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Litigating Property Damage Claims

A. *Covered Perils/Causation*

When reviewing coverage under a policy, you must first determine what type of insurance policy the inured maintains and what types of risks that policy insures against. For the most part, risks are covered in two different ways. Either the policy insures on an all-risk basis or on a specified peril basis. In essence both of these policies differ dramatically as to their approach for extending coverage.

1. All Risk Coverage

An all-risk policy starts with the premise that all fortuitous and direct property damage losses are covered unless they are particularly excluded from coverage by unambiguous policy exclusions. The courts and legal encyclopedias have defined all-risk policy as follows: An all-risk policy covers all losses which are fortuitous. *David Danzeinsen Realty Corp. v. Continental Ins. Co.,* 170 A.D.2d 432, 565 N.Y.S.2d 233. An all risk policy covers "all fortuitous losses not resulting from misconduct or fraud. See 70 N.Y. Jur.2d, Insurance, §1434, at 294. A fortuitous event is defined in Insurance Law § 1101(a)(2) as "any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party." *A & B Enterprises Inc. v. Hartford Ins. Co.*, 198 A.D.2d 389, 604 N.Y.S.2d 166 (2 nd Dept. 1993). Further, under McKinney's Insurance Law § 1101(a)(2), the issue of fortuitousness under an all-risk policy may be decided as a matter of law.

2. Specified Perils Coverage

Under a specific perils or a named perils policy starts with the premise that no risk is included within the coverage of the policy unless coverage is expressly created for that particular loss. Named peril policies expressly exclude all risks not specifically included in the contract, 7 Couch on Ins. §101:7 (3d ed). Also note that coverage under either an all-risk policy or a named peril policy is limited only to direct physical loss and damage that arising from a covered peril.

3. Insurance Law § 3404

See attached exhibit "A".

4. Exclusions and Burden of Proofs

In addition to the nature of the risks covered, there is another significant difference between assessing the merits of a claim under an all risk and a named perils policy. That is the burden of proof on the issue of coverage.

In order to recover under an all-risk policy, the burden of proof lies on the insured to prove that the loss was fortuitous, and that it occurred to covered property. The insured need not prove the cause of the loss. *In re Balfour MacLaine Intern. Ltd*, 85 F.3d 68 (2 nd Cir. 1996). The inured's initial burden of proving a fortuitous loss must establish that the event could not have been expected to occur over a period of time. *Avid Equities, LTD. v. Commerce and Indus. Ins. Co.,* 225 A.D.2d 446, 639 N.Y.S.2d 352 (1 st Dept. 1996).

After establishing that an all risk policy exists and that the insured suffered a loss to covered property, the burden of proof shifts to the insurer to demonstrate that an exclusion contained in the policy defeats the claim. *Throgs Neck Bagels, Inc. v. GA Ins. Co. of NY,* 241 A.D.2d 66, 671 N.Y.S.2d 69 (1 st Dept. 1998). Some examples of specific exclusions found in an insurance policy include but are not limited to the following: Ordinance or law; Earth movement; Water damage; Power failure; Neglect; War; Nuclear hazard; and Intentional loss. It is also important to note that such exclusions will apply, "regardless of any other cause or event contributing concurrently or in any sequence to the loss." *Casey v. Gen. Accid. Ins. Co.*, 178 A.D.2d 1001 (4 th Dept. 1991).

Further, where the meaning of a policy provision is subject to more than one reasonable interpretation, it is resolved in favor of the policyholder. This is especially true where an exclusionary clause is subject to more than one interpretation. *Moneta Development Corp v. General Ins. Co. of Triesta and Venice,* 212 A.D.2d 428, 622 N.Y.S. 930, 931 (1 st Dept. 1995). *Venigalla v. Penn Mut. Ins. Co.*, 130 A.D.2d 974, 975, 515 N.Y.S.2d 939 (4 th Dept. 1987). However, policies must be considered as a whole and the meaning of one clause may be sharpened by reference to another. *Lilco v. Hartford Acc. & Indem. Co.*, 350 N.Y.S. 967 (1973).

