

Ford Motor Company

W. H. Kelly
THE AMERICAN ROAD
DEARBORN, MICHIGAN

OFFICE OF THE GENERAL COUNSEL

May 5, 1965

Liberty Mutual Insurance Co.
97-45 Queens Boulevard
Forest Hills 74, New York

Attention: Richard R. Bauman, Supervisor
Claims Department

Re: Montgomery Elevator Company -
Ford Motor Company
Your File Nos.: P 216-1987 & PD 459-1459

Dear Mr. Bauman:

Your letter of March 12, 1965 denying the claim of Ford Motor Company has been forwarded to me for review and a decision as to whether we should bring a lawsuit. A careful review of the file indicates to me that our legal position is secure. I conclude from reading your letter that you may not have had all of the relevant considerations, and in a spirit of friendliness, I would like to set forth, in some detail, the reasons why I have concluded that you owe us a recovery.

Your letter states "any malfunction in the elevator equipment would be attributable to the installation and/or maintenance of the equipment...". You also point out Staley performed the maintenance. (You may be unaware of the existence of a purchase order which explicitly sets forth that Montgomery Elevator Company, which furnishes all labor, material, tools, equipment and supervision required for the "construction" of elevators, including the one in issue.) Included within the Bill of Sale are a set of General Conditions, including a section 31 in which Montgomery agreed to indemnify Ford Motor Company for all damage "arising out of, or in connection with the performance of all work..." either from the alleged negligence of the contractor or any subcontractor. The proposition that a prime contractor will agree to protect the purchaser for actions arising from the negligence of a subcontractor is, of course, a common feature of construction contracts.

ACCOUNTING
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To the extent that your analysis of the cause of the elevator failure is correct, it would follow that your assured was responsible to Ford Motor Company for all loss resulting from the failure. We have previously submitted to you an invoice covering that loss.

While I defer judgment as to whether the failure resulted from a product deficiency of the elevator or a deficiency of installation, I fail to see where the distinction would be relevant in so far as our rights against Montgomery Elevator Company. That issue might be relevant as between your assured and its subcontractor, Staley, but our rights are not determined by that feature.

Certainly, we cannot accede to the basis of your declination. I am hopeful that when you have reviewed the underlying contract, you will see fit to alter your stand. I am being pressed for immediate action, but I can understand that your review may take a few days, since I must assume that your letter was based on false assumptions arising from an incomplete file. I am marking our file on current diary, and we will not initiate any legal proceedings until you have had a reasonable opportunity to review the position of Liberty Mutual. Our many relationships with your Company have been most satisfactory, and I look forward to your resolving this matter in our favor once your review is completed.

Yours very truly,

Robert M. Johnson
Staff Attorney

RMJ:mec

cc: A. Scalia
J. A. Davis

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