CHAPTER 65

FIRE INSURANCE COMPANIES

NOTE: L. 1860, c. 6, entitled "An act to regulate insurance companies not incorporated in Minnesota" was the first attempt to regulate fire insurance companies. The law was revised and rewritten by L. 1872, c. 1, and made to include domestic companies. Title 4 contained the provisions relating to fire insurance companies. L. 1885, c. 185, authorized fire and marine companies to write hail and tornado insurance. The law was completely revised by L. 1895, c. 175, and as amended and supplemented is found in chapter 65.

65.01 STANDARD FIRE POLICY.

1. Generally
2. Notice of proof of loss
3. Increased risk
4. Additional insurance
5. Mortgage clause
6. Fraud
7. Arson
8. Total loss
9. Repair or rebuilding
10. Evidence
11. Arbitration
12. Appraisal
13. Reformation of policy

1. Generally

The language of an insurance policy is to be given the usual and ordinary meaning which it conveys to the popular mind. There must be a reasonable and practical construction not inconsistent with the language of the policy which, when reasonably possible, will give effect to the general insurance purpose. The trial court correctly concluded that plaintiff's property was covered by "Salesmen's Sample Floater Policy" issued by defendent. Gershcow v Homeland Co., 217 M 568, 15 NW(2d) 88.

The rule that an ambiguous provision of a policy is to be construed most favorably to insured cannot be availed of to refine away terms of contract expressed with sufficient clearness to convey the plain meaning of the parties. A fire policy covering potatoes handled or used by insured growers' association, its own or held in trust or in storage, "if in case of loss the insured is legally liable therefor", did not cover potatoes owned by association members and held in storage, where association was not liable to members. Millers' Mutual v Warroad Assn., 94 F(2d) 741.

In an action on a fire policy any reasonable doubt must be resolved against the plaintiff, on whom rests the burden of proof, but any ambiguity in the policy is construed most favorably to the insured. Fire policies covering merchandise for which elevator operator was "liable" were not restricted to the operator's common-law or statutory liability as warehouseman, but included merchandise belonging to Commodity Credit Corporation for loss of which, from any cause, operator was responsible. National Surety v Michigan Fire Marine, 59 F. Supp. 493.

Insurance companies conducting their activities across state lines are within the regulating power of congress under the commerce clause. United States v South-Eastern Underwriters, 64 SC 1162, 322 US 533.

Exemption of insurance policies where right to change beneficiary is reserved, when construed in bankruptcy proceedings. 7 MLR 163.

Loss of article inadvertently thrown into furnace as within policy. 13 MLR 154.

Conditional vendee as "Sale and Unconditional" owner. 13 MLR 735.

Making contract of insurance. 17 MLR 567.

Effect of conveyance and reconveyance; condition against change in interest, title, or possession. 19 MLR 479.

Cancelation of fire insurance policy by contract or cancelation by mutual consent. 22 MLR 896.

Construction of "permission" in omnibus coverage clause in automobile policies. 23 MLR 227.

An explosion occurs and people are killed and property destroyed. The observations of one chemical engineer based on his investigation may be more reliable than the testimony of a dozen eye-witnesses. 30 MLR 410.

3. Increased risk

Effect of illegal use of insured property on insurance contract. 16 MLR 318.

4. Additional insurance

Fire insurance is not concurrent unless the policies are on the same property or some part thereof, on the same interest, against the same risk, and in favor of the same party; and where holder of a mechanic's lien procured insurance in his own interest and at his own expense and there was a loss which insurer paid to the lien holder, the insurer was subrogated to the lien and entitled to enforce it against the proceeds of other insurance procured by the fee owner. Nobbe v Equity Fire Co., 210 M 93, 297 NW 349.

5. Mortgage clause

An insured who recovered his loss from an arsonist wrongdoer by a suit by means of which he recovered his damages by cancelation of a mortgage debt to the wrongdoer cannot recover such loss from his insurer. Bacich v Homeland Co., 212 M 375, 3 NW(2d) 665.

