

**CONTRACTS:
ENSURING INSURANCE INSURES THE INSURED:
THE MINNESOTA SUPREME COURT CLARIFIES THE
MINNESOTA STANDARD FIRE INSURANCE POLICY —
*NATHE BROS., INC. v. AM. NAT’L FIRE INS. CO.***

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I. INTRODUCTION

Courts seek to interpret ambiguities in insurance policies, and applicable statutory language, in a manner that maintains the insured’s rights.¹ Recently, the Minnesota Supreme Court had an opportunity to interpret ambiguities in Minnesota’s fire insurance

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1. See generally Mark C. Rahdert, *Reasonable Expectations Revisited*, 5 CONN. INS. L.J. 107, 115-16 (1998) (stating “the time-honored ambiguity principle of insurance policy interpretation states when a policy term is ambiguous the court should adopt the interpretation that favors the insured”); see *infra* note 103 (discussing the long-standing judicial policy disfavoring forfeiture clauses in insurance contracts).

statute,² and clarify the function of a proof of loss clause in an insurance policy.³ In *Nathe Bros., Inc. v. American National Fire Insurance Co.*,⁴ the court considered a proof of loss clause in a policy, which used the statutory language⁵ in Minnesota's Standard Fire Insurance Policy.⁶ The court correctly ruled that the proof of loss clause is a condition subsequent⁷ and failure to submit the proof of loss within the specified time requirement should not necessarily bar recovery.⁸ This decision maintained the plaintiff's rights under the policy and clarified the function of the proof of loss clause in Minnesota.⁹

This note examines the history of courts reviewing insurance policies, focusing primarily on proof of loss clauses.¹⁰ This note also explores the history of Minnesota's Standard Fire Insurance Policy.¹¹ Part III of this note details the supreme court's holding in *Nathe*¹² while Part IV analyzes the ruling's implications.¹³ The note concludes that the Minnesota Supreme Court's correct ruling maintained the insured's rights under the policy.¹⁴ The court concluded that failing to submit a sworn proof of loss within "60 days,"¹⁵ as required by the Minnesota Standard Fire Insurance Policy, will not necessarily bar recovery on the policy.¹⁶ This conclusion maintained the plaintiff's rights under the policy and clarified the Minnesota Standard Fire Insurance Policy by finding the proof of loss requirement, absent specific policy language, is a condition subsequent.¹⁷

2. MINN. STAT. § 65A.01 (2000).

3. *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341 (Minn. 2000).

4. *Id.*

5. *Id.*

6. MINN. STAT. § 65A.01 (2000).

7. BLACK'S LAW DICTIONARY 289 (7th ed. 1999) (defining *condition subsequent* as "an event the existence of which, by agreement of the parties, discharges a duty of performance that has arisen").

8. *Nathe*, 615 N.W.2d at 348-49.

9. *Id.*

10. *See infra* Part II.A.

11. *See infra* Part II.B-C.

12. *See infra* Part III.A-B.

13. *See infra* Part IV.A-B.

14. *See infra* Part V.

15. MINN. STAT. § 65A.01 (2000).

16. *Nathe*, 615 N.W.2d at 348.

17. *Id.*

II. HISTORY OF PROOF OF LOSS TIME REQUIREMENT

A. Courts Reviewing Insurance Policies

Insurance policies follow the basic principles of contracts.¹⁸ Most insurance policies are adhesion contracts;¹⁹ therefore courts resolve ambiguities in favor of the insured to avoid interpreting them in a manner that will forfeit rights under the policy.²⁰ However, courts will find a forfeiture in an insurance contract if the language is unambiguous and a forfeiture is clearly the intent of both parties.²¹ Interpretation of insurance policy and statutory language presents questions of law that courts in every state²² review de novo.²³

B. Common Law

At common law, Minnesota courts held specific policy language will expressly make the time requirement to submit the proof of loss a condition precedent²⁴ would bar recovery by the insured if that time was not met.²⁵ However, courts held that even

18. 1 GEORGE J. COUCH ET AL., *COUCH ON INSURANCE* § 1:4 (2d rev. ed. 1984) (stating “insurance is a matter of contract and parties are bound by the terms thereof, the same as parties to other contracts”).

19. BLACK’S LAW DICTIONARY 318-19 (7th ed. 1999) (defining *adhesion contracts* as “a standard-form contract prepared by one party, to be signed by the party in a weaker position”).

20. See *infra* note 103 (discussing the long-standing judicial policy disfavoring forfeiture clauses in insurance policies).

21. *Northwestern Tel. Exch. Co. v. Maryland Cas. Co.*, 86 Minn. 467, 469, 90 N.W. 1110, 1111 (1902) (holding “no notice was given until more than a year after the accident, which was not in compliance with the terms of the contract, therefore the appellant is released from liability”); *Raska v. Farm Bureau Mut. Ins. Co. of Mich.*, 314 N.W.2d 440, 440 (Mich. 1982) (stating “any clause in a policy is valid so long as it is clear and unambiguous”).

22. See generally Richard H.W. Maloy, ‘Standards of Review’ – *Just a Tip of the Iceberg*, 77 U. DET. MERCY L. REV. 603, 614-16 (2000) (stating federal courts use a de novo review when interpreting insurance contracts and state courts use a de novo review when interpreting a statute or written documents).

23. BLACK’S LAW DICTIONARY 94 (7th ed. 1999) (defining *appeal de novo* as “an appeal in which the appellate court uses the trial court’s record but reviews the evidence and law without deference to the trial court’s rulings”).

24. *Id.* at 289 (defining *condition precedent* as “an act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises”).

