money deposited with defendant insurance exchange, conflicting evidence held to make question whether insurance policies were assigned by plaintiff to one of defendants on sale of property which they covered, was a question of fact for the jury. Northern Lumber v Retail Lumbermen's Fire Ins. Co. 168 M 97, 209 NW 880.

A fire insurance policy issued on a barn known by the company to contain an actively operating illegal still is void as against public policy. Vos v Albany Mutual, 191 M 197, 253 NW 549.

The policy covered merchandise in a basement under an adjoining building which for 20 years had been leased and used by plaintiff and the basement room being connected with plaintiff's own building by two archways and fitted up the same as the basement under plaintiff's building. Elliott v Retail Hdwe. Ins. Co. 183 M 556, 237 NW 421.

The evidence sustained the finding that when writing a renewal insurance policy, it was the intention to cover a hog house covered by the original policy but omitted in the renewal policy and the amount intended to cover the hog house was included and added to the insurance on the dwelling house. Koegh v Sharon Township, 195 M 575, 263 NW 601.

The terms of a policy are to be ascertained from the plain, ordinary language used and cannot be enlarged or fashioned by judicial construction. It is only where there is ambiguity or where the contract is silent or incomplete that the court may resort to practical construction to determine the intention of the parties. Millers Mut. v Warroad Potato Growers, 94 F(2d) 741.

One holding registered title to real estate under the registration of title act and in actual possession of the property has an insurable interest therein. Fuller v Mohawk Fire Ins. Co. 187 M 447, 245 NW 617.

The homestead title was held by the wife but the husband while living with the wife has an insurable interest in the homestead. Basa v Pierz, 178 M 305, 227 NW 39.

The provisions of a policy that sworn proofs of loss are to be furnished, that any attempt of the insured to defraud the insurer before or after loss shall void the policy and that the insurer may replace the property damage instead of paying the amount of the loss in money, make the debt or claim for loss dependent upon

contingencies and not garnishable. Smaltz Goodwin Co. v Poppe, Inc. 172 M 43, 214 NW 762.

Where it is stipulated in a fire insurance policy that the application shall be part of the contract and warranty by the assured and that if the interests of the assured in the property be not truly stated therein, the policy shall be void, the parties have stated for themselves what shall be material and the assured cannot be permitted in case of loss to escape the consequences of making a false answer to a question. Serys v State Ins. Co. 71 M 338, 73 NW 849.

After a fire insurance policy was issued, the record owner conveyed to the plaintiff and both grantor and grantee notified the issuing agent of the insurance company and requested him to make the necessary entries to protect grantee and others. This the agent consented and agreed to do but overlooked making the entries. The dwelling was destroyed by fire. The agreement was within the authority of the agent and the company was bound. Paull v Columbian Nat. Fire Ins. Co. 171 M 118, 213 NW 539.

A fire insurance policy insuring "estate of Elizabeth L. Hazen and legal representatives" is valid and enforceable. Magoun v Firemen's Fund, 86 M 486, 91 NW 5.

Where the insurance policy was in standard form but certain words had been added stating that the risk was to be in accordance with Laws 1895, Chapter 175, the defendants were not liable for assessments for the losses of the company because the mere reference to Laws 1895, Chapter 175, did not indicate that the contract was a mutual fire insurance contract. Dwinnell v Kramer, 87 M 392, 92 NW 227.

A receiver appointed by the court for an insolvent corporation is "its legal representative" within the meaning of this phrase. Alford v Consol. F. & M. Co. 88 M 478, 93 NW 517.

In case of arbitration the loss as adjusted by the referees becomes payable 60 days after the award is returned and bears interest from the date set for payment. Produce v Norwich, 91 M 210, 97 NW 875.

The Minnesota standard form of fire insurance policy though dictated by the state must be construed by the same rules as similar contracts voluntarily entered into. Conditions of insurance found in an application but not embraced in the terms and conditions of the policy itself, are inoperative and of no effect. Kolitz v Equip. Mut. 92 M 234, 99 NW 892.

The purpose of the Minnesota standard policy is to require that all the conditions of the insurance shall appear in one written instrument and the form prescribed contains the only terms and conditions which can be incorporated in a contract of fire insurance. Only the changes which are specifically authorized by Laws 1897, Chapter 254, Section 53, may be made in the statutory form. Wild Rice Lumber v Royal Ins. 99 M 190, 108 NW 871.

Subject to the statutory laws of this state, a policy of insurance is within the application of the general principles of the law of contracts. The insurer has the burden of proving consent by the insured to a modification of terms of the policy. Accepting and attaching a rider to the policy is proof of consent to a modification of the contract shown by the rider. Shake v Westchester Fire, 158 M 40, 196 NW 804.

The contract for the sale of land, part of the purchase price being paid and possession taken, vests in the vendee an equitable title in fee. The legal title in fee is retained by the vendor as security and upon payment he holds it in trust for the vendee. The policy of insurance issued to the vendor with a condition of forfeiture in the event the property is sold without the assent of the assurer, is not forfeited by his subsequently making such a contract. Mark v Liverpool, London & Globe, 159 M 315, 198 NW 1003.

