

# Inter-Insurer Refuses to Pay a Fire Loss

**Lumbermen's Indemnity Exchange Sets Up Ultra Vires Defence When Sued by Property Owner — Mill Company Cannot Collect \$170,500 Although Regular Companies Have Long Since Paid.**

F-2778/15

IN THE SUPREME COURT OF BRITISH COLUMBIA.

Between

Forest Mills of British Columbia, Limited,  
and Canadian Bank of Commerce,

Plaintiffs,

and

Adams River Lumber Company, Limited,

Defendant.

The case of an inter-insurer versus the Forest Mills of British Columbia, Limited, is told in the issue of April 6, 1916, of the Underwriters' Report of San Francisco with reference to the mill company's difficulties in collecting \$170,500 of inter-insurance with the Lumbermen's Indemnity Exchange. The article is as follows:

That property owners insuring with reciprocal underwriters or inter-insurance exchanges can not collect for losses by fire is the remarkable situation which has developed between the Forest Mills Company of Complex, B. C., and the Lumbermen's Indemnity Exchange of Seattle. Following the refusal of the Lumbermen's Indemnity Exchange, an inter-insurer operated by Jas. H. de Veuve, to pay the timber company, the latter sued a fellow member of the exchange in British Columbia for its proportion of the loss. Now comes the astonishing answer that the fellow member refuses to pay on the ground that it had not the authority to make the insurance contract, that the Forest Mills Company also lacked authority to make the contract, and that the Lumbermen's Indemnity Exchange was likewise unauthorized to engage in fire insurance in British Columbia.

Because the Lumbermen's Indemnity Exchange refused to pay \$170,500 fire loss on the Forest Mills Company's plant at Complex, B. C., and following a similar suit against the Adams River Lumber Company of British Columbia, the Forest Mills Company has filed suit in the Superior Court at Tacoma against the St. Paul & Tacoma Lumber Company for its share in the loss, as one of the big members of the exchange.

The Forest Mills fire was on April 4, 1915, and the insurance involved totalled \$233,000, of which \$170,500 was in the Lumbermen's Indemnity Exchange and the remainder in Board companies. The regular insurance companies have long since paid their share of the loss.

Some time after the fire and after the exchange had taken proofs on the loss it set a Burns detective to work on the report that the fire was of incendiary origin. British Columbia government officials in June of 1915 conducted an investigation, but threw out the case, declaring that not the slightest evidence was introduced to show that the timber company was in any way responsible for the fire. Next the exchange served notice of its intention to replace the plant and plans and specifications were asked. These were furnished. Still no action was taken, although the exchange held to its opinion regarding the incendiary origin of the fire.

The Forest Mills Company in October asked another investigation. Government officials conducted the case a second time and with the same result as the first. Still unable to obtain satisfaction from the Seattle exchange, the Forest Mills Company filed suit in the British Columbia courts against the Adams River Lumber Company, as the first company on the list of the exchange members. Following is a portion of the answer filed by the Adams River Company in the case:

27. The defendant says that under its charter it had not the power to enter into any association for carrying on the business of fire insurance, and that it was ultra vires of the defendant to enter into or become a member of the Lumbermen's Indemnity Exchange, or to become a contributory thereunder, and that the policies or contracts of insurance, and each of them, are ultra vires of the said plaintiff, and no rights can arise thereunder; and in the further alternative that the Lumbermen's Indemnity Exchange, being an association of persons, firms and corporations, mutually insuring each other, the said policies of insurance, and each of them, and any and all contracts or obligations arising therefrom are, insofar as the said plaintiff is concerned, null and void, and of no effect for want of mutuality, and by reason of the incapacity of the said plaintiff to enter into such an association of mutual insurers, and no rights whatsoever can arise thereunder or by reason of the said policies or any of them.

29. The said Lumbermen's Indemnity Exchange has no authority or power to do or carry on business within the Province of British Columbia, or to carry on the business of fire insurance, nor has it complied with any act of the Legislature of the Province of British Columbia or the Dominion of Canada respecting fire insurance or policies of fire insurance in companies or associations empowered to transact such business, and the said alleged policies of insurance and all contracts or rights based thereon or thereunder are illegal, null and void.

The case was referred to Insurance Commissioner Fishback of Washington by the Forest Mills Company management. Mr. Fishback said that his hands were tied as he had no authority to act in British Columbia. This led to bringing the case in the State of Washington and the Forest Mills Company has now filed suit against the St. Paul & Tacoma Lumber Company to collect that company's contribution to the loss, amounting to \$4,000. Much interest attends the filing of the answer of the St. Paul & Tacoma Lumber Company. It is considered that, should the case hold against the St. Paul & Tacoma Lumber Company, it will also apply to the others in the exchange.

The act of a property owner who is insured in an inter-insurance concern being compelled to sue individual members in an effort to recover his insurance money, is not new. A number of cases have developed where inter-insurance or reciprocal exchanges have sought to evade payment of losses and the property owner who thought he was insured faces the proposition of travelling all over the country suing each member. In one case the attorney-in-fact or manager of the exchange refused to give the loss claimant member a list of the other members and further action had to wait until the courts intervened.