25. *Mason v. St. Paul Fire & Marine Ins. Co.*, 82 Minn. 336, 339, 85 N.W. 13, 15 (1901); *Shapiro v. St. Paul Fire & Marine Ins. Co.*, 61 Minn. 135, 136, 63 N.W. 614, 614 (1895); *Shapiro v. W. Home Ins. Co.*, 51 Minn. 239, 240, 53 N.W. 463, 463

though specific language made the proof of loss provision a condition precedent, the insurer can waive the provision through its actions.²⁶ Courts noted where the policy does not include specific language making that time requirement a condition precedent to the liability of the insurance company, then the time to submit a proof of loss is not “of the essence”²⁷ of the contract.²⁸

C. *Minnesota Standard Fire Insurance Policy of 1895*

In 1895, the Minnesota legislature enacted the Minnesota Standard Fire Insurance Policy²⁹ which provided a standard form that contained required terms and conditions for policies of fire insurance. The form contained a provision requiring that a sworn proof of loss must be submitted to the insurer “forthwith”³⁰ after the loss, which courts interpreted as a condition subsequent to recovery on the policy.³¹ Courts stated that the “forthwith” clause should be interpreted to mean a reasonable time,³² which left some uncertainty to what constitutes a reasonable time.

(1892); *Mosness v. German-Am. Ins. Co. of N.Y.*, 50 Minn. 341, 346, 52 N.W. 932, 933 (1892); *Bowlin v. Hekla Fire Ins. Co.*, 36 Minn. 433, 434, 31 N.W. 859, 859 (1887). See *infra* note 87 (discussing recent Minnesota court decisions holding specific policy language constituted a condition precedent; further discussing similar holdings from other jurisdictions).

26. *Shapiro*, 61 Minn. at 136, 63 N.W. at 614 (holding failure to submit a proof of loss as required by the policy was a bar to recovery absent any waiver by the insurer); *First Nat'l Bank of Devil's Lake v. Am. Cent. Ins. Co. of St. Louis*, 58 Minn. 492, 497, 60 N.W. 345, 345 (1894); *Bromberg v. Minn. Fire Ass'n of Minneapolis*, 45 Minn. 318, 321, 47 N.W. 975, 976 (1891).

27. BLACK'S LAW DICTIONARY 1115 (7th ed. 1999) (defining *of the essence* as “so important that if the requirement is not met, the promisor will be held to have breached the contract and a rescission by the promisee will be justified”).

28. See generally *Mason*, 82 Minn. at 339, 85 N.W. at 15 (stating “holdings that proof of loss provisions was condition precedent at common law was due to express provisions in the policies”).

29. See Act of Apr. 25, 1895, ch. 175, § 53, 1895 Minn. Laws 392 (codified in MINN. STAT. § 65A.01 (2000)).

30. *Id.*

31. *Boston Ins. Co. v. A.H. Jacobson Co.*, 226 Minn. 479, 483, 33 N.W.2d 602, 605 (1948) (stating “while the policy requires the statement of loss to be rendered ‘forthwith,’ it does not provide for a forfeiture of the insured’s rights if he fails to comply within the time limited”); *Mason*, 82 Minn. at 340, 85 N.W. at 15 (holding the term “forthwith” created a condition subsequent).

32. *Farrell v. Neb. Indem. Co.*, 183 Minn. 65, 67, 235 N.W. 612, 613 (1931) (holding a reasonable time will vary in each case depending on the facts and circumstances); *Mason*, 82 Minn. at 339, 85 N.W. at 15 (stating “‘forthwith’ should be construed to mean within a reasonable time”).

In *Mason v. St. Paul Fire & Marine Insurance Co.*,³³ the Minnesota Supreme Court noted that the time which proof of loss is required is not “of the essence” of the contract.³⁴ In this case, St. Paul Fire & Marine Ins. Co. had issued a fire insurance policy in the form of the Minnesota Standard Fire Insurance Policy covering a steam yacht.³⁵ The yacht was totally destroyed by fire and Mason submitted a proof of loss to St. Paul Fire & Marine Ins. Co.³⁶ The trial court charged the jury that Mason had failed to show compliance with a “forthwith” submission of a proof of loss, however such failure was not material and it did not invalidate the policy.³⁷ The Minnesota Supreme Court upheld the ruling in favor of Mason and stated “unless the policy provides a forfeiture, or makes the service of proofs of loss within the time specified therein a condition precedent to the liability of the company, the time within such proofs are required to be furnished is not of the essence of the contract.”³⁸ The court noted that this policy “contains no provision making the service of proofs of loss within the time specified fatal to the rights of the insured.”³⁹ The court noted that the legislature may add express language to the Minnesota Standard Fire Insurance Policy to make the failure to comply with the timeliness requirement of submitting the proof of loss a condition precedent.⁴⁰

The *Mason* case clarified the proof of loss clause in the Minnesota Standard Fire Insurance Policy of 1895 by finding that absent specific policy language, the proof of loss clause is “not of the essence of the contract.”⁴¹

D. Amendments to the Minnesota Standard Fire Insurance Policy

In 1955, the Minnesota Legislature amended the standard fire insurance policy⁴² by adding a maintenance of suit clause to the

33. 82 Minn. 336, 85 N.W. 13 (1901).

34. *Id.* at 339, 85 N.W. at 14.

35. *Id.* at 337, 85 N.W. at 14.

36. *Id.*

37. *Id.*

38. *Id.* at 338, 85 N.W. at 14.

39. *Id.*

40. *Id.* at 340, 85 N.W. at 15.

41. *Id.* at 338, 85 N.W. at 14.