The term "the insured" refers to the owner of the property insured to whom the policy is issued and by whom the premium is paid. Acts prohibited by the policy, done by one to whom the policyholder gives a contract for deed, a rider being attached to the policy which provides that the loss, if any, shall be payable to the vendor and vendee as their respective interests may appear, do not affect the rights of the policyholder unless he consented to the acts. The vendee is merely

an appointee and entitled, in case of loss, to receive the stipulated portion of the proceeds of the policy. Kierce v Lumbermen's Fire Ins. Co. 162 M 277, 202 NW 730.

The vendee in possession of real estate under an executory contract has an insurable interest, even though the contract is subject to recision for his fraud, and the fraud being proven the vendee may be considered trustee for the vendor and any loss payable will enure to the benefit of the vendor. Cetkowski v Knutson, 163 M 492, 204 NW 528.

The statute permits the blanks in a standard fire policy, or rider provisions, to be filled in by print or writing for insurance against loss of a leasehold interest. The provisions of section 65.01 do not prohibit the issuance of valued policy of insurance upon personal property. Unton v Liverpool, London & Globe, 166 M 273, 207 NW 625.

**2. Notice and proof of Loss**

Where an insurance company objects to the sufficiency of payment of loss on one ground alone, this amounts to a waiver of all other objections. Levine v Lancashire Fire Ins. Co. 66 M 138, 68 NW 855.

In an action against an insurance company for the value of a stock of merchandise destroyed by fire, day books, ledgers, and other books of account kept in the usual course of business showing the amount and value of the goods, are competent evidence when properly authenticated. Levine v Lancashire Fire Ins. Co. 66 M 138, 68 NW 855.

The policy provided that it should be void if the insured misrepresented material facts or was guilty of fraud. The court properly refused the defendant's request to charge, in effect, that the slightest exaggeration of the amount or value of the property destroyed, made knowingly and wilfully in the proof of loss, avoided the policy. Hamberg v St. Paul F. & M. Ins. Co. 68 M 335, 71 NW 388.

Proofs of loss were not rendered until 18 days after the fire. The policy provided, in case of loss, the insured should "forthwith" render to the insurer proofs of loss. The court held under the circumstances the proofs were rendered in time. Rines v German Ins. Co. 78 M 46, 80 NW 839.

Where the policy requires proofs of loss to be furnished "forthwith" and the fire occurred on August 4 and the proof of loss was forwarded on August 31, the question whether such proof of loss was furnished within a reasonable time was, under the evidence, a question for the jury and properly submitted to it. Fletcher v German Ins. Co. 79 M 337, 82 NW 647.

Where an insurance company, upon information that property covered by one of its policies has been damaged, makes investigation into the cause of the fire, obtaining information sufficient to determine its liability, expressly recognizes such liability and prepares proofs of loss from the information thus obtained which it presents to the insurer for signature but which he refuses to sign because of a stipulation of settlement contained therein, the failure on the part of the insured to make and serve formal proofs of loss is waived. Larkin v Glenns Falls Ins. Co. 80 M 527, 83 NW 409.

The time within which proofs of loss are required to be furnished is not the essence of the contract and a failure to furnish them within such time does not invalidate the policy nor work a forfeiture of the rights of the insured. Mason v St. Paul F. & M. Ins. Co. 82 M 336, 85 NW 13.

It is necessary to the sufficiency of a statement of a proof of loss given pursuant to the requirements of the Minnesota standard insurance policy that the proof contain a specific demand or claim as to the amount of the loss. A substantial compliance with the terms of the policy is sufficient. Raishe v Liverpool, London & Globe, 83 M 398, 86 NW 425.

The provisions in the Minnesota standard policy that no suit to recover for loss shall be sustained unless commenced within two years from the time the loss occurred runs from the time of the fire, and not from the date when the cause of action accrues, namely, 60 days after the loss statement is rendered by the insured. Rautier v German Ins. Co. 84 M 116, 86 NW 888.

Proof of negotiations for the settlement of a loss, or an offer to pay the loss, warrants a jury in finding that there was a waiver of formal notice and proofs of loss. Reliance v St. Paul F. & M. Ins. Co. 165 M 442, 206 NW 655.

### 3. Increased Risk

Whether owner of a farm had knowledge that the tenant was maintaining a still and thus increasing the risk from fire, was held for the jury. Schaffer v Hampden, 183 M 101, 236 NW 327.

Plaintiff received from defendant's agent permit to store fireworks in the building for 15 days. No application was made for an extension and the fireworks caused an explosion 11 days after the expiration of the permit. The defendant had no notice of this extra keeping. The courts will take judicial notice of the fact that the storing of explosive fireworks increased the risk of the loss of the insured property by fire. Betcher v Capital Fire Ins. Co. 78 M 240, 80 NW 971.

The defense claimed that the risk was materially increased by the erection of adjoining buildings with the consent of the insured. This is a question of fact for the jury and evidence of the custom of insurance companies to charge a higher rate of premium under similar conditions is competent but not conclusive evidence and when the insurer sets up a forfeiture of the policy growing out of the alleged increase of the risk, the burden is upon the insurer to prove it. Taylor v Security Mutual, 88 M 231, 92 NW 952.