B. *Damages*

1. Insurable Interest

Generally speaking, a person has an insurable interest in property whenever he would profit by or gain some advantage by its continued existence and suffer some loss or disadvantage by its destruction. If the insured would sustain such a loss, it is immaterial whether he has, or has not any title in, or lien upon or possession of the property itself. *Modern Music Shop v. Concordia Fire Ins. Co.*, 131 Misc. 305, 226 N.Y.S. 630. It is not necessary for the insured to actually be the owner of the property. The insured is covered, no matter what his interest is, up to the extent of his interest. However, if an insured is carrying insurance on property on which he has no interest, the policy is null and void.

In the well known case of *Alexandra Restaurant v. New Hampshire Insurance Co.*, 272 A.D. 346, 71 N.Y.S.2d 515, aff'd. Ct. of App. 297 N.Y. 858, the facts indicated that the lessee of a restaurant had installed improvements and betterments to the extent of $19,000 and carried a policy covering the said property. The landlord under the building policy, carried insurance covering the same items and it was conceded that the moment the fixtures and improvements and betterments were installed, they became part of the building and were covered under the

building policy. It was further shown that after the loss occurred, the landlordrestored the fixtures to the condition in which they existed prior to the loss. The tenant made claim against his underwriters to recover and the underwriters refused on the ground that the fixtures, having been repaired by the landlord, there was no loss actually sustained by the tenant.

However, the Appellate Division held that there was no substance to this argument; that the tenant had taken out a policy and paid a premium, it had an insurable interest in these fixtures and the mere fact that it recovered through an outside contract with the landlord, did not relieve the underwriters from liability.

As a practical matter, the underwriters have since obviated this double payment feature by inserting in the new forms a proviso that in the event the property is restored through some other source, that the tenant shall not be held to have sustained any loss.

2. Valuation of Damages

(a) Actual Cash Value

Policies of property insurance commonly contain a statement which limits the insured to recovering what he or she lost. Couch on Ins. 3d, § 175:10. The great majority of policies limit the insured's recovery to the "*actual cash value*" of the property at the time of the loss. " *Actual cash value*" is not defined by the insurance policy, nor is it defined by statute. According to the law of New York, there is no single determining measure for actual cash value. Rather all evidence of value must be considered by the trier of fact. *McAnarney v. Newark Fire Insurance Co.*, 247 N.Y. 176, 159 N.E. 902 (1928). That standard is commonly known as "the broad evidence rule."

In *McAnarney*, the leading case on the measure of damages in property insurance cases, the Court of Appeals held that,

Where insured buildings have been destroyed, the trier of fact may, and should, call to its aid, in order to effectuate complete indemnity, every fact and circumstance which would logically tend to the formation of a correct estimate of the loss. It may consider original cost and cost of reproduction; the opinions upon value given by qualified witnesses; the declarations of interest which have been made by the insured; the gainful uses to which the buildings might have been put; as well as any other fact reasonably tending to throw light upon the subject.

It is thus apparent that no rigid formula may be used to determine the "*actual cash value*". Rather, the concept of " *actual cash value*" is amorphous, and the trier of fact must consider all relevant factors, bearing in mind the purpose of the policy, which is to put the assured in as good a position as he would have been had no fire occurred. See *Fifty States Management Corp. v. Public Service Mut. Ins. Co.*, 324 N.Y.S.2d 345 (N.Y. Sup. Ct. 1971) and *Esperance v. Royal Globe Ins. Co.*, 512 N.Y.S.2d 313 (N.Y.C. Civ. Ct. 1987).

The court's adoption of the above-quoted formula was based upon its understanding that the goal of the policy is indemnification, the court noting that: "Indemnity is the basis and foundation of all insurance law." *Id.* Furthermore, the *McArnarney* court indicated that " *Actual Cash Value*" is not simply synonymous with market value.

(b) Replacement Cost Value

Replacement cost insurance protects the insured from having to bear the brunt from the fact that depreciation and the like have decreased the actual value of the property below the amount of money that would be required to replace the property as the time of loss. Such provisions address whether the insurer is essentially obligated to pay more than the actual cash value. *Couch on Insurance, 3d* § 176:56.

While a standard policy compensating an insured for the actual cash value of damaged or destroyed property makes the insured responsible for bearing the cash difference necessary to replace old property with new property, replacement cost insurance allows recovery for the actual value of property at the time of the loss, without deduction for deterioration, obsolescence, and similar depreciation of the property's value. *Couch on Insurance, 3d* § 176:56.