42. See Act of Apr. 18, 1955, ch. 482, § 1, 1955 Minn. Laws 751 (codified in MINN. STAT. § 65A.01 (2000)).

two-year limitation on actions⁴³ and changing the timeliness requirement for the submission of proof of loss to “60 days.”⁴⁴ The Minnesota Supreme Court has held the addition of the maintenance of suit clause did not make strict compliance with all the terms of the policy a condition precedent to recovery.⁴⁵

Recently, in *Leamington Co., v. Nonprofits' Insurance Ass'n*,⁴⁶ the Minnesota Supreme Court noted that the insured's failure to submit its proof of loss within sixty days does not bar recovery.⁴⁷ In this case, Nonprofits' Insurance Association (NIA) issued an insurance policy to Leamington covering a building in Minneapolis.⁴⁸ Leamington discovered water damage to the ceilings and walls of the building caused from thawing snow or ice.⁴⁹ NIA sent a reservation of rights to Leamington and also requested a sworn proof of loss and enclosed a proof of loss form in the letter.⁵⁰ Leamington completed and signed the sworn proof of loss from and mailed it to NIA seventy-seven days after NIA's request.⁵¹ After receiving no response from NIA, Leamington commenced an action alleging that NIA breached its policy.⁵² The court of appeals upheld the trial court's summary judgment ruling that Leamington's failure to submit a sworn proof of loss effected a complete bar to any recovery.⁵³ Minnesota's Supreme Court overruled the court of appeals and stated “Leamington's delay in submitting its proof of loss does not bar its recovery in this case.”⁵⁴ The court held that the proof of loss clause under Minnesota's Standard Fire Insurance Policy is not a condition precedent to recovery on a policy.⁵⁵

43. *Id.* at subd. 3.

44. *Id.*

45. *McCullough v. Travelers Cos.*, 424 N.W.2d 542, 545 (Minn. 1988) (holding insured's failure to submit to an examination under oath prior to bringing suit on the policy did not require dismissal of the suit).

46. 615 N.W.2d 349 (Minn. 2000).

47. *Id.* at 353-54.

48. *Id.* at 351.

49. *Id.* at 352.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 353.

54. *Id.* at 354.

55. *Id.* This case was decided on the same day as *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341 (Minn. 2000) and cites to *Nathe Bros.* in its opinion. *Id.*

III. THE *NATHE* DECISIONA. *The Facts*

On November 6, 1996, Nathe Brothers, Inc. (“Nathe Brothers”) purchased a policy of property hazard insurance from American National Fire Insurance Company (“American National”) for a restaurant.⁵⁶ Ten days after Nathe Brothers purchased the insurance policy, a rain and ice storm substantially damaged the restaurant’s roof and flooded its banquet hall.⁵⁷ Nathe Brothers immediately notified American National of the damages.⁵⁸ On December 4, 1996, American National sent an adjuster to survey the damage.⁵⁹ Thirteen days later, American National sent a reservation of rights letter to Nathe Brothers.⁶⁰

Nathe Brothers sent a letter to American National and attached a damage and repair estimate of \$362,700.⁶¹ American National responded by stating that based on policy exclusions, coverage would be limited to \$10,000.⁶² On January 30, 1997, American National informed Nathe Brothers that if it disagreed with the adjustment it must submit a sworn proof of loss statement with supporting documentation within sixty days of that date.⁶³ Enclosed in that letter was the proof of loss form along with a check for \$8,949.42 (\$10,000 less the policy’s deductible).⁶⁴

Nathe Brothers returned American National’s check, along with an incomplete proof of loss form.⁶⁵ American National responded by stating that the proof of loss form had not been properly executed and that it was required for Nathe Brothers to maintain the claim.⁶⁶

56. *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 343 (Minn. 2000). Nathe Brothers purchased the commercial insurance policy for the 49 Club (the restaurant and bar), which is located in Lino Lakes Minnesota. *Id.*

57. *Id.* American National and Nathe Brothers disagreed on whether the roof actually collapsed, as Nathe Brothers claimed, or whether the roof merely sagged, as American National claimed. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* Nathe Brothers’ letter was sent on December 24, 1996. *Id.*

62. *Id.* American National’s response was sent on January 22, 1997. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* Nathe Brothers claim to have attached another copy of its damage and repair estimate to this letter, which was sent on February 14, 1997. *Id.*

66. *Id.* American National disputes receiving the damage and repair estimate

On April 24, 1997, eighty-four days after the initial request, Nathe Brothers returned a properly executed proof of loss form.⁶⁷ American National returned the form on May 30, 1997, rejecting it as incomplete and containing errors.⁶⁸

Nathe Brothers sued American National alleging it had breached the insurance policy.⁶⁹ American National moved for summary judgment on the grounds that Nathe Brothers' suit was barred because it did not provide the sworn proof of loss within sixty days of American National's request.⁷⁰ The trial court granted American National's motion for summary judgment.⁷¹

Nathe Brothers appealed the district court's ruling.⁷² The court of appeals ruled that under American National's policy⁷³ and Minnesota's Standard Fire Insurance Policy,⁷⁴ the timely submission of a sworn proof of loss is a condition precedent to recovery.⁷⁵ The appellate court affirmed the trial court's decision by holding that Nathe Brothers' failure to submit a proof of loss within sixty days barred recovery.⁷⁶ The court of appeals reasoned that the policy and statute compelled the conclusion that the insured, as a precondition to suing for benefits, must provide signed and sworn proof of loss within sixty days of the insurer's request.⁷⁷ The court stated, "the insured may not bring suit unless all the policy provisions are complied with and thus acts as a condition precedent to recovery."⁷⁸ The court of appeals affirmed the district court's ruling by holding "Nathe failed to satisfy a condition precedent to recovery under its standard commercial fire insurance policy when it failed to provide a sworn proof of loss within 60 days

in Nathe Brothers' February 14 letter. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 343-44. American National's policy called for the submission of a proof of loss form within sixty days of its initial request. *Id.* at 348.

