loss under 202.11 (4). Von Uhl v. Trempealeau County Mut. Ins. Co. 33 W (2d) 32, 146 NW (2d) 516.

Rights of a mortgagee are protected in case a company attaches to a town mutual fire insurance policy the standard mortgage clause. 13 Atty. Gen. 370.

A town mutual fire insurance company need not pay the amount of a loss to a policyholder where, at the time of loss, the latter was in default and has neglected or refused to pay the assessment at expiration of 30 days from time specified in the notice of assessment sent to him. Payment of a delinquent assessment after loss does not alter the situation. It is not necessary that a policyholder receive the notice of assessment; it is sufficient if the secretary of the company mail notice in proper form, duly stamped and properly addressed. 16 Atty. Gen. 100.

Where a mortgage clause is attached to the policy of a town mutual insurance company the mortgagee is not liable for payment of assessment under 202.11 (2), Stats. 1931. 21 Atty. Gen. 67.

A town mutual insurance company which is a member of a reinsurance company may levy assessments upon its policyholders to pay assessments made upon it by the reinsurance company. A town mutual has no power to borrow for such purpose. 22 Atty. Gen. 742.

202.12 History: 1876 c. 344 s. 9; R. S. 1878 s. 1936; Stats. 1898 s. 1936; 1923 c. 291 s. 3; Stats. 1923 s. 202.12; 1929 c. 418 s. 14.

202.13 History: 1876 c. 344 s. 14; R. S. 1878 s. 1937; 1882 c. 146 s. 6; Ann. Stats. 1889 s. 1937; Stats. 1898 s. 1937; 1899 c. 169 s. 1; Supl. 1906 s. 1937; 1923 c. 291 s. 3; Stats. 1923 s. 202.13; 1929 c. 418 s. 15; 1931 c. 387; 1969 c. 44.

In an action upon a premium note given in consideration of a policy of insurance, the insured cannot defeat a recovery on the ground that conditions in the policy respecting the ownership of the premises and the use of benzine thereon had been broken, unless the breaches would have defeated a recovery on the policy in case of loss. Davis v. Pioneer F. Co. 102 W 394, 78 NW 506.

Insured's surrendering his town mutual fire policy, with a demand that it be canceled on January 10th, constituted a cancellation of the policy. The company by letter of January 11th sought to have the insured reconsider his action but, instead of replying, he obtained a policy elsewhere for the same coverage. The company was not estopped from setting up that the surrendered policy had been canceled and was not in effect when a loss occurred on February 12th. Waller v. Door County Mut. Ins. Co. 256 W 323, 41 NW (2d) 211.

202.14 History: 1876 c. 344 s. 13; 1878 c. 214; R. S. 1878 s. 1938; 1881 c. 48; 1882 c. 205; 1883 c. 168; 1885 c. 421 s. 3; Ann. Stats. 1889 s. 1938; Stats. 1898 s. 1938; 1913 c. 117; 1923 c. 291 s. 3; Stats. 1923 s. 202.14; 1929 c. 418 s. 16; 1931 c. 387; 1969 c. 337.

202.15 History: 1909 c. 130; Stats. 1911 s. 1941a—1; 1923 c. 291 s. 3; Stats. 1923 s. 202.18; 1929 c. 418 s. 19; Stats. 1929 s. 202.15; 1967 c. 254.

A mutual fire insurance company became a member of a reinsurance corporation and liable to assessment, notwithstanding one of 3 members of the committee of officers appointed to represent the insurance company in organization of the reinsurance corporation took no part in the proceedings of the committee. Wisconsin Town M. R. Co. v. Calumet County Mut. Fire Ins. Co. 224 W 109, 271 NW 51.

202.16 History: 1909 c. 130; Stats. 1911 s. 1941a—2; 1923 c. 291 s. 3; Stats. 1923 s. 201.19; 1929 c. 418 s. 20; Stats. 1929 s. 202.16.

202.17 History: 1909 c. 130; Stats. 1911 s. 1941a—3; 1923 c. 291 s. 3; Stats. 1923 s. 202.20; 1929 c. 418 s. 21; Stats. 1929 s. 202.17.

202.18 History: 1909 c. 130; 1911 c. 663 s. 388; Stats. 1911 s. 1941a—4; 1923 c. 291 s. 3; Stats. 1923 s. 202.21; 1929 c. 418 s. 22; Stats. 1929 s. 202.18; 1947 c. 173.

202.20 History: 1937 c. 226; Stats. 1937 s. 202.20; 1939 c. 513 s. 42.

CHAPTER 203.

Fire Insurance.

203.01 History: 1895 c. 387; Stats. 1898 s. 1941—43, 1941—63; 1917 c. 127 s. 2; 1917 c. 671 s. 26; Stats. 1917 s. 1941x, 1941—63; 1923 c. 291 s. 3; Stats. 1923 s. 203.01, 203.04; 1933 c. 487 s. 80, 81, 81a; Stats. 1933 s. 203.01; 1943 c. 408; 1945 c. 474; 1947 c. 251; 1951 c. 452 s. 1 to 4; 1957 c. 236; 1965 c. 464; 1969 c. 55.

Revisor's Note, 1933: The provision added for damage by lightning is from 203.03. Old lines 1 to 6 are amended to harmonize with 209.06 and old lines 159 to 175 to harmonize with 203.045, and old lines 59 and 60 amended to correspond with 203.03. The lines referred to now misstate the law. Old lines 35, 36 and 37 are struck out because they were repealed by 203.215, rn. 203.11 (chapter 456, Laws 1929). [Bill 50-S, s. 80]

Editor's Notes: (1) Cases arising under various forms of policies existing before the standard policy act of 1895 will be found in Wis. Annotations, 1914.

(2) Prior to the repeal and recreation of 203.01 (ch. 474, Laws 1945) and while the standard fire insurance policy contained a clause that if the interest of the insured be other than unconditional and sole ownership the policy was rendered void, the following relevant cases were decided: Johnson v. Hartland Farmers' M. F. S. Ins. Co. 220 W 77, 264 NW 480; Miller v. Yorkshire Ins. Co. 237 W 551, 297 NW 377; Keller v. Hartford Fire Ins. Co. 239 W 354, 300 NW 471.

1. Effect of standard policy; construction.
2. Concealment; fraud.
3. Perils; loss.
4. Conditions suspending insurance.
5. Added provisions; permits.
6. Waivers.
7. Cancellations.
8. Mortgage interests.
9. Pro rata liability.
10. Requirements after loss.

11. Appraisal.
12. Company's options.
13. Time limit on suit.
14. Subrogation.
15. Property covered.

1. Effect of Standard Policy; Construction.

Ch. 195, Laws 1891, which provided for a standard policy, and which provided that other conditions might be incorporated in the policy by writing or printing but that they "shall in no case be inconsistent with or a waiver of any of the provisions or conditions of of the standard policy", plainly excluded changes or waivers of the standard policy provisions. Bourgeois v. Northwestern N. Ins. Co. 86 W 606, 57 NW 347.

