No. 306

INSURANCE—FIRE INSURANCE COMPANIES—LIABILITY INSURANCE—MOTOR VEHICLES—AUTOMOBILES

Held: A casualty insurance company may write a combination policy upon motor vehicles covering damage from fire, theft, collision, public liability and property damage.

Mr. Edward T. Dussault
County Attorney
Missoula County
Missoula, Montana

December 4, 1941.

Dear Mr. Dussault:

You have requested my opinion whether a casualty insurance company may write a combination insurance policy upon a motor vehicle covering

damage from fire as well as theft, public liability and property damage. You call my attention to an opinion of a former Attorney General reported in Volume 17, Opinions of the Attorney General at page 134, and dated July 29, 1937.

Insurance companies may transact only such business as the state through its statutes may permit. We must, therefore, look to the statutes for a solution of the question.

Section 6136, Revised Codes of Montana, 1935, deals with the powers of insurance companies and declares that "It shall be lawful for any corporation organized under this Chapter, doing business in this state . . ." to write the types of insurance thereafter enumerated in five paragraphs. Paragraph 1 authorizes a corporation to insure against fire and theft, accidents to motor vehicles, and hail damage to growing crops, etc.; paragraph 2, health, personal injury and accident insurance; paragraph 3, fidelity insurance; paragraph 4, general coverage of theft or loss of animals, business risks, plate glass and boiler explosion insurance, etc.; and paragraph 5, titles and credits.

Section 6137, Revised Codes of Montana, 1935, provides in part as follows:

> ". . . Combinations may be permitted of the different classes herein established, under one incorporation, except that fire insurance companies may not transact any other character of business than that designated in paragraph 1 of the preceding action, . . ."

It will be noted that, by Section 6137, supra, fire insurance companies may not write any other form of insurance than that provided in paragraph 1 of Section 6136, supra, while any other insurance company may write any combinations of the forms specified in said section.

The question therefore resolves itself into the proposition of whether an insurance company primarily writing casualty coverage on motor vehicles and other property would be classed as a fire insurance company, so as to come within the exception noted in Section 6137, should write fire coverage on a motor vehicle in combination with its other coverage.

In the Opinion found in Volume 17, noted above, it was held that a company writing fire insurance is a fire insurance company; and hence, if a fire insurance company may not write liability insurance, it follows a casualty company authorized to write liability insurance may not write fire insurance. With these conclusions I cannot agree. The opinion cites no authority for the conclusion except a reference to two opinions of former Attorneys General, viz., Volume 8, page 264 and Volume 14, page 7, Report & Official Opinions of Attorney General.

A reading of the opinion on page 264 of Volume 8 discloses that the question considered was whether the St. Paul Fire and Marine Insurance Company could legally amend its charter so as to permit it to add to the risks which it might carry that of liability for damage to persons. The opinion holds that, "Damage to persons is not a risk which an insurance company such as the St. Paul Fire & Marine Insurance Company is permitted to carry under the laws of Montana."

In the latter opinion, reported on page 7 of Volume 14, the question was whether a company writing fire insurance upon an automobile may also insure the owner against loss or expenses resulting from claims for damages on account of damage to, or destruction of, property of other persons caused accidentally by reason of the ownership or operation of the insured automobile. After pointing out the provisions of Sections 6136 and 6137, the opinion holds:

> "It will be observed that liability insurance is not included within the kinds of risks mentioned in the first class as designated in said section 6136 and by force of Section 6137 a fire insurance company is therefore prohibited from writing insurance covering liability arising by reason of damages caused by the ownership or operation of the insured automobile. Such liability insurance is provided for in

class 4 mentioned in Section 6136 and under the provisions of Section 6137 a fire insurance company is specifically prohibited from insuring against risks mentioned in class 4 and all other classes, except the first class mentioned in Section 6136. . . .

"I assume the company you have in mind is authorized to write fire insurance. If so, it is a fire insurance company within the meaning of Section 6137 and is by said section prohibited from also writing liability insurance of the nature mentioned in your inquiry."

In both of these opinions, the company was specifically organized as a fire insurance company; and hence, by force of Section 6137, was prohibited from writing liability insurance, or any other form than that specified in Section 6136. The authorities seem to distinguish between a purely fire insurance company and other insurance companies.

