

SPECIAL REPORT

PROTECTIVE SAFEGUARDS CLAUSES

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DO NOT BE FOOLED. THE POLICYHOLDER IS NOT THE ONE BEING PROTECTED BY A “PROTECTIVE SAFEGUARDS PROVISION” AND IT COULD COST YOU MILLIONS OF DOLLARS IN UNCOVERED LOSSES.

A protective safeguards provision allows the insurance company to deny coverage if certain conditions are not satisfied at the time of loss.

For example, a reading of this form tells us that if the fire sprinkler system does not operate properly, there is no coverage. If the burglar alarm system does not go off, there is no coverage. If the smoke detectors do not work, there is no coverage, and so on.

A common protective safeguards provision that is included in most property policies is included below.

Protective Safeguards:

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

- In *Burmac Metal Finishing Co. v. West Bend Mut. Ins. Co.*,¹ the insurance company denied coverage for damage caused to the insured's building after a natural gas explosion based on the insured's failure to properly maintain its automatic sprinkler system as required by the protective safeguards endorsement to the policy. This case is attached.
- In other cases, insurance companies have attempted to deny coverage if the water valve for the fire suppression valve was not chained in the full open position prior to the loss.
- We recently have seen impaired sprinkler systems caused by uncorrected maintenance problems.
- Microbiologically influenced corrosion (MIC) has been an emerging problem for owners of buildings with sprinkler fire protection.

In one recent case, a fire protection contractor determined that due to MIC there was an 80% chance of the sprinkler system failing at the time of a fire.

In another example, a nursing home's sprinkler heads failed to release water during a fire due to the pipes being totally plugged with thick rust deposits from MIC.

- Failure to have a flow alarm connected to a central station reporting source can be another example of a failure to maintain in good order the sprinkler or alarm system.
- What is important here, with or without this protective safeguard warranty, is to be sure that you have an annual comprehensive inspection performed of your entire automatic sprinkler and alarm systems by an experienced fire sprinkler system contractor and that you

¹ 356 Ill. App. 3d 471, 292 Ill. Dec. 235, 825 N.E.2d 1246 (2d Dist. 2005).

maintain records supporting compliance with any recommendation that it may make.

This can also be supported by frequent mid-year inspections of your sprinkler system by your employees and that you have documented checklists and inspection forms showing these inspections.

Last, and this is critical –

AVOID INSURANCE CARRIERS THAT INSIST ON USING THIS AMBIGUOUS AND POORLY WRITTEN ENDORSEMENT THAT, IF ENFORCED, COULD COST YOU MILLIONS OF DOLLARS BECAUSE OF A CLAIM THAT IS DENIED.

IF THERE IS NO INSURANCE CARRIER THAT WILL WRITE YOUR PROPERTY POLICY WITHOUT THIS PROTECTIVE SAFEGUARDS PROVISION, BE SURE THAT YOU CAN PROVE THAT YOUR SYSTEM WAS, IN FACT, IN GOOD WORKING ORDER.

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