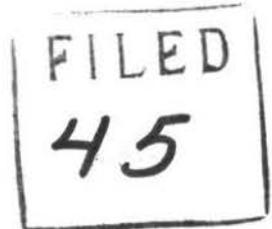


INSURANCE COMPANIES ORGANIZED
UNDER ARTICLE 7, CHAPTER 37,
R. S. MO. 1939

Insurance corporations organized un-
der Article 7, Chapter 37, R. S. Mo.
1939, may issue a policy on personal
property, known as a "floater" pol-
icy that might involve loss by fire
in transportation.

April 23, 1948



Honorable Owen G. Jackson
Superintendent of Insurance
Jefferson City, Missouri

Attention: Honorable Ralph G. Lashly

Dear Superintendent Jackson:

This will acknowledge your letter in which you request the opinion of this department whether insurance companies organized under the provisions of Article 7, Chapter 37, R. S. Mo. 1939, are authorized to write the various forms of inland marine floater policies. Your letter is as follows:

"Will you please advise whether in your opinion an insurance company organized under the provisions of Article 7, Revised Statutes 1939, is authorized to write insurance covering loss against fire.

"The specific case, which has been presented, is that of an Article 7 company writing what is known as a 'personal property floater' policy, which covers the insured against any or all loss to personal property except certain named exclusions. Fire coverage is not one of the exclusions and is one of the hazards covered by the policy.

"An attempt has been made to distinguish between fire insurance on property at a definite, specified location and fire insurance on personal property, which may be or is being moved from one location to another and is not in place and at a definite specified location.

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"The distinction has been carried to the extent that Article 7 companies contend that the latter, that is, insurance against loss by fire of personal property, not at definite specified location does not constitute fire insurance as that term is used in Section 5955, R. S. Mo. 1939.

"This Department has taken the position that fire insurance or insurance against loss by fire means just what the term implies, whether it is contained in a policy of fire insurance or in a personal property floater. The indemnity provided is the same in both cases."

The particular question here submitted is whether or not a Missouri insurance company organized under Article 7, Chapter 37, R. S. Mo. 1939, may write the various forms of inland marine floater policies.

Section 5904 as amended, Laws Missouri, 1945, page 1014, Chapter 37, R. S. Mo. 1939, provides in the first subdivision of said section that an insurance corporation may be formed for the following purposes; "First, to make insurance on houses, buildings, merchandise, furniture, and all kinds of property, against loss or damage by fire, lightning, hail and windstorm and earthquake; to make all kinds of insurance on ships, steamboats and other vessels, and their freight and cargoes, and also on goods, merchandise, produce, and all other kinds of property in the course of transportation, either by land or water, and to lend money on bottomry and respondentia * * *".

Section 5955, Art. 7, Chapter 37, R. S. Mo. 1939, hereinafter again discussed, provides:

"1. Any company organized under the provisions of this article is empowered and authorized to make contracts of insurance or to reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles for the kinds of insurance following:

* * * * *

"Miscellaneous insurance. Against loss or damage by any hazard upon any risk not provided for in this section, which is not prohibited by statute or at common law from being the subject of insurance, excepting life insurance and fire insurance."

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The language of the provision quoted from said section 5904, we believe, makes it clear that an insurance company may be incorporated under said section "to make insurance on houses, buildings, merchandise and furniture and all kinds of property against loss or damage by fire, lightning, hail and windstorm and earthquake." This provision of the statute evidently refers to fire, lightning hail and windstorm and earthquake insurance as such on all property while contained in or while being upon property having a definitely fixed location. Said section 5904, supra, then next provides that insurance companies may be incorporated to write marine and transportation insurance as a definite and different kind of insurance as follows: "to make all kinds of insurance on ships, steamboats and other vessels and their freight and cargoes and also on goods, merchandise, produce and all other kinds of property in the course of transportation, either by land or water, * * * *" (all underscoring ours). This would be an inland marine company. Such company would not have the charter powers to write fire insurance, as such, provided for in the first clause of Section 5904, as amended, Laws Missouri, 1945, page 1015, l.c. 1016, but its policies of marine or transportation insurance would cover the marine or transportation risks under that class of insurance provided for in said Section 5904, even though the loss might arise from fire.

We think said Section 5904 would permit the incorporation of a company to write both fire and marine insurance. There have been such companies organized in this state, and which have transacted insurance business in this state, for many years with apparently no question ever having been raised as to the validity of such dual purpose of organization or of doing the business of writing both fire and marine insurance. One difficulty with said Section 5904 is that it does not set out separately and distinctly the authority to write fire insurance on the one hand, and marine or transportation insurance on the other hand. But a careful reading of said section makes it very clear that they are two separate and distinct lines of insurance provided for in the first subdivision of said section 5904.