The agent of a fire insurance company having power to consent to the removal of the property to a new location may by oral agreement consent to such removal, and his consent does not void the policy which continues in force. Cooper v German Am. Ins. 96 M 81, 104 NW 687.

Where two provisions of an insurance policy conflict, the policy is to be construed as a whole and in favor of the insured to avoid a forfeiture wherever possible. Haltorf v Rochester, 190 M 44, 250 NW 816.

### 4. Additional Insurance

The insurance policy on the church contained a provision that it should be void if the plaintiff procured other insurance on the property. Later the plaintiff mortgaged the premises to secure a presently made loan, and covenanted in the mortgage to cause the property to be insured. The mortgagee procured insurance at plaintiff's expense, the insurance being payable as the respective interests of the plaintiff and the mortgagee might appear. Held: that the plaintiff is not to be deemed to have procured additional insurance. Church v Sunfire Ins. 54 M 162, 55 NW 909.

The taking of additional insurance was not such, under the circumstances, as to avoid the validity of the original policy. Carpenter v Germania Ins. 86 M 371, 90 NW 766.

Contemporaneous verbal statement, agreements, and understandings offered in evidence to establish assent to additional insurance prohibited by the statements of the policy issued or merged in the written contract are inadmissible as evidence. Talmenson v Equip. Mut. 92 M 390, 100 NW 88.

Each of six defendants issued to the plaintiff its policy insuring him against loss by fire of his goods. Each policy was standard in form and contained a provision that the liability of the insurer should be limited to the proportion of the loss which the amount of its policy bore to the total amount of valid insurance on his property. He sustained a partial loss and each defendant denied any liability on its policy. The defendants severally demurred to the complaint on the ground that several causes of action were improperly united. The demurrer was accordingly overruled. Fegelson v Niagara Fire Ins. Co. 94 M 486, 103 NW 495.

A policy of fire insurance contained a condition that the insured should not be entitled to recover if he should thereafter take any insurance in any other company on the property without obtaining the consent of the secretary. He did take other insurance in another company and it is held that the condition in the original policy was broken and the insured could not recover. Funke v Minn. Farmers 29 M 347, 13 NW 164.

### 5. Mortgage Clause

The prohibitory provisions of the policy as to a change of title have reference to a change or transfer of title or possession to a third person and not one from the mortgagor to the mortgagee by foreclosure, and the insurance policy is valid. Pioneer v St. Paul F. & M. Ins. Co. 68 M 170, 70 NW 979.

When an insurance policy is made payable to a person "as his interest may appear," the burden of proof is upon such person to show his interests. Wilcox v Mut. Fire Ins. Co. 81 M 478, 84 NW 334.

A fire insurance policy insuring the "estate of A. B., deceased" is valid and enforceable. Magoun v Firemen's Fund Ins. 86 M 486, 91 NW 5.

The union mortgage clause in an insurance policy constitutes an independent contract between the insurer and the mortgagee and that contract is not avoided though at the time of the issuance of the policy there was other insurance upon the property and though it was a condition of the policy that in such event the policy should be void. Allen v St. Paul F. & M. Ins. Co. 167 M 146, 208 NW 816.

The word "mortgagee" as used in fire policy containing a standard or union mortgage clause protecting a mortgagee from the consequences of acts of defaults on the insured is used in the restricted sense. Langhorne v Capital Fire Ins. Co. 44 F. Supp. 739.

Where contract for deed required vendee to insure premises against loss by fire for vendor's benefit and vendee obtained policy insuring premises in her name but containing loss payable clause for benefit of vendor, and containing a standard or union clause protecting mortgagee from consequences of acts of insured, vendor is not a "mortgagee" within the mortgage clause, but in action on the fire policy vendor was subject to defenses insurer might have against insured. Langhorne v Capital Fire Ins. Co. 44 F. Supp. 739.

Findings of fact adverse to the intervening mortgagee were abundantly supported by the evidence. Bagger v Nunan, 184 M 490, 239 NW 225.

Interest of mortgagee in insurance effected by mortgagor's grantee, 16 MLR 447. Mortgagee's rights under the standard mortgage clause, 16 MLR 597. Assignment of mortgagee's rights under standard mortgage clause, 16 MLR 866. Standard mortgage clause, 19 MLR 125.

### 6. Fraud

An attempt to defraud must consist of wilful and known wrongful, fraudulent, or deceitful acts to defraud, but in this case the defendant did not prove the attempts to defraud which were alleged in the amended answer. Bahr v Union Fire Ins. Co. 167 M 479, 209 NW 490.

The evidence warranted a finding of fraud in obtaining over insurance from each defendant and perjury and fraud after loss to obtain the excessive insurance. Zane v Home Ins. Co. 191 M 382, 254 NW 453.

Under the fire insurance policy where the agreed damage was $1,118.61, the insured in submitting proof of loss included therein property valued at $3.50 which he did not in fact own. Held: the triviality of the amount misrepresented warrants the conclusion that this representation was not wilfully false but was the result of inadvertence and hence did not avoid the policy. Goldberg v Globe Ins. Co. 193 M 600, 259 NW 402.

The conclusion of the trial court that the insurance policy was voided is not wholly based upon the finding that the fire was incendiary and that the stock was overinsured, but chiefly upon the fraud attempted in padding the proof of loss. Foote v Yorkshire Fire Ins. Co. 205 M 478, 286 NW 400.

