THE STANDARD FIRE POLICY: LECTURES BEFORE THE FIRE INSURANCE CLUB OF CHICAGO

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THE STANDARD FIRE POLICY

LECTURES BEFORE THE FIRE INSURANCE CLUB OF CHICAGO

BY

GUILFORD A. DEITCH

OF THE

INDIANAPOLIS BAR

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PREFACE

AT THE request of ROUGH NOTES I delivered a series of seven lectures before the Fire Insurance Club, of Chicago, taking as the text the "Standard Fire Insurance Policy of New York." The last lecture was delivered in June, 1905.

So many calls have been received for these lectures that ROUGH NOTES requested me to revise and prepare them for issuance in book form. The result is this volume, which I hope will prove a help to the insurance profession, and an aid to the busy insurance lawyer.

I express my thanks to Mr. Irving Williams, of ROUGH NOTES, and Miss Goldie Scovel, of my office, for assistance in preparing this book for the press.

GUILFORD A. DEITCH.

Indianapolis, June 26, 1905.

The Standard Fire Policy

YOUR committee, to whom was left the choosing of the subjects for the lectures which I have been invited to deliver before you, have requested that I take up the standard policy form and give the construction which the courts have placed upon its provisions.

In the limited number of lectures it will not be possible to cite to you all the cases construing the several provisions of the standard policy. To do so would require more time than the club would care to have taken. If all the cases construing the standard policy form were collected and even briefly noted, they would make a book of more than a thousand pages. I shall endeavor, however, to quote to you from the leading case construing each provision and cite a sufficient number of other cases to inform you of the legal construction.

The standard policy is a form of comparatively recent adoption. It is now provided for in the following States: Connecticut, Maine, Massachusetts, Michigan, North Dakota, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota and Wisconsin.

Even in those States not having a standard policy law the form is in general use by companies doing more than a local business. There are local mutual fire insurance companies in every State that do not use the standard form.

The reason for the adoption of the standard form of policy can not be better stated than by giving the language of the court in the case of DeLancy v. Rockingham Farmers' Mut. Fire Ins. Co., 52 N. H. 581, 3 Ins. L. J. 131. In that case the court had to construe a law of New Hampshire amending the charter of the defendant company, which had to do with the policy form of the company. The court there used the following language:

"The principal act of precaution was to guard the company against liability for losses. Forms of applications and policies (like those used in this case) of a most complicated and elaborate structure were prepared and filled with covenants, exceptions, stipulations, provisos, rules, regulations and conditions, rendering the policy void in a great number of contingencies. These provisions were of such bulk and character that they would not be understood by men in general, even if subjected to a careful and laborious study; by men in general they were sure not to be studied at all. The study of them was rendered particularly unattractive by a profuse intermixture of discourses on subjects in which a premium payer would have no interest. The compound, if read by him, would, unless he were an extraordinary man, be an inexplicable riddle, a mere flood of darkness and confusion. Some of the most material stipulations were concealed in a mass of rubbish on the back side of the policy and the following page, where few would expect to find anything more than a dull appendix and where scarcely anyone would think of looking for information so important as that the company claimed a special exemption from the operation of the general law of the land relating to the only business in which the company professed to be engaged. As if it were feared that, notwithstanding these discouraging circumstances, some extremely eccentric person might attempt to examine and understand the meaning of the involved and intricate net in which he was to be entangled—it was printed in such small type and in lines so long and so crowded that the perusal of it was made physically difficult, painful and injurious. Seldom has the art of typography been so successfully diverted from the diffusion of knowledge to the suppression of it.

7

There was ground for the premium payer to argue that the print alone was evidence, competent to be submitted to a jury, of a fraudulent plot. It was not a little remarkable that a method of doing business not designed to impose upon, mislead and deceive him by hiding the truth, and depriving him of all knowledge of what he was concerned to know, should happen to be so admirably adapted to that purpose. As a contrivance for keeping out of sight the dangers created by the agents of the nominal corporation, the system displayed a degree of cultivated ingenuity which, if it had been exercised in any useful calling, would have merited the strongest commendation.

"Traveling agents were necessary to apprise people of their opportunities and induce them to act as policyholders and premium payers, under the name of 'the insured.' Such emissaries were sent out. 'The soliciting agents of insurance companies swarm through the country, plying the inexperienced and unwary, who are ignorant of the principles of insurance law and unlearned in the distinctions that are drawn between legal and equitable estates.' Combs v. Hannibal Savings Ins. Co., 43 Mo. 148, 152; 6 Western Insurance Review, 467, 529. The agents made personal and ardent application to people to accept policies and prevailed upon large numbers to sign papers (represented to be mere matters of form) falsifying an important fact by declaring that they made application for policies, reversing the first material step in the negotiation. An insurance company, by its agent, making assiduous application to an individual to make application to the company for a policy, was a sample of the crookedness characteristic of the whole business.