In *Eshan Realty Corp. v. Stuyvesant Insurance Co. of New York,* 202 N.Y.S.2d 899, *aff'd* 12 A.D.2d 818, 210 N.Y.S.2d 256 (1961), *aff'd* 11 N.Y.2d 707 (1962), the Court ruled that under an insurance policy limiting amount recoverable to *actual cash value* at time of loss but not exceeding amount it would cost to repair or replace property with material of like kind and quality, and insured suffering a partial building loss was entitled to replacement with new materials without any deduction for depreciation.

The rationale behind this case is that if depreciation is deducted from the cost to repair the partially damaged property, the insured will not be able to completely repair his property, thus, falling short of being fully indemnified as required under a standard fire insurance policy. Therefore, when there is a partial loss, replacement cost less depreciation is an entirely inadequate formula. The concept of depreciation is better suited to property as a whole. Thus, even in an actual cash value policy, there is an argument that in order that the insured be completely indemnified, depreciation should not be deducted from the cost of the materials necessary to repair the damaged property.

C. Silverstein case: Binder vs. Policy

The leaseholder for the World Trade Center properties, which were destroyed in a terrorist attack by two hijacked airplanes, has sued the property insurers to recover for the losses incurred. The insured's main contention in this case is that the leveling of the two towers by two hijacked planes on September 11, 2001 amounted to two occurrences for insurance purposes. However, the United States District Court for the Southern District of New York by District Judge Martin in *SR International Business Insurance Co. v. World Trade Center Properties*

LLC, --- F.Supp.2d --, 2002 WL31118331 (S.D.N.Y. 2002) held that the destruction of the buildings was a single occurrence under the binder's definition and granted partial summary judgment for three insurers.

The District Court stated, "Under New York law, the terms of an insurance policy are interpreted from the vantage point of the average person on the street." *Id. at 12* (citing *Nat'l Screen Serv. Corp. v. United States Fidelity & Guaranty Co.*, 364 F.2d 275, 278 (2 nd Cir.), cert. Denied, 385 U.S. 958, 87 S.Ct. 394, 17 L.Ed.2d 304 (1966)). The court further stated, "Complex comprehensive general liability policies issued to large corporate manufacturers … should be viewed as if by a reasonably intelligent business person who is familiar with the agreement and with the industry in question." *Id.* They concluded that an "ordinary businessman would have no doubt that when two hijacked planes hit the Twin Towers in a sixteen minute period, the total destruction of the World Trade Center resulted from one series of similar causes" as the WilProp form defines as an occurrence. *Id*.

The courts of New York have long adhered to the principle that, absent peculiar policy language, events stemming from a single cause constitute a single "loss" or "occurrence" for insurance purposes. See, e.g., Champion Int'l Corp. v. Continental Cas. Co., 564 F. 2d 502 (2d Cir. 1976) (Assured's multiple sales, to numerous unrelated buyers, of defective vinyl paneling used in some 1400 vehicles constituted one occurrence for deductible purposes under product liability policy); Uniroyal, Inc. v. Home Ins. Co., 707 F. Supp. 1368, 1383 (E.D.N.Y. 1988) (110 deliveries of Agent Orange to military over seventeen months under three separate contracts constituted single occurrence for purposes of calculating deductible); Michaels v. Mutual Marine Office Inc., 472 F. Supp. 26 (S.D.N.Y. 1979) (for purposes of deductible of $10,000 for any "one loss, accident, or disaster," approximately 200 holes and dents in ship's deck caused by repeated drops of grab bucket over several days during unloading of heavy scrap steel constituted single loss under New York law, where same continuous negligent act was cause of all damage); Aguirre v. City of New York, 214 A. D. 2d 692, 693, 625 N.Y.S. 2d 597, 590 (2nd Dept. 1995) (windblown paint damage to forty cars caused by defendant's negligent application of spray paint to nearby vessel was single occurrence); Bethpage Water District v. S. Zara & Sons Contracting Co., Inc., 154 A. D. 2d 637, 638, 546 N.Y.S. 2d 645 (2nd Dept. 1989) (damage to water mains in more than 250 areas caused by negligent backfilling of sewer trenches over two years was single occurrence).