The provision that the policy shall be void if the insured attempt to defraud is constitutional. Plaintiff's argument that by retaining the premium defendant insurer has waived, or is estopped from asserting, forfeiture on the ground of fraud is without merit. Supornick v Nat. Ret. Mut. 209 M 500, 296 NW 904.

### 7. Arson

In a suit on policies of fire insurance, the defense being that the fire was wrongfully set by plaintiff, any proof for plaintiff is relevant which tends directly

to show an absence of motive. It was error to exclude plaintiff's offered proof that at the time of the fire and for some months previously his business had been making a substantial profit. Breitman v Aetna Ins. Co. 164 M 490, 205 NW 442.

It appears from the record that the verdict was predicated solely upon the proof that the plaintiff caused his brother to set the fire and by perjury and fraud in the proofs of loss to collect over-insurance. Proof by circumstantial evidence was sufficient. Zane v Home Ins. Co. 191 M 382, 254 NW 453.

The fact that the fire was of incendiary origin would not void the fire policy unless the fire was traceable to one of the insured. Foote v Yorkshire Ins. Co. 205 M 478, 286 NW 400.

### 8. Total Loss

Under the standard fire insurance policy, "total loss" is to be ascertained as to the date of the fire and is determined by the following tests: A building is not a total loss unless it has been so far destroyed by fire that no substantial part of it above the foundation remains in place capable of being safely utilized in restoring the building to the condition in which it was before the fire, and whether what ruins are left may be used in restoration depends upon the question whether a reasonably prudent owner of a building uninsured would utilize such standing remnant as remains. N.W. Mut. Ins. Co. v Rochester German Ins. Co. 85 M 49, 88 NW 265; N.W. Mut. Ins. Co. v Sun Ins. Co. 85 M 65, 88 NW 272; Poppitz v German Ins. Co. 85 M 118, 88 NW 438.

The building inspector of the city, under the powers granted to him under the ordinance, refused the owner permit to repair a building damaged by fire to the extent of more than 50 per cent of a similar new building and resting upon a sufficient fact basis is well within his power in doing so. The plaintiffs are entitled to recover on their insurance policy as for a total loss of the building. Zalk v Stuyvesant Ins. Co. 191 M 60, 253 NW 8.

### 9. Repair or Rebuilding

Under a valued policy of a building, the insurer has the option in case of loss to repair or rebuild. In this case it is held that where there was a total loss, the insurer had the option to pay the loss in cash or rebuild the dwelling. Curo v Citizens' Fund, 186 M 225, 242 NW 713.

Where the insurer rebuilds, the insured is subject to an implied promise to render the insurer reasonable aid and cooperation necessary to enable him to restore the building as nearly as may be. On failure to do so, the insurer is justified in not proceeding with the rebuilding pending the outcome of an action on the policy. Cussler v Firemen's Ins. Co. 194 M 325, 260 NW 353.

### 10. Evidence

Minnesota, by statute, requires all the fire insurance companies to use a prescribed form of standard policy in which are provisions for determining, by arbitration, the amount of any loss.

Where one party declines to select an appraiser, the other party may secure, upon due notice, a judicial appointment of an umpire. The decision of this board, if not grossly excessive or incorrect or procured by fraud, is conclusive as to the amount of the loss in an action on the award, but does not determine the judicial question of liability under the policy. A statute dealing with a subject within the scope of legislative power is prescribed to be standard. Glidden v Ret. Hdwe. Mut. Fire, 181 M 518, 233 NW 310, 284 US 151.

In an action to recover on a policy covering a used automobile stolen from plaintiff and practically destroyed by fire, a booklet "National Used Car Market Report" is admissible as evidence as to the value of the used car. Whitcomb v Automobile Ins. Co. 167 M 362, 209 NW 27.

When custom in business is relied upon for the establishment of an alleged fact, and such custom is to be established by specific instances, they must be numerous enough to base an inference of systematic conduct. The probative value of such

instances rests largely in their regularity. Union Central v Star Ins. Co. 178 M 526, 227 NW 850.

Where plaintiff, the lessee, held fire insurance policies covering improvements and betterments made by him in the sum of $12,000, and a fire rendered the premises untenantable two years before the leasehold expired, a verdict finding the loss more than twice the amount of the cost of restoration or repairs is contrary to the evidence and the law. Harrington v Agr. Ins. Co. 183 M 74, 235 NW 535.

Where the only issue was as to whether the loss was total, the evidence sustained a finding of total loss. Supornich v N.W. Nat. Ins. Co. 190 M 19, 250 NW 716.

In an action for fire insurance, the defense being incendiarism by the insured, the verdict for plaintiff was properly directed where evidence for the defendant, who had the burden of proof, did not support a reasonable inference that the fire was set by the insured or with his connivance. Barrich v Penn. Fire Ins. Co. 191 M 628, 255 NW 80.

The evidence justified the court in finding that the plaintiff mortgagee was not specifically asked as to the nature of her insurable interest at the time she procured the policy of insurance, and that she had not practiced any intentional concealment in regard thereto. Jadwiga v St. Paul F. & M. Ins. Co. 203 M 333, 281 NW 267.