The rule in construing insurance policies that they will be construed liberally in favor of the insured does not apply to a standard or statutory policy. Straker v. Phenix Ins. Co. of Brooklyn, N.Y. 101 W 413, 77 NW 752.

The standard policy of fire insurance is a statutory law as well as a contract and should be treated and construed accordingly. It is the only contract for insurance which the parties have the power to make. Being a law as well as a contract, its provisions are all binding upon the parties. Temple v. Niagara F. Ins. Co. 109 W 372, 85 NW 361.

The change in the form of the standard fire insurance policy of Wisconsin effected by ch. 127, Laws 1917, which omitted the former provision as to the knowledge of the agent being knowledge of the company, did not change the rule of law on that subject, for the former provision was merely declaratory of existing law. As that provision added nothing, its abrogation took away nothing. Gould v. Pennsylvania F. Ins. Co. 174 W 422, 183 NW 245.

While insurance in legal theory and in fact rests upon contract it is dealt with more as if it were a commodity kept for sale, due in large part to the standardization of insurance policies by legislative enactment and by long continued practice. Modern G. M. Co. v. Globe & Rutgers F. Ins. Co. 192 W 319, 212 NW 523.

An insured cannot have a standard fire insurance policy reformed by the substitution of provisions inconsistent with its standard provisions. Ottens v. Atlas Assur. Co. 226 W 596, 275 NW 900.

A standard policy should be construed as a voluntary contract of the parties, and not as a statutory provision, but the fact that the language is prescribed by statute should be kept in view, and the language should not be extended by construction beyond its plain meaning. Straw v. Integrity Mut. Ins. Co. 248 W 96, 20 NW (2d) 707.

The general rule is that the construction of words and clauses used in an insurance policy, where such construction does not depend on extrinsic facts, presents a question of law for the court to decide, and is not for the jury. The rule that an insurance policy is construed most strongly against the insurer applies only to the language of the contract and not to the facts of the case. Bauman v. Midland Union Ins. Co. 261 W 449, 53 NW (2d) 529.

A clause entitled "Operation of Building Laws" would not meet requirements of the statutes and should not be approved by commissioner of insurance for inclusion in the standard fire policy. 54 Atty. Gen. 75.

2. Concealment; Fraud.

Notwithstanding a provision that it shall be void if any fact material to the risk is concealed by the insured, a policy issued without any written application by the insured (a minor), and without any question being put to him as to matters material to the risk, will not be invalidated by the failure of the insured to disclose such material facts, if he did not intentionally or fraudulently conceal them. Johnson v. Scottish U. & N. Ins. Co. 93 W 223, 67 NW 416.

A policy on a building and contents was an indivisible contract and under a general forfeiture clause was defeated by false swearing as to the value of the personal property. Worachek v. New Denmark M. H. F. Ins. Co. 102 W 88, 78 NW 411.

Proofs of loss not containing a declaration that the statements must be made on personal knowledge was sufficient to warrant the assured in believing that the statements might be made on information and belief. Beyer v. St. Paul F. & M. I. Co. 112 W 138, 88 NW 57.

The giving of an absolute deed, receipt of which is acknowledged in writing by the grantee, to be held as collateral security for an account operates as a mortgage and does not change the interest, title or possession of the property. Wolf v. Theresa Village M. F. Ins. Co. 115 W 402, 91 NW 1014.

The provision forfeiting the policy is self-executing and requires no action of the company. Where members of a partnership bought out another member and so informed the agent who told them that it would be necessary to have the assent of the company indorsed upon the policy but where he was understood by them to the effect that he would arrange the transfer himself, there was no waiver of the provision in the policy. Keith v. Royal Ins. Co. 117 W 531, 94 NW 295.

The presence of the words "false swearing" in connection with the word "fraud" indicates that either wilful fraud or false swearing is designed to have the effect of defeating the policy, regardless of the ultimate effect of the false swearing upon either party to the contract. Meyer v. Home Ins. Co. 127 W 293, 106 NW 1087.

Where a husband has left his property and cannot be found, his wife has implied power to make the proofs of loss. Her false swearing in the proofs will not avoid the policy, unless the husband ratifies. Evans v. Crawford County F. Ins. Co. 130 W 189, 109 NW 952.

To forfeit a policy false swearing must be wilfully done. A false representation made with intent that it shall be acted on raises the inference of fraudulent intent and forfeits the insurance. Fink v. La Crosse M. F. Ins. Co. 203 W 350, 234 NW 339.

On the effects of misrepresentation, fraud and concealment see Stebane Nash Co. v. Campbellsport Mut. Ins. Co. 27 W (2d) 112, 133 NW (2d) 737.

3. Perils; Loss.

The neglect of insured to make exertions to save the property defeats his right to recover

only to the extent of the resulting loss on account thereof, there being no condition in the policy for a forfeiture on account of such conduct. The burden of proof is upon the insurer who sets up such misconduct. Wolters v. Western A. Co. 95 W 265, 70 NW 62.

A loss was caused by the undermining of the insured buildings by high water, and not by lightning. Clark v. Franklin F.M. Ins. Co. 111 W 65, 86 NW 549.

In an action to recover damages for the destruction of a silo and contents on the ground that such destruction was caused by an explosion under the provisions of the extended coverage clauses of fire policies issued by the defendant insurers, it was the function of the trial court to interpret the meaning of the word "explosion" in the policies and to instruct the jury as to the proper meaning of such word in that part of the charge dealing with a question of the special verdict asking whether an explosion had occurred, and it was error to give an instruction which left to the jury the determination of the proper interpretation of such word in the policies. Bauman v. Midland Union Ins. Co. 261 W 449, 53 NW (2d) 529.

An innocent joint tenant cannot recover for a fire loss where the fire was started by another joint tenant, and the fact that plaintiff paid off a mortgage does not subrogate her to the mortgagee's rights, since the mortgage debt was her own primary obligation. Klemens v. Badger Mut. Ins. Co. 8 W (2d) 565, 99 NW (2d) 865.

4. Conditions Suspending Insurance.

The provisions in regard to increase of hazard relate to future as well as to existing conditions; statements about exposures are continuing warranties, a breach of which avoids the policy. Straker v. Phenix Ins. Co. 101 W 413, 77 NW 752.

Where, to the knowledge of the insurer's agent, insured buildings were vacant when the policy was written, a provision that the policy would become void if the premises became unoccupied was waived. Day v. Hustisford F. M. Ins. Co. 192 W 160, 212 NW 301.

A provision in a standard fire insurance policy that the insurer "shall not be liable for loss or damage while a described building is vacant or unoccupied beyond a period of 10 days," is plain and unambiguous. Use of building for sleeping only by an unauthorized person is not occupancy. Frozine v. St. Paul F. & M. Ins. Co. 195 W 494, 218 NW 845.

5. Added Provisions; Permits.

A written provision in a fire insurance policy granting permission to cease operations not to exeed 30 days eliminated a 10-day provision in the statutory policy. Permits attached to a policy are no part of the standard form and are to be construed liberally in favor of the insured. Pritchett v. Herman F. M. Ins. Co. 201 W 521, 230 NW 706.