In the case of Pennsylvania Fire Insurance Company v. Johnson (Ariz.), 237 Pac. 634, the plaintiff insured an automobile with the defendant company against fire and theft and wrongful conversion. The Arizona statute (Sec. 3441, R. S. A., 1913, now Section 61-503 Ariz. C. Ann., 19139) provided that whenever a loss occurred and a **fire insurance company** failed to pay the claim promptly, such company was liable to pay a penalty, together with a reasonable attorney's fee. The Arizona court held the company in question was not a fire insurance company **even though the policy contained a provision insuring against fire** and ruled that the penalty and attorney's fees, being recoverable only against fire insurance companies, were not recoverable in this instance.

And in the case of North British and Mercantile Insurance Company v. San Francisco Securities Corporation, 30 Ariz. 599, 249 Pac. 761, the defendant insurance company had insured the plaintiff's automobile against loss by fire, theft or pilferage. The car was destroyed by fire and the company failed to pay the claim promptly. The question arose as to the liability of the insurance company for penalty and attorney's fee under the statute cited above. The court quoted from the Pennsylvania Fire Insurance Company v. Johnson case, supra, and held the defendant company in writing this type of policy was not a fire insurance company.

In Arkansas a similar penalty statute (Sec. 6166, Crawford & Moses Digest) was held not to apply to a combination fire insurance and cyclone policy (see Home Fire Ins. Co. v. Stancell, 127 S. W. 966); nor to a combination fire and theft policy in case of a theft of an automobile (see National Union Fire Insurance Co. v. Crabtree, 237 S. W. 97).

The courts have all recognized that, in motor vehicle insurance, the fire coverage is merely an incidental part of a broader coverage and have held that companies writing fire insurance, as a part of a specialized type of insurance contract, are not to be designated fire insurance companies. That this was the intention of our legislature is manifest from an amendment to Section 2761, Revised Codes of Montana, 1935, adopted by the Twenty-seventh Legislative Assembly, 1941. This section provides for the levy and collection of the tax for the maintenance of the department of the State Fire Marshal. In the amendment, the legislature levied the tax for the support of that department in the following words, "on the direct fire premiums received for fire insurance policies and the **fire portion of automobile insurance poliices** . . ." See Chapter 83, Laws of 1941. It is reasonable to suppose that, by using the words above emphasized, the legislature recognized such combination policies are authorized under Sections 6136 and 6137, supra, and seeks to tax only the fire insurance premium on such policies for the benefit of the Fire Marshal's fund.

A history of this legislation is enlightening and, I think, fortifies my conclusion. Section 6136, supra, was first enacted in 1883—and at that time no restriction was imposed upon writing any type of policy by an authorized insurance corporation. In 1895, the legislature adopted the following amendment:

"No corporation shall be organized to issue policies of insurance for more than one of the above mentioned purposes and no corporation that shall have been organized for either one of said purposes shall issue policies of insurance for any other."

Section 658, Civil Code, 1895.

At that time, then, there was a specific prohibition preventing casualty companies from writing fire insurance, but the legislature of 1911 adopted the provision now found in Section 6137, supra. It removed the general restriction and left only the prohibition against fire insurance companies' writing other types of insurance. The only fair and reasonable inference then is, I think, that the legislature clearly intended insurance companies other than fire insurance companies could write any type of insurance. (Specified in Section 6136, supra.) That this was the legislative intention is evinced by the language used in Chapter 83, Laws of 1941.

The conclusion in the opinion in Volume 17, Opinions of the Attorney General, above referred to—that since a fire insurance company may not write liability insurance, it follows a casualty company authorized to write liability insurance may not write fire insurance—does not logically follow from the premise set up. One of the elementary rules of statutory construction is expressed in the maxim "expressio unius est exclusio alterius." When the legislature prohibited the fire insurance companies from writing liability insurance, it is axiomatic that if it had also wanted to prohibit casualty companies from writing fire insurance it would have expressly done so, and by failure to do so, the logical inference is that it did not so intend.

In the light of the cases cited and of the history of the legislation in question, I think it fair to assume under the statutes now in force—an insurance company authorized to write liability insurance may write fire insurance coverage when such coverage is merely part of a broader coverage in a casualty policy.

It is therefore my opinion a casualty company may write a combination policy upon motor vehicles covering damage from fire, theft, collision, public liability and property damage.

Sincerely yours,

JOHN W. BONNER
Attorney General

(Editor's Note: See Opinions No. 362 and 373, post.)