PEOPLESBANK vs. CERTAIN UNDERWRITERS AT LLOYD'S, LONDON.

No. 24-P-135.

Hampshire. December 16, 2024. – April 25, 2025.

Present: Henry, Desmond, & Englander, JJ.

Contract, Indemnity, Performance and breach. Insurance, Coverage, Construction of policy, Interest. Practice, Civil, Interest. Damages, Interest, Breach of contract. Interest. Statute, Construction.

Civil action commenced in the Superior Court Department on August 3, 2018.

The case was heard by John A. Agostini, J.; a motion for entry of final judgment, filed on September 5, 2023, was heard by James M. Manitsas, J., a motion for reconsideration was considered by him, and entry of final judgment was ordered by him.

Christopher M. Reilly for the plaintiff.
William A. Schneider for the defendant.

ENGLANDER, J. The appeal in this insurance coverage dispute presents another factual variant as to the appropriate calculation of prejudgment interest under G. L. c. 231, § 6C. Here, the defendant, Certain Underwriters at Lloyd's, London

(Lloyd's), denied coverage under a builder's risk insurance policy for a loss claimed by the plaintiff, PeoplesBank (Peoples), related to a building damaged by a fire. After a jury-waived trial, the trial judge found that Lloyd's had breached the policy by denying coverage. The parties thereafter agreed, in two separate stipulations, to a total amount of covered loss of $2.5 million; however, the parties disagreed as to when prejudgment interest began to accrue on that amount. The motion judge determined that interest would be calculated at the statutory rate of twelve percent per annum from April 27, 2021, the date of the parties' first stipulation on damages. See G. L. c. 231, § 6C (§ 6C). A judgment entered to that effect.

On appeal, Peoples argues that it is entitled to an additional $800,000 in prejudgment interest because interest should have been awarded beginning on July 3, 2018, which was the date that Lloyd's denied coverage to Peoples. Lloyd's counters that the earlier date is wrong, because under the policy language Lloyd's obligation to pay did not arise until much later, in 2021. Application of § 6C is complicated, because the case law freely acknowledges that under some circumstances, our courts have not followed the statute's plain

language in awarding interest.[1] Here we conclude that interest on the first stipulated amount ($2.274 million) should be calculated from the date that Lloyd's denied coverage in 2018 (which is the date of the breach), and that interest on the remaining amount ($236,000) should be calculated from the date that additional amount was actually paid to one of the contractors for work completed, in 2022. Accordingly, we vacate so much of the judgment as awarded prejudgment interest and remand for a recalculation consistent with this opinion.

Factual and procedural history. The insurance policy at issue is a builder's risk policy[2] that Lloyd's issued to Historic Round Hill Summit, LLC (Historic), in April 2016. Historic purchased and began to renovate two buildings, Hubbard Hall and Rogers Hall, in Northampton. The policy was obtained to cover losses, if any, while construction was ongoing. Peoples held a first mortgage on the property. Peoples was also covered under Historic's builder's risk policy, pursuant to a mortgage holder endorsement provision (mortgage holder endorsement).

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[1] See, e.g., Bank v. Thermo Elemental Inc., 451 Mass. 638, 662-663 (2008); Sterilite Corp. v. Continental Cas. Co., 397 Mass. 837, 841-842 (1986).

[2] Builder's risk insurance covers a project in construction before it becomes insurable as a building. After construction is complete and a certificate of occupancy is issued, insurance coverage would be obtained through a standard commercial policy.

In August 2016, a fire destroyed Rogers Hall and caused extensive water and smoke damage at Hubbard Hall. Lloyd's paid for Historic's loss as to Rogers Hall; however, Lloyd's asserted that Historic's loss as to Hubbard Hall was not covered under the policy because (unbeknownst to Lloyd's) the building was occupied by tenants at the time of the fire.[3] Peoples, however, claimed that it was separately entitled to coverage for the Hubbard Hall loss, pursuant to the mortgage holder endorsement. In June of 2018 Peoples submitted a proof of loss to Lloyd's seeking coverage in the amount of approximately $2.8 million. On July 3, 2018, Lloyd's rejected Peoples's claim, contending that coverage did not apply to Hubbard Hall at the time of the fire because it was occupied, and that "the mortgage holder may not claim independently of the insured [i.e., Historic]." Lloyd's also stated that it "does not necessarily agree with the full cost of repair or replacement" claimed by Peoples.