6. Waivers.

The owner of the insured property had disappeared and could not be communicated with. Before expiration of the time for making proofs defendant's adjuster received from insured's agent a list of the personal property destroyed, with the values thereof, which he retained. He said he was ready to settle the loss if the owner were there, but because the owner was not there he could not settle it. Insurer made no request for other proofs. Said list must be regarded as proofs, and insurer could not object thereto, notwithstanding the policy provided that no waiver of its conditions should be effectual unless indorsed thereon. Roberts v. Northwestern N. Ins. Co. 90 W 210, 62 NW 1048.

A statement bearing the same date as the policy, and attached to it, signed by insurer's agent, that "if at the time of the fire the whole amount of the insurance on the property covered by this policy be less than 80 per cent of the actual cash value thereof," then the defendant should, "in case of loss or damage, be liable only for such proportion of such loss or damage as the amount insured by this policy shall bear to the said 80 per cent of the actual cash value of such property," by necessary implication authorized additional insurance and made it desirable for plaintiff to take additional insurance until the 80 per cent of the actual cash value should be covered, in which case each defendant was liable to pay the full amount of its policy. The policy was not rendered void by such additional insurance. Pool v. Milwaukee M. Ins. Co. 91 W 530, 65 NW 54.

After a condition suspending insurance had arisen the insured building was burned and proof of loss made; defendant sent an adjuster to adjust the loss; he required plaintiff to supplement his proofs by furnishing a carpenter's estimate of the loss and damage, which was done at some trouble and cost. The agent who issued the policy knew of the foreclosure before the loss, and the adjuster knew of it before he required the estimate. The knowledge of the agent was imputable to his principal; the adjuster, though designating himself as a special agent and claiming only limited powers, had authority to require the carpenter's estimate; such estimate did not relate to an appraisal or examination within the meaning of the clause of the policy heretofore quoted, and the attempted restriction upon the power of the company, its general officers and agents, acting within the scope of their general authority to subsequently waive the conditions of the policy and bind the company in a manner contrary to such conditions, were ineffectual. Dick v. Equitable F. & M. Ins. Co. 92 W 46, 65 NW 742.

Insured agreed that, in case of fire, he would "forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, and, when required, exhibit to the defendant's adjuster all that remained of the property insured." By sorting out the undamaged property after a fire and selling and shipping it away before the adjuster came the insured forfeited its rights to recover. The conditions of a policy are not waived by requiring the insured to submit to an examination after proofs of loss have been furnished to the insurer, it being a condition of the contract that no waiver shall arise in consequence of any requirement, act or proceeding on the

part of the company relating to such examination. Oshkosh M. Works v. Manchester F. A. Co. 92 W 510, 66 NW 525.

The knowledge or information on the part of the insurer which will constitute a waiver of a condition must relate to an existing fact or condition, and not to the mere statement of the insured as to an intention to do some act contrary to the policy. Knowledge of an agent that a portable engine was within 200 feet of a house containing the insured household goods, with the statement of the insured that he intended to use it in the future, is not a waiver. Worachek v. New Denmark M. H. F. Ins. Co. 102 W 81, 78 NW 165.

It is competent at the time the policy is delivered for the agent to waive the conditions therein notwithstanding the clause prohibiting such waiver except in writing. St. Clara F. A. v. Northwestern N. Ins. Co. 98 W 257, 73 NW 767; Welch v. Fire Asso. of Philadelphia, 120 W 456, 98 NW 227.

In general, to constitute a waiver by the insurer of a condition in the policy limiting the time in which suit shall be brought after loss, the act or declaration relied on must be done or made during the running of the period of limitation or at least begun during such period; and the insurer, by conduct extending beyond the limitation period, inducing the insured to believe that his claim would be settled without suit, may be precluded from invoking the contractual limitation against the insured. Fischer v. Harmony Town Ins. Co. 249 W 438, 24 NW (2d) 887.

A provision in a comprehensive insurance policy on an automobile, that the terms of the policy shall not be waived or changed except by indorsement issued to form a part of the policy, which is part of the standard policy provision, is construed as having reference to a waiver after the policy has become effective, and as not relating to prior acts of the agent in negotiating or writing the policy. Emmeco Ins. Co. v. Palatine Ins. Co. 263 W 558, 58 NW (2d) 525.

7. *Cancellations.*

The conditions upon which the right to cancel may be exercised must be strictly complied with; there must be an actual notice of cancellation, not a mere notice of a desire to cancel, or that the policy will be canceled or a notice to cancel; and the notice must be served on or given to the proper person and a tender of the unearned premium must be made. A tender thereof and a demand for the purpose of canceling a policy from the beginning, if refused on that ground, does not satisfy the condition. John R. Davis L. Co. v. Hartford F. Ins. Co. 95 W 226, 70 NW 84.

A general agent, with authority to write policies for several insurance companies, was instructed on behalf of an insured that he should maintain insurance on the insured's mill in a stated amount and that, if the C. company would not take such amount of coverage, he should place it in other companies. The agent, on writing a policy for such amount in the C. company and then being instructed by it to cancel the same before it had received any premium, had authority to waive the 5 days' notice of cancellation for the insured, to cancel such policy effective immediately, and to write new covering policies in other companies effective immediately, so that only the other companies were liable for a loss thereafter occurring. The requirement that 5 days' notice of cancellation be given to the insured, is for the protection of the insured. Homeland Ins. Co. v. Carolina Ins. Co. 261 W 378, 52 NW (2d) 782.

Under the cancellation clause of a standard fire insurance policy, written notices mailed by the insurer to the insured on January 9, and January 30, 1950, stating that the insured's 5-year policy issued on February 7, 1949, would be automatically suspended from noon of February 7, 1950, until reinstated by payment of the annual premium, were effective to terminate the rights of the insured under the policy, so that, the insured not having reinstated the policy, the insurer was not liable for a loss which occurred on March 18, 1951. Seeburger v. Citizens Mut. Fire Ins. Co. 267 W 213, 64 NW (2d) 879.

8. *Mortgage Interests.*

A policy covering lumber owned by the insured or held in trust or sold but not delivered, piled in his mill yard, is not an open policy such as would authorize the owner of any such lumber in case of loss to sue directly for the insurance on his property. A provision in a policy that the loss shall be payable to a third person as his interest may appear does not give him an independent right of action against the insurer. Wunderlich v. Palatine F. Ins. Co. 104 W 395, 80 NW 471.

Certain acts of the insurer did not amount to a waiver of a forfeiture on account of the premises becoming vacant. Wisconsin N. L. & B. A. v. Webster, 119 W 476, 97 NW 171.

If the insurer denied all liability on a policy on personal property, both as to the mortgagee and the mortgagor, and did not pay the loss to the mortgagee no rights of subrogation arose by virtue of a standard clause in the policy. Prentiss-Wabers S. Co. v. Millers M. F. Ins. Asso. 192 W 623, 211 NW 776, 213 NW 632.

