

FIRE INSURANCE TO INCLUDE FIRES CAUSED DUE TO SMOKE, HEAT AND CHEMICAL REACTIONS

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ABSTRACT

A fire insurance is a contract between the buyer and the insurer, in which the insurer undertakes to pay for damage or loss to the insurer's property for a period of time. Fire insurance protects property against unexpected dangers by evaluating the worth of assets based on their market value. Accidents caused by fire, lightning, implosion, or explosion, among other things, are covered by fire insurance. Also, man-made hazards such as pipes bursting or overflowing, water sprinkler leaks are covered. For a person to claim fire insurance there must be an actual fire or an ignition and such fire must be incidental. As a result, if the property is destroyed due to heat or smoke without there being an ignition. It will not be covered under the term 'Fire insurance'. Most insurance companies provide no remedy for goods damaged due to excessive heat and smoke. Remedies are only provided for goods and property damaged due to the fire. This paper will further analyse the need to include damages caused due to smoke, Heat and Chemical Reaction under fire insurance in India with comparison with Fire insurance policies with other countries and attached case laws.

Keywords: Insurance, Ignition and Reaction

INTRODUCTION

There is a major loophole prevalent in Fire Insurance coverage policies which allow various insurance companies to escape the liability of paying insurance claims for goods which have been completely damaged due to smoke which have arisen from the fire. These companies will not pay for the damaged goods as these goods have been damaged due to the smoke and not the flames from the fire. At times Insurance companies follow the policies so strictly avoid any liabilities and compensation to any people who have died due smoke inhalation and not due to the fire itself.

Losses due to fire, on the other hand, indicate that there should be an actual ignition. Damage generated by smoke or from a chemical reactions or explosions will not be classified as fire. Losses resulting from fermentation, natural heating or spontaneous combustion, or any other heating are not includedⁱ.

In order for one to cover to claim coverage under fire Insurance it is necessary to satisfy two parts- 1. There must be an actual fire /Ignition and 2. This fire must be accidental. It is important to note here that the key words in the previous line is 'actual fire/ignition' meaning property and goods damaged due to Heat and Smoke will not be covered under Fire insurance. It is crucial for there to be an actual Ignition, damage of property or goods due to fire or heat will not be covered under such a policy.

REFORMS/ANALYSIS

Our reforms focus on the inclusion of smoke, heat and chemical action as a cause of fire. Fire Insurance should also provide coverage for damage caused due to smoke and heat. In order to remove any ambiguity as to what constitutes a fire we propose that there need not be an 'ignition' in order for it to be a fire. Many a time, fires have been started due to smoke this can be seen in the case *M/S. Mukesh & Company Tobacco vs New India Assurance Co. Ltd.* Where the Petitioner was engaged in the business and production of tobacco. He was denied insurance claims on the grounds that the goods had been burned down due to the smoke generated from the internal heat due to spontaneous combustion and not from an actual ignition. There was no evidence of an ignition fire and the petitioner was denied any claimsⁱⁱ. With our reforms such Industries can avail compensation as fire can be started because of a natural reaction and heat,

such fires can cause severe damage and is out of the control of the Insured. By increasing the coverage of Fire insurance we can protect the interest of the insured.

Our policy if implemented can protect industries which deal with spontaneous combustible substances, there are various industries in India involved in this field which would prove beneficial to Insurance Companies as well as the claimants. In the recent case of *Dalby Bio-Refinery Ltd v Allianz Australian Insurance Limited*ⁱⁱⁱ the Full Court of the Federal Court of Australia decided the meaning of the word 'spontaneous' with respect to peril exclusion. The court held, after viewing the whole policy, that the term spontaneous includes an aspect of self-generation and that suddenness does not have to be a factor. The court further ruled that "spontaneous heating" is heating generated internally and involves environmental factors providing oxygen, for a process of oxidation and heating. Spontaneous combustible substances are materials which can ignite without any flame, spark, heat, or other ignition source examples of these substances may include linseed oil, alkyd enamel resins, and drying oils. These substances are in common use in many industries and so it is essential that such insurance policies cover damages arising from spontaneous combustion. A key example of our reform can be seen in the policies implemented by Auto & General Insurance Company which provides coverage to building and property from damages caused from heat, ash, smoke or soot that is a result of a fire. In the wake of the catastrophic bushfires in many parts of Australia, some insurers such as Auto & General Insurance have added much-needed improvements to their fire cover.

Our reform would also be beneficial to homeowners, there are cases where people have died due to inhalation of smoke and insurance companies often escape liability as they do not consider it to be fire related damages as the damage was not caused by the flames itself. This is a very narrow and strict interpretation which does not benefit the policyholder. Auto & General Insurance have extended home and contents insurance to cover damage from heat, ash, smoke that is a result of a fire^{iv}, this was also done after the Australian wildfires. In our opinion, the same should be covered under a general homeowners insurance as well to allow insurance owners to claim damages in such situations

CONCLUSION

If our reform is implemented it would help various manufacturing industries by fulfilling the purpose of a fire insurance in itself. It can be seen that apart from a fire itself, the after effects of the same i.e. smoke and soot etc are equally hazardous to health and also causes a relative amount of damage to the goods in a particular case. This loophole is unfair to say the least and supports a very strict interpretation of fire related damages. As seen in the precedents discussed above, a fire can be caused due to various reasons other than an ignition, it can be something as minute as a faulty wiring or appliance so it is essential that these other possibilities be taken into consideration . A foundation principle of insurance law is that of indemnity and this is a way to practice and uphold the same. When insurance companies add smoke, chemical reaction and spontaneous combustions under their coverage it is beneficial to the masses.

ENDNOTES

ⁱ Sanjeev Sinha , Not everything that Burns is a fire: What you must know about Fire Insurance claims (2018)

ⁱⁱ IST 2017 C/SCA/6828/2009

ⁱⁱⁱ [2019] FCAFC 85

^{iv} Andy Kollmorgen ,How does your insurer define a fire (30 April 2021)
<https://www.choice.com.au/>