Under union-mortgage-loss-payable clause attached to policies of fire insurance, duty to furnish proofs of loss rests upon the mortgagor or insured. Failure of mortgagor or insured to furnish such proofs of loss does not bar or forfeit mortgagee's rights under policies, since there is no obligation on the part of mortgagee to furnish same and policies provide that no act or default of any person other than mortgagee or his agent shall affect mortgagee's right to recover. Shepherdson v Central Fire Co., 220 M 401, 19 NW(2d) 772.

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

Where the vendee had obtained a fire policy providing that in case of fire loss proceeds should be payable to vendee and vendor as their interests should appear, under Minnesota law, vendor as third party beneficiary could maintain action on policy without joining vendee where loss exceeded amount due vendor. Langborne v Capital Fire, 54 F. Supp. 771.

Interest of mortgagee in insurance effected by mortgagor's grantee. 16 MLR 447.

Mortgagee's rights under standard mortgage clause. 16 MLR 597.

Assignment of mortgagee's rights under standard mortgage clause. 16 MLR 866.

Priority of second mortgage under standard mortgage clause as against insurer's right of subrogation. 19 MLR 125.

6. Fraud

The provision contained in a Minnesota standard fire policy, as authorized by statute, which declares void any policy on which the insured shall attempt to defraud the insurer either before or after the fire, is not invalid for constitutional reasons considering the public interest affected by fire insurance and the gravity of the offense. Supornick v. Natl. Retailers Mutual, 209 M 500, 296 NW 904.

Effect of falsification of application by soliciting agent. 16 MLR 422.

7. Arson

Right of insured's assignee to recover on fire policies was not vitiated by the fact that assignee brought suit, subsequently dismissed, against insurers for loss occasioned by a subsequent fire when it knew or should have known the subsequent fire was incendiary. National Surety v Michigan Fire, 59 F. Supp. 495.

10. Evidence

The mortgagor, the mortgagee's former partner, by a written statement acknowledged that the loose-leaf ledger sheets were correct. These entries made in the usual course of business, and supported by the admission against interest, while not conclusive against the insurer were of a great probative value, Shepherdson v Central Fire, 220 M 401, 19 NW(2d) 772.

Parol evidence rule relating to waiver and estoppel in insurance cases. 5 MLR 136.

Effect of the "waiver in writing only" clauses in standard fire policies. 5 MLR 559.

Damage from falling building as loss or damage by fire. 12 MLR 545.

Proof of crime in a criminal proceeding. 13 MLR 556.

11. Arbitration

Where the purpose of a statute is remedial the legislative intention will always prevail over the literal sense of its terms; so that, when the expression is special or particular, but the reason is general, the expression should also be deemed general. Minnesota Farmers Mutual v Smart, 204 M 101, 282 NW 658.

Appraisers may appoint an umpire before they themselves have qualified. Appraisers may appoint an umpire regardless of whether their failure to agree was due to an attempt on their part, or failure to even try. Kavli v Eagle Star Ins. 206 M 360, 288 NW 723.

The fourteenth amendment to the federal constitution neither implies that all trials be by jury, nor guaranties any particular method of state procedure. Procedure by which rights may be enforced and wrongs remedied is peculiarly within state regulation and control. A statute requiring an arbitration clause in fire insurance policies substitutes determination by arbitration for court trial as to the amount of loss suffered under the policy and affords due process of law. Hardware Dealers v Glidden Co., 52 SC 69, 284 US 151.

Constitutionality of compulsory arbitration clause in Minnesota standard fire insurance policy. 15 MLR 708.

12. Appraisal

Effect of appraisal clause in valued policy in case of total loss. Submission to arbitration as waiver of claim to total loss. 14 MLR 301.

