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Insurance - Recovery - Extent Under Interest Limitation Clause of the Standard Fire Insurance Policy

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INSURANCE—RECOVERY—EXTENT UNDER INTEREST LIMITATION CLAUSE OF THE STANDARD FIRE INSURANCE POLICY—Plaintiff leased vacant land and erected a building thereon. At the election of the lessor the lease could be terminated upon thirty days' notice, plaintiff having the right to remove the building. Defendant issued to plaintiff a policy insuring the building against loss by fire to the extent of the cash value of the property at the time of loss, but not exceeding the repair or replacement cost, "nor in any event for more than the interest of the insured."¹ The building was destroyed by fire and plaintiff sued to recover the full amount of the insurance. The trial court refused to admit defendant's proffered evidence that three months prior to the fire plaintiff's lessor served notice terminating the lease and had taken action to dispossess, and that plaintiff had made arrangements to have the building demolished. On appeal, *held*, reversed. As affecting the amount of the insured's recovery under the interest limitation clause and as constituting a factor in the cost or value of the destroyed building the evidence was properly excluded. However, such evidence should have been admitted as bearing on the question whether insured had any insurable interest in the building.² *Federowicz v. Potomac Insurance Co.*, 7 App. Div. (2d) 330, 183 N.Y.S. (2d) 115 (1959).

Recovery under the New York standard fire insurance policy is limited by the language "nor in any event for more than the interest of the insured."³ Superimposed on this stated limitation seems to be an unwritten limitation which recognizes the fire insurance policy as a contract of indemnity only.⁴ Where the property interest of the insured is less than a fee, the interest-limitation clause and the indemnity principle would produce identical

¹ 27 N.Y. Consol. Laws (McKinney, 1949) §168; principal case at 331.

² For insurance on property to be validly obtained, the insured must have an insurable interest in the property. In the principal case there were provisions of the lease upon which a finding might be made, in the absence of other proof, that upon giving notice to remove and the failure of the tenant to remove within the required time the building became the property of the lessor. If such were found, then the plaintiff would have no insurable interest. See VANCE, INSURANCE §29 (1951).

³ This standard policy has been adopted in most of the states in the same form or with only minor deviations; 1951 INS. L.J. 785 at 786-787; 48 N.W. UNIV. L. REV. 354 at 355, n. 6 (1953). For general discussions of the standard fire insurance policy, see 42 COL. L. REV. 1227 (1942); 39 ILL. L. REV. 66 (1944); 20 J. AMER. INS. 15 (April 1943); 20 J. AMER. INS. 9 (Sept. 1943).

⁴ PATTERSON, ESSENTIALS OF INSURANCE LAW, 2d ed., 137 (1957); 4 APPLEMAN, INSURANCE §2107, pp. 10-11 (1941); 6 *id.*, §3823.

results since a determination of the amount for which indemnity will be had is based on the extent of the property interest. However, where the insured's property interest is a fee, different results would be reached depending on whether the interest-limitation clause or the indemnity principle were applied, since the factors used to measure each are different. Obviously the interest-limitation clause would be wholly ineffectual as a limitation on recovery where the interest is a fee; there would be no limited interest. In such a case, an otherwise unlimited recovery could still be reduced by the application of the indemnity principle where the insured suffered a financial loss of less than the value of the fee. Be this as it may, considerable authority supports the proposition adopted in the principal case that the holder of the fee in a building may recover the full value thereof, not exceeding the amount of insurance, regardless of other factors which might tend to reduce or eliminate his actual financial loss.⁵ The holder of the fee in betterments and improvements is similarly entitled to full recovery on a fire insurance policy when such betterments and improvements are destroyed by fire.⁶ Cases which are concerned with insurance of a less-than-a-fee interest, a limited interest, generally limit recovery to an amount which is compatible with both the limited-interest clause and the indemnity principle. In these cases, the interest of the insured has been consistently dealt with as his *property* interest, whether it be as lessee,⁷ vendor,⁸ life

⁵ *Laurent v. Chatham Fire Ins. Co.*, 1 Hall (N.Y.) 45 (1828) (lease giving lessee right to remove building was about to expire when fire destroyed building); *First Nat. Bank of Highland Park v. Boston Ins. Co.*, 17 Ill. (2d) 147, 160 N.E. (2d) 802 (1959) (land contract vendor of buildings destroyed, contract price less than amount of insurance); *Girard Ins. Co. v. Taylor*, 6 App. Div. (2d) 359, 177 N.Y.S. (2d) 42 (1958) (owner of land and building who conveyed the land but retained the building with right to remove); *Heidisch v. Globe and Republic Ins. Co.*, 368 Pa. 602, 84 A. (2d) 566 (1951) (owner of property condemned by eminent domain still held title); *Rosenbloom v. Maryland Ins. Co.*, 258 App. Div. 14, 15 N.Y.S. (2d) 304 (1939) (building owner had contracted to sell land and build; after fire, the land was sold by owner for only a slightly reduced price); *Godwin v. Iowa State Ins. Co.*, (Mo. App. 1930) 27 S.W. (2d) 464 (plaintiff prior to fire ordered building demolished); *German Fire Ins. Co. v. Duncan*, 140 Ky. 27, 130 S.W. 804 (1910) (vendor of land who retained right to remove building); *Irwin v. Westchester Fire Ins. Co.*, 58 Misc. 441, 109 N.Y.S. 612 (1908) (owner of a building declared to be a public nuisance and ordered removed; fire destroyed the building prior to removal); *Tiemann v. Citizens' Ins. Co.*, 76 App. Div. 5, 78 N.Y.S. 620 (1920) (vendor received full purchase price); *Foley v. Manufacturers' & Builders' Fire Ins. Co.*, 152 N.Y. 131, 46 N.E. 318 (1897) (owner of building partially completed at time of destruction; by his contract with insured, contractor was liable for completion of the building); *Washington Mills Emery Mfg. Co. v. Weymouth & Braintree Mut. Fire Ins. Co.*, 135 Mass. 503 (1883); *Washington Mills Emery Mfg. Co. v. Commercial Fire Ins. Co.*, (C.C. Mass. 1882) 13 F. 646 (vendor of land who retained ownership of building and right to remove; building was destroyed by fire).