The same rule is observed in the majority of jurisdictions. In Appalachian Insurance Co. v. Liberty Mutual Insurance Co., 676 F.2d 56, 61 (3d Cir.1982), the Third Circuit held,

> The general rule is that an occurrence is determined by the cause or causes of the resulting injury. "(T)he majority of jurisdictions employs the 'cause theory'. (Citations omitted.) Using this analysis, the court asks if '(t)here was but one proximate, uninterrupted, and continuing cause which resulted in all of the injuries and damage.'" Bartholomew v. Insurance Co. of N. America, 502 F. Supp. 246, 251 (D.R.I.1980), aff'd. sub nom. Bartholomew v. Appalachian Ins. Co., 655 F. 2d 27 (1st Cir. 1981), citing Olsen v. Moore, 56 Wis.2d 340, 202 N.W.2d

236 (1972); Transport Ins. Co. v. Lee Way Motor Freight, Inc., 487 F. Supp. 1325, 1330 (N.D.Tex.1980); contra, Elston-Richards Storage Co. v. Indemnity Ins. Co. of N. America, 194 F. Supp. 673, 682 (W.D.Mich.1960), aff'd., 291 F.2d 627 (6th Cir. 1961).

676 F. 2d at 61.

It therefore found that multiple and various instances of sexual discrimination by the assured company over some six years constituted a single occurrence, because they all resulted from a single policy decision made by management.

Further, the District Court in *SR International Business Insurance Co.* explained how the Wilprop form that was incorporated in the insurance binders of the insurance carriers was binding even though there were negotiations still occurring as to the final version of the insurance policy.

The court stated, "An insurance binder is a unique type of contract, while not all of the terms of the insurance contract are set forth . . . a binder is a present contract of insurance." *Id. at 1.* The District Court further stated that the terms of a binder are not left to future negotiations. As the New York Court of Appeals explained in *Employers Commercial Union Ins. Co. v. Firemen's Fund Ins. Co.*, 45 N.Y.2d 608, 612-13, 412 N.Y.S.2d 121, 384 N.E.2d 668 (1978):

It is common and necessary practice in the world of insurance, where speed often is of the essence, for the agent to use this quick and informal device to record the giving of protection pending the execution and delivery of a more conventionally detailed policy of insurance. Courts, recognizing that the cryptic nature of binders is born of necessity and that many policy clauses are either stereotypes or mandated by public regulation, are not loath to infer that conditions and limitations usual to the contemplated coverage were intended to be part of the parties' contract during the binder period.

The court further explained that the law of New York with binders is that it does not look to the negotiations of the parties to see what terms might have transpired into a formal policy, but rather, the binder itself becomes in effect the same as a regular policy. (See *Seiderman v. Herman Perla Inc.*, 268 N.Y. 188, 190, 197 N.E. 190 (1935)). The court noted "to consider a binder merely a preliminary agreement could deprive the insured of 'protection pending the execution and delivery of a more conventionally detailed policy of insurance." *Id*. at 2.

II. BUSINESS INTERRUPTION CLAIM (See Attached Exhibit "B")

Business interruption insurance (a/k/a business income insurance) is typically purchased as part of a commercial property insurance program. Business interruption insurance is designed to protect a business from a loss after it has been partially or wholly disabled. Typically, under business interruption coverage, the insurance policy, among other things, covers the actual loss sustained by the insured during a period of interruption directly resulting from physical loss or

damage of the type insured against by the policy, to property not otherwise excluded by the policy, utilized by the insured and located as described elsewhere in the policy.

The typical coverage promise for business interruption insurance provides that the insurance company:

Will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration." The suspension must be caused by direct physical loss of or damage to property . . . . The loss or damaged must be caused by or a result from a Covered Cause of Loss.

Typically, "Business Income" is defined to include "Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred" and "Continuing normal operating expenses incurred, including payroll."

Additionally, "Period of Restoration" is typically defined to begin at the time of "direct physical loss or damage" and end on the earlier of "the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality" or "the date when business is resumed at a new permanent location."

