



Saving Lives, Protecting Property.

Lack of UL300 System Negates Restaurant's Fire Insurance Policy

A Massachusetts restaurant owner who failed to upgrade his obsolete dry chemical fire suppression system was not entitled to collect insurance money after a massive fire six years ago — and must return \$15,000 advanced to him by his insurer, an appeals court judge ruled.

At issue is an exclusion in a commercial lines policy issued to the French King restaurant in Erving, which required the restaurant owner to maintain a fire suppression system. The insurer — Interstate Fire & Casualty Co., a subsidiary of Fireman's Fund — claimed that the fire-suppression system installed at the restaurant was obsolete, and therefore triggered the exclusion and did not require them to indemnify the restaurant.

Lawyers for Interstate argued that the restaurant owners and managers knew the system was obsolete and failed to correct problems that might have averted a fire that caused substantial damage to the restaurant in October 2005, when the system failed to function properly.

The dry chemical fire-suppression system had been installed in the restaurant since before 1974. In 2000, the manufacturer recommended that all dry chemical systems be upgraded to UL300 wet chemical systems. Two years later, it ceased supporting, inspecting and repairing dry chemical systems.

In 2004, the state's Executive office of Public Safety issued a bulletin saying that dry chemical systems were no longer supported by manufacturers, and were no longer in compliance with National Fire Protection Association codes — a requirement in the Bay State.

In 2003, the company hired by French King to service its dry chemical system told the restaurant owners that the system was no longer in compliance and needed upgrading to a wet chemical system — an estimated cost of \$3,250. A year later, a building inspector told the restaurant it could no longer issue an inspection certificate because of the obsolete dry chemical system.

A previous insurer — MassWest — had non-renewed the restaurant's policy in 2002 because its system was out of date.

Following the fire, Interstate initially advanced the restaurant a \$15,000 payment. But following an investigation of the fire suppression system, it declined to pay the claim and sought to recover the money it had paid.

French King sued the insurer and two superior court judges ruled in favor of the insurance company — finding that the system was not properly maintained and that the money should be repaid. Appeals Court Justice Francis Fecteau affirmed those rulings.

“There is nothing in the record that indicates that this was an unconditional advancement, especially because the (insurer) had not commenced investigating why the fire suppression system did not work,” he wrote in his opinion on the case. “There was evidence that the plaintiff did, in fact, know that there could be potential issues with the system” thus Interstate “was entitled to reimbursement of \$15,000.”

* * * * *

Source: Insurance Journal. The court opinion (*French King Realty Inc. v. Interstate Fire and Casualty Co.*) is at www.socialaw.com/slip.htm?cid=20724&sid=119

July 2011