74. MINN. STAT. § 65A.01 (2000). Minnesota's Standard Fire Insurance Policy calls for the submission of the proof of loss within sixty days after the damage or loss. *Id.* at subd. 3.

75. Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co., 597 N.W.2d 587, 590-91 (Minn. Ct. App. 1999).

76. *Id.*

77. *Id.* at 589.

78. *Id.* at 590.

of American National's request."⁷⁹

B. The Court's Analysis

The supreme court in *Nathe* reversed the appeals court.⁸⁰ It concluded that failure to submit a sworn proof of loss in a timely manner will not necessarily bar recovery on a policy.⁸¹ The court noted that an insurance company may include specific language in its policy stating that failure to submit a sworn proof of loss is a condition precedent to the liability of the insurer.⁸² The court noted this finding is consistent with past rulings that insurance policies should be construed in favor of the insured and disfavor forfeiture clauses in insurance contracts.⁸³

The court reached this conclusion by reasoning that the Minnesota Standard Fire Insurance Policy of 1895 used the language "forthwith" to describe the time in which the sworn proof of loss must be submitted.⁸⁴ Past cases have interpreted the "forthwith"⁸⁵ time requirement as a condition subsequent because it affected rights that have already accrued.⁸⁶ This holding was distinguished from other cases, where the policy contained specific language changing the time of submission to a condition precedent.⁸⁷

79. *Id.* at 591.

80. *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 348-49 (Minn. 2000).

81. *Id.* at 348.

82. *Id.*

83. *Orren v. Phoenix Ins. Co.*, 288 Minn. 225, 228, 179 N.W.2d 166, 169 (1970) (stating "courts will resolve ambiguous policy language against the insurer, avoiding an interpretation which would forfeit the insured's rights"); *Weum v. Mut. Benefit Health & Accident Ass'n, Omaha*, 237 Minn. 89, 105, 54 N.W.2d 20, 29 (1952) (stating "the supreme court will avoid an interpretation of an insurance policy which would forfeit rights"); *see also infra* note 103 (discussing similar holdings in other jurisdictions).

84. *See* Act of Apr. 25, 1895, ch. 175, § 53, 1895 Minn. Laws 392 (codified at MINN. STAT. § 65A.01 (2000)).

85. *Id.*

86. *Boston Ins. Co. v. A.H. Jacobson Co.*, 226 Minn. 479, 483, 33 N.W.2d 602, 604-05 (1948); *Cash v. Concordia Fire Ins. Co. of Milwaukee, Wis.*, 111 Minn. 162, 166, 126 N.W. 524, 525 (1910); *Mason v. St. Paul Fire & Marine Ins. Co.*, 82 Minn. 336, 339, 85 N.W. 13, 15 (1901).

87. *Stein v. Nat'l Farmers Union Prop. & Cas. Co.*, 281 Minn. 287, 293, 161 N.W.2d 533, 537 (1968) (stating that "courts will not redraft insurance policies in order to provide coverage where the plain language of the policy indicates that no coverage exists"); *Hammer v. Investors Life Ins. Co. of N. Am.*, 473 N.W.2d 884, 889 (Minn. Ct. App. 1991) (stating "unambiguous language will not be construed

The court held the amendments to the 1895 Act in 1955⁸⁸ did not change the proof of loss time requirement to a condition precedent.⁸⁹ It noted a past holding where failure to submit to examination under oath before suing under a maintenance clause did not require dismissal.⁹⁰ The court reasoned that the change in the clause from “forthwith”⁹¹ to “60 days”⁹² provided specific language so there would be no factual dispute in determining a reasonable time⁹³ for the submission of a proof of loss.⁹⁴ The court noted that the legislature has the power to change the proof of loss clause to a condition precedent, but has failed to do so.⁹⁵

Finally, the court examined the differences in American National’s policy and the standard fire insurance policy.⁹⁶ The court noted that American National’s policy requires the proof of loss to be submitted within sixty days after it is requested.⁹⁷ Under American National’s policy, the insurer can choose to pay on a claim without requesting a sworn proof of loss, which the court noted indicates the clause is a condition subsequent to recovery.⁹⁸ The standard fire insurance policy requires the proof of loss to be

in a manner more favorable to finding coverage”); *see supra* note 25 (discussing Minnesota holdings at common law). In addition to Minnesota courts, many other jurisdictions have held specific language in a policy can make a proof of loss clause a condition precedent. *Nationwide Ins. Co. v. Nilsen*, 745 So.2d 264, 267 (Ala. 1998); *Elberton Cotton Mills v. Indem. Ins. Co. of N. Am.*, 145 A. 33, 35 (Conn. 1929); *Yeo v. State Farm Ins. Co.*, 555 N.W.2d 893, 895 (Mich. Ct. App. 1996); *Commodore Int’l, Ltd. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 591 N.Y.S.2d 168, 170 (N.Y. App. Div. 1992); *Allstate Ins. Co. v. Wilson*, 856 S.W.2d 706, 708-09 (Tenn. Ct. App. 1992); *Keith v. Allstate Indem. Co.*, 19 P.3d 1077, 1079 (Wash. Ct. App. 2001).

88. *See* Act of Apr. 18, 1955, ch. 482, § 1, 1955 Minn. Laws 751 (codified in MINN. STAT. § 65A.01 (2000)).