Peoples then brought this breach of contract action against Lloyd's, claiming that even if Historic was not covered, Peoples could recover the Hubbard Hall losses under the mortgage holder endorsement. After a jury-waived trial, the trial judge found that Lloyd's was in breach of the mortgage holder endorsement

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[3] The policy states, in part, that coverage will end "when a structure is occupied or put to its intended use, without [Lloyd's] written consent."

and was obligated to cover the loss to Peoples, where Peoples did not have actual knowledge that Hubbard Hall was occupied at the time of the fire.[4]

On the issue of damages, the parties entered into a stipulation dated April 27, 2021, that the cost to repair the damage to Hubbard Hall was $2,274,194.07 (first stipulation); that stipulation was incomplete, however, because it expressly did not include the cost for work performed at Hubbard Hall by one of Historic's contractors, Complete Restoration Solutions, Inc. (CRS). As discussed further below, as of April 2021 the amounts due to CRS had not been resolved, as Historic challenged the amount of CRS's bills. The CRS dispute was the subject of a separate lawsuit that was consolidated with this insurance action between Peoples and Lloyd's.[5]

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[4] In determining that Peoples was covered so long as it did not have actual knowledge that Hubbard Hall was occupied, the judge interpreted the mortgage holder endorsement that states, in part,

> "If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder . . . has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder. All of the terms of this Coverage Part will then apply directly to the mortgage holder." (Emphasis added.)

[5] Lloyd's was a third-party defendant in the lawsuit between CRS and Historic.

After the parties' first damages stipulation, Lloyd's sought entry of judgment, which Peoples opposed on the basis that the CRS litigation was ongoing and the judgment in this action must include the amount, if any, paid for the CRS work. The trial judge denied the motion, thereby delaying entry of judgment. Ultimately, Historic and CRS settled, after which Lloyd's and Peoples filed a second stipulation dated May 24, 2023, establishing that the fair value of CRS's work recoverable under the mortgage holder endorsement was $236,000 (second stipulation).

After the parties' second stipulation, Peoples filed a motion for entry of a final judgment against Lloyd's in the amount of $2,510,194.07, which included both stipulated amounts. Peoples also sought prejudgment interest from July 3, 2018 (the date Lloyd's denied coverage to Peoples). Lloyd's countered that prejudgment interest should run from dates in 2021 and 2023, reasoning that interest began to accrue only when the amounts became due under the "loss payment" provision of the Lloyd's builder's risk policy. That provision states,

> "We will pay or make good any 'loss' covered under this Coverage Part within 30 days after:
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> "1. We reach an agreement with you;
>
> "2. The entry of final judgment; or
>
> "3. The filing of an appraisal award.

> "We will not be liable for any part of a 'loss' that has been paid or made good by others."

Based on the loss payment provision, Lloyd's argued that it was not obligated to pay Peoples before Lloyd's and Peoples had reached agreement, and that prejudgment interest should only begin to accrue thirty days after the entry of each stipulated amount, i.e., May 27, 2021, for the first stipulation, and June 24, 2023, for the second stipulation. Following a hearing, the motion judge (who was not the trial judge) concluded that statutory interest would be calculated on the total amount of damages ($2,510,194.07) from the date of the first stipulation (April 27, 2021) to avoid "a windfall to the recipient." A separate and final judgment entered against Lloyd's that included prejudgment interest from April 27, 2021. This appeal followed.

