ACCIDENT INSURANCE POLICIES

Analysis of the Policy Clauses by Mr. Severin, of Winnipeg, Reveals Good Reasons for Their Inclusion

Writing to *The Monetary Times*, Mr. A. F. Severin, manager and secretary of the Western Canada Accident and Guarantee Insurance Company, Winnipeg, deals with current criticisms of accident insurance policies.

"A statutory standard policy," says Mr. Severin, "would be welcomed, but until such legislation is enacted it is a difficult matter to get the insurance companies interested together and devote the time required to determine on any plan that would have a chance of success, and it must be admitted that the contract cannot be expressed in a few words.

"In commenting on the appeal to the accident insurers and what is termed as "trick" clauses, at the very outset of our investigation we are met with a difficult and very technical point. What is meant by "accident insurance?" The definition given to the word "accident," and around this word the policy conditions centre, which as employed in these days have been gradually built up in consequence of various legal decisions.

As to Earliest Policies.

"The earliest general accident policies witnesseth that if the assured shall sustain any injury caused by accident or violence within the meaning of this policy and the conditions thereto, the company shall be subject and liable to pay. The only conditions were those necessary to secure:—

(1) Identification.
(2) Notice of accident within 21 days.
(3) Examination by the company's medical officer.
(4) Arbitration in cases of dispute.
(5) Limit of the company's liability.
(6) That the company should not be affected by any lien on the policy.
(7) That the company could refuse the renewal.

"Some such policies are still in force, but very different they are to the modern policies. To a great extent the responsibility for the difference arises from:—

(1) The methods of fraudulent persons.
(2) The quibble and word-splitting of litigious people,

"Briefly, the conditions of the policies are designed to safeguard the indemnity and not to defeat it. They are necessary for the protection of the companies against fraud.

Giving Notice of Accident.

"Conditions requiring the assured or his representative to give notice to the insurers of any accident are of the utmost importance to the insurers. They have a much better opportunity of testing the genuineness of a claim when the events are recent than they would have after a substantial lapse of time, involving probably the loss of important evidence. They can also protect their interests by insuring proper medical attendance and so prevent a trifling injury developing into something serious through the assured's neglect or ignorance.

"The general rule of law is that where a party to a contract undertakes to do something which afterwards turns out to be impossible he is not thereby excused, but where from the nature of the subject-matter the performance of a portion is only possible, under certain circumstances the parties may be deemed to have implicitly confined the obligation to the cases where these circumstances existed and to have excluded all other cases; thus, the obligation to give notice of an accident may be not unreasonably confined to cases where the claimant himself has knowledge of the accident.

"On this principle it has been held that where the assured was drowned, but his fate was not discovered by the claimant until six months afterwards, there was no breach if notice was given immediately after discovery; and again, where the assured died, but the accidental cause of death was not apparent until after a post-mortem examination, that notice given immediately after discovery of the facts upon which the claim was based was sufficient. In an American case where the condition was that the claimant should give notice within seven days of the accident it was held to be inapplicable to the case of instantaneous death, and because there was no claim in existence until the assured's representatives had completed their title to probate.

"The word 'occupation' in clauses of the policy has reference to the vocation, profession, trade or calling in which the assured is engaged for hire or profit and does not preclude him from performing of acts and duties which are simply incidents connected with the daily life of men in any or all occupations. Occasional acts do not amount to an occupation, and even although they are acts which are ordinarily incidental to some occupation they are not acts pertaining to that occupation unless the assured has temporarily or permanently engaged in such occupation as a means of livelihood. Where acts are done merely by way of recreation or to give temporary assistance to another they are acts pertaining to the daily life of any one, whatever his occupation might be and not acts pertaining to any particular occupation.

Exposure to Danger.

"As to the voluntary exposure to danger clause, a man who crosses an ordinary crowded street is exposed to obvious risk of injury; a literal interpretation is, therefore, as a rule inadmissible, and some qualification must be put to the words used. The exceptions are not to be read as excluding recovery where the conduct of the assured is that of a reasonably prudent man. Even an occasional lapse from extreme prudence will not bring the case within the exception. Neither are the ordinary duties of humanity unnecessary, and a man may incur danger involuntarily helping another. He may run the most extreme danger in order to save life, and yet it will not be unnecessary danger. The test is, 'Was the risk run reasonably appropriate to the end to be attained?'

"Another criticism refers to the sunstroke clause. It has been laid down that in cases of sunstroke, as also in that of freezing, are not in fact accidents. The term used for the former is misleading. No stroke is received; there is a gradual heightening of temperature, in a measure frequently due to the condition of the body, culminating in a condition of illness. We cannot understand an accident gradually happening. The very statement implies a momentary occurrence, and this sunstroke is not, even in spite of its misleading name. The same remarks apply in a measure to freezing; although a person holding an accident policy were to fall and break a leg, and through inability to move were to die from exposure to the sun or cold, this would constitute a claim under said conditions.

Of the Word "Accidental."

"The word 'accidental' as applied to death or injury, unless intentionally inflicted by the assured upon himself, is accidental; that is to say, the time, manner and cause of it is unforeseen and unexpected. Insurers have, therefore, been compelled to define the risk more narrowly, with the result that the modern accident policy bristles with limitations and qualifications.

"The general risk is now usually defined as bodily injury caused by violent, accident, external and visible means. This definition postulates not merely an accidental injury, an injury caused by accident, but an injury caused by accidental means. The definition of the risk is so framed as to exclude all cases where disease is the sole and immediate cause of the injury or death. In one sense disease is an accidental means of injury or death, and particularly in the case of infectious or contagious diseases, where the exposure to infection or contagion is unknown to the insured, and, therefore, wholly involuntary. But injury or death engendered by what is ordinarily known as diseases would never be referred to in ordinary parlance as an injury or death from accident, and insurance simply against injury or death caused by accident would not cover consequences resulting solely from disease. Thus, it has been held that death from sunstroke resulting from exposure to the heat on board ship was not covered by a policy insuring against injury caused by accident. There is a suggestion in that case that if the exposure itself had been due to accidental circumstances the risk would have been covered.

What Disability Means.

"Regarding the complaint of the disability clause, when the injury has been sustained which comes within the general definition of injury it still remains for the claimant to prove that the injury has caused the disability or death in the manner provided by the policy. Where the policy provides for compensation if the assured should die from the effects of the injury it is not necessary for the claimant to show that the injury was the immediate or approximate cause of death. In the strictest sense it is sufficient if the death has resulted as a natural consequence of the injury without the intervention of any extraordinary independent cause.

"Death or disability may be partly the consequence of disease either because

(1) Disease was a contributary cause of the accidental violence which caused the injury.