

MAINE STATE LEGISLATURE

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Aug. 6, 1943

Guy R. Whitten, Deputy

Insurance

John G. Marshall, Assistant

Attorney General

We have reviewed the photostatic copy of contract between The Millers Mutual Fire Insurance Company of Texas, and others.

Of course, this contract has already been executed by the several parties and it now presents the problem of whether or not it will properly protect the policy holders of the ceding company. In that respect there arises rather a confusing procedure for a policy holder to pursue in the event of a contested loss by reason of the provision on Page 2 of the photostatic copy where the first paragraph on that page contains the following language: "... each of the 'assuming companies' agrees to and does hereby severally and not jointly, assume one twelfth (1/12) of such liability."

1. This apparently would mean that the policy holder would have to sue all of the assuming companies as each would be liable for only one-twelfth of such liability. In my opinion this would put an onerous burden upon the policy holder greatly in excess of the terms of his original contract with The Millers Mutual. This part of the contract should be explored more fully in order to determine just what the policy holder would be obliged to do in the event of any contested loss or claim. This may be entirely technical on my part, but could it not be construed to mean that each one of the assuming companies would be entitled to an arbiter in the event of a loss with consequential expense involved?

2. I think that the assuming companies' obligation to the policy holders of the ceding company should be absolute with the expressed agreement on the part of the assuming companies that they would raise no defense on a claim of any policy holder subsequent to the date of this contract for any breach on the part of the ceding company under this contract, nor any affirmative defense such as misrepresentation or misstatement on the part of the ceding company that was used in the inducement of the contract itself.

3. It is noted that the ceding company has attached an affidavit acknowledging the document as evidenced by the photostatic copy to be a true and accurate representation of the agreement, but there should be similar affidavits obtained from the assuming companies stating the authority of the executing officer to sign for and in behalf of the assuming companies.

Mr. Cowan is presently away but will be back probably Monday, August 9th, and I advise you to further consult with him before the matter is fully approved by your department.

John G. Marshall
Assistant Attorney General

JGM h