

Opinion No. 138.

Hail Insurance—Waiver of Limitation of Recovery.

The State Board of Hail Insurance has power to waive a clause in the contract limiting the amount of the recovery when doing so would result in such insurance as is contemplated by the Hail Insurance Act.

August 16, 1937.

Mr. E. K. Bowman, Chairman
Board of Hail Insurance
Capitol Building

Dear Mr. Bowman:

You have submitted the following facts and request for opinion:

"Re: the 1937 hail loss of J. Leslie Stewart, Yellowstone County.

This party suffered total loss on his bean crop June 11. Under paragraph 4 of the hail insurance stipulations and agreements this man is entitled to only 50% of his insurance. The words limiting this are "In case of loss on beans during the following 20 days only one-half the liability is in force."

"This stipulation was originally put in force to prevent growers from insuring too soon. The Board felt that those suffering losses from May 15 to the first week in June on the early beans could replant and raise beans on the same ground. In practice this has occurred but none of the losses on insured beans have happened as late as Mr. Stewart's and on fields that have not been up 20 days, or where the grower could not replant and grow a satisfactory crop.

"In Mr. Stewart's case he had the ground well prepared and had a good chance, barring hail damage, to raise a good crop. Immediately after the hail, on June 11, he planned replanting but flood conditions had so soaked the ground that he could not plant for more than a week. He did replant but it appears now that he will raise little or no crop of beans from the subsequent planting.

"The intention of our Board has always been to insure and pay in full for the total loss of any well tended crop. In this case the insured is suffering total loss with only one-half liability effective.

"Other agencies writing hail insurance in Montana have been working under a similar rule which in some cases like Mr. Stewart's they have waived. Now in 1937 they have dropped the rule.

"Our Board now finds we made our rule to cover more days than necessary to prevent insurance being placed on crops insured too soon and are changing the rule to cover only five days after the beans are up. It is our purpose that all losses where total, be paid in full, but it happens in this case that this will not be done unless our change of rule can apply in his case.

"The question now is: Can our Board approve for full payment the total loss of Mr. Stewart's beans in view of our intentions and practice over former years of full payment on all total losses where the insured has done all he can during the full growing season to produce a crop?

"Please let us know if we can as a matter of fairness and equity, allow full payment of this loss if we find at the end of the growing season his beans have proven a total loss."

Section 350, R. C. M. 1935, provides that the State Board of Hail Insurance "Is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find particular, necessary and beneficial for the conducting of the Department of Hail Insurance, subject to the provisions of this Act—" The purpose of the Act as expressed in this section is to furnish protection against loss by hail at the actual cost to all taxpayers who may elect to become subject to the provisions of the Act. In other words, the policy of the Act is not to permit the State of Montana to engage in a business for the purpose of making a financial profit, but rather to furnish full protection at cost to taxpayers. In view of this purpose of the Hail Insurance Act and the reason for the limitation as contained in said Paragraph 4 of the Hail Insurance stipulations and agreements as cited in your request, when in the minds of the Board members the reason for the rule no longer exists, and to enforce it would frustrate the real purpose of the Act and result in unnecessary hardship and injustice, as appears in the present case, it is my opinion that the Board has the power to change the rule and to waive its operation so that the contract may come within the general purpose and policy of the Act and of the Board to fully insure all bona fide losses by hail.