89. *Nathe Bros., Inc. v. Am. Nat’l Fire Ins. Co.*, 615 N.W.2d 341, 347 (Minn. 2000).

90. *McCullough v. Travelers Cos.*, 424 N.W.2d 542, 545 (Minn. 1988).

91. *See* Act of Apr. 25, 1895, ch. 175, § 53, 1895 Minn. Laws 392 (codified at MINN. STAT. § 65A.01 (2000)).

92. *See* Act of Apr. 18, 1955, ch. 482, § 1, 1955 Minn. Laws 751 (codified in MINN. STAT. § 65A.01 (2000)).

93. *Farrell v. Neb. Indem. Co.*, 183 Minn. 65, 67, 235 N.W. 612, 613 (1931) (stating “a reasonable time will vary in each case raising issues of certainty”).

94. *Nathe*, 615 N.W.2d at 347.

95. *See infra* Part IV.B. (discussing the legislature’s opportunities to change the proof of loss requirement to a condition precedent, but making no such change).

96. *Nathe*, 615 N.W.2d at 348.

97. *Id.*

98. *Id.*

submitted within sixty days of the loss.⁹⁹ The court noted that American National's policy did not have specific language in the policy to change the clause to a condition precedent.¹⁰⁰

Thus, the court concluded that the proof of loss clause in American National's policy, and under the statute, is a condition subsequent, and failure to comply with the clause will not necessarily bar recovery on a policy.¹⁰¹

IV. ANALYSIS OF THE *NATHE* DECISION

The court in *Nathe* had an opportunity to further clarify Minnesota's Standard Fire Insurance Policy,¹⁰² specifically the function of the proof of loss clause. The court used this opportunity to develop a clear and fair rule; simultaneously it affirmed a long-standing judicial policy employed in every state, which disfavors forfeiture clauses in insurance contracts.¹⁰³

99. MINN. STAT. § 65A.01, subd. 3 (2000).

100. *Nathe*, 615 N.W.2d at 348.

101. *Id.* at 348-49.

102. MINN. STAT. § 65A.01 (2000).

103. *McMaster v. N.Y. Life Ins. Co.*, 183 U.S. 25, 40 (1901); *Amerisure Ins. Co. v. Allstate Ins. Co.*, 582 So.2d 1100, 1102 (Ala. 1991); *U.S. Fire Ins. Co. v. Colver*, 600 P.2d 1, 3 (Alaska 1979); *N. British & Mercantile Ins. Co. v. San Francisco Secs. Corp.*, 249 P. 761, 762 (Ariz. 1926); *Fed. Life Ins. Co. v. Pearrow*, 86 S.W.2d 1106, 1108 (Ark. 1935); *Page v. Wash. Mut. Life Ass'n*, 125 P.2d 20, 23 (Cal. 1942); *Columbian Nat. Life Ins. Co. v. McClain*, 174 P.2d 348, 350 (Colo. 1946); *Lee v. Cas. Co. of Am.*, 96 A. 952, 954 (Conn. 1916); *Brooks Transp. Co. v. Merch's Mut. Cas. Co.*, 171 A. 207, 213 (Del. Super. Ct. 1933); *Provident Life Ins. Co. v. Grant*, 31 A.2d 885, 887 (D.C. 1943); *Infinity Yachts, Inc. v. St. Paul Fire & Marine Ins. Co.*, 655 So.2d 1259, 1261 (Fla. Dist. Ct. App. 1995); *James v. Pa. Gen. Ins. Co.*, 306 S.E.2d 422, 425 (Ga. Ct. App. 1983); *Hurtig v. Terminix Wood Treating & Contracting Co.*, 692 P.2d 1153, 1154 (Haw. 1984); *Abbie Uriguen Oldsmobile Buick, Inc. v. U.S. Fire Ins. Co.*, 511 P.2d 783, 789 (Idaho 1973); *Mack v. Liverpool & London & Globe Ins. Co.*, 160 N.E. 222, 225 (Ill. 1928); *Modern Woodmen of Am. v. Hall*, 130 N.E. 849, 850 (Ind. 1921); *Crowe v. Merch's Life & Cas. Co.*, 209 N.W. 406, 407 (Iowa 1926); *Queen Ins. Co. of Am. v. Excelsior Mill Co.*, 76 P. 423, 424 (Kan. 1904); *Hartford Fire Ins. Co. v. Bryan*, 50 S.W.2d 74, 75 (Ky. 1932); *Simmons v. Am. Nat'l Ins. Co.*, 199 So.2d 421, 424 (La. Ct. App. 1967); *Royal Ins. Co. v. Pinette*, 756 A.2d 520, 523 (Me. 2000); *McEvoy v. Sec. Fire Ins. Co. of Baltimore*, 73 A. 157, 161 (Md. 1909); *Queen v. Vt. Mut. Ins. Co.*, 589 N.E.2d 325, 328 (Mass. App. Ct. 1992); *Ever Krisp Food Prods. Co. v. New Amsterdam Cas. Co.*, 61 N.W.2d 172, 175 (Mich. 1953); *Wait v. Journeymen Barbers' Int'l Union of Am.*, 210 Minn. 180, 188, 297 N.W. 630, 634 (1941); *J & W Foods Corp. v. State Farm Mut. Auto. Ins. Co.*, 723 So.2d 550, 552 (Miss. 1998); *Greer v. Zurich Ins. Co.*, 441 S.W.2d 15, 31 (Mo. 1969); *Holstrom v. Mut. Ben. Health and Acc. Ass'n*, 364 P.2d 1065, 1067 (Mont. 1961); *Springfield & Marine Ins. Co. v. McLimans*, 45 N.W. 171, 172 (Neb. 1890); *Ambassador Ins. Co. v. Bozarth*, 582 P.2d 798, 799 (Nev. 1978); *Weaver v. Royal Ins. Co. of Am.*, 674 A.2d 975, 977 (N.H. 1996); *Toub*