A mortgagee may protect his interest in the mortgaged property by a loss-payable clause or by a standard mortgage clause (in a fire insurance policy issued to the mortgagor) or by a policy issued to the mortgagee himself. The rights of a mortgagee under a standard fire policy to which is attached a standard mortgage clause are subject to all the terms of the policy except those which are expressly waived by the insurer in the rider containing the mortgage clause. Such waiver does not affect the option of the insurer to rebuild the destroyed structure. The insurer could not exercise its option to rebuild the destroyed structure by offering to rebuild the barn, where the barn and a silo, although separately valued in the policy, together constituted a single structure. State Bank of Chilton v. Citizens M. F. Ins. Co. 214 W 6, 252 NW 164.

Under an "open" loss-payable clause in a fire insurance policy, which is one making the mortgagee an appointee only (by making loss, if any, payable to the mortgagee as his interest may appear), no assignment of the policy is effected, and the interest of the mortgagee is measured, not by any interest

in the property insured, but by the amount due upon the obligation, the payment of which is to be secured. Cary Mfg. Co. v. Acme B. & M. Works, 215 W 585, 254 NW 513.

Cancellation notices mailed to the insured, although effective to terminate the rights of the insured under the standard fire policy, did not affect the rights of a mortgagee named in a loss-payable clause, to whom such notices were not mailed; and under a later letter to the mortgagee, which effectively informed the mortgagee that the policy had been terminated, the policy continued in force and effect for 5 additional days so far as the mortgagee was concerned, since the mortgagee, under the cancellation clause of the policy, was also entitled to 5 days' advance notice of cancellation. Seeburger v. Citizens Mut. Fire Ins. Co. 267 W 213, 64 NW (2d) 879.

A standard mortgage clause attached to a standard fire insurance policy constitutes a separate independent contract between the mortgagee and the insurer, not to be invalidated by any act or neglect of the mortgagor or owner either before or after the attachment or issuance of the mortgage clause. Polar Mfg. Co. v. Integrity Mut. Ins. Co. 7 W (2d) 443, 96 NW (2d) 822.

9. Pro Rata Liability.

The word "loss" is used in sec. 1941-43, Stats. 1898, not as a limitation upon the amount of the insurance, but primarily as a limitation of the policy. The amount of the insurance is the maximum amount of the risk assumed, the face of the policy. The amount of loss is the adjusted damage by the fire to the property covered by the policy. The amount of liability as to any particular loss, is the amount of the adjusted damages properly apportionable to the policy. In apportioning the loss as between the different insurers, the amount of insurance effected by the policy is its face. Stephenson v. Agricultural Ins. Co. 116 W 277, 93 NW 19.

A fire insurance policy issed by an agent covering his own property or property in which he has an interest is voidable, not void, and is therefore susceptible of ratification. The purpose of the pro rata liability clause in the standard fire insurance policy is to relieve an insurer from the burden or necessity of litigating with the insured questions as to the validity of other policies covering the insured property and to guard against inducement to the insured to commit fraud. Under such clause, an insurer was entitled to prorate its liability, where an additional policy on the property had been issued by the insured to themselves in a company for which they were agents, although the property was destroyed before such company had had an opportunity to ratify or disaffirm such policy. Kisow v. National Liberty Ins. Co. 220 W 586, 265 NW 569.

10. Requirements After Loss.

Where, soon after the fire, defendant's adjuster visited the scene of it, received from plaintiff and kept a list of the property destroyed, and denied liability because benzine had been left on the premises, there was a waiver of the requirement as to the proofs. Faust v. American F. Ins. Co. 91 W 158, 64 NW 883.

Denying liability for a loss during the time for filing proofs thereof is a waiver of such proofs. Gross v. Milwaukee M. Ins. Co. 92 W 656, 66 NW 712.

As the policy does not state that it is forfeited in the case of failure to furnish proofs of loss within 60 days after fire, the failure to furnish proofs within the time required merely postpones the time of payment. Welch v. Fire Asso. of Philadelphia, 120 W 456, 98 NW 227.

Where a fire insurance policy required notice of loss, but did not provide that failure to give notice within the time limited would work a forfeiture, failure to give the notice as stipulated merely postponed maturity of a claim. Ciokewicz v. Lynn M. F. Ins. Co. 212 W 44, 248 NW 778.

11. Appraisal.

If appraisal fails because of bad faith of the company's appraiser, the assured may bring suit without another appraisal. The fair cash value of the goods in the market where they were destroyed is the basis for ascertaining the amount of the loss, regardless of what the insured paid for them, or whether they were paid for in cash or obtained in exchange for other property. Chapman v. Rockford Ins. Co. 89 W 572, 62 NW 422.

The basis for valuation of machines destroyed in a fire was not limited to replacement cost less observed depreciation, but other factors such as age, obsolescence, manner in which the machinery was acquired and used machinery market could be considered. The proper measure of damages when an insured building is partially destroyed is the cost of repairs, not exceeding actual cash value of the entire building. Wisconsin Screw Co. v. Fireman's Funds Ins. Co. 193 F Supp. 96.

12. Company's Options.

The option to rebuild a building which has been wholly destroyed is not affected by the provision of sec. 1943, Stats. 1898, which provides that the face of the insurance shall be the true value of the property in case it is wholly destroyed. Sec. 1941-44 is as much a part of the statute as sec. 1943 and the 2 sections should be construed together. Temple v. Niagara F. Ins. Co. 109 W 372, 85 NW 361.

13. Time Limit on Suit.

An insurance company, after it had adjusted the loss of P., was notified by F. that P. had assigned the policy to him. Thereafter it was summoned as garnishee of P., but failed to disclose the assignment to F., who was not a party to the garnishee action. A judgment against the insurance company in the garnishment action did not prevent F. from recovering from it the full proceeds of the policy, even though suit is not brought within one year. Frels v. Little Black F. Ins. Co. 120 W 590, 98 NW 522.

The rule, that when a policy provides that no action thereon for the recovery of any claim shall be sustained unless commenced "within 12 months next after the fire" the time limitation begins to run from the date of the fire and not from the time when the lia-

bility is fixed and the right of action accrues, is subject to the principle that if the insurer, by its acts, induces the insured to suspend his proceedings and delay action on the policy, the time elapsing during such delay so caused should not be reckoned as a part of the time limited for bringing of the action. Fisher v. Harmony Town Ins. Co. 249 W 438, 24 NW (2d) 887.

The time limit for commencing actions under the standard fire insurance policy apply to extended coverage items whether specified in the policy or attached by endorsement and the extension under 201.19 does not change this rule. Riteway Builders, Inc. v. First National Ins. Co. 22 W (2d) 418, 126 NW (2d) 24.

14. Subrogation.

On payment of a loss by the insurer it becomes substituted to all the rights of the insured against the person who caused the loss and may bring an action against such person in its own name; and acceptance by the insured of his loss bars his right of action against the wrongdoer. Allen v. Chicago & Northwestern R. Co. 94 W 93, 68 NW 873.

15. Property Covered.

Where the building insured is described as a furniture factory, the use of a quantity of benzine customary in such factory does not avoid the policy, as where the policy covers property which is used in a particular business the keeping of an article necessarily used in such business will not avoid it, although expressly prohibited in the special conditions. Davis v. Pioneer F. Co. 102 W 394, 78 NW 596.

