Hail Insurance—Proceeds—Policies—Crop Mortgagee—Assignments.

Crop mortgagee is not entitled to participate in the proceeds of a state hail insurance policy unless there has been an assignment by the insured or the policy so provides.

State Board of Hail Insurance, September 7, 1932.
Helena, Montana.

Gentlemen:

You have requested my opinion as follows:

> "Has the holder of a mortgage on a crop any right to a share of the payment made for hail losses by this department when the mortgaged crop is damaged by hail unless the hail insurance policy is made payable to the mortgagee or unless assigned?"

Section 363-A provides:

> "All money or benefits received from hail insurance shall be exempt from execution and shall not be liable to attachment nor to be seized, taken nor appropriated by any local process to pay any debt or liability of the insured unless the amount shall be assigned and then for no more than the amount of the claim intended to be secured by the assignment with lawful interest."

What amounts to an assignment, however, is a matter that might be an open question. It is undoubtedly the general law of insurance that unless a lienor is specifically mentioned in the policy as you suggest, that is, by a clause making the policy payable to him as his interests may appear, or other appropriate language, that the proceeds of the policy may be paid direct to the one mentioned in the policy, as, for instance, a mechanic's lien is not entitled to share in the proceeds of a fire insurance policy.

See:

In re San Joaquin Valley vs. Dodds, 445 S. Ct. 459, 265 U. S.

583, and a number of cases cited in 3rd Decennial Digest, topic: Insurance, Key No. 582.

If there is a clause in a mortgage requiring that the building (crop would be the same thing) be insured in favor of the mortgagee undoubtedly the mortgagee would have an equitable lien on the proceeds of the insurance policy, and such is the generally recognized rule.

See:

First National Bank vs. Commercial Union Assurance Co., 232 Pac. 899, 40 Idaho, 236;

Mark vs. Liverpool, etc., 198 N. W. 1003, 159 Minn. 315;

Boughman vs. Niagara Fire Ins. Co., 204 N. W. 321.

All of the cases, however, appear to hold that a lien holder in the absence of statute or in the absence of a clause so provided is not entitled to share in the proceeds of a policy. (Hopkins vs. Connelly & Co., 221 S. W. 1082, 195 S. W. 656).

You are accordingly advised that in the absence of an agreement in a mortgage on a crop to the effect that the mortgagor shall keep the crop insured against damage by hail that the mortgagee is not entitled to share in the hail insurance and that any other lien would be in the same position. A crop mortgage to the United States, in the absence of a federal statute to that effect (and we have been able to find none) and without such provision in the policy, would not be entitled to the proceeds of hail insurance. (44 Stat. at Large, P. 1245 (1927); Act of Jan. 22, 1932 Reconstruction Finance Corporation).

An examination of the regulations of the Department of Agriculture reveals no requirement in regard to hail insurance.

Very truly yours,

L. A. FOOT,

Attorney General.