"When a premium payer met with a loss, and called for the payment promised in the policy which he had accepted upon most zealous solicitations, he was surprised to find that the voluminous, unread and unexplained papers had been so printed at headquarters and so filled out by the agents of the company as to show that he had applied for the policy. This, however, was the least of his surprises. He was informed that he had not only obtained the policy on his own application, but had obtained it by a series of representations (of which he had not the slightest conception) and had solemnly bound himself by a general assortment of covenants and warranties (of which he was unconscious), the number of which was equalled only by their variety and the variety of which was equalled only by their capacity to defeat every claim that could be made upon the company for the performance of its part of the contract. He was further informed that he had succeeded in his application by the falsehood and fraud of his representations—the ommission and misstatement of facts which he had expressly covenanted truthfully to disclose. Knowing well that the applications were made to him and that he had been cajoled by the skillful arts of an importunate agent into the acceptance of the policy and the signing of some paper or other, with as little understanding of their effect as if they had been printed in an unknown and untranslated tongue, he might well be astonished at the inverted application and the strange multitude of fatal representations and ruinous covenants. But when he had time to realize his situation, had heard the evidence of his having beset the invisible company and obtained the policy by just such means as those by which he knew he had been induced to accept it, and listened to the proof of his obtaining it by treachery and guilt in pursuance of a premeditated scheme of fraud with intent to swindle the company in regard to a lien for assessments, or some other matter of theoretical materiality, he was measurably prepared for the next regular charge of having burned his own property.

"With increased experience came a constant expansion of precautionary measures on the part of the companies. When the court held that the agent's knowledge of facts not stated in the application was the company's knowledge and that an unintentional omission or misrepresentation of facts known to the company would not invalidate the policy, the companies, by their agents, issued new editions of applications and policies containing additional stipulations to the effect that their agents were not their agents, but were the agents of the premium payers; that the latter were alone responsible for the correctness of the applications, and that the companies were not bound by any knowledge, statements or acts of any agent not contained in the application. As the companies' agents filled the blanks to suit

themselves, and were in that matter necessarily trusted by themselves and by the premium payers, the confidence which they reposed in themselves was not likely to be abused by the insertion in the application of any unnecessary evidence of their own knowledge of anything, or their own representations, or their dictation and management of the entire contract on both sides. Before that era it had been understood that a corporation—an artificial being, invisible, intangible and existing only in contemplation of law—was capable of acting only by agents; but corporations, pretending to act without agents, exhibited the novel phenomena of anomalous and nondescript, as well as imaginary, beings, with no visible principal or authorized representative; no attribute of personality subject to any law or bound by any obligation, and no other evidence of a practical, legal, physical or psychological existence than the collection of premiums and assessments. The increasing number of stipulations and covenants, secreted in the usual manner, not being understood by the premium payer until his property was burned, people were as easily beguiled into one edition as another, until at last they were made to formally contract with a phantom that carried on business to the limited extent of absorbing cash received by certain persons who were not its agents.

"When it was believed that things had come to this pass, the Legislature thought it time to regulate the business in such a manner that it should have some title to the name of insurance and some appearance of fair dealing."

As the New York standard form of policy is the one most in use, and embraces all that is in other forms, with some provisions that are not in other forms, I will take up its provisions as the foundation of what I have to say to you.

"In consideration of the stipulations herein named and of $..... premium."

The recital in the policy raises a presumption that the premium has been paid, and, if it has not been paid, that is a matter of defense which the company must plead and prove. What will constitute a payment of premium has been often before the courts. It is a rare case in which the premium is actually paid in cash at the time the policy is delivered. Usually, on country property, the premium is settled by note given to the agent. On city property the premium is usually settled by the agent extending a credit to the insured. The policy is delivered to the insured without any demand for premium, the agent charging the insured with the amount of the premium on his books, and charging himself with the amount of the premium in his account with the company.

In Elkins v. Susquehanna Mut. Fire Ins. Co., 113 Pa. 386, 16 Ins. L. J. 78, the agent delivered the policy to the insured, giving the insured credit for the premium, and charged himself, in his account with the company, with the amount of the premium. The agent was responsible for the premium or the return of the policy. The court, in holding that the facts constituted a payment of the premium, says:

"From this it appears that Crane had power, on receipt of a policy, to deliver it to the assured, or to his agent, and to collect the premiums. The company looked to Crane either for a return of the policy or for the premium. Upon delivery of the policy he was obligated to pay the premium as for his own debt. He therefore kept an account with the company and charged himself with the premiums as the policies were delivered, and took credit with any remittances he might make. Now, if it were true, that an arrangement to this effect existed between the company and Crane—and that may be fairly inferred from

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Insuring clause.

the evidence—the arrangement would seem to indicate that the company was content to accept the responsibility of their own agent for such sums as he might receive or otherwise provide for on delivery of the policies, and to substitute the personal liability of the agent in the place of the security which the suspension clause in their contract afforded. This implication is greatly strengthened by the course of business which the agent pursued in the conduct of the company's business. He delivered such policies as he chose and charged the premiums in an account which he kept. He had a running account with Lancaster, and the premiums for this insurance were charged up to Lancaster when the policy in suit was delivered to him. The effect of such a course of business as respects Crane certainly was to substitute the liability of Lancaster for that of the assured. And Lancaster says he usually rendered bills to Mr. Elkins once in three months.