The question here under consideration was decided by the Supreme Court of Wisconsin, in the case of Northwestern National Insurance Company vs. Mortensen, 284 N.W. 13, l.c. 16 (1-3). The Supreme Court of Wisconsin in deciding that case said:

"The plaintiff is licensed to write fire insurance, and is therefore, under Sec. 203.33, subject to the rating law. It is also licensed to write marine insurance. Sec. 203.42, Stats., provides that no insurer shall intentionally charge a different rate from that which

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has been filed with the bureau. Does this mean that the plaintiff, being subject to the rating act because licensed to write fire insurance, must file rates for its marine policies also, excepting only such as relate to property of or in the hands of common carriers? It seems apparent that the legislature did not so intend, and that, as the plaintiff contends, the legislature recognized the existence of marine insurance as something entirely distinct from fire insurance. In legislating with reference to fire insurance it was not necessary to except from the fire rating act marine insurance, because the distinction between the two types of insurance existed without specific provision."

The proviso clause of Section 5905, R. S. Mo. 1939, as amended Laws 1941, page 402, l.c. 404, confirms the distinction intended to be made and which was made, by the Legislature in defining two distinct lines of insurance as provided in the first subdivision of said Section 5904, by further providing in said proviso of said Section 5905 the following:

"* * * provided further, that existing corporations which by their charters are authorized to do the business of fire, or marine, or fire and marine insurance may, without amending their charters, make any one or more kinds of insurance now or hereafter permitted to such corporations."

It is thus made apparent that the Legislature in Section 5904 intended to provide and did provide for fire insurance, marine insurance, or fire and marine insurance, and in the next section, 5905, gave conclusive evidence in confirmation of such intention.

There can be no question, we think, that said Section 5904, in the first subdivision thereof, by authorizing insurance corporations organized thereunder "to make all kinds of insurance on ships, steamboats and other vessels and their freight and cargoes and also on goods, merchandise, produce and all other kinds of property in the course of transportation either by land or by water * * *" means that what is popularly termed floater policies may be written by such companies to cover any risk incident to such transportation either by land or water.

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This character of insurance has been recognized as legitimate, and such policies have been upheld by the Courts wherever and whenever the parties to the contract agreed upon such a policy. 26 C. J., page 96, states the following test on the principle:

"Shifting location. 'Floating' policies are policies intended to cover property or value which cannot well be covered by specific insurance because of the fact that the property is changing in quantity or location. A so-called 'drummer floater' policy on the property of a salesman 'while traveling' covers the property while he is on the road, including necessary interruptions of his journey, but not after it has been returned to the starting point.* * *".

The Supreme Court of Missouri had before it the case of Wilson vs. Hartford Fire Ins. Co., 300 Mo. 1. The question of the validity of a "floating policy" was involved in the case. In holding such a policy valid when agreed upon by the parties to the contract, our Supreme Court, l.c. 52, said:

"* * *Not only therefore by the express agreement of the parties but in contemplation of law the Globe & Rutgers may be designated as a floating policy. The texts and cases tell us that a floating policy is one intended to supplement specific insurance on property and attaches only when the latter ceases to cover the risk. (Cutting v. Atlas Ins. Co., 199 Mass. 380; Peabody v. Liverpool Ins. Co., 171 Mass. 114; Bloch v. Am. Ins. Co., 132 Wis. 150.) The reason for the creation and the purpose of this character of policy is to provide indemnity for property which cannot because of its frequent change in location and quantity be covered by specific insurance * * *".

Insurance companies organized under Article 7, Chapter 37, R.S.Mo. as hereinabove noted, have, in addition to the authority contained in the provisions of said Sections 5904 and 5905, supra, the authority to write floater policies on personal property in transportation. Such provisions are set forth in Subsection (7) of Section 5995, R. S. Mo. 1939 authorizing them to write insurance, as follows:

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"Miscellaneous insurance. Against loss of damage by any hazard upon any risk not provided for in this section, which is not prohibited by statute or at common law from being the subject of insurance, excepting life insurance and fire insurance."

The writing of floater policies on personal property is not only not prohibited by statute, as recited hereinabove at length, but, on the contrary, is positively authorized by said Sections 5904 and 5905, supra. The provisions then of said Subsection (7) of said Section 5955 providing that companies organized under said Article 7 may write Miscellaneous insurance are comprehensive and conclusive to the end that such companies may write personal property floater policies under said Section 5955.

CONCLUSION

It is, therefore, under the above cited statutes and authorities, the opinion of this department that insurance corporations organized under the provisions of Article 7, Chapter 37, R. S. Mo. 1939, may write the various forms of inland marine personal property floater policies on ships, steamboats and other vessels and their freight and cargoes, and also on goods, merchandise, produce and all other kinds of property in the course of transportation, either by land or by water which may involve the hazards of fire while in transportation.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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