Discussion. The issue is whether the motion judge properly applied G. L. c. 231, § 6C, in holding that prejudgment interest on Peoples's successful breach of contract claim began to accrue on April 27, 2021. Based in part on the plain language of § 6C, Peoples argues that interest should be calculated from "the date of the breach," and that the breach here occurred when Lloyd's rejected Peoples's coverage claim on July 3, 2018. Lloyd's counters that awarding prejudgment interest from the date of the breach would result in an unfair windfall to Peoples, because

Peoples had delayed the entry of judgment by insisting on including the CRS amount. Instead, Lloyd's maintains that interest should run from the date that payment was due to Peoples under the loss payment provision of the policy.[6]

Section 6C governs the calculation of prejudgment interest on damages in cases "based on contractual obligations." The statute "is designed to compensate a damaged party for the loss of use or unlawful detention of money" (citation omitted). Sterilite Corp. v. Continental Cas. Co., 397 Mass. 837, 841 (1986) (Sterilite). Thus, "[a]n award of interest is made so that a person wrongfully deprived of the use of money should be made whole for his loss" (quotation and citation omitted). Id. The statute states, in relevant part,

> "In all actions based on contractual obligations, upon a . . . judgment for pecuniary damages, interest shall be added by the clerk of the court . . . at the contract rate, if established, or at the rate of twelve per cent per annum from the date of the breach or demand. If the date of the breach or demand is not established, interest shall be added . . . from the date of the commencement of the action."

Thus, under the statutory language interest is added at the contract rate, if any, or at a rate of twelve percent "from the date of the breach or demand." G. L. c. 231, § 6C.

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[6] Although Lloyd's argues that interest should have been calculated in a manner different from that used by the motion judge, Lloyd's did not cross-appeal and requests only that we affirm the judgment.

In this case, a straightforward, plain language application of § 6C would result in prejudgment interest commencing in July of 2018. That is the "date of the breach" -- the date Lloyd's wrongfully declined coverage. Under controlling case law, however, § 6C is not always applied in accordance with its plain language. Thus, in Sterilite, the defendant insurance company had improperly denied coverage to an insured threatened with a lawsuit. See Sterilite, 397 Mass. at 838. The insured later incurred litigation defense costs, consisting of periodic bills for attorney's fees that the insured paid. See id. The Supreme Judicial Court held that the interest on these damages did not accrue from the date of breach (the denial of coverage), but instead accrued when the insured actually paid the bills for the attorney's fees, years later. See id. at 841-842. The court acknowledged that it was varying from the statute's plain language, in order to avoid a "windfall" to the insured. Id. at 842. It reasoned,

> "While the defendant was in breach of its duty to defend Sterilite on January 5, 1976, there was no duty at that time to reimburse Sterilite for legal expenses incurred at later dates. This duty arose when Sterilite, on notice that the defendant would refuse to pay for those expenses, was forced to pay those expenses itself. The dates of the payment of the various bills, which are readily ascertainable, determine the points at which Sterilite was obliged to commit sums which it rightfully should not have been obliged to commit. Before those bills were paid, Sterilite was not deprived of the use of its money. No interest is due on sums when Sterilite was not deprived of the use of those sums. Any other rule would result in a

> windfall for Sterilite, which the Legislature did not intend."

Id. at 841–842.

Lloyd's seizes on a part of the above language to argue that prejudgment interest should not begin until Lloyd's had a "duty . . . to reimburse" Peoples. Lloyd's argues that its duty to reimburse was governed by the "loss payment" provision of the insurance contract, and thus did not arise until Lloyd's had reached agreement with Peoples on the amount. We do not agree that the obligation to pay interest can be delayed in this fashion. The critical difference between this case and Sterilite is that in this case, the record shows that the $2.274 million for which Peoples sought coverage had actually been paid, for the repair of Hubbard Hall, before Lloyd's breached by denying coverage.[7] Thus, as to that sum, no windfall to Peoples would result from awarding prejudgment interest from the date of the breach.

