

LIABILITY FOR LIGHTNING

One of the Points in the Omaha Tornado Matter.

WHAT BAR COMMITTEE REPORTS

Cases from Wisconsin and Iowa Are Cited as Covering Losses Sustained by Omaha Property Owners from Tornado.

Questions concerning liability of insurance companies whose policies provide for protection against lightning and whose policyholders suffered losses in the tornado of March 22 are the principal issues discussed in the brief prepared by the committee of three of the Douglas County Bar association for guidance of storm sufferers.

The wording of lightning clauses in the various fire insurance policies is the determining factor in settling the possible liability of the companies. It is in the lightning clause, says the committee, that "the liability will usually be found. These clauses differ from policy to policy."

Where the policy makes the company liable for "any loss or damage caused by lightning" the committee has found a decision made by the Wisconsin supreme court regarded as very favorable to the insured. In the larger number of cases where the lightning clause reads, "It is understood and agreed that this policy shall cover any direct loss or damage caused by lightning (meaning thereby the commonly accepted use of the term lightning and in no way such damage as is caused by cyclone, tornado or wind storm)" courts have held that juries must be required to limit the recovery of the insured to the direct loss caused by the lightning.

Rests with the Jury. In a New York case, however, it is held as the brief says, "to be the peculiar province of the jury, not reviewable on appeal, to say how much damage was caused by lightning under a policy strictly limited to the direct loss caused by lightning where burns were destroyed without any fire, during a tornado and rain storm accompanied by lightning, and the proof of the action of the lightning was only inferentially drawn from evidence of the appearance and effect of heat upon the softening of the roof."

In the Wisconsin case, Spensley vs. Lancashire Insurance company, 11 North-western, 84 64 Wisconsin, 432, the facts are recited as follows: "On the afternoon of May 23, 1873, a heavy, dark thunder storm, giving evidence of considerable electric discharges along the lower edge, was seen from the northern horizon and apparently eight, ten or twelve miles from the city. At the western part of the storm an ordinary wind cloud sprung out and moved southward until it became distinctly separated from the thunder cloud by clear sky and reached a point west of the city, when there appeared on the outer edge of this wind cloud some slight or ten miles west of Mineral Point, a whirlwind or tornado moving rapidly eastward, and continuing to move in that direction at the rate of about twenty-five miles an hour, through the counties of Iowa, Dan and Jefferson, a distance of sixty-four miles and varying in width from seventy yards to eighty rods.

Tale of the Tornado. "The tornado was narrow at the bottom and widened out at the top, having a revolving motion in the opposite direction to the hands of a watch, and occupying about thirty-six seconds in passing a given point at the center of its track. The force or forces within the tornado were so powerful as to take up, shatter, destroy, carry away and scatter in promiscuous confusion buildings and almost everything, animate and inanimate, within its track not firmly attached to the earth. Among the buildings so destroyed, was the plaintiff's dwelling house, situated a little northeast of Mineral Point, and which was at the time covered by a policy of insurance issued by the defendant to the plaintiff, indemnifying him against all damage or loss by fire in the property, and expressly agreeing in the written portion of the policy, 'that this policy is held for any loss or damage caused by lightning to the property insured, not exceeding the sum insured nor the interest of the assured, and subject in all other respects to the terms and conditions herein mentioned and referred to.' Due notice and proofs of loss by lightning were made and served as required by the policy. The defendant, however, denied the liability on the grounds that lightning was not an agency in the destruction of the building insured; and whether it was or not is the only issue involved in this action."

The supreme court reversed the district court, which had entered a nonsuit against the policyholder, and remanded the case in order that the issue of the fact might be submitted to the jury.

What the Court Held. The supreme court said the policy certainly covered all known effects of lightning. It found the word "tornado" defined in the dictionaries as "a violent gust of wind, or tempest, distinguished by a whirling, progressive motion, usually accompanied with severe thunder, lightning and torrents of rain and commingled of short duration and small breadth." It found one definition including the information that tornadoes "appear to have electrical origin."

The court found the issue to be "whether we can say from the evidence that lightning was proximate as an active agency in the destruction of the dwelling house in question." In determining this the condition of the atmosphere before and after the destruction; the seared condition of vegetation; the rending of an oak tree a few feet from the house; fire in the basement after the storm; the splintered and splintered condition of the timbers and almost every part of the building and other similar circumstances were considered.

