

Apportionment of Losses Between "Blanket" and "Specific" Insurance Policies

A Restatement of the "Sum Insured" Theory

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SEVERAL years ago, under the name of the "sum insured theory," the authors proposed a new solution of a long-standing problem of insurance law, generally considered as "hopelessly confused" and repugnant to any rule of universal and unvarying application.¹ A recent interesting, though, it is believed, partly erroneous, discussion of that proposal² may justify a reappraisal and restatement of the authors' theory.

The underlying factual situation is that of a "compound nonconcurrency" between blanket and specific fire insurance policies. A manufacturer has insured his factory, consisting of building, stock and machinery, with three policies covering the several items with \$1000 each. In addition, he has taken out what—in relation to those three separate "specific" policies—is a "blanket" policy of insurance, covering the entire undivided factory with \$3,000. Machinery, stock and building are damaged by a fire, resulting in a loss of \$1,600 on each item. If two or more insurance companies are involved, the distribution of these losses among the several policies raises questions which are generally considered insolvable.

Where courts have not preferred to rely on the "facts of the particular case," they have applied widely differing "rules" of apportionment, all of which have, at one time or another, been rejected as

¹ A. Ehrenzweig, Sr. and A. Ehrenzweig, Jr., *Apportionment of Losses between "Blanket" and "Specific" Insurance Policies, A "Sum Insured" Theory* (1943) 43 COL. L. REV. 825. The following additional references were proffered by Professor Robert Riegel of the University of Buffalo: DANIELS, APPORTIONMENT AND CONTRIBUTION (Rough Notes Co. 1904); HALL, INSURANCE ADJUSTMENTS (Rough Notes Co. 1916); HORE, APPORTIONMENT OF FIRE LOSSES (1911); RICE, *Contribution in Fire Losses in FIRE UNDERWRITERS' ASSOCIATION OF THE NORTHWEST* (1880); THORNTON, *The Kinne Rule in FIRE INSURANCE SOCIETY OF SAN FRANCISCO* 8-15, (1910-11); THORNTON, *Contribution and Apportionment in LECTURES TO ASSOCIATE MEMBERS, FIRE UNDERWRITERS' ASSOCIATION OF THE PACIFIC* (1915).

² Drechsler, *Apportionment or Contribution as between Specific and Blanket Insurance Policies* (1947) 169 A. L. R. 387.

arbitrary. Under the "General Reduction" rules the blanket policy contributes proportionately with each specific policy, successively on each item, until exhausted. The item to be first apportioned is either that with the largest loss (Connecticut rule and its English variant³), or that appearing at the top of the policy schedule (Chicago rule), or that item whose apportionment will result in the smallest payment for the blanket policy (Western rule). Under other rules the blanket policy sum may be divided among the several specific items in proportion to their values (Reading, Massachusetts and Vermont rule) or in proportion to the several losses (Kinne,⁴ Finn, Griswold and Rice rules).⁵

General recognition of any solution could probably be attained only by including a pertinent clause in the standard policy.⁶ In the absence of such a clause progress can be achieved only by devising a distribution which is both equitable and theoretically sound. The authors have, in accordance with a significant dictum in a leading case,⁷ proposed a computation which they believe satisfies those requirements. Since each loss is covered by the entire "sum insured" of the blanket policy, that policy under a "first apportionment" should, in the above example, pay on each loss three times as much as each specific policy, *i.e.*, three-fourths of \$1,600 or \$1,200. However, since a total payment of \$3,600 would exceed the face amount of the blanket policy by \$600, a "second apportionment" must reduce that payment by \$200 on each loss, while a "third apportionment" must correspondingly increase to \$600 the payment on each specific policy.

The authors have chosen to designate their proposal as a "sum insured theory" of apportionment, because the sums insured by the

³ Apparently because it is "difficult to understand" why one should not "commence at the other end" (*Royall v. Hartford Fire Ins. Co.* (1910) 158 Ill. App. 463, 466), this rule first starts with the item with the largest loss, then with that with the smallest loss, and then takes the mean of the two apportionments.

⁴ For an analysis of this rule which "has received more approval than any other," see RIEGEL AND MILLER, *INSURANCE* 462 (3d ed. 1947).

⁵ For a fuller description of these computations and additional references, see Ehrenzweig, *supra* note 1.

⁶ The Texas policy of 1944, apparently the only standard policy referring to the present problem, has been severely criticized. See RIEGEL AND MILLER, *INSURANCE* 459, 461. Under that rule the blanket policy will "pay only for any actual loss sustained over the amount of specific insurance." On this "rather peculiar" solution [VANCE, *LAW OF INSURANCE* 763 (2d ed. 1930)] see Ehrenzweig, *supra* note 1, at 828, n. 15.

⁷ "The whole amount insured [by a blanket policy] attaches and invariably attaches to each item thereunder." *Schmaelzle v. London & Lancashire Fire Ins. Co.* (1903) 75 Conn. 397, 402, 53 Atl. 863, 865.

policies concerned is the deciding factor in the proposed computation. In the recent discussion previously referred to, this theory has been adopted under the new name of a "full risk theory."¹⁸ The authors wish to call attention to the danger that, by eliminating the underlying idea from the name of the proposed rule, that idea may easily disappear also in its application.

The proponent of the "full risk" theory has not escaped that danger. Having renamed the "sum insured" theory on the erroneous assumption that that theory would not be applicable to the so-called Cromie rule,⁹ he invokes in his defense of that rule the "basic principle" (to which the "full risk" theory apparently owes its name) "that the protection of the insured must under no circumstances be diminished" and that "only where the combined face amounts of blanket and specific policies are less than the loss suffered will the insured not receive full compensation."¹⁰ Suppose there is a blanket policy of \$3,000 covering building, stock and machinery, and two specific policies covering stock and machinery for \$1,000 each. If the insured suffers losses of \$1,600 on each item, the Cromie rule makes the blanket policy contribute its entire coverage on the building loss, leaving \$1,400 for the two other losses. While this rule secures in this case full protection to the insured, a "full risk" theory explaining the rule only as based on the insured's right to full recovery up to the combined face amounts of all policies becomes inapplicable wherever the loss on the item exclusively covered by the blanket policy exceeds the face amount. Thus, if the building loss amounts to \$4,000 and is therefore only partly covered by a \$3,000 blanket policy, and machinery and stock sustain a damage of \$400 each, the insured will receive only \$3,800, which is less than "the combined face amounts" of \$5,000.

Either case can be explained under the "sum insured theory"¹¹ on the ground that a blanket policy, in so far as it covers one item exclusively (Cromie rule), must be treated as a specific policy and can contribute to losses on other specifically covered items only with the amount exceeding this exclusive, "specific" coverage. Or, in other words, where one item is covered by the blanket policy, the three ap-

⁸ Drechsler, *supra* note 2 at 417.

⁹ See generally *Cromie v. Kentucky and Louisville Mutual Ins. Co.* (1854) 54 Ky. 346.

¹⁰ Drechsler, *supra* note 2 at 420, n. 20.

¹¹ For this occasion to rectify their original treatment of the Cromie rule, the authors are indebted to the editor of the Annotation, *supra* note 2.

portionments under the "sum insured theory" required for the loss allotment among nonconcurrent blanket and specific policies will be applied only after deduction from the face value of the blanket policy of the loss exclusively covered by that policy.