



# safeguards

HELPING INSURERS PROTECT THEIR CLIENTS

05.04.06

## No Coverage for an Insured Who Fails to Properly Maintain Sprinkler System

By Jennifer L. Smith

In *Burmac Metal Finishing Company v. West Bend Mutual Insurance Company*, an Illinois appellate court upheld a jury verdict finding that no commercial coverage existed after commercial property was damaged by a fire, when the insured failed to maintain its sprinkler system. The jury had found that the insured failed to substantially perform in compliance with a policy rider requiring it to maintain its automatic sprinkler system and returned a verdict for the insurer.

Burmac Metal Finishing Company's ("Burmac") building in Rockford sustained fire damage after a natural gas explosion occurred on March 29, 1997. The building was insured through West Bend Mutual Insurance Company ("West Bend Mutual"), and had been since 1990. Burmac sought coverage for the fire damage, and West Bend Mutual denied it, claiming that Burmac failed to satisfy a condition precedent under the insurance policy when it failed to properly maintain its automatic sprinkler system, which was required by the protective safeguards endorsement to the policy. Burmac then filed a complaint for declaratory judgment against West Bend Mutual.

In the course of discovery, it was shown that Burmac had removed sprinkler heads in order to stop them from automatically activating in an area near a high-heat oven. Although testimony varied, anywhere from 3 to 19 sprinklers out of the 600 in the building had been removed and plugged. At least one of these plugged sprinkler heads was in the area of the oven, the location which the fire had allegedly started. Although these sprinkler heads had been capped off sometime in 1996, neither West Bend Mutual nor the sprinkler system security company had been notified of the changes to the automatic sprinkler system. In addition, the sprinkler

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There are several key coverage issues addressed by the court in this case. First, the appellate court decided that a jury should determine whether or not an insured substantially complied with a condition precedent under an insurance policy's protective safeguards endorsement. Secondly, the appellate court held that an insurer is allowed to assume, absent any information to the contrary, that an insured will continue to comply with a condition precedent at the time of a policy renewal. Lastly, the court decided that a commercial insured that is familiar with insurance policies must act in good faith and notify an insurer of any substantial changes in its ability to comply with a policy, or risk losing its coverage.

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system in the building consisted of four major sections and the water flow to each section was controlled by a separate “post-indicator valve.” If this valve is in the closed position, there is no water flow to that section of the sprinkler system. At the last sprinkler security check, it was noted that the valve controlling the water supply to the section containing the oven was in the closed position.

The trial court granted West Bend Mutual’s motion for summary judgment, finding that Burmac did not comply with the conditions of the policy and therefore was not entitled to coverage. Burmac appealed and the appellate court held that the question of whether Burmac substantially complied with the condition precedent of maintaining the sprinkler system was a question of fact that precluded granting summary judgment. The case was then remanded to a jury trial on the sole question of whether or not Burmac substantially complied. After completion of the trial, the jury returned a general verdict in favor of West Bend Mutual, and answered special interrogatories finding that the existence of three or more capped sprinkler heads at the time of the loss constituted a failure to substantially perform the condition of insurance that required Burmac to maintain its automatic sprinkler system. The trial court then granted West Bend Mutual’s motion for bill of costs and awarded it \$3,632. Burmac appealed again, alleging the court erred by denying its motion for judgment notwithstanding the verdict and by denying its motion for a new trial.

For its first argument, Burmac alleged that it removed and capped the sprinkler heads prior to the effective date of its policy renewal, and that coverage should be afforded under the renewed policy. The appellate court found that the jury could have reasonably believed that some of the sprinkler heads were capped after the effective date. In addition, the court found that Burmac never alleged that it told West Bend Mutual about the capping, and there was no evidence that West Bend Mutual knew or should have known that the sprinkler heads had been disabled before the policy was renewed. By operation of law, West Bend Mutual was entitled to assume that the automatic sprinkler system in place at the previous renewals was in place for the final renewal and at the date of loss.

In addition, the court reiterated that parties to an insurance contract should act in good faith. Burmac was not a lay person but a company who was familiar with the terms of the previous insurance policies and knew that an alteration to the sprinkler system might affect the acceptance or continuation of the risk. The court found it ridiculous to think that West Bend Mutual would have renewed the policy without modifying its terms if it had known about the capping, or would have at least had the chance to determine whether the insured met its underwriting guidelines.

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