Heads of an Active Omaha Agency



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the amount of damage caused by lightning to be awarded against the company, however, is held to be the duty of a jury. A suit under the lightning clause of a fire policy where the policy read: "If a building or any part thereof, fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease," was carried to the Iowa supreme court by the defendant company. A brick wall of a building fell during a violent rain and hail storm and the structure and its contents were badly damaged. The company claimed the falling of the wall was due to a stream of water which formed and flowed rapidly past the wall, but a jury agreed with the plaintiff's claim that it was caused by lightning.

Iowa Court on Point. The higher court in reviewing the case sustained the judgment for the plaintiff, saying: "Surely it could not have been intended in stipulating indemnity for loss by lightning at the same time to eliminate the natural consequences of a stroke of lightning. Manifestly the clause quoted has reference to the falling of a building consequent of causes other than those insured against and the lightning clause is subject to the condition as so construed. Moreover the walls in falling precipitated the goods of the insured in the water and debris, and no time appears to have elapsed between the falling of the wall and the injury upon which the claim of damages is predicated. In any event, then, the damages are within the terms of the contract. Certainly it might have been found that the fall of the building was caused by the stroke of lightning; and as a natural consequence that the goods were precipitated in the water and debris."

NEW THEORY OF RHEUMATISM

Experts Now Say Germs Enter the System Through the Tonsils. If Dr. Edward C. Rosenow of Rush Medical college has really discovered the germ of rheumatism, as was announced in Chicago recently, the discovery is one of the most important in the history of medicine, for it is the first step toward finding a cure for the terrible disease.

"We know no more about rheumatism today than the physicians of the middle ages knew," said one of the most eminent physicians of New York a few weeks ago. Many theories about rheumatism have been advanced. It has generally been described as due to uric acid in the blood, the pain in the joints being caused by minute crystals of the acid forming in the tissues. But some physicians ridicule the uric acid theory. An eminent professor at Johns Hopkins advanced the theory a few years ago that rheumatism had its origin in the tonsils; that gonorrhoea and rheumatism went so generally together that it was impossible not to see in them cause and effect. The removal of tonsils was advocated as the cure for rheumatism. This worked well in some cases, but not in all.

Then it was suggested that not tonsils alone, but any gathering of pus at any place in the body whence it could not escape—an ulcer at the root of a tooth, for example—was the cause. This has recently been one of the most generally accepted theories.

Cures have been sought vainly. One meets men constantly who have tried every course of treatment without relief. One meets men who, after trying many treatments for many years, have suddenly found themselves free from pain, seemingly cured, and yet unable to trace their cure to any remedy. From what Dr. Rosenow has said for confirmation of the theory of the relation between the tonsils and rheumatism. He is quoted as saying that the germs of rheumatism enter the system through the tonsils. These strange glands at the back of the throat have some use in the life of the body, but what this use is has not yet been discovered. It is definitely known that they are peculiarly susceptible to infection. It has been suggested that they may be a sort of sentry at the gateway of the alimentary canal. If this be so, it is strange that they are the seat of so many distressing troubles. Some surgeons have insisted upon extirpating the tonsils. But the operation is a dangerous one, owing to the liability to severe hemorrhage and to the difficulty of preventing infection of the wound.—New York World.

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The Prevailing Darky. "The darky," says a southern congressman, "although proverbially improvident, sometimes has his weather-eye open. 'In Mobile, one day, I gave a quarter to a colored youth who had done me some trifling service. The coin was handed back to me. 'Excuse me, boss,' said the negro; 'yo' knows I don't want no pay fo' what I does fo' yo'. Yo' jes' stumps dat ole suit of clothes yo' has on.'—Judge.

Commonwealth Life Shows Steady Growth



SHERMAN W. SAUNDERS

The Commonwealth Life Insurance company has added to its surplus from the very inception of the business. This is an unusual accomplishment and augers well for the future of this home company. While the company is only in its third year it has already written nearly \$500,000 of business and has a substantial surplus on its books. The increase has been a steady one and the growth of the company has been made on a sound and healthy basis. It has established a reputation for conservative dealing both as to the policy contracts and its investment department, and has succeeded in doing business at a reasonable cost, which is also unusual with new companies. The Commonwealth is on a legal reserve basis and has now over 3,000 policyholders. The officers of the company, elected at the date of organization, August 2, 1910, are Sherman Saunders, president; Paul Wupper, vice president; Franz Neison, secretary, and J. H. Clancy, superintendent of agencies.

AROUND INSURANCE FIELD

Life Insurance Companies Attack Proposed Income Tax.