In an action on a fire policy for loss on a stock of goods, competent proof was required, the burden being upon the insured, of the value of the property in the store at the time the fire broke out and the value after it was extinguished. Foote v Yorkshire Fire Ins. Co. 205 M 478, 286 NW 400.

Where two of the jurors during the trial inspected the damaged building even though they had no intention of wrongdoing, the effect of what they did was to try the case upon evidence not received in court and was misconduct which required a new trial. Spinner v McDermott, 190 M 390, 251 NW 908; Haltorf v Rochester, 190 M 44, 250 NW 816.

The evidence is conclusive that the operation of a still in an old barn increased the fire hazard and whether such operation by the tenant was within the control of the insured (the landlord) within the meaning of the policy so as to void the insurance was for the jury. Schaffer v Hampden, 183 M 101, 235 NW 618, 236 NW 327.

The evidence being conclusive that the explosion in a gas filling station was caused by innocent incidents, the loss caused by the explosion was not recoverable under the terms of the policy, but damage caused by fire as distinguished from the explosion is recoverable. Zamboni v Implement Dealers, 174 M 122, 218 NW 457.

In a trial upon the theory that there was a breach of contract to insure, the evidence was sufficient to sustain a finding of a contract and a breach. Stewart v St. Paul Fire, 171 M 363, 214 NW 58.

### 11. Arbitration

Where the purpose of the statute is remedial, the legislative intention will always prevail over the literal sense of its terms; therefore when its exprssion is special or particular but the reason is general, the expression should also be deemed general. Farmers Mut. Ins. Co. v Thos. A. Smart, 204 M 101, 282 NW 658.

In an action to set aside an award it is competent for one of the arbiters, who had refused to join in the award, to testify as to acts of partiality and misconduct on the part of the other arbiters. Levine v Lancashire Ins. Co. 66 M 138, 68 NW 885.

The insurer waived the arbitration provision in the policy by denying its reliability and telling the insured, in substance, that if he got any insurance money he would have to recover it in court. Hamberg v St. Paul F. & M. Ins. Co. 68 M 335, 78 NW 388.

The refusal of the insured at first to submit the amount of the loss to arbitration merely amounted to a waiver to the right of an appraisal but did not extinguish her right to recover on the policy. The refusal of the insurer to submit to reference upon the subsequent offer of the insured to do so was a waiver of its right to an appraisal, and thereupon the insured could maintain an action on the policy without any appraisal. Schrepfer v Rockford Ins. Co. 77 M 291, 79 NW 1005.

The arbitration provided for by Laws 1895, Chapter 175, Section 53, is not a condition precedent to the right of action upon the insurance policy unless the parties actually disagreed as to the amount of the loss. Fletcher v German Am. Ins. Co. 79 M 337, 82 NW 647; Kelly v Liverpool, London & Globe, 94 M 141, 102 NW 380.

When a building is destroyed by fire, if the total insurance thereon exclusive of the foundation is less than its insurable value as designated by the insurer, it is not necessary for the insured to submit to arbitration even though such foundation is included in the description of the property. Ohage v Union Ins. Co. 82 M 426, 85 NW 212.

The referees provided for in Laws 1895, Chapter 175, selected to adjust loss by fire under the standard policy, are not official referees and their fees are not regulated by General Statutes 1894, Section 5572.

The agreement between the insured and the insurer for submission to referees, having failed to state what compensation such referees should receive, there was an implied agreement with each party to compensate the referees for one-half the amount of the reasonable value of such services. Alden v Christiansen, 83 M 21, 85 NW 824.

Where two of the referees proceed to act together, privately collecting information, and examining witnesses without regard to the third referee, finally making up the award without reference to him; and where evidence is received by the full board without affording the members concerned an opportunity to be present in person or by counsel, such conduct will invalidate the award. Christianson v Norwich Ins. Co. 84 M 526, 88 NW 16; Redner v N.Y. Fire Ins. Co. 92 M 306, 99 NW 886.

If a referee nominated by the insurer arbitrarily and unfairly refuses to cooperate with his associates in selecting a third referee, such conduct will constitute a waiver by the insurer of its rights to have the loss adjusted if it authorizes or approves, directly or indirectly, the action of its referees. O'Rourke v German Ins. Co. 96 M 154, 104 NW 900.

To attack an award by arbiters made under a standard fire insurance policy provision it is necessary to allege specific facts, and not general conclusions, that the arbiters acted in error and incorrectly. Bahr v Union Fire Ins. Co. 167 M 479, 209 NW 490.

The award in question was made by one of the appraisers and the umpire, the other appraiser refusing to join. It appearing that the umpire did not consider at all a basic fact issue upon the determination of which for plaintiff depended an allowance of $20,000, the award must fall as a matter of law. Kaufman v Ins. Co. 172 M 314, 214 NW 65, 431.

The provision in the Minnesota standard policy for arbitration or appraisal in the case of disagreement is not violated by the Minnesota Constitution, Article 1, Sections 4 and 7, or the Fourteenth Amendment of the Federal Constitution. The business of fire insurance is affected with a public interest and is subject to control and regulation by the state. Glidden v Retail Hdwe. 181 M 518, 233 NW 310. Affirmed, 284 US 151, 76 L. Ed. 217, 52 SC 69.

