

**OPINION
49-91**

January 31, 1949

INSURANCE - Benefits in Riders

This is in reply to your letter of January 28, 1949, requesting an opinion on the following matter:

"I would like to have your opinion as to whether or not this phraseology, 'the company will determine the amount of payment, if any, for a cutting operation not specified in this schedule', in these two riders comply with Article 5 of Section 26-0338 of the North Dakota laws."

The general law is that when a law is susceptible of two constructions, the one which will give it effect rather than the one which would render it negatory has been applied in the construction of contracts of insurance. (Pa. F Insurance Company vs. Cullin, 258 SW 965). And in case of doubt that interpretation which imports validity will be preferred to that which would make the instrument of no effect. (Fidelity Phenix F Insurance Company vs. Quenn City Bus and Transfer Company, CCA 4th 3 F. 2nd 784)

Section 26-0338, subsection 5 of the 1943 Revised Code provides:

"All benefits called for by the policy shall be stated specifically in full therein, and all exceptions shall be stated specifically and with the same prominence as the benefits."

The benefits stated in the riders attached to your letter are stated specifically in full in so far as can fairly, practicably and reasonably be done. The provision of the insurance contract referred to might be called an exception to the contract as defined in the statute. Even as an exception it complies with the statute as being stated specifically. It is reasonable to conclude that the policy could not list nor the compiler of the benefits perceive all cutting operations which an individual might go through.

Therefore, it is our opinion that the benefits are stated in the riders with as much exactness and precision as the statute imports, nor will a policy be so construed as to make it violative of a statute if such a construction can be fairly avoided. Giles pie vs. Security M.L. Insurance Company, 18 Ohio Appellate 164.

We trust that this will be an answer to the matters you hold in question.