PARTIAL SUCCESS OF CAMPAIGN

Chaotic Condition of Affairs in Fire Circles in Missouri—Probable Action Under Referendum Law.

Prompt and vigorous steps taken by life insurance companies to protect themselves and their policyholders against unjust taxation under the proposed income tax brought quick results. The democratic caucus has agreed to exempt from taxation the proceeds of life insurance policies paid on the death of the insured. This was one of the many objectionable features of their proposed law. Several obnoxious taxing details remain to test the strength and staying powers of the life insurance campaign. The income tax proposition is a part of the coming tariff bill, which the democratic congressional caucus is whipping into shape for action by congress.

President William A. Day of the Equitable of New York, succinctly states the objections of life insurance interests to the threatened tax. The bill as it stands, he says, would require policyholders to pay three taxes in addition to the tax already required on their premiums by the states. The four taxes which he enumerated are these: Money applied to payment of premiums is directly taxed as part of the income of the insured if a "taxable person."

Bill specifically requires payment of a tax on "the proceeds of life insurance policies paid on the death of the person insured," and in addition requires payment of a tax on "income derived from any source whatever," which may include proceeds of endowment policies, cash surrender values and annuities. The bill also requires life insurance companies to pay a tax on the annual savings returned to policyholders as dividends, or refunds, whether these refunds have been accumulated in the year or over a long period of years. It also requires a tax on sums set aside out of premiums for what is known as "the reserve," or the amount accumulated from year to year to pay the policy. This reserve has always been considered as the equivalent of a savings bank deposit and therefore has been free from taxation.

States already tax policyholders all over the country through their companies on an average of about 2 per cent on all premiums. Continuing, President Day says: "It is therefore of the utmost importance that all policyholders should write at once to their senators and representatives and urge that if their insurance funds are to be taxed they be taxed only once, and that a hearing be granted that the facts may be presented." Reports from Washington indicate a

PRESIDENT OF A BUSY LOCAL AGENCY.



W. A. TOMSON, President of the B. L. Baldwin Insurance Agency.

determination among democratic leaders to resist further changes in the measure as drafted. Protests from life insurance companies and from policyholders are pouring in upon congress and causing irritation. Leaders of the party caucus declare that the provisions in controversy were worked out with great care, and that it might just as well be recognized now as later that with a great many people the income tax will be unpopular for a while. They are opposed to any exemptions except those already provided in the bill, and intend to stand pat on the provisions taxing the dividends of mutual insurance companies as well as policies that are paid upon death.

DEATH RATE AMONG MIDDLE AGED MEN IS INCREASING

In a recent issue of the Scientific American there is an important article based upon mortality statistics respecting middle-aged men in America. The startling statement is made that within fifty years the death rate among such men has increased 30 per cent. Several reasons are given for this which would occur to the average reader, yet the author frankly admits that the reasons named do not cover the case. They are just as puzzling as are the statistics, which show that there is more insanity among inhabitants of sparsely settled regions than among those of any other locality. Outdoor life is said to be conducive to good health of both mind and body.

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Advertisement for HARRY L. MALLO, featuring a circular diagram of insurance services and a portrait of the agent. Services include Personal Accident and Health, Workmen's Compensation, Liability All Forms, Fidelity and Surety Bonds, Automobile Liability, FLY WHEEL, Fire and Tornado, Merchants and Bank Burglary, Sprinkler Leakage, Steam Boiler, Residence Burglary, and Plate Glass. The diagram is centered around a portrait of Harry L. Mallo.

Table showing financial data for HARRY L. MALLO, including Income, Disbursements, and Liabilities.

CERTIFICATE FOR PUBLICATION—STATE OF NEBRASKA, OFFICE OF AUDITOR OF PUBLIC ACCOUNTS. Lincoln, Feb. 1st, 1913. It is hereby certified, that the Globe Indemnity Company of New York, in the State of New York, has complied with the Insurance Law of this State, applicable to such companies and is therefore authorized to continue the business of Fidelity Surety, Liability, Burglary and Theft, Plate Glass, Steam Boiler, Accident and Health Insurance in this State for the current year ending January 31st, 1914.

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Large advertisement for National Fidelity & Casualty Company. Features the company logo, name, and address (National Fidelity & Casualty Building, OMAHA, NEB., Douglas 850). Lists services: Accident, Health, Fidelity, Surety, Bonds, Plate Glass, Burglary, Liability. Includes a quote: "If you buy Omaha made goods your money stays at home. It helps to build up the section in which you and Omaha are equally interested." From Omaha Commercial Club's Made-in-Omaha Directory.