A. *Proof of Loss*

The court developed a clear rule to determine the function of the Minnesota Standard Fire Insurance Policy proof of loss clause to insurance contracts. This ruling found that under the policy and the statute, the proof of loss clause operates as an investigative tool available to insurers to verify facts and compliance with the policy.¹⁰⁴ This tool should help insurers to investigate and prevent fraud on an insurance policy.¹⁰⁵ Since the proof of loss operates as an investigative tool, it should function as a condition subsequent, because it is “affecting rights that have already accrued under the policy and intended not as conditions of liability, but for evidential purposes in enabling the insurer to determine its liability.”¹⁰⁶

Before the 1955 amendments to the statute, compliance with the proof of loss time requirement was vital because it operated as

v. Home Indem. Co. of N.Y., 183 A. 827, 829 (N.J. Super. Ct. 1936); King v. Travelers Ins. Co., 505 P.2d 1226, 1231 (N.M. 1973); Press Pub. Co. v. Gen. Accident, Fire & Life Assurance Corp., 145 N.Y.S. 711, 713 (N.Y. App. Div. 1st Dep't 1914); Smith v. Nat'l Fire Ins. Co., 95 S.E. 562, 564 (N.C. 1918); Kief Farmers Coop. Elevator Co. v. Farmland Mut. Ins. Co., 534 N.W.2d 28, 32 (N.D. 1995); Westfield Ins. Co. v. Nationwide Mut. Ins. Co., 650 N.E.2d 112, 116 (Ohio Ct. App. 3d. 1993); Hartford Fire Ins. Co. v. Union Graded Sch. Dist. No. 73 of Garvin County, 249 P. 345, 346 (Okla. 1926); Purcell v. Wash. Fid. Nat'l Ins. Co., 16 P.2d 639, 641 (Or. 1932); Poles v. State Mut. Ben. Soc., 195 A. 429, 431 (Pa. Super. Ct. 1937); Campbell v. Norfolk & Dedham Mut. Fire Ins. Co., 682 A.2d 933, 935 (R.I. 1996); Ward v. Pac. Fire Ins. Co., 104 S.E. 316, 317-18 (S.C. 1920); Duerksen v. Brookings Int'l Life & Cas. Co., 166 N.W.2d 567, 571 (S.D. 1969); Satterfield v. Inter-Ocean Cas. Co., 19 S.W.2d 229, 230 (Tenn. 1929); Travelers Indem. Co. of R.I. v. Lucas, 678 S.W.2d 732, 734 (Tex. Ct. App. 1984); Moran v. Knights of Columbus, 151 P. 353, 360 (Utah 1915); Coop. Fire Ins. Ass'n of Vt. v. Bizon, 693 A.2d 722, 727 (Vt. 1997); Williams v. Metro. Life Ins. Co., 123 S.E. 509, 512 (Va. 1924); Frye v. Prudential Ins. Co. of Am., 288 P. 262, 264 (Wash. 1930); Nat'l Mut. Ins. Co. v. McMahan & Sons, Inc., 356 S.E.2d 488, 496 (W.Va. 1987); W. Cas. & Sur. Co. v. Budrus, 332 N.W.2d 837, 839 (Wis. Ct. App. 1983); Wilson v. Witt, 952 P.2d 214, 216 (Wyo. 1998).

104. *Nathe*, 615 N.W.2d at 348.

105. *See generally* 13 LEE R. RUSS ET AL., COUCH ON INSURANCE § 186:8 (3d ed. 1999) (stating “the proof of loss requirement is designed to give the insurer facts to facilitate its investigation”). *See also* Vala v. Pac. Ins. Co., Ltd., 695 N.E.2d 581, 586 (Ill. App. Ct. 1998) (stating “the purpose of a proof of loss is to allow the insurer to form an intelligent estimate of its rights and liabilities, to afford it an opportunity for investigation and to prevent fraud and imposition upon it”); Clark v. London Assur. Corp., 195 P. 809, 812 (Nev. 1921) (stating “one of the purposes—in fact, the chief one—of requiring the proof of loss is to prevent imposition and fraud”).

106. *Boston Ins. Co. v. A.H. Jacobson Co.*, 226 Minn. 479, 483, 33 N.W.2d 602, 605 (1948).

the initial notice to the insurer.¹⁰⁷ The initial notice requirement has a different function than the proof of loss requirement.¹⁰⁸ The initial notice requirement operates as a tool for the insurer to begin a timely investigation.¹⁰⁹ The initial notice requirement should operate as a condition precedent, because it is the first time an insurer learns of the loss and in order to conduct an adequate investigation the insurer must have early notice of the loss.¹¹⁰

The legislature noted the differences in the functions of the two clauses and the importance of the initial notice of the loss by making that time requirement immediate, thereby separating it from the proof of loss requirement.¹¹¹ In *Nathe* the court noted that “the legislature was quite clear that notice was now required to be immediate” when it separated the notice and proof of loss requirements.¹¹² The court noted that this immediate notice protects the insurer’s interests¹¹³ by giving the insurer “ample opportunity to investigate into the cause of the fire and the nature and extent of the loss.”¹¹⁴

The court noted that American National’s use of the proof of loss clause supported the view that the clause operates as an investigative tool.¹¹⁵ American National did not that request *Nathe* Brothers submit a proof of loss unless it disagreed with the initial \$10,000 adjustment.¹¹⁶ Furthermore, American National could choose to pay on a claim without ever requesting a sworn proof of

107. *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341, 346 (Minn. 2000). *See Fletcher v. German-Am. Ins. Co.*, 79 Minn. 337, 341, 82 N.W. 647, 648 (1900) (stating “one of the objects in requiring forthwith proof of loss is to give the insurer ample opportunity to investigate the cause and the extent of the loss”).