13. Reformation of policy

Legality of a fire insurance policy erroneously naming the husband rather than the wife in whose name was title to the property as insured should be tested by the actual, not the expressed, agreement where evidence justifies reformation. Pellicano v Hartford Fire Co., 211 M 314, 1 NW(2d) 354.

65.02 AUTOMOBILE FIRE INSURANCE POLICIES.

Interpretation of "use" under ownership, maintenance, or "use" clause in automobile policies. 22 MLR 736.

65.05 WHOLE AMOUNT COLLECTIBLE.

The duly authorized agent of a fire insurance company, having power to consent to the removal of the location of insured property and to transfer the policy, may by oral agreement consent to such removal and make such transfer, even where the new location calls for additional premiums. Cooper v German-American, 96 M 81, 104 NW 687.

An agent to insure is authorized to make a contract to insure. This includes renewal. Eifert v Hartford Fire, 148 M 17, 180 NW 996.

The insurance company denying liability and pleading no desire to rebuild, waived its option to rebuild. Plaintiff's loss was real even though she later, but before trial, lost the land under mortgage foreclosure. Forney v Farmers Mutual, 181 M 8, 231 NW 401.

Where an insurer customarily dates policies of insurance as of the day of application instead of the day of issuance, its soliciting agents have implied authority to enter into contracts of insurance with applicants for the interim between application and acceptance. Glens Falls v Swanstrom, 203 M 68, 279 NW 845.

Fire insurance is not concurrent unless the policies are on the same property or some part thereof, on the same interest, against the same risks, and in favor of the same party. Nobbe v Equity Fire, 210 M 93, 297 NW 349.

It was not error for the court to permit the plaintiff to amend the pleadings to conform to the amount of the face of the policy. Rommel v New Brunswick, 214 M 252, 8 NW(2d) 28.

Effect of falsification of application by soliciting agent. Waiver and estoppel. 16 MLR 422.

65.07 PAYMENT TO MORTGAGEE.

The evidence justifies the finding of the court that the intervenor, a mortgagee, requested the defendant to make certain insurance policies, issued to the plaintiff, the mortgagor, who covenanted in the mortgage to keep the property insured for the benefit of the mortgagee, payable in case of loss to it as mortgagee, and that it agreed to do so but did not. Under such finding the intervenor is entitled to share in the policy. Mark v Liverpool, London & Globe, 159 M 315, 198 NW 1003.

The plaintiff, not having been specifically asked the nature of her insurable interest was not guilty of intentional concealment in regard thereto. Olszewski v St. P. F. & M., 203 M 333, 281 NW 267.

Under union-mortgage-loss-payable clause, since there is no duty on the part of the mortgagee to furnish proofs of loss, liability of insurer to such mortgagee accrues as of date of destruction of property securing such mortgage, and amount due to mortgagee bears interest from date of loss. Shepherdson v Central Fire, 220 M 402, 19 NW(2d) 772.

Under an "open mortgage clause" in fire policy mortgagee is merely an appointee to receive fund recoverable in case of loss to extent of his interest, whereas by the "union or standard mortgage clause" stipulating that insurance shall not

be invalidated as to the mortgagee by any act or default of the mortgagor, an independent contract of insurance is created between mortgagee and insurer. Capital Fire v Langhorne, 146 F(2d) 237.

65.08 ADJUSTMENT; REFERENCE.

A breach of warranty will not avoid the policy unless made with intent to deceive and defraud or unless the matter misrepresented increases the risk of loss. Where a policy makes the loss payable to the mortgagee, the mortgagee is not bound by an adjustment between the insurer and the mortgagor. First Nat'l v Nat'l Liberty, 156 M 1, 194 NW 6.

There is no constitutional bar which prevents parties to a contract from subjecting rights which may subsequently arise therefrom to arbitration. The standard policy gives to the insured as well as the insurer the right to an appraisal. Abramowitz v Continental Ins., 170 M 215, 212 NW 449.