### 12. Appraisal

Under the Minnesota standard fire insurance policy, the insured as well as the insurer has the right to an appraisal. The statute relating to arbitration does not deprive the courts of their jurisdiction and is in every way constitutional. Abramowitz v Cont. Ins. Co. 170 M 215, 212 NW 449; Itasca Paper Co. v Niagara Fire Ins. Co. 175 M 73, 220 NW 425.

Standard provisions for due process and equal protection yield to the police power. The insurance business is affected with a public interest and subject to governmental regulations. The duties of the board of appraisers in the Minnesota standard fire insurance policy are in the nature of common law arbitration. It is the duty of such board to determine coverage when necessary to determine the amount of loss and damage. Itasca Paper Co. v Niagara Fire Ins. Co. 175 M 73, 220 NW 425.

An award will not be vacated unless for fraud or misfeasance or malfeasance on the part of the appraisers. Inadequacy of an award may be so gross as to es-

tablish fraud and testimony of inadequacy may be admissible as evidence. Robertson v Boston Ins. Co. 184 M 470, 239 NW 147.

The presumption of validity conditions the award of appraisers of a fire insurance loss, not the insurance policy, and one attacking it for fraud must state the ground by way of direct and specific allegations and not by way of conclusions. Di Re v Fire Ass'n, 156 M 281, 194 NW 755.

An award of the appraisers may be so grossly inadequate as to be subject to vacation although no actual fraud is claimed, and where the lessee had no interest in the property except the right to use the same, an award as for full "sound value" was erroneous and might be set aside by the court. Harrington v Agric. Ins. 179 M 510, 229 NW 792.

**13. Reformation of Policy**

The plaintiff while engaged in constructing a building for Kreisel applied to its foreman, who was also an insurance agent, for tornado insurance on the building under construction. The insurance company executed and delivered to plaintiff a policy issued to Kreisel with the usual mortgage clause payable to plaintiff as mortgagee. There was, in fact, no mortgage. The insurance agent knew this. The policy was represented to the plaintiff as the correct form. It was held that the plaintiff was entitled to a reformation of the policy because of a mutual mistake so as to make it correctly state the agreement as made and understood by the parties, thus awarding plaintiff a recovery. Consolidated Lbr. Co. v Mercury Ins. Co. 189 M 370, 249 NW 578.

Courts incline toward reformation of a policy to carry out the evident intention of the parties. Schmidt v Dixon, 189 M 420, 249 NW 580.

Policy of fire insurance issued to an administrator of an estate, and the "legal representative" of a person deceased, for a period of three years, paid out of the funds of the estate, was properly reformed to express the real intention of the parties and to cover the interest of the heir in whom the title was when the policy was issued. Miller v Phoenix Ins. Co. 191 M 586, 254 NW 915.

The original policy carried $3,000 on a dwelling and $500.00 on a hog house. In the renewal policy the hog house was omitted, and $3,500 placed on the dwelling house. The court found that it was the intention that the renewed policy should cover the hog house as in the original, and reformed the policy so that a recovery was had upon the destruction of the hog house by fire. Keogh v Sharon Township, 195 M 575, 263 NW 601.

Statutes requiring standard forms for property insurance policies, and making co-insurance clauses void and the absence of written application therefor, are remedial statutes, and in case of doubt the court may look into the vices which they attempted to remedy. Thorrez v American Central, 32 F. Supp. 110.

Equity court will not require the doing of a useless act. Langthorne v Capital Fire, 54 F. Supp. 779.

Terms of insurance contract. 17 MLR 575.

**65.02 AUTOMOBILE FIRE INSURANCE POLICIES.**

HISTORY. 1921 c. 342 s. 1; G.S. 1923 s. 3513; M.S. 1927 s. 3513.

An automobile trailer is a "motor vehicle" under a statute dealing with "insurance on automobiles, motorcycles and other motor vehicles." Genreau v State Farm Ins. 206 M 237, 288 NW 225.

Not being violative of any statute and the time not unreasonably short, a limitation of one year after loss fixed on a policy of automobile insurance for commencing actions thereunder is valid. Genreau v State Farm Ins. Co. 206 M 237, 288 NW 225.

**65.03 CANCELATION OF FIRE POLICY.**

HISTORY. 1923 c. 390 s. 1; G.S. 1923 s. 3514; M.S. 1927 s. 3514.

**65.04 VIOLATION.**

HISTORY. 1895 c. 175 s. 107; R.L. 1905 s. 1641; G.S. 1913 s. 3319; G.S. 1923 s. 3515; M.S. 1927 s. 3515.

**65.05 WHOLE AMOUNT COLLECTIBLE.**

HISTORY. 1895 c. 175 s. 25; 1903 c. 245; R.L. 1905 s. 1642; 1907 c. 446; 1913 c. 79 s. 1; G.S. 1913 s. 3322; G.S. 1923 s. 3516; M.S. 1927 s. 3516.

The clause "shall become vacant by the removal of the owner or occupant and so remain vacant for more than 30 days without such assent" is not affected, qualified, or modified by Laws 1895, Chapter 175, Section 25. Doten v Aetna Ins. 77 M 474, 88 NW 630.