The policy covered a vehicle left for repair with the policyholder, because of a provision covering property held in storage or for repair. Johnston v. Charles Abresch Co. 123 W 130, 101 NW 395.

In the prescribed space for description of property in a standard fire insurance policy, stating the location of the insured property and that it consisted of a building "occupied and to be occupied only for dwelling purposes," the quoted phrase is construed as being purely descriptive and not as an additional limitation on the coverage, and hence the policy was not suspended at the time of a fire merely because the fire occurred while the insured building was occupied for other than dwelling purposes only. Home Mut. B. & L. Asso. v. Northwestern Nat. Ins. Co. 236 W 475, 295 NW 707.

A clause in the fire insurance policy, allowing the insured to apply 10% of the amount of the policy on "private structures" appertaining to the house, was one relating to coverage. Since there was no evidence of specific intent to cover the insured's garage, knowledge of the insurer's agent, at the time the policy was issued, of the insured's use of the garage as an auto-repair shop open to the public, did not operate as a waiver of the insurer's right to claim after the burning of the garage that by reason of such use the garage was not a "private structure" and hence was not covered by the policy. (Fountain v. Importers & Exporters Ins. Co. 214 W 556, distinguished.) Ziebarth v. Fidelity & Guaranty Fire Corp. 256 W 529, 41 NW (2d) 632.

203.02 History: 1870 c. 56 s. 14; R. S. 1878 s. 1942; 1895 c. 387; Stats. 1898 s. 1941—61, 1942; 1909 c. 460; Stats. 1911 s. 1901n, 1941—61, 1942; 1923 c. 291 s. 3; Stats. 1923 s. 201.23, 203.02, 203.20; 1933 c. 487 s. 82, 83, 98; Stats. 1933 s. 203.02; 1943 c. 357; 1945 c. 474.

Where the bylaws of the company were not incorporated in the policy or referred to they could not be available as a defense in an action upon the policy. Bruger v. Princeton F. Ins. Co. 129 W 281, 109 NW 95.

203.03 History: 1929 c. 320; Stats. 1929 s. 203.025; 1933 c. 487 s. 85; Stats. 1933 s. 203.03; 1945 c. 474.

203.04 History: 1927 c. 267; Stats. 1927 s. 203.045; 1931 c. 308; 1933 c. 487 s. 86; Stats. 1933 s. 203.04; 1945 c. 474; 1959 c. 226.

If under the standard policy an appraisal has been properly demanded, the insured cannot maintain an action for the loss until such appraisal has been made, waived or legally dispensed with. If the failure to arbitrate is chargeable to the bad faith of the insurer and the perverse refusal of the appraiser selected by it to concur in the appointment of an umpire who resides in the vicinity where the loss occurred, the insured need not enter into another appraisal before bringing suit. (Canfield v. Watertown Ins. Co. 55 W 419, 13 NW 252, and Oakwood R. Asso. v. Rathbone, 65 W 117, 26 NW 742, distinguished.) Chapman v. Rockford Ins. Co. 89 W 572, 62 NW 422.

A submission to arbitration is not a waiver of the benefits under a valued policy. Temple v. Niagara Fire Ins. Co. 109 W 372, 85 NW 361.

An appraiser appointed by the insured pursuant to a standard fire insurance policy did not disqualify himself from further acting because of his refusal to act with the insurers' appraiser and an umpire not properly appointed. Cady L. Co. v. Philadelphia F. & M. Ins. Co. 195 W 509, 218 NW 814.

203.06 History: 1895 c. 387; Stats. 1898 s. 1941—64; 1905 c. 102 s. 1; Supl. 1906 s. 1941—64; 1907 c. 525; 1911 c. 247; 1919 c. 425 s. 13; 1919 c. 671 s. 51; 1919 c. 703 s. 38; 1921 c. 469; 1923 c. 291 s. 3; Stats. 1923 s. 203.06; 1925 c. 377; 1933 c. 487 s. 88; 1941 c. 108; 1943 c. 192, 408, 472; 1943 c. 553 s. 32; 1945 c. 90, 474; 1947 c. 189, 585; 1951 c. 410; 1951 c. 452 s. 5, 6; 1955 c. 524, 605; 1957 c. 236, 408; 1959 c. 41; 1961 c. 562; 1969 c. 55, 144.

A rider, not being standard form, attached to a fire insurance policy is construed most strongly against the insurer. A haybaler and silo filler are farm machinery and in this case were temporarily off the premises. Lewis v. Insurance Co. 203 W 324, 234 NW 499.

Provisions in a rider attached to a standard form fire insurance policy providing for ascertainment of loss of business during partial or total suspension due to fire on a per diem basis were valid and enforceable. Hudson M. Co. v. New York U. Ins. Co. 33 F (2d) 460.

A clause may be inserted in the standard fire insurance policy permitting the insured to remove from manufactured tobacco, damaged by fire, all trademarks, etc., prior to any sale thereof. 3 Atty. Gen. 432.

The commissioner of insurance is justified in refusing to approve a clause added

to the standard form of policy that modifies provisions and conditions of the standard policy otherwise than is authorized by conditions specified in 203.06, Stats. 1927. 17 Atty. Gen. 163.

The use of the standard fire insurance policy is not required for insurance in the state fire fund. 34 Atty. Gen. 304.

The statutes (203.01, 203.06 and 215.22, Stats. 1961) do not provide for any form of group fire insurance or use of memorandum of insurance referring to or attempting to incorporate provisions of a master policy by reference. 50 Atty. Gen. 161.

203.07 History: 1913 c. 366; Stats. 1913 s. 1941—64m; 1923 c. 291 s. 3; Stats. 1923 s. 203.07; 1933 c. 487 s. 89; 1945 c. 474; 1961 c. 397.

Revisor's Note, 1933: This section conflicts with the last part of 203.08, and is amended to reconcile the two. [Bill 50-S, s. 89]

203.08 History: 1895 c. 387; Stats. 1898 s. 1941—65; 1919 c. 425 s. 14; 1919 c. 671 s. 52; 1919 c. 703 s. 39; 1923 c. 291 s. 3; Stats. 1923 s. 203.08; 1933 c. 487 s. 90; 1969 c. 337.

Revisor's Note, 1933: It is thought that the statute contemplates an express revocation of license. That is the more orderly way and gives the company a chance to be heard. The fault might be wholly that of an agent. [Bill 50-S, s. 90]

203.09 History: 1876 c. 73 s. 1 to 5; R. S. 1878 s. 1922 to 1925; Stats. 1898 s. 1922 to 1925; 1901 c. 144 s. 1, 2; Supl. 1906 s. 1924, 1925; 1923 c. 291 s. 3; Stats. 1923 s. 203.16 to 203.19; 1933 c. 487 s. 91; Stats. 1933 s. 203.09; 1939 c. 268; 1955 c. 661; 1965 c. 252.