Our review of Sterilite and subsequent cases indicates that deviation from the plain language of § 6C is merited only when a

[7] On appeal Lloyd's argues, for the first time, that Peoples was required to present evidence of when it made payments for the work to Hubbard Hall. However, Lloyd's itself represented in its Superior Court briefing that Peoples paid for the repairs to Hubbard Hall (other than the amount due to CRS) before bringing this action in August 2018. The issue is waived because it was not raised in the trial court. See Carey v. New England Organ Bank, 446 Mass. 270, 285 (2006).

windfall will otherwise result.[8] That is the thrust of the court's reasoning -- that judges may deviate from the plain language when the result that would otherwise be reached is clearly inconsistent with the Legislature's intent. See Sterilite, 397 Mass. at 839-842. But deviation from plain language will be an exception, and there is no sound reason to do so here. Lloyd's breached the contract. Had Lloyd's adhered to the contract, $2.274 million should have been paid to Peoples in response to the demand. Thus, as to the $2.274 million, a straightforward application of the statute's language yields an interest accrual date of July 3, 2018.

On the facts here, there is little to commend Lloyd's position that the accrual of interest should be delayed until (in its view) it had an obligation under the loss payment

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[8] See, e.g., Bank, 451 Mass. at 663 (interest accrued from last day of year in which each bill was paid); Santos v. Chrysler Corp., 430 Mass. 198, 218 (1999) (interest accrued from dates that legal bills were paid by retail seller when car manufacturer wrongfully refused to indemnify it); O'Malley v. O'Malley, 419 Mass. 377, 381 (1995) (interest accrued from end of each year that judge determined plaintiff was entitled to twenty percent of profits); Craft v. Kane, 65 Mass. App. Ct. 322, 328 (2005) (interest accrued from date that judge entered order establishing amount of attorney's fees subject to lien); Kelly v. Dimeo, Inc., 31 Mass. App. Ct. 626, 630-631 (1991) (interest accrued from date of settlement payment by general contractor when subcontractor wrongfully refused to indemnify it). Cf. St. Paul Surplus Lines Ins. Co. v. Feingold & Feingold Ins. Agency, Inc., 427 Mass. 372, 377-378 (1998) (interest accrued under G. L. c. 231, § 6B, from dates that insurer paid for defense and settlement of underlying tort claims).

provision of the policy. Lloyd's breach of its duty to provide coverage was, in essence, a rejection that the contract applied. Lloyd's disputed that any loss to Hubbard Hall was covered under the mortgage holder endorsement and forced litigation on that issue, thereby delaying when payment would become due under the policy and leaving Peoples (and Historic) to fend for themselves.[9,10]

These facts distinguish Sterilite, where the insurer's breach of the duty to defend did not delay the date that payments became due under the policy. See Sterilite, 397 Mass. at 841. Instead, the amounts only became due as the legal expenses were incurred and billed over the course of a six-year period; the insurer was in breach of its duty to reimburse the insured on each occasion payment was due and the insured was

[9] For the same reasons, we reject Lloyd's argument that Peoples waived its right to claim interest from the date of the breach by forgoing reference or an appraisal on the amount of the loss under the policy. The parties expressly agreed to postpone resolution of any dispute concerning the amount of the loss until the coverage issue was resolved. Given that Lloyd's continued to dispute coverage, it cannot now seek to reduce the amount of interest owed Peoples by virtue of that agreement.

[10] Johnson v. Settino, 495 Mass. 42 (2024), is not to the contrary. There, the Supreme Judicial Court held that prejudgment interest should begin to accrue even before the plaintiff (in counterclaim) was "out of pocket," because there was detrimental reliance by the plaintiff (in counterclaim) and intentional delay in payment by the defendant after his duty to pay arose. Id. at 54.

forced to cover the expense. See id. at 838, 841-842. Lloyd's reliance on Sterilite is misplaced.