108. 13 LEE R. RUSS ET AL., *COUCH ON INSURANCE* § 186:8 (3d ed. 1999) (stating “notice of the accident serves a different purpose than the proof of loss . . . [as] [t]he proof of loss requirement is designed to give the insurer facts to facilitate its investigation as opposed to notice to commence a timely investigation”).

109. *Id.*

110. 13 LEE R. RUSS ET AL., *COUCH ON INSURANCE* § 186:14 (3d ed. 1999) (stating “that the purpose of a provision for notice of loss is to afford the insurer an adequate opportunity to investigate, to prevent fraud and imposition upon it, and to form an intelligent estimate of its rights and liabilities before it is obliged to pay”).

111. *See Act of Apr. 18, 1955, ch. 482, § 1, 1955 Minn. Laws 755* (codified in MINN. STAT. § 65A.01, subd. 3 (2000)).

112. *Nathe*, 615 N.W.2d at 348.

113. *Id.*

114. *Fletcher v. German-Am. Ins. Co. of New York*, 79 Minn. 337, 341, 82 N.W. 647, 648 (1900).

115. *Nathe*, 615 N.W.2d at 348.

116. *Id.* at 343.

loss from Nathe Brothers or any customer American National insured.¹¹⁷ By its actions, American National indicated that the submission of a sworn proof of loss is not a condition precedent to its liability, but a condition subsequent to recovery.¹¹⁸

By noting the function of the proof of loss and showing how, by its actions, American National used the proof of loss, the court clarified the current function of the clause in this case and in the statute.¹¹⁹

B. Condition Subsequent v. Condition Precedent

This decision provided further certainty to the Minnesota statute by holding the proof of loss clause acts as a condition subsequent.¹²⁰ Had the supreme court sustained the lower court's ruling, it would be in conflict with its holding in *McCullough v. Travelers Cos.*,¹²¹ where the Court held that failure to submit to an examination prior to bringing suit did not require dismissal of the insured's suit.¹²²

In this case, McCullough's restaurant was destroyed by a gas explosion and fire.¹²³ McCullough submitted a proof of loss statement to Travelers Companies.¹²⁴ Travelers Companies demanded an oral examination of McCullough pursuant to a policy provision that requires the insured to submit to examinations under oath upon Travelers' Companies demand.¹²⁵ When the examination could not be scheduled and several months passed, McCullough served a summons and complaint on Travelers Companies.¹²⁶ Travelers Companies answered that McCullough's suit was barred because he had refused to comply with the policy provision requiring him to submit to an oral examination under oath.¹²⁷ The trial court granted summary judgment in favor of Travelers Companies, and the appellate court affirmed.¹²⁸ The

117. *Id.* at 348.

118. *Id.*

119. *Id.*

120. *Id.* at 348-49.

121. 424 N.W.2d 542 (Minn. 1988).

122. *Id.* at 545.

123. *Id.* at 543.

124. *Id.*

125. *Id.*

126. *Id.* at 544.

127. *Id.*

128. *Id.* at 544.

supreme court reversed and remanded the case stating “under this policy, and oral examination under oath is not a condition precedent to suit.”¹²⁹ The court in *McCullough* further stated that the suit would not be barred because “the policy merely states that no suit will be sustainable.”¹³⁰ The court contrasted this holding from a situation that would void the policy where an insured fraudulently conceals or misrepresents information during an insurer’s investigation.¹³¹

One could argue that the 1955 amendments¹³² specifically added language changing the clause to a condition precedent.¹³³ However, this argument fails because the court addressed the maintenance of suit clause in *McCullough*, when it stated that a “failure to submit to examination is not fatal to the insured’s suit where, as here, the insured has not expressly refused to submit to an examination and has expressed a willingness to be examined shortly after commencing suit.”¹³⁴ The legislature has amended the 1895 statute on numerous occasions, and each time it had an opportunity to change the proof of loss clause to a condition precedent.¹³⁵ However, the legislature has not changed the proof of loss clause, as it remains a condition subsequent.¹³⁶ Furthermore, courts have made suggestions to the legislature on several

129. *Id.* at 544.

130. *Id.*

131. *Id.* at 545.

132. See Act of Apr. 18, 1955, ch. 482, § 1, 1955 Minn. Laws 751 (codified in MINN. STAT. § 65A.01 (2000)).

133. See generally *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 597 N.W.2d 587, 589-590 (Minn. Ct. App. 1999), *overruled by* *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341 (Minn. 2000) (discussing that the Minnesota Standard Fire Insurance Policy compels the conclusion that the insured must provide a signed and sworn proof of loss within sixty days of the insurer’s request; however this argument was overruled by the Minnesota Supreme Court). See also *Accord Yaccarino v. St. Paul Fire & Marine Ins. Co.*, 542 N.Y.S.2d 660, 661 (N.Y. App. Div. 1989) (stating “that the failure to timely file a proof of loss statement constitutes an absolute defense to an action to recover the proceeds of an insurance policy”).