Revisor's Note, 1933: The law is not changed, except to permit personal service. [Bill 50-S, s. 91]

A board of fire underwriters incorporated pursuant to sec. 1922, Stats. 1915, is not a municipal corporation. Neither is it a charitable or business corporation relieved from the rule of respondeat superior. Such a board is liable for negligent acts of members of a fire patrol established and controlled by it. Its corporate acts are for its own private benefit and although they constitute a service usually performed by municipal corporations or public officers they create no immunity from liability for the negligence of its employes. Sutter v. Milwaukee Board of Fire Underwriters, 161 W 615, 155 NW 127. See also Sutter v. Milwaukee Board of Fire Underwriters, 164 W 532, 160 NW 57.

An amendment to the articles of incorporation of a board of fire underwriters extending membership to each insurance company doing business in the county instead of limiting them to those doing business within the city was invalid. Where a mutual insurance company was excluded from membership in the board of fire underwriters and therefore was not subject to assessments, but voluntarily paid assessments and reported premiums for the purpose of fixing the assessments for several years, the mutual company was not estopped to deny the board's right to assess the company in the future. Milwaukee Board of Fire Underwriters v. Badger Mut. Fire Ins. Co. 230 W 60, 283 NW 342.

A mutual fire insurance company is subject to the provisions of 203.17 to 203.19, Stats. 1927. In case assessments are not paid, an action may be commenced in the name of the board of fire underwriters to collect delinquent assessments. A forfeiture action lies against a member of a fire patrol who refuses to file a proper statement or who files a false statement. 18 Atty. Gen. 184.

203.11 History: 1929 c. 456; Stats. 1929 s. 203.215; 1933 c. 487 s. 92; Stats. 1933 s. 203.11; 1949 c. 238.

A policy issued while 203.215, Stats. 1929, was in force was construed in Ciokewicz v. Lynn M. F. Ins. Co. 212 W 44, 248 NW 778.

As to effect of pro rata liability clause see note to 203.01, citing Kisow v. National Liberty Ins. Co. 220 W 586, 265 NW 569.

Where 2 policies were issued on a barn for a total of more than the value, without the knowledge or consent of the respective companies, and after the barn was totally destroyed one company paid the whole amount of its policy, it could recover from the insured the amount by which its payment exceeded its pro rata share of the loss, although its policy contained no provision for prorating the loss. In making the contribution the amount of additional insurance written by the other company, rather than the amount for which the latter company settled with the insured, is to be used. Reedsburg Farmers Mut. F. Ins. Co. v. Koenecke, 8 W (2d) 408, 99 NW (2d) 201.

Where property totally destroyed by fire was covered by 2 fire policies issued by 2 separate insurers through one agent, insured could not recover the full amount of both policies under 203.21, but was limited to his actual loss under 203.11. Wisconsin Screw Co. v. Detroit F. & M. Ins. Co. 183 F Supp. 183.

203.13 History: 1919 c. 248; 1919 c. 703 s. 26; Stats. 1919 s. 1977—3; 1923 c. 291 s. 3; Stats. 1923 s. 209.08; 1931 c. 330; 1933 c. 487 s. 95; Stats. 1933 s. 203.13.

Where the agent of the company knew at the time he delivered the policy that the title of the insured was other than sole and unconditional, such provision of the policy was waived. St. Clara F. A. v. Northwestern Nat. Ins. Co. 98 W 257, 73 NW 767.

Where an application was made which stated that there were no exposures on one side of the building within 100 feet and stated that the answers were to be taken as continuing warranties, an erection of a building within 6 feet of the insured building avoids the policy, even though it does not increase the hazard. Straker v. Phenix Ins. Co. 101 W 413, 77 NW 752.

Prior to the adoption of the standard form the issue of a policy by an agent with full knowledge of the existence of an incumbrance on the property was a waiver of the condition in the policy against incumbrances, even though the policy provided that such waiver must be in writing. Hobkirk v. Phoenix Ins. Co. 102 W 13, 78 NW 160.

The word "agent" is used in sec. 1941-62, Stats. 1898, in the same sense as in sec. 1977. It was not intended by this section to abrogate the judicial rule as to the estoppel of a com-

pany as has been laid down in the case of Renier v. Dwelling H. Ins. Co. 74 W 89, 42 NW 208. If when the agent of an insurance company delivers the policy of insurance he has knowledge of the facts with regard to subject of insurance which are inconsistent with the terms of the policy, the company may be estopped from declaring the policy void because the terms were not changed in writing to conform to the facts. (Bourgeois v. Northwestern N. Ins. Co. 86 W 606, 58 NW 347, explained.) Welch v. Fire Asso. of Philadelphia, 120 W 456, 98 NW 227.

Where a chattel mortgagee of property previously insured inquired of the agent of the insurer who placed the insurance, but not in his capacity as such agent, what she should do with the mortgage, such agent's knowledge of the mortgage was not notice to the insurer of the existence of the mortgage. Bloomer v. Cicero M. F. Ins. Co. 183 W 407, 198 NW 287.

Where an insured advised an agent of the insurer that he intended to remove to another city, but did not state when, or disclose his new address, and did not deliver the policy covering his household goods for an indorsement as to change of location, and the agent said "it would be all right," the insurer was not estopped from asserting a forfeiture. (Spohn v. National F. Ins. Co. 190 W 446, 209 NW 725, explained and distinguished.) Stillman v. North River Ins. Co. 192 W 204, 212 NW 67.

Knowledge acquired by an agent after the issuance and delivery of the policy is not imputed to the principal when not acquired while acting within the scope of his authority as agent of the company. Prentiss-Wabers S. Co. v. Millers' M. F. Ins. Asso. 192 W 623, 211 NW 776, 213 NW 632.

Where a company has in the past recognized the power of the local agent to change the terms of a fire insurance policy by attaching riders thereto, the company is estopped to set up the failure of such local agent to attach a vacancy permit as he had agreed to do. Klinger v. Milwaukee M. Ins. Co. 193 W 72, 213 NW 669.

Where an insurer's agent was informed that plaintiff intended to move from the house insured, and the agent informed plaintiff that he must obtain a vacancy permit on moving, and nothing was said or done by the insurer or agent indicating a promise to issue such permit or to waive its issuance, the neglect of the insured to obtain a permit avoided the policy as to the dwelling, and is a good defense. Servais v. Shelby F. M. F. Ins. Co. 194 W 325, 216 NW 654.

Under 209.08 (1), Stats. 1927, the knowledge of such general agent respecting the title and the son's interest in the insured automobile is knowledge of the insurer, and such imputed knowledge when the policy was first issued is imputed at subsequent renewals thereof. Where the insurer, knowing that a person not named in the policy as owner held a beneficial interest in the automobile covered, issued its policy to protect him, it was estopped to deny liability after an accident. Newburg v. United States F. & G. Co. 207 W 344, 241 NW 372.

An insurer is charged with the knowledge had by its agent at the time of application for a burglary policy that the premises of the insured were burglarized within 5 years prior to the date of the application, although a warranty stated that no burglary had occurred within 5 years. McKinnon v. Massachusetts B. & I. Co. 213 W 145, 250 NW 503.