Accordingly, as to the first stipulated amount ($2,274,194.07), we do not deviate from the statutory language in determining prejudgment interest. To do so would result in a windfall to Lloyd's for its breach. See Cambridge Trust Co. v. Commercial Union Ins. Co., 32 Mass. App. Ct. 561, 568 (1992) (bank entitled to prejudgment interest for "period between wrongful refusal by an insurer to pay a proper claim and ultimate recovery after litigation"). Cf. Olin Corp. v. OneBeacon Am. Ins. Co., 864 F.3d 130, 152 (2d Cir. 2017) (under New York's prejudgment interest statute, insurer may not "benefit from its tactical decision to deny its contractual obligation to indemnify [the insured] for covered losses by avoiding liability for interest. It is not the intention of [the New York statute] that an insurer could deny coverage for years in the face of reasonable demands and then, once it is adjudicated liable, avoid paying any prejudgment interest").[11]

[11] In other contexts, Federal courts have held that when an insurer improperly disavows liability, it cannot treat an insured's subsequent failure to meet a condition precedent to payment as a bar to the insured's right to recover. See Insurance Co. of N. Am. v. Newtowne Mfg. Co., 187 F.2d 675, 684-685 (1st Cir. 1951). See also M. DeMatteo Constr. Co. v. Century Indem. Co., 182 F. Supp. 2d 146, 158 (D. Mass. 2001) (insurer forfeited right to argue insured had duty to preserve subrogation rights where insurer disavowed liability under policy). That same logic applies here to Lloyd's purported

As to the second stipulated amount ($236,000), the circumstances differ because Historic did not pay that amount until 2022, when Historic and CRS resolved their litigation over the amount due for CRS's work on Hubbard Hall. As to that amount, CRS originally billed Historic approximately $600,000 in 2016. When Historic declined to pay, CRS brought an action in Superior Court and Historic filed counterclaims. Historic's position was that CRS's bill was "wildly and fraudulently inflated." CRS and Historic ultimately settled the suit in November 2022, and CRS was paid $295,000.[12] Thereafter, in 2023, Peoples and Lloyd's reached a further agreement that only a portion ($236,000) of the settlement amount was part of the covered loss under the mortgage holder endorsement. In these specific circumstances, Sterilite teaches that the appropriate course is to award prejudgment interest only from the date that CRS was paid for its work following settlement with Historic. See St. Paul Surplus Lines Ins. Co. v. Feingold & Feingold Ins. Agency, Inc., 427 Mass. 372, 377 (1998) ("in calculating prejudgment interest under . . . § 6C [applicable to contract

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reliance on the loss payment provision of the policy to avoid the accrual of interest.

[12] Peoples represented in the Superior Court that CRS was paid on November 7, 2022, after the CRS and Historic lawsuit was settled. We accept that representation for the purposes of our analysis.

actions], the fact that no loss was incurred until after an action was commenced should be recognized, as a matter of fairness, in order to avoid giving a party an undeserved windfall").[13]

Conclusion. So much of the judgment dated December 13, 2023, as awarded prejudgment interest from April 27, 2021, is vacated. Prejudgment interest should be calculated on the first stipulated amount ($2,274,194.07) from the date of Lloyd's breach on July 3, 2018, and on the second stipulated amount ($236,000) from the date that the second stipulated amount was paid to CRS for its work on November 7, 2022. The judgment is otherwise affirmed. The matter is remanded for the

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[13] This result is consistent with the court's explanation in Bank, 451 Mass. at 662–663, that

> "when expenses incurred as a result of a contract breach are not paid by a plaintiff until after the breach has occurred, the interest is calculated not from the date of the breach or even the date the action was commenced, as the plain language of the statute would require, but from the date or dates on which the plaintiff made such payments."

We nevertheless note, however, that the trial judge enjoys some discretion in setting accrual dates for prejudgment interest. The process need not be micromanaged in this court; for example, sensible adjustments to simplify calculations will not be overturned. See id. at 663 (judge's "approximation avoided using the more than 180 different dates of accrual that would have been required for a more precise calculation based on the actual dates the invoices were paid").

recalculation of prejudgment interest consistent with this opinion and the entry of an amended judgment.

So ordered.