When the loss is greater than the amount of insurance fixed by the policy, the loss is total and an attempt for arbitration is not a prerequisite to recovery. Ohage v Union Ins. 82 M 426, 85 NW 212.

The building insured was unoccupied at the time the policy was issued and remained vacant until destroyed by fire and the insurance company is not liable thereon. Aiple v Boston Ins. 92 M 337, 100 NW 8.

Plaintiff requested the defendant to obtain insurance on his mill and defendant obtained certain policies from companies not authorized to do business in this state. The policies were turned over to the plaintiff who, through other agents, corresponded with insurance companies and finally accepted three of the policies. There was no liabililty on the part of the defendant. Webster v Ferguson, 94 M 86, 102 NW 213.

The provisions of the policy with reference to other insurance being ambiguous, in the absence of fraud or laches, the policy may be reformed and enforced in a proper action. Kelly v Citizens Mutual, 96 M 477, 105 NW 675.

The insured may sue for a total loss and allege in addition thereto the actual amount of the damage, so that if the evidence fails to establish a total loss he may still recover for the actual damages as proven. Moore v Sun Ins. 100 M 374, 111 NW 260.

The insurance broker is the representative of the insured, and not the agent of the insurance company, and an agency in fact cannot be inferred from acts and conduct entirely consistent with his position as a broker. Jos. Fredman v Consolidated Fire, 104 M 76, 116 NW 221.

It is only where a loss of buildings is total that the insurable value as stated in the policy forms the basis for determining the amount of a recovery. Where the loss is partial, the insured is entitled to recover the actual amount of his loss, and this cannot be based on the insurable value. Oppenheim v Firemen's Fund, 119 M 417, 138 NW 777.

A provision requiring percentage coinsurance was satisfied though such coinsurance did not cover all the property insured by the defendants. N. W. Fuel Co. v Boston Ins. 131 M 19, 154 NW 515.

Where parties verbally agree upon all the terms of the contract but through the mistake of a scrivener in reducing it to writing the written document does not express the real agreement, the court will reform the written contract and make it conform to the real agreement orally made. Mahoney v Minn. Farmers Ins. 136 M 34, 161 NW 217.

Where an insured had a policy on a granary for $400.00, fixing the insurable value at $600.00, and took out another policy on the same building for $800.00 and fixing the insurable value at $1,000, and each policy has a "union mortgage clause" in favor of the mortgagee holding a $3,600 mortgage, the mortgagee's contract insurance in the first policy is not affected but remains undestroyed and he is required to make contribution based upon the insurable value as fixed by his policy. Bankers v St. Paul F. & M. Co. 158 M 363, 197 NW 749.

A contract for deed, title remaining in the vendor, is not a sale forfeiting the vendor's insurance under the provisions of this section. Mark v Liverpool & L. & G., 159 M 315, 198 NW 1003.

When, in a statute relating to a remedy upon certain contracts touching public interest, a limitation of the time to bring suit thereon is fixed at a less period than the general statute of limitation, it should be regarded as prohibiting the parties from contracting for a less period, the one prescribed by the legislature being the shortest reasonable time to which such actions should be limited. Smith & Wyman Co. v Carlsted, 165 M 313, 206 NW 450.

The court refuses to decide whether the mortgagee-payable clause in this section applies only to real property. Kohn v Fire Ass'n of Philadelphia, 172 M 486, 215 NW 835.

Under a valued policy on a building, the insurer has the option in the case of loss to repair or rebuild. The rule applies where there is a total loss. Curo v Citizens Fund, 186 M 225, 247 NW 713.

It was not an error for the trial court to refuse to allow amendment of answers to show that the icehouse was purchased by plaintiff for $1,000 since under "valued policies" insurable value therein stated $12,000 controls in the absence of intentional fraud on the insured's part. Romain v Twin City Ins. 193 M 1, 258 NW 289.

A broker who procures the application for fire insurance and the issue of a policy thereon by an insurer becomes so far the insurer's agent that his mistake of fact as to the property to be covered is chargeable to the insurer. Dose v Ins. Co. 206 M 114, 287 NW 866.

Responsibility of company for misconduct of agent, 17 MLR 600.

### 65.06 INSURANCE IN EXCESS OF VALUE.

HISTORY. 1895 c. 175 s. 50; R.L. 1905 s. 1643; G.S. 1913 s. 3323; G.S. 1923 s. 3517; M.S. 1927 s. 3517.

The amount of insurance carried is admissible as evidence in proving value. State v Potlatch, 160 M 209, 199 NW 968.

### 65.07 PAYMENT TO MORTGAGEE.

HISTORY. 1895 c. 175 s. 51; R.L. 1905, s. 1644; G.S. 1913 s. 3324; G.S. 1923 s. 3518; M.S. 1927 s. 3518.

Where a policy makes the loss payable to the mortgagee, the mortgagee is not bound by an adjustment between the insurance company and the mortgagor. First Nat. v Nat. Liberty, 156 M 1, 194 NW 6.