⁶ *Modern Music Shop v. Concordia Fire Ins. Co.*, 131 Misc. 305, 226 N.Y.S. 630 (1927) (lessee made improvements over which he retained full ownership and right to remove at termination of lease; improvements were destroyed by fire).

⁷ See *Niblo v. North Amer. Ins. Co.*, 1 Sandf. (N.Y.) 551 (1848); *Hale v. Simmons*, 200 Ark. 556, 139 S.W. (2d) 696 (1940); *Lighting Fixture Supply Co. v. Fidelity Union Fire Ins. Co.*, (5th Cir. 1932) 55 F. (2d) 110; *Sievers v. Union Assur. Society of London*, (Cal. 1912) 128 P. 771.

⁸ See *Shotwell v. Jefferson Ins.*, 5 Bos. (N.Y.) 247 (1859); *McWilliams v. Farm & City Mut. Ins. Assn.*, 248 Iowa 233, 80 N.W. (2d) 320 (1957).

tenant,⁹ or mortgagee.¹⁰ When, in the principal case, the court in considering the interest of the insured looked to his property interest,¹¹ it took a sound view.¹² The new interest-limitation clause replaced two of the "moral hazard" provisions found in the old standard form.¹³ These provided for avoidance of the policy if the interest of the insured was other than that of unconditional and sole ownership or if the subject of the insurance was a building on ground not owned by the insured in fee simple. These clauses clearly dealt with the property interest of the insured. And the court correctly treated the new clause as having the effect of expanding the kinds of *property* interests covered.¹⁴ But the court refused to recognize the effect of the indemnity principle in the case of the holder of the fee.¹⁵ There are a few cases which do apply the indemnity principle to limit recovery regardless of the extent of the property interest and deny to the holder of the full legal title full recovery under a fire insurance policy upon the destruction of the insured property.¹⁶ In such cases recovery is limited to the amount of the financial loss sustained. And it seems proper that the nature of the property interest of the insured should not affect the applicability of the indemnity principle.¹⁷ Where there is an apparent conflict between the interest-limitation clause and the indemnity principle, as there may be in the case of insurance of a fee and as there is in the principal case, there is no sound reason to reject the indemnity principle.¹⁸

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⁹ See *Hartford Ins. v. Haas*, 87 Ky. 531, 9 S.W. 720 (1888); *Beekman v. Fulton & Montgomery Mut. Ins. Co.*, 66 App. Div. 72, 73 N.Y.S. 110 (1901); *Convis v. Citizens Mut. Fire Ins. Co.*, 127 Mich. 616, 86 N.W. 994 (1901); *Western Assur. v. Stoddard*, 88 Ala. 606, 7 S. 379 (1889); *Agricultural Ins. v. Yates*, 10 Ky. L. Rep. 984 (1889); *Andes Ins. Co. v. Fish*, 71 Ill. 620 (1874).

¹⁰ See *Kernochnan v. N.Y. Bowery Ins.*, 5 Duer (N.Y.) 1 (1855); *In re Clover Ridge Planting & Mfg. Co.*, 178 La. 302, 151 S. 212 (1933); *Saverese v. Ohio Farmers Ins. Co.*, 260 N.Y. 45, 182 N.E. 665 (1932).

¹¹ See principal case at 336.

¹² See PATTERSON, *ESSENTIALS OF INSURANCE LAW*, 2d ed., 141 (1957); Godfrey, "Some Limited Interest Problems," 15 *LAW AND CONTEMP. PROB.* 415 at 417 (1950); 48 *N.W. UNIV. L. REV.* 354 at 355 (1953); 1950 *INS. L.J.* 722 at 725; 20 *J. AMER. INS.* 10 (Sept. 1943).

¹³ See N.Y. Sess. Laws (1917) c. 440.

¹⁴ See principal case at 335.

¹⁵ *Id.* at 336.

¹⁶ *Ramsdell v. Ins. Co. of North America*, 197 Wis. 136, 221 N.W. 654 (1928); *Glens Falls Ins. Co. v. Sterling*, (Md. 1959) 148 A. (2d) 453 (building partially completed when destroyed by windstorm; no pecuniary loss suffered because contractor was obliged to submit completed building); *Edlin v. Security Ins. Co.*, (S.D. Ill. 1957) 160 F. Supp. 487; *Tauriello v. Aetna Ins. Co.*, 14 N.J. Super. 530, 82 A. (2d) 226 (1951).

¹⁷ See PATTERSON, *ESSENTIALS OF INSURANCE LAW*, 2d ed., 142 (1957); Bonbright and Katz, "Valuation of Property To Measure Fire Insurance Losses," 29 *COL. L. REV.* 857 at 888, 898-899 (1929).

¹⁸ See *Flint Frozen Food v. Firemen's Ins. Co.*, 8 N.J. 606, 86 A. (2d) 233 (1952) (full payment of debt owed was made after insured chattels were destroyed by fire).