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INSURANCE - FIRE INSURANCE - WHAT IS A FIRE LOSS

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INSURANCE — FIRE INSURANCE — WHAT IS A FIRE LOSS — Plaintiff's merchandise was insured by defendant against direct loss or damage caused by fire. In 1937 the Ohio River overflowed its banks and water entered the premises in which the assured stored his goods. While the employees of the assured were removing the goods to higher floors for protection against the flood, a near-by gasoline tank exploded and started a fire some five hundred yards from the building. The fire threatened destruction to the whole area, and in an effort to prevent this ruin, the fire department ordered the employees to quit their work because of the possible necessity of having to dynamite the building and because of the imminent peril of the workers should the structure

catch fire. As a result the insured merchandise was damaged by the flood waters though the building did not catch fire. *Held*, the fire was the proximate cause of the loss and the assured could recover under the policy. *Princess Garment Co. v. Fireman's Fund Insurance Co. of San Francisco*, (C. C. A. 6th, 1940) 115 F. (2d) 380.

Justice Cardozo once said that the extent to which property is covered under the ordinary fire insurance policy should be determined by the intentions of ordinary business men when the contract is made, and that the rule of proximate cause as known in the field of torts should be applied only in so far as it tends to indicate what losses the business man would ordinarily think he should be protected against.¹ Thus, even though a court may say the basis of liability is the intention of the parties, it must be remembered that this intention is ascertained by applying the rules of proximate cause. In certain instances one might reasonably anticipate that the type of damage suffered would be likely to result from fire although the insured property was not actually touched by the fire.² Thus the courts have allowed recovery where the goods insured against loss have been damaged by water used to extinguish the flame,³ or where the injury was caused by smoke,⁴ or where the goods have been stolen or ruined after they had been removed from the building in order to prevent their destruction.⁵ It is not even essential to recovery that fire occur in the building insured.⁶ For example, the insurer is liable where a neighboring structure has been completely demolished by fire except for one wall which subsequently falls against the insured building.⁷ In other instances where there is damage but the

¹ *Bird v. St. Paul Fire & Marine Ins. Co.*, 224 N. Y. 47 at 51, 120 N. E. 86 (1918): "General definitions of a proximate cause give little aid. Our guide is the reasonable expectation and purpose of the ordinary business man when making an ordinary business contract. It is his intention, expressed or fairly to be inferred, that counts. There are times when the law permits us to go far back in tracing events to causes. The inquiry for us is how far the parties to this contract *intended* us to go. The causes within their contemplation are the only causes that concern us."

² *Clark v. North River Ins. Co.*, (D. C. Wash., 1934) 8 F. Supp. 394. Here an insured locomotive was marooned in the woods because a bridge over which it ran was burned and reconstruction of the bridge would have cost more than the engine.

³ *Lewis v. Springfield Fire & Marine Ins. Co.*, 10 Gray (76 Mass.) 159 (1857).

⁴ *Jiannetti v. National Fire Ins. Co. of Hartford*, 277 Mass. 434, 178 N. E. 640 (1932).

⁵ In *Insurance Co. of North America v. Leader*, 121 Ga. 260, 48 S. E. 972 (1904), the insurer was held liable where the assured had the goods injured in trying to remove them from the threatening fire. Also in *Farmers' & Merchants' Ins. Co. v. Cuff*, 29 Okla. 106, 116 P. 435 (1911), where the fire was in a near-by building. In *Queen Ins. Co. v. Patterson Drug Co.*, 73 Fla. 665, 74 So. 807 (1917), recovery was allowed where the removed goods had been stolen.

⁶ *Lynn Gas & Electric Co. v. Meriden Fire Ins. Co.*, 158 Mass. 570, 33 N. E. 690 (1893), held that where a fire occurred which caused a "short circuit" of the electric current resulting in damage to certain machinery in a building not yet reached by fire the insurer would have to pay the damages.

⁷ *Ermentrout v. Girard Fire & Marine Ins. Co.*, 63 Minn. 305, 65 N. W. 635 (1895). In *Russell v. German Fire Ins. Co.*, 100 Minn. 528, 111 N. W. 400 (1907), seven days had elapsed since the fire occurred and there was some evidence that the

fire has not directly touched the property insured, the question may arise whether there was an intervening agency breaking the causal chain between the fire and the damage. The courts are inclined to relax the rules of proximate cause in such cases and will often ignore the fact that the destruction was not within the contemplation of the parties.⁸ Thus, where the insured property is damaged by the intentional discharge of dynamite to prevent the spread of a hostile conflagration, the insured is allowed recovery.⁹ In reality this result does not impose an undue burden upon the insurance companies because their interests can also be best served by preventing the spread of fires. Consistent with this view some courts have said that a clause exempting the insurer from liability for damages resulting from explosion when fire does not ensue does not apply under these circumstances.¹⁰ The principal case aptly illustrates the attitude of the courts in this particular field of insurance law. A flood is such an unusual occurrence that it scarcely could have been within the contemplation of the parties to the policy; therefore, the court would have been justified in holding that the agency interrupting the causal connection between the fire and the loss was unforeseeable and independent. Had this view been taken the insurance company would not have been liable.¹¹

wind was unusually strong. In *Automobile Ins. Co. of Hartford v. Thomas*, 153 Md. 253, 138 A. 33 (1927), the wall fell 38 days after the fire; and in *Western Assurance Co. v. Hann*, 201 Ala. 376, 78 So. 232 (1917), the wall collapsed over four months after the fire and the wind at the time was held not to be an intervening cause. *Contra dictum* in *California Ins. Co. v. Union Compress Co.*, 133 U. S. 387, 10 S. Ct. 365 (1890). In *Cuesta v. Royal Ins. Co. of Liverpool*, 98 Ga. 720, 27 S. E. 172 (1896), the court held that subsequent rains had drenched the wall so that there was an unexpected intervening cause. And in *Alter v. Home Ins. Co.*, 50 La. Ann. 1316, 24 So. 180 (1898), it was held that the wall should have been torn down and so the negligent act of leaving it up was an intervening cause.

⁸ See note 7, *supra*. In *Johnston v. West of Scotland Ins. Co.*, 7 Sess. Cas. (Scot.) 52 (1828), where a gable of a burned house fell on the insured house when the damaged house was being taken down, the court held there was no independent intervening agency. Also *Queen Ins. Co. v. Patterson Drug Co.*, 73 Fla. 665, 74 So. 807 (1917).

⁹ *Cook v. Continental Ins. Co.*, 220 Ala. 162, 124 So. 239 (1928); 6 COOLEY, BRIEFS ON INSURANCE, 2d ed., 4935 (1928); *Pentz v. Receivers of Aetna Fire Ins. Co.*, 9 Paige (N. Y.) 568 (1842); *City Fire Ins. Co. v. Corlies*, 21 Wend. (N. Y.) 367 (1839).

¹⁰ *Greenwald v. Insurance Co.*, 3 Phila. (Pa.) 323 (1859); 26 C. J. 342 (1921); 4 JOYCE, INSURANCE, 2d ed., § 2824 (1918).

¹¹ In every case where the question of causal relation is involved it must be remembered that the more risks the policy is held to include the higher must be the insurance rates, but since distributing the risk of loss is the very essence of insurance, no harm is done.