

Short paper on an interesting case of damage

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Construction of residential buildings: fire loss.

This paper focuses on:

- implementations of Endorsement 112 (Munich Re) "Fire fighting facilities"
- indemnity sum including/excluding VAT
- negligence as a matter of insured loss

1. THE PROJECT

The insured project was the construction of residential village consisting of 9 wooden frame houses. Project included contract works, delivery of materials, equipment as well as landscaping works within the boundaries of the site. The project was in its final stage at the moment of loss event.

2. THE COVERAGE

Insurance coverage was provided according to the conditions of CAR policy (Munich Re form), Endorsements 014 "Terrorism exclusion" and 112 "Fire fighting facilities". Sum insured was around 4.9 Mio USD

3. THE LOSS

a) Fire circumstances

At the date of the event works were carried out in the part of a concrete floor in the basement, performed by subcontractors.

Contractors and subcontractors were liable for the compliance with the fire protection regulations. There was an **instruction for the site fire protection and prevention approved by the Principal** that included the following:

- 1) fire fighting means:
 - 4 fully equipped fire boards
 - a fire-extinguisher for every house
- 2) smoking places must be kept out of the site territory
- 3) the site is to be patrolled **every hour** during the night
- 4) combustible materials and goods to be kept in warehouses at a distance of 25 meters from houses under construction

Due to running "wet processes" there was a necessity of maintaining temperature above 15°C at night time. That was done by usage of fan heaters. According to the instructions of use, the **fan heaters can work self-supporting**, because of proper safety protection. The fire on the building site began at 04:00 a.m. approximately, on Tuesday, 28 of February 2006, in one of the wooden houses under construction. Flames spread to a nearby house due to the wind.

b) Cause of fire

Experts concluded the following - "the fire began due to thermal processes linked with the use of the mobile fan air-heater".

c) Fire spread/cessation

The fire started, obviously, in the basement area, where the fan heater system was installed. The fire spread quickly through the area due to the neighboring flammable materials. Then, fire propagated through inside partitions and finishings and jumped to the flammable materials of interior decoration and equipment.

According to statements of witnesses, the staff and security people could neither extinguish the fire nor stop its spread, by the time the fire was detected.

When fire-engines arrived two houses were fully burning.

d) Damaged property

It was determined, that wooden parts of both houses were fully destroyed after the fire. Only concrete walls in the basement part of buildings were partly-preserved. Although the survey revealed that some parts of concrete constructions were significantly damaged.

e) Claim

The Insured made a claim of about 420 000 USD, including VAT.

4. EXPERT COMMENTS:

Loss adjusters verified the claim and concurred with several important notices:

- a) Initially, the design cost of 25 000 USD was included by the Insured in sum insured and, hence, in the sum of the claim. The claim was adjusted because project and design documents were not damaged during the fire and can be used during the reconstruction works.
- b) The sum of the claim had to be decreased by the sum of VAT, because the sum of VAT paid by the Principle to the Contractor and so on, is to be refunded (and concordantly reimbursed by the Insurer) only after issuing the Act of completion (p. 6 art. 171 of the Russian Federation Tax Code). Experts didn't have any formal basis to recommend a total sum payment (including VAT) since no Act of completion had been issued. However the VAT sum has to be reserved.
- c) Principals' site fire protection and prevention instructions (hereinafter - FPPI) were more severe than the requirements of Endorsement 112. The representatives of the Insured had fulfilled all the requirements of this Endorsement but not all the requirements of FPPI. They could have been acting more carefully if FPPI had a priority. So in this case the Insurer could have considered declining the claim due to the wilful negligence on part of the Insured. However this would, most probably, not be allowed by the Court.

The claim was settled at an amount of approximately 324 000 USD (420 000 USD as original claim less design costs and VAT) and VAT sum was reserved.

CONCLUSION:

Apart from VAT, the design cost issue and a "Beneficiary question" of Russian market, which may be worth another short paper, the main conclusion of the paper is that underwriters have to study all the safety instructions and related documents of the Insured very carefully. The contract conditions / instructions and documents must be implemented in the policy conditions as requirements in case they are more severe than standard endorsements. The latter must be used if minimum requirements are not established by the Insured.

PHOTOS: 1. fan heater. 2/3 damaged property

1.



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