However, in order to recover business income a necessary element to an insurance policy is that the loss of business income is attributable to a physical loss or damage. (See *523 Madison Avenue Gourmet Foods, Inc. v. Finlandia Center, Inc.*, 96 N.Y.2d 280, 727 N.Y.S.2d 49 (2001); *National Children's Expositions Corp. v. Anchor Ins. Co.*, 279 F.2d 428 (2 nd Cir. 1960)).

Even though, the loss of business income is not attributable to a physical loss or damage, the insured may be able to recover if it falls within the additional coverage of civil authority. In pertinent part it states:

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

In other words, the business interruption claim is caused by the physical loss or damage to another's property but it affects the insured because that physical loss or damage prohibits access to his premises causing a suspension of the insured's business operations. For example, if a fire physically damaged a property up the street from the insured, and the entire street was closed to the public until the damaged building in danger of collapse could be demolished then the insured would be entitled to business income for that period.

In addition to Business Income an insured can collect for Extended Business Income. Generally, there are two types of Extended Business Income: 1) Business Income Other than Rental Value and 2) Rental Value. In pertinent part it states:

(1) Business Income Other Than "Rental Value"

If the necessary suspension of your "operations" produces Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and operations are resumed; and

(b) Ends on the earlier of:

(i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damaged had occurred; or

(ii) 30 consecutive days after the date determined in (1)(a) above.

(2) Rental Value

If the necessary suspension of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

(a) Begins on the date property is actually repaired, rebuilt or replaced and tenant-ability is restored; and

(b) Ends on the earlier of:

(i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damaged had occurred; or

a. 30 consecutive days after the date determined in (2)(a) above.

In summary, business income coverage is designed to pay the profits and unavoidable continuing expenses caused by an interruption of the policyholder's business. Business Income coverage protects policyholders who have to suspend production or business due to property damage. It also reimburses policyholders for expenses that continue despite the cessation of business, such as salaries, certain utility charges, and insurance premiums.

III. PRESENTING THE CLAIM

A. Process

1. Notice of Claim

Virtually every insurance policy has a provision requiring that the insured give timely notice of an occurrence which may result in a claim. In the usual property policy the notice requirement is expressed as a condition precedent and generally requires the insured to provide immediate notice of claim to the insurer of circumstances which may give rise to a claim.

The basic Commercial Property form provides:

Duties in the Event of Loss or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

(1) Notify the police if a law may have been broken.

(2) Give us prompt notice of the loss or damage. Include a description of the property involved.

(3) As soon as possible, give us a description of how, when and where the loss or damage occurred.

The New York Insurance Law Section 3407(b) provides:

If any contract of insurance issued or delivered in this state, covering Loss of or damage to property by fire provides that the insured give immediate notice, in writing, to the insurer, of any loss or damage, it shall be sufficient compliance if immediate written notice is given, by or on behalf of the insured, to any licensed agent of the insurer in this state, with particulars sufficient to identify the insured and the property insured under such contract and to notify the insurer of the time and place of such loss or damage.

Most courts have interpreted notice provisions such as this to require that notice be given within a reasonable time under the circumstances. Generally, notice must be in writing and delivered to the insurer or its agent. A telephone call to the broker will not suffice.

The Appellate Division, First Department succinctly set forth the purpose and effect of notice of claim provisions in *Power Authority v. Westinghouse Electric Corp.*, 117 A.D.2d 336, 502 N.Y.S.2d 420 (1st Dept. 1986).

An insurer's obligation to cover its insured's loss is not triggered unless the insured gives timely notice of loss in accordance with the terms of the insurance contract. *Security Mutual Ins. Co. of New York v. Acker-Fitzsimmons Corp.*, 31 N.Y.2d 436, 340 N.Y.S.2d 902, 293 N.E.2d 76 (1972); *Allstate Ins. Co. v. Furman*, 84 A.D.2d 29, 445 N.Y.S.2d 236 (2nd Dept. 1981), *aff'd* 58 N.Y.2d 613. 458 N.Y.S.2d 532, 444 N.E.2d 996 (1982). Without timely notice an insurer may be deprived of the opportunity to investigate a claim and is rendered vulnerable to fraud. Late notification may also prevent the insurer from providing a sufficient reserve fund. (See *Utica Mutual Fire Ins. V. Fireman's Fund Ins. Co.,*748 F.2d 118, 121 (2nd Cir. 1984)). For these reasons

"the right of an insurer to receive notice has been held to be so fundamental that the insurer need show no prejudice to be able to disclaim liability on the basis [citations omitted].