"In view of the course of business pursued by this company with Crane, and by this agent in consummation of their contracts, we think the implication might fairly arise that any absolute requirement of the policy, as to the actual prepayment of the premiums, had been dispensed with, and that the obligation of the agent to pay the premium was, in effect, the payment of it by the insured. If Crane had advanced the money to the company and delivered the policy, no one can doubt that it would have taken immediate effect, and in what respect can there be any difference, in principle, if Crane, with the company's consent, assumed the payment, thus substituting his personal liability in the place of the money? Lancaster became a debtor to Crane and Crane to the company, and this, in view of the course of business pursued, would, as between the insurer and the insured, we think, be equivalent to actual payment."

Other cases to the same effect are:

Pennsylvania Ins. Co. v. Carter, 11 Atl. 102.
Huggins Cracker Co. v. People's Ins. Co., 41 Mo. App. 530.
Bouton v. American Mut. Ins. Co., 25 Conn. 542.
Sheldon v. Connecticut Ins. Co., 25 Conn. 207.
Dayton Ins. Co. v. Kelley, 24 Ohio 345.

Where a broker procures the insurance, and the policy is delivered to the broker to be delivered to the insured, with authority to the broker to collect the premiums, and the broker is charged with the premium by the agent in his account kept with him, this constitutes a payment of the premium.

Bang v. Farmville Ins. Co., 1 Hughes 290.
White v. Conn. Ins. Co., 120 Mass. 330.
Elkins v. Susquehanna Mut. Fire Ins. Co., 113 Pa. 386.

Where the broker is not intrusted by the company with the delivery of the policy and the collection of the premium, and no account exists between the broker and the company, the payment of the premium to the broker in such case is not binding upon the company.

Pottsville Mut. Fire Ins. Co. v. Minnequa Springs Improvement Co., 100 Pa. 137, 11 Ins. L. J. 892.
Peoria Sugar Refinery v. Susquehanna Ins. Co., 20 Fed. 480, 14 Ins. L. J. 333.

It appears from the foregoing cases that the premium may be paid in either of the following ways: (1) By cash or note; (2) by the agent extending credit to the insured and charging himself with the amount of the premium in his account with the company; (3) by the agent charging the broker with the amount

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Insuring clause.

of the premium and charging himself with the premium in his account with the company.

Does Insure.....

Insurance is a contract of indemnity, and it appertains to the person or party to the contract, and not to the property which is subjected to the risk against which its owner is protected. Cummings v. Cheshire County Mut. Fire Ins. Co., 55 N. H. 457, 4 Ins. L. J. 932. It is not a contract running with the land, as in the case of real estate, nor running with the personalty, so to speak, as in the case of a chattel interest of the insured.

Any person who would be subjected to a pecuniary loss in case of the destruction of real or personal property by fire, or other casualty, has an interest in such property which is subject to be insured for his benefit. Care should be taken in the preparation of the policy to name the insured correctly. Initials should be in all cases avoided in writing the name of the insured. The exact interest of the insured in the property should be ascertained, and if such interest be less than the fee simple title, it should be so expressed in the policy. Warehousemen, factors and brokers may insure property in their custody and care in their own name as such. Where two or more persons have a joint interest in property, the name of each and every person interested should be written in the policy, and so if individuals transact business by trade name, the names of the individuals should be written in the policy as well as their trade name.

For the term of ..... from the ..... day of .....
19...., at noon, to the .....day of .....at noon.

The question as to the proper construction to be given to the word "noon" has not been often before the courts. The leading case on the subject is Jones v. German Ins. Co. (Ia.), 29 Ins. L. J. 60, where it is said:

"How shall the exact time of 'noon' be determined by 'common' or 'standard' time? At Creston, Iowa, the latter is seventeen and a half minutes faster than the former, and, as the policy sued on covered the property destroyed 'for one year from the 18th day of September, 1896, at 12 o'clock at noon, to the 18th day of September, 1897, at 12 o'clock at noon,' and the fire broke out on the last day at about 11:45 o'clock a. m., common time, or at two and a half minutes after 12 o'clock, standard time, the rights of the parties depend on the correct solution of this question. The trial court instructed the jury that 'the usual means of determining time of day, when such time is referred to in ordinary contracts, is by the standard of the meridian of the sun, or sun time." The presumption is that common, or solar, time is the time intended by the parties when reference to the time of day is made in contracts, unless a different standard is shown to have been intended. It may be taken as a presumption from the use of the language, '12 o'clock at noon,' that the parties intended to mean 12 o'clock, sun time, as that phrase is commonly understood. The exigencies of some lines of business may require the adoption of a system which shall definitely fix the same hour and minute at a particular instant at localities widely separated in longitude, so that the delay of, and occasional mistake in, computation may be avoided. Indeed experience had demonstrated the inestimable importance to railroad companies of giving direction to employes everywhere on their lines of road with absolute certainty as to time. Without such certainty, safety would be imperiled. And it may be that, because of

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Insuring clause.