Where the intention was to cover the specific cars described in the policy, and the agent of the insurer had knowledge that the cars were in fact mortgaged but the effect of the policy as written was to exclude coverage on mortgaged cars, there was a mutual mistake of the parties as to the effect of the policy, which, although a mistake of law, authorizes reformation of the policy to make it express the intention of the parties. Fountain v. Importers & Exporters Ins. Co. 214 W 556, 252 NW 569.

The fact that the insured building was unoccupied when destroyed by fire did not defeat recovery on the policy, where the insured at the time of applying for insurance had informed the agent of the insurance company that the premises were then vacant and would remain vacant until the insured could make suitable repairs so as to rent the building, since under the statute the knowledge which the agent had at the time of the issuance of the policy was knowledge of the company, and the issuance of the policy in the circumstances waived any provision therein as to vacancy or unoccupancy then existing. Keller v. Hartford Fire Ins. Co. 239 W 354, 300 NW 471.

The knowledge of an insurance agent at the time a fire policy was issued was knowledge of the company. Fish v. Connecticut Fire Ins. Co. 241 W 166, 5 NW (2d) 779.

Since there was no evidence of specific intent to cover the insured's garage, knowledge of the insurer's agent, at the time the policy was issued, of the insured's use of the garage as an auto-repair shop open to the public, did not operate as a waiver of the insurer's right to claim after the burning of the garage that by reason of such use the garage was not a "private structure" and hence was not covered by the policy. (Fountain v. Importers & Exporters Ins. Co. 214 W 556, distinguished.) Ziebarth v. Fidelity & Guaranty Fire Corp. 256 W 529, 41 NW (2d) 632.

203.15 History: 1850 c. 232 s. 2; R. S. 1858 c. 72 s. 2; 1870 c. 56 s. 2, 6; 1875 c. 314 s. 8; R. S. 1878 s. 1905; 1897 c. 277; Stats. 1898 s. 1905, 1966—48; 1899 c. 190 s. 2; 1903 c. 394; Supl. 1906 s. 1905a, 1919b; 1913 c. 637; Stats. 1913 s. 1905; 1919 c. 425 s. 8; 1923 c. 291 s. 3; Stats. 1923 s. 201.27; 1933 c. 487 s. 96; Stats. 1933 s. 203.15.

203.16 History: 1875 c. 314 s. 1 to 8; 1878 c. 214; R. S. 1878 s. 1909 to 1913; Stats. 1898 s. 1909 to 1913; 1915 c. 634 s. 16; 1923 c. 291 s. 3; Stats. 1923 s. 201.31 to 201.35; 1933 c. 487 s. 97; Stats. 1933 s. 203.16; 1947 c. 100; 1969 c. 276 s. 597 (4).

203.21 History: 1917 c. 461; Stats. 1917 s. 1943; 1923 c. 291 s. 3; Stats. 1923 s. 203.21; 1933 c. 487 s. 99.

Ch. 347, Laws 1874, rests on grounds of public policy; hence no contrary provision of a contract will control or impair it. Reilly v. Franklin Ins. Co. 43 W 449.

It is immaterial that the assured is guilty of false swearing as to the amount of loss since that is fixed by the statute. Cayon v. Dwelling H. Ins. Co. 68 W 510, 32 NW 540.

The insured does not waive his rights under sec. 1943, R. S. 1878, by submitting, pursuant to a stipulation in the policy, the question of the amount of the loss to arbitrators, their award being more favorable to the insurer than its liability would be under the statute. Seyk v. Millers' N. Ins. Co. 74 W 67, 41 NW 443.

If the policy so provides, where both real and personal property are covered by it, fraudulent representations as to the value and quantity of the latter will work a forfeiture as to the former. Worachek v. New Denmark M. H. F. Ins. Co. 102 W 88, 78 NW 411.

The insurer may rebuild in case of a total loss. Temple v. Niagara F. Ins. Co. 109 W 372, 85 NW 361.

If several concurrent policies have been written upon realty with the consent of the respective insurers and the property is wholly destroyed their aggregate amount is the true value of the property and measure of damages. Oshkosh G. L. Co. v. Germania Ins. Co. 71 W 454, 37 NW 819; Stephenson v. Agricultural Ins. Co. 116 W 277, 93 NW 19.

In case of total loss by fire the amount of the policy is the measure of damages and appraisal proceedings under the policy are ineffective. Eck v. Netherlands Ins. Co. 203 W 515, 234 NW 718.

The rule that where the insured under a valued policy has some insurable interest subject to hazard, the agreed valuation, in the absence of fraud, accident or mistake, is conclusive on the parties, is subject to the general rule that a conveyance by the insured of the insured property ordinarily terminates the policy, because if the vendor retains no interest in the property he suffers no loss by its destruction. And if the vendor of the insured property retains an interest therein, the extent of such interest measures the extent of his loss. Regardless of whether the so-called valued policy law applies to other than fire insurance (a question not determined in this case), recovery under a tornado policy containing no provision for forfeiture for change in the interest of the insured should have been limited to his interest in the insured premises deeded by him to another in possession, although the value of the property destroyed exceeded the amount of the policy coverage thereon. Such interest of the insured was only the amount of a vendor's lien to the extent of the value of other premises orally agreed to be but in fact not conveyed to the insured as part consideration for his deed of the insured premises, such oral agreement being void and not subject to specific performance because the insured at the time of the destruction of the insured property had not been placed in possession of such other premises. Wohlt v. Farmers Home H., T. & C. Ins. Co. 206 W 35, 238 NW 809.

The valued policy law controls over the subsequently enacted standard fire policy law, limiting damages to actual cash value of property at time of loss being an exception thereto. Fox v. Milwaukee M. Ins. Co. 210 W 213, 246 NW 511.

The valued policy law applied where a fire policy merely provided that the insurer should not be liable for greater proportion of loss than amount insured should bear to whole insurance covering the property. Ciokewicz v. Lynn Mut. Fire Ins. Co. 212 W 44, 248 NW 778.

In an action to recover on a policy for the loss of a barn by fire, under credible evidence that as a result of the fire the barn had lost its character and identity as a barn, that the concrete walls could not be utilized as a barn or foundation for a new superstructure for a haymow, and that the expense of removal of the salvable material would exceed the value thereof, the jury could find that as the result of the damage caused by the fire the barn was a "total loss." Fisher v. Harmony Town Ins. Co. 249 W 438, 24 NW (2d) 887.

203.21, Stats. 1955, does not apply where 2 or more companies insure the risk unless the several policies are written with the respective companies' consent. Reedsburg Farmers Mut. F. Ins. Co. v. Koenecke, 8 W (2d) 408, 99 NW (2d) 201.

Where a building after partial fire destruction is ordered destroyed under a fire ordinance, the insurer's liability is not determined by the actual fire loss but is measured by the face value of the policy as for total fire destruction. New Hampshire Fire Ins. Co. v. Murray, 105 F (2d) 212.

See note to 203.11, citing Wisconsin Screw Co. v. Detroit F. & M. Ins. Co. 183 F Supp. 183.

