Wordings and Warranties*

More Important Wordings in Fire Insurance Policies are in Brokers' Hands—Supervision of Canadian Fire Underwriters' Association—General and Blanket Wordings—100 per cent. Co-Insurance Should be Required.

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ON this wide and important subject little seems to have been said of public note beyond an able paper by Mr. Jones, C.F.U.A., Toronto. Under the title of policy drafting there appears a contribution in one of the Federation journals in England. Hine's "Book of Forms" represents the American contribution. Co-insurance and average has, of course, been widely written of and discussed. Although the field is so wide, I do not propose to do anything more than touch an occasional point, here and there. This paper is no complete compendium for brokers and agents who want the latest. Nor is it intended to be the junior officials' "Vade Mecum." More than likely, it will not contain a single idea which is new. Rather, it is meant to quicken our interest in and focus attention on a subject that seems to have suffered by neglect.

After all, the making of our more important wordings is left largely in the brokers' hands supervised by the C.F.U.A. The wording frequently contains undesirable features. Sometimes the company does not get all it deserves; sometimes the insured suffers; and on the whole there are many wordings regarding which one feels that the further away from court they remain the better. I think it is no small tribute to the liberality and broad-mindedness of the companies that so few cases fail to be decided by the courts. Nevertheless, that is tribute which should not be levied. Wordings and warranties should receive sufficient care and attention to keep them beyond the bounds of all controversy. The responsibility for payment of the loss rests with the company. The agent no doubt feels it his duty to protect his client. The C.F.U.A. are concerned purely with the observance of their rules; but it is with the company and on the company alone that the question of liability and payment depends. Much may be done, collectively, by the creation of a healthy general opinion, amongst officers, underwriters, brokers and the insuring public. In the formation of this opinion the first step is a clear understanding by the staffs of the companies of the precise requirements for each case. It is not enough to say "we cannot accept this" or "we must decline" that. Mere negation will not do. We must and ought to be able to put our finger on the weak spot and at the same time say what ought to be substituted. Like a doctor, we must follow our prognosis and diagnosis with treatment and cure.

In writing a policy the first point is the name of the insured. I do not propose to enter into the niceties of insurable interest. That is a subject for a lengthy paper in itself.

Particulars About the Insured

After the name, I would like to see set out in full, the trade or business of the insured. One realizes from the name itself the business of say the Canada Cement Company, the Maple Leaf Milling Company or such representative concerns; but there are others, and their number is legion, where the name of the insured in no way indicates the trade or business. Take the following examples:—John Jones,—"Fish, Fruit, Vegetable, Poultry, Game and Provision Dealer;" William Smith,—"Builder and Contractor, Plumber, Tinsmith, Electrician, Paper Hanger, Painter, Decorator." Set out in full the whole business of the insured immediately following his name, and the remainder of the wording is much simplified. No need to introduce such phrases as "on stock consisting chiefly of _____" "in their business of _____" "in their premises occupied as _____"

Brokers or inspectors drafting such wordings will usually find a complete note of an insured's business printed on his bill heads. An underwriter looking over such a form sees at a glance the class he is insuring, and knows what to expect. That idea may not be new, it is an innovation in our present practice which would tend to simplicity and improvement.

Consider for a moment the question of insurable interest. The chief source of difficulty is the partial owner under mortgage, deed of sale, collateral security, and all the variations, including agent, bailee and warehouseman, with which we are more or less familiar.

The Mortgage Clause

The mortgage clause is another subject on which we shall hope to have an address before this association. Whilst mortgagees as a class, in regard to fire insurance, seem greatly favoured, the privileges granted in the mortgage clause have been remarkably free from abuse. There is one point in some clauses (they vary, of course, according to taste) which refers to contribution between companies. The usual clause reads:—"In the event of the said property being further insured with this or any other office on behalf of the owner or mortgagee, the company shall only be liable for a ratable proportion of any loss or damage sustained." But sometimes an effort is made to apportion the total loss between insurances actually payable to the mortgagee and bearing the mortgage clause. There are some arguments which may be advanced in favor of such a change; but between companies, I think there are more arguments "con" than "pro."

The point becomes an active issue when some violation of condition has arisen, at, or previous, to a loss. The mortgage clause protects the mortgagee but should there be some additional insurance written without that clause, the company issuing that insurance may be disposed to take advantage of the breach of conditions. Policies on the same risk should wherever possible be concurrent in every sense.

Use of Term "Ratable"

As a point of academic interest you observe the use of the word "ratable" in the mortgage clause. In other places the word has been a storm centre of argument, and I refer you to the works of Mr. Hore and Messrs. Laird on loss adjustment, if you feel sufficiently interested to follow the various contentions. The contribution clause in the Quebec Act says "ratable, without reference to dates of the different policies."

One rather peculiar case of partial owner or excess insurance arises in covering whiskey in bond. The warehouseman insures his responsibility, which may cover up to the amount of his receipt. The excess or increased value between date of bonding and time of fire may be covered by the owner as an excess insurance. A special clause in the policy would read somewhat as follows:—"It is declared and agreed that the insurance hereby is limited to the excess value only of the said stock in trade, that is the difference between the invoice value for which the distillers or warehousemen having custody of the said stock in trade are responsible and the market value at the time of the fire, and it is further hereby declared that if in the event of fire there be paid by this or any other company to such distillers or warehousemen on any of the above whiskey any sum exceeding the original invoice price thereof, then this company shall be liable only for the difference between the actual market price of such whiskey and the amount paid as aforesaid."

*An address before the Fire Insurance Association of Montreal, January 21, 1920.