

Opinion No. 43-4407

November 10, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Ralph Apodaca, Superintendent of Insurance, State Corporation Commission, Santa Fe, New Mexico

We are in receipt of your letter of November 4, 1943, in which reference is made to our former Opinion No. 4326, given to you on June 30, 1943. In that opinion we held that under sub-section (b), Class 2, Casualty Insurance of Section 60-501 of the New Mexico 1941 Compilation, that at most an insurance company would be authorized to write only insurance covering damage to cargoes carried in a motor vehicle when such loss arises out of an accident incident to the ownership or use of such motor vehicle.

In view of this opinion, Mr. W. Y. Blanning, Director of the Interstate Commerce Commission, held that as an insurance company only authorized to do Class 2 (b) insurance could not insure the cargo of a shipper when in the possession of a carrier, but not on his truck, that such company was not authorized to write cargo insurance in the State of New Mexico in the form required by the Interstate Commerce Commission.

In view of this fact, you ask our further opinion as to what cargo risks can be insured by companies authorized to transact Class 2, Casualty business under any or all of the sub-sections of that class, under Section 60-501 of the New Mexico 1941 Compilation.

The sub-sections that are pertinent are as follows: Class 2. Casualty, Fidelity and Surety.

"(c) Liability. Insurance against the liability of the insured for the death, injury or disability of an employee or other person, and insurance against the liability of the insured for damage to or destruction of another person's property.

"(i) Other Casualty Risks. Insurance against any other casualty risk not otherwise specified which may lawfully be the subject of insurance and may properly be classified under Class 2."

In view of these two sub-sections, it is seen that an insurance company can insure not only against the liability of the insured for damage to, or destruction of, any other person's property, but also any other casualty risk lawfully the subject of insurance, when properly classified under Class 2.

Under sub-section (c), if taken alone, it might appear that an insurance company classified so as to do business under this section could cover a carrier for any liability for damages to, or destruction of, property which would cover most, if not all, of the risks involved in cargo insurance. However, this section cannot be read alone, but must be

read in the light of the whole statute, and particularly in the light of the classification set forth in the heading, which is, as far as is material here, "Casualty Insurance." That the Legislature intended to cover only casualty risks by this sub-section is further borne out by the general provision of sub-section (i) set forth above. It thus appears that by sub-section (c), only the writing of insurance against liability of **the insured for damage to, or destruction of, another person's property** when arising out of a casualty is authorized.

"Casualty" has been defined as synonymous with "accident." See *Farmers' Coop. Society No. 1 v. Maryland Casualty Company*, Tex. Civ. App., 135 S. W. (2d) 1033; and *U.S. v. Rogers*, 120 Fed. (2d) 244.

In view of the foregoing, it is my opinion that an insurance company authorized to do business under Class 2 can insure a carrier against liability for damage to, or destruction of, a shippers property when such loss is the result of an accident, whether such property be located in a motor vehicle or in some other place.

As a word of caution, however, your attention is directed to the fact that our Supreme Court has never passed upon this question, and that the above quoted sections are susceptible of various interpretations.

Trusting that the foregoing sufficiently answers your questions, I am

By ROBERT W. WARD,

Assistant Attorney General