The insurer under a policy insuring a mortgagee of real estate had the express right, upon payment of the loss, to be subrogated to the rights of the mortgagee and to take an assignment of the mortgage upon payment by him of the mortgage debt. The policy did not insure the owner or mortgagor. After loss, the mortgagee took payment of the debt and satisfied the mortgage and thereby discharged the insurer from liability. McKay v Nat. Union Ins. 182 M 378, 234 NW 589.

### 65.08 ADJUSTMENT; REFERENCE.

HISTORY. 1895 c. 175 s. 55; R. L. 1905 s. 1645; G.S. 1913 s. 3325; G.S. 1923 s. 3519; M.S. 1927 s. 3519.

A referee nominated by the insurer to adjust a fire loss refuses to cooperate with his associate in selecting a third referee. Such conduct will constitute a waiver by the insurer of its rights to have the loss adjusted by referees. O'Rourke v German Ins., 96 M 154, 104 NW 900.

The referees selected to adjust a loss must be residents of the state. The referees are not vested with absolute authority to make independent investigation and base their award on the result thereon, but are required to give interested parties reasonable opportunity to present evidence bearing on the case. Schoenich v American Ins. 109 M 388, 124 NW 5.

Contract stipulations limiting the time in which action may be brought when not unreasonable are valid though the period fixed be at variance with the statutory limitations. Stewart v Nat. Council 125 M 512, 147 NW 651.

The evidence justified the verdict that the policy had been canceled by mutual consent. Galanter v Minneapolis Fire, 160 M 6, 199 NW 886.

The judge of the district court may appoint the umpire if the appraisers cannot do so within five days, regardless whether the inability is due to failure to agree after attempting to do so, or failure to attempt to agree at all. Kavli v Eagle Star Ins. 206 M 360, 288 NW 723.

A clause in the policy providing that the soliciting agent, in taking the application, be deemed the agent of the applicant, and not of the company, would probably be held ineffective in Minnesota. 17 MLR 600.

**65.09 LIABILITY OF COMPANY.**

HISTORY. 1895 c. 175 s. 107; R. L. 1905 s. 1646; G.S. 1913 s. 3326; G.S. 1923 s. 3520; M.S. 1927 s. 3520.

A mutual insurance company is liable upon a policy issued to a school district even though the district cannot legally become a member. OAG Sept. 9, 1932.

**65.10 SALVAGE CORPS AND FIRE PATROLS.**

HISTORY. 1895 c. 178; R.L. 1905 s. 1656; G.S. 1913 s. 3359; G.S. 1923 s. 3521; M.S. 1927 s. 3521.

**65.11 GUARANTY SURPLUS AND SPECIAL RESERVE FUND.**

HISTORY. 1909 c. 437 s. 1; G.S. 1913 s. 3332; G.S. 1923 s. 3522; M.S. 1927 s. 3522.

**65.12 ACTION OF STOCKHOLDERS TO BE FILED WITH COMMISSIONER.**

HISTORY. 1909 c. 437 s. 2; G.S. 1913 s. 3333; G.S. 1923 s. 3523; M.S. 1927 s. 3523.

**65.13 DIVIDENDS MAY BE DECLARED OUT OF SURPLUS PROFITS.**

HISTORY. 1909 c. 437 s. 3; 1911 c. 263 s. 1; G.S. 1913 s. 3334; 1923 c. 130 s. 1; G.S. 1923 s. 3524; M.S. 1927 s. 3524.

**65.14 COMMISSIONER TO MAKE EXAMINATION.**

HISTORY. 1909 c. 437 s. 4; G.S. 1913 s. 3335; 1923 c. 130 s. 2; G.S. 1923 s. 3525; M.S. 1927 s. 3525.

**65.15 ITEMS CONSIDERED IN ESTIMATING PROFIT.**

HISTORY. 1909 c. 437 s. 5; G.S. 1913 s. 3338; 1923 s. 130 s. 3; G.S. 1923 s. 3526; M.S. 1927 s. 3526.

**65.16 INVESTMENT OF GUARANTY SURPLUS.**

HISTORY. 1909 c. 437 s. 6; G.S. 1913 s. 3336; G.S. 1923 s. 3527; M.S. 1927 s. 3527.

**65.17 INVESTMENT OF SPECIAL RESERVE FUND.**

HISTORY. 1909 c. 437 s. 7; G.S. 1913 s. 3337; G.S. 1923 s. 3528; M.S. 1927 s. 3528.

**65.18 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK.**

HISTORY. 1909 c. 457 s. 8; G.S. 1913 s. 3339; 1923 c. 130 s. 4; G.S. 1923 s. 3529; M.S. 1927 s. 3529.

**65.19 DIRECTORS TO CALL UPON STOCKHOLDERS TO MAKE UP IMPAIRMENT.**

HISTORY. 1909 c. 457 s. 9; G.S. 1913 s. 3340; G.S. 1923 s. 3530; M.S. 1927 s. 3530.

The insurance company may issue preferred stock which shall not be subject to any double liability but stockholders owning the preferred stock may be assessed to make up any impairment of capital. OAG Sept. 26, 1933.

**65.20 STATEMENT PRINTED ON POLICY.**

HISTORY. 1909 c. 457 s. 10; G.S. 1913 s. 3341; G.S. 1923 s. 3531; M.S. 1927 s. 3531.