The Court in *Heydt Contracting v. American Home*, 146 A.D.2d 497, 536 N.Y.S.2d 770 (1st Dept. 1989) held that the obligation to give notice is a condition precedent to coverage and a four month delay was not excused by the insured's good faith belief that another party would pay for the loss.

New York is the minority in that it is not necessary to show prejudice by delay in order for a claim to be disclaimed by the insurance carrier. *Power Authority v. Westinghouse Electric Corp.*, 117 A.D.2d 336, 502 N.Y.S.2d 420 (1st Dept. 1986).

2. Proof of Loss Requirements

The basic Commercial Property form provides in relevant part:

3. Duties in the Event of Loss or Damage:

a. You must see that the following are done in the event of loss or damage to Covered Property:

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

Policies of insurance typically provide that a loss is not payable until 30 or 60 days after receipt of a duly executed proof of loss setting forth specified information.

4. Loss Payment

We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if your have complied with all of the terms of this Coverage Part and:

(1) We have reached agreement with you on the amount of loss; or

(2) An appraisal award has been made.

New York has enacted a statute which provides that the insured is not required to submit a proof of loss unless demanded by the insurer.

New York Insurance Law Section 3407 provides:

(a) The failure of any person insured against loss or damage to property under any contract of insurance, issued or delivered in this state or covering property located in this state, to furnish proofs of loss to the insurer or insurers as specified in such contract shall not invalidate or

diminish any claim of such person insured under such contract, unless such insurer or insurers shall, after such loss or damage, give to such insured a written notice that it or they desire proofs of loss to be furnished by such insured to such insurer or insurers on a suitable blank form or forms. If the insured shall furnish proofs of loss within sixty days after the receipt of such notice and such form or forms, or within any longer period of time specified in such notice, such insured shall be deemed to have complied with the provisions of such contract of insurance relating to the time within which proofs of loss are required. Neither the giving of such notice nor thefurnishing of such blank form or forms by the insurer shall constitute a waiver of any stipulation or condition of such contract, or an admission of liability thereunder.

The failure to submit a proof of loss in response to a proper demand is a breach of a condition precedent and an absolute defense to coverage under the policy.

In *Igbara Realty Co. v. N.Y.P.I.U.*, 63 N.Y.2d 741 (1984), the Court of Appeals affirmed the general principle that the failure to submit duly executed proof of loss within 60 days following a proper demand is an absolute bar to coverage. The Court of Appeals held that an insured served with a demand to file proofs of loss prior to commencement of an action, couldn't cut off the defense by bringing the action which requires the insurer to answer prior to the expiration of the time period for filing the proof of loss. The court noted that if the insurer had answered after the 60-day period and failed to raise it in its defense then the issue of waiver would arise.

Further, the Court of Appeals in *Maleh v. N.Y.P.I.U.*, 64 N.Y.2d 613, 485 N.Y.S.2d 32 (1984) stated that "plaintiff's submission of documentation and participation in oral examination did not discharge their obligation to submit sworn proofs of loss within 60 days after the insurer's demand." Finally, on a technical note, the sixty-day requirement entails only mailing by the insured, not receipt by the insurer within that time frame. *Ball v. Allstate Ins.*, 81 N.Y.2d 22 (1993).

Another issue, which often arises, is the calculation of interest in the event of a failure of the insurer to pay the claim. The New York Court of Appeals has held that a claim under an insurance policy does not accrue until 60 days after the submission of a duly executed proof of loss, and that therefore, interest begins to run from that day onward.

In *Farmland Market v. North River Insurance,* 481 N.Y.S.2d 80, aff'd 64 N.Y.2d 1114 (1985), the Court held that interest was not recoverable from the date of loss but commenced 60 days after the proof of loss was submitted by the insured. The policy, in conformance with the New York Insurance Law, provided that payment would be made 60 days after submission of the proof. The Court found that by its express terms the insurer was not liable until 60 days after the proof was submitted and therefore interest ran from that date. The Court noted "interest upon a loss payable under a fire insurance policy is not recoverable before the payment of principle is due pursuant to the policy." *Id.*