



Current Articles 2004 – February

Fire Following

If you recall your Insurance Institute courses and particularly "Property 1", the text referred to the Fire section of the Insurance Act and explained that the Basic Fire policy included 3 perils: fire, lightning and explosion of natural, coal or manufactured gas. By the wording of the Act these perils, and particularly the peril of fire, would always apply even if the proximate cause was other than an insured peril. In other words a loss caused by a fire following a loss caused by a peril NOT covered by the policy, the fire damage would still be covered.

This "fire following" issue was raised several years ago in British Columbia when insurers tried to get the B.C. Insurance Act changed so that fire damage following an earthquake would be excluded. The B.C. courts refused this amendment and therefore damage caused by fire following the excluded peril of earthquake would be covered. Insurers, realizing that the likelihood of an earthquake in British Columbia was extremely high, introduced an earthquake Pool to fund such potential losses.

The IBC have set out how companies may adapt an IBC Advisory Wording to incorporate the absolute exclusions if the insurers feel that it would be necessary as a result, of among other things, reinsurance considerations. This will be the major cause for such exclusions as some reinsurers are calling for adoption of such limitations in coverage particularly for fire following nuclear.

The suggested IBC Absolute Exclusion is: *We do not insure loss or damage: caused directly or indirectly, in whole or in part, by **_____.* (** the specific peril will be inserted which could include nuclear, earthquake, terrorism.

Also in dealing with the Fire Part of the Insurance Act, this part establishes the Statutory Conditions which apply to all policies where a major peril is "fire". However a recent Supreme Court of Canada decision (KP Pacific v. Guardian et al) declared that this section of the Act, including Statutory Conditions does not apply to a multi-peril "all risk" policy and also would not apply to a case involving a "named perils" policy. The situation followed a denial by the insurer when the 1 year limitation for "Action" (Statutory Condition #12) against the insurer had been exceeded. It was declared that since the Statutory Conditions did not apply to a multi peril policy the 12 month limitation period did not apply.

Another case has created concern, "Churchland v. Gore", and applicable to a Homeowner's policy which covered 14 enumerated perils, including theft, i.e. a "named perils" policy. The Supreme Court reached the same conclusion that the Fire Part of the Insurance Act did not apply to this "named perils" policy.

What happened to our basic insurance principals? Do these decisions mean that the Statutory Conditions may not apply to any policy that includes additional perils other than "fire, lightning and explosion of natural, coal or manufactured gas?"

So much for Property 1! I am sure that there will be additional decisions and policy changes to "fix" these decisions made by these "generous judges". Insurers may opt to add Conditions to their "multi-peril" policies which may parallel the Statutory Conditions, but until that happens it is "wait and see".

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