134. *McCullough*, 424 N.W.2d at 545. Addressing the *McCullough* decision, the court in *Nathe* stated “[o]ur holding in *McCullough* makes it clear that the addition of the maintenance of suit clause to the Standard Fire Insurance Policy did not make strict compliance with all its terms a condition precedent to recovery.” *Nathe*, 615 N.W.2d at 347.

135. See Act of Apr. 18, 1955, ch. 482, § 1, 1955 Minn. Laws 751 (codified in MINN. STAT. § 65A.01 (2000)) (amending the 1895 statute in 1955, but the legislature did not change the timeliness requirement of proof of loss to a condition precedent); *McCullough*, 424 N.W.2d at 545 (finding the maintenance of suit amendments to the 1955 statute to be a condition subsequent).

136. MINN. STAT. § 65A.01 (2000).

occasions, providing express language the legislature should use if it wished to change the clause to a condition precedent.¹³⁷ It appears that the legislature wishes the proof of loss clause to remain a condition subsequent, as it has not used its opportunities or suggestions from the court to change the clause to a condition precedent.¹³⁸

The court in *Nathe* noted that absent specific policy language the clause is a condition subsequent.¹³⁹ This leaves insurers free to change the proof of loss clause to a condition precedent in their own policies.¹⁴⁰ American National failed to add this specific language to their policy.¹⁴¹

Furthermore, there was no claim of fraudulent concealment, misrepresentation, or bad faith in this case.¹⁴² *Nathe* Brothers attempted to adhere to the policy by submitting an incomplete proof of loss form,¹⁴³ and subsequently submitting a complete proof of loss form.¹⁴⁴ If the *Nathe* Brothers did commit fraud, when

137. *Boston Ins. Co. v. A.H. Jacobson Co.*, 226 Minn. 479, 483, 33 N.W.2d 602, 605 (1948) (discussing a forfeiture of the insured's rights must be provided in the policy for a court to construe a policy as providing a forfeiture; however, in this case the statute prescribing the form of policy does not provide a forfeiture); *Mason v. St. Paul Fire & Marine Ins. Co.*, 82 Minn. 336, 338, 85 N.W. 13, 14 (1901) (discussing that the legislature can provide express language amending the 1895 statute such as the failure to comply with the timeliness requirement would be "fatal to the rights of the insured, or a condition precedent to the liability of the company").

138. MINN. STAT. § 65A.01 (2000).

139. *Nathe*, 615 N.W.2d at 348.

140. 2 LEE R. RUSS ET AL., *COUCH ON INSURANCE* § 22:34 (3d rev. ed. 1995) (stating "in the absence of a contrary statute, forfeiture provisions are valid . . . [and] courts will enforce a forfeiture where there has been a plain violation of a condition of the policy and it is the clearly expressed intent of the parties that forfeiture be the consequences of such a violation"); *see infra* note 63 (discussing recent Minnesota decisions holding specific language in an insurance policy constitutes a condition precedent; further discussing similar findings in other jurisdictions). However, a proof of loss clause drafted as a complete bar to recovery in Minnesota is a penalty to rights already vested in the insured, and is against long-standing judicial policy disfavoring forfeiture clauses in insurance contracts and should not be allowed. *Boston Ins. Co. v. A.H. Jacobson Co.*, 226 Minn. 479, 483, 33 N.W.2d 602, 605 (1948) (stating "the proof of loss time requirement in the Minnesota statute is a condition subsequent because it affects rights that have already accrued"); *see supra* note 103 (discussing long-standing judicial policy disfavoring forfeiture clauses in insurance contracts).

141. *Nathe*, 615 N.W.2d at 348.

142. *See generally* *Nathe Bros., Inc. v. Am. Nat'l Fire Ins. Co.*, 615 N.W.2d 341 (Minn. 2000).

143. *Id.* at 343.

144. *Id.*

submitting a proof of loss, the fraud can void the policy,¹⁴⁵ because the essential function of a proof of loss clause is a tool that the insurer can use to investigate a claim and prevent fraud on the policy.¹⁴⁶

The court properly ruled the proof of loss requirement is a condition subsequent under the statute and in this situation.¹⁴⁷ Courts in other jurisdictions have come to similar conclusions while determining the function of a proof of loss clause.¹⁴⁸

V. CONCLUSION

The *Nathe* decision correctly determined that the submission of proof of loss in this situation (and under the statute) is a condition subsequent and failure to meet that time requirement should not necessarily bar recovery.¹⁴⁹ This ruling enhances the view that courts should interpret ambiguities in a manner that maintains the insured's rights under the policy.¹⁵⁰ The legislature has had ample opportunity to change the proof of loss clause to a condition precedent in the statute, but has made no such change. In overruling an erroneous court of appeals decision, the supreme court has made the current Minnesota Standard Fire Insurance Policy and Minnesota's insurance law more certain.

145. 5 LEE R. RUSS ET AL., *COUCH ON INSURANCE* § 79:66 (3d ed. 1996).

146. *See supra* note 105.

147. *Nathe*, 615 N.W.2d at 348-49.

148. *See supra* note 105 (finding cases discussing the function of a proof of loss clause); *see also* *Elberton Cotton Mills v. Indem. Ins. Co. of N. Am.*, 145 A. 33, 35 (Conn. 1929); *Himelfarb v. Harford Fire Ins. Co.*, 718 A.2d 693, 700 (Md. 1998); *Keene Co-op. Grain & Supply Co. v. Farmers Union Indus. Mut. Ins. Co.*, 128 N.W.2d 773, 778 (Neb. 1964); *Clark v. London Assur. Corp.*, 195 P. 809, 812 (Nev. 1921).

149. *Nathe*, 615 N.W.2d at 348.

150. *See supra* note 1.