203.21, Stats. 1931, is applicable where a building is totally destroyed by fire and there are 2 or more fire insurance policies covering such property, regardless of whether several insurance companies had knowledge of existence of other policies. 21 Atty. Gen. 634.

The Wisconsin "valued policy" law. Alexander, 10 WLR 248.

203.22 History: 1897 c. 343; Stats. 1898 s. 1943a; 1913 c. 208; 1921 c. 385; 1923 c. 291 s. 3; Stats. 1923 s. 203.22; 1933 c. 149; 1933 c. 487 s. 100; 1943 c. 327; 1969 c. 337.

One policy on a building provided that unless insurance was kept upon the property to 80 per cent of its value the insurer could only be liable for such portion of the face of the policy as the total insurance should bear to the 80% of the value. Sec. 1943a, Stats. 1898, was not applicable in an action on other policies which did not contain this clause, and the companies issuing such policies were liable for the proportion which their policies bore to the total amount of insurance. Stephenson v. Agricultural Ins. Co. 116 W 277, 93 NW 19.

The provision that no policy shall be issued limiting the amount to be paid by the actual cash value of the property if within the amount of the insurance for which the premium is paid refers to the actual cash value of the property destroyed rather than the value of the property insured. If the total cash value of the property destroyed is less than the total insurance no provision attached to the policy is effective to reduce the amount to be paid by the insurer to a sum less than

the cash value. Newton v. Theresa V. M. F. Ins. Co. 125 W 289, 104 NW 107.

Sec. 1943a, Stats. 1898, applies only to cases in which the insurer attempts by stipulation in the policy or with the policy without consent of the insured and without reduction of premium to limit its liability thereon below the amount or face of the policy, upon which or for which the insured has paid full premium and where the value of the goods destroyed is within the amount of such insurance carried on the property. This does not conflict with the standard policy law nor prohibit permission for additional insurance nor restriction of the amount of such additional insurance nor waiver of the invalidity of the additional insurance in whole or in part. A rider on the policy stated to be at the option of the insured and in consideration of a reduced rate of premium which gave permission for insurance up to 75% of the cash value of the policy, and providing that if the total insurance exceeded 75% the policy should be paid only in the proportion of such excess to the total insurance, held to be valid. Bloch v. American Ins. Co. 132 W 150, 112 NW 45.

An insurance contract under which the amount of coverage and the premium varies according to monthly inventory reports by the insured does not violate 203.22, Stats. 1953. Albert v. Home Fire & Marine Ins. Co. 275 W 280, 81 NW (2d) 549.

Where an insured did not receive the benefit of a monthly reporting form of fire insurance policy because of the insurance company's method of handling the reporting form by indorsing the policy each month and reducing what would be a provisional limit to a maximum limit of the amount of insurance for one month, such procedure violated 203.22, providing that no insurance company shall issue any fire policy containing any provision limiting the amount to be paid in case of loss below the actual cash value of the property if within the amount for which the premium is paid. Ben-Hur Mfg. Co. v. Firemen's Ins. Co. of N. J. 18 W (2d) 259, 118 NW (2d) 159.

A coinsurance clause in a policy is valid if consented to by the insured. 1904 Atty. Gen. 145.

A "three-fourths value limitation clause" on fire insurance policies is not prohibited by this section. 2 Atty. Gen. 435.

This section and 201.20, Stats. 1931, are independent of each other, 201.20 providing for carrying of a portion of the risk by the insured and this section for sharing of loss, and are not in conflict. 20 Atty. Gen. 605.

203.24 History: 1913 c. 316; Stats. 1913 s. 1943m; 1915 c. 29; 1919 c. 425 s. 15, 16; 1923 c. 291 s. 3; Stats. 1923 s. 203.24; 1933 c. 236 s. 2; 1933 c. 487 s. 102; 1933 c. 489 s. 9; 1937 c. 235; 1961 c. 562; 1969 c. 337 ss. 50, 88.

In pursuing the business of adjuster of losses when employed by an insurance company, a layman may investigate the facts of any loss, either himself or through his employes, may obtain written statements and photographs, and may appraise a loss or damages; and if authorized by his employer he may obtain reports or estimates of damage to property or the extent of personal injuries from experts, and he may report all facts so obtained to his employer, and may comment on the facts found; but he may not advise his employer as to its liability or render advice as to legal rights to a claimant without thereby engaging in the "practice of law." State ex rel. Junior Asso. of Milwaukee Bar v. Rice, 236 W 38, 294 NW 550.

Sec. 1943m (9), Stats. 1913, does not prohibit a fixed fee of more than 5% to be paid to an insurance adjuster. The provisions apply only to a contingent fee. 4 Atty. Gen. 247.

203.28 History: 1933 c. 487 s. 103; Stats. 1933 s. 203.28; 1951 c. 573.

203.29 History: 1933 c. 487 s. 104; Stats. 1933 s. 203.29.

203.30 History: 1933 c. 487 s. 105; Stats. 1933 s. 203.30.

203.31 History: 1933 c. 487 s. 106; Stats. 1933 s. 203.31.

CHAPTER 204.

Insurance—Surety, Credit, Casualty.

204.01 History: 1933 c. 487 s. 131; Stats. 1933 s. 204.01.

Revisor's Note, 1933: Chapter 655, Laws 1919, created 14 sections numbered 1966—33a to 1966—33n, which dealt with fidelity insurance. At that time there were in existence statutory provisions created by chapter 277, Laws 1897, and covering this same subject, which provisions had been revised and made 1966—33 to 1966—39, Stats. 1898. See Revisers' note to 1966—25, Stats. 1898. The 14 sections created in 1919 were forced in between 1966—33 and 1966—34. Nothing was done to reconcile or harmonize the conflicting provisions in these 2 enactments. Although there was no express repeal, there certainly was some implied repeal; so far as there is conflict the act of 1919 is the law. There is conflict between 204.01 and 204.02; 204.09 and 204.19; 204.07 and 204.16; 204.11 and 204.18 and 204.20. Furthermore, the provisions of chapter 204 are not logically arranged and contain many repetitions of provisions elsewhere found in the statutes. These facts necessitate a thorough rearrangement, revision and renumbering of the provisions of the chapter. Section 204.01 is chiefly from the last sentence of old 204.02; 204.02 (1) is from 204.07 (1); (2) is from 204.14, created by ch. 655, Laws 1919 (1966—33m), which was approved on July 25, 1919; (3) is from (2) and (3) of 204.07; (4) is from 204.16; 204.03 and 204.04 are from 204.16. Subsection (4) of 204.07 deals with revocation of licenses and court reviews. Provisions for revocation of licenses are contained in 200.04, 200.14 and 201.40 (new 201.34). Rehearings and court review of the orders of the commission are covered by 200.11. [Bill 50-S s. 131]

204.02 History: 1933 c. 487 s. 131; Stats. 1933 s. 204.02.

An undertaking for costs on appeal executed by a surety company must have an attached certificate of the commissioner of insurance in order to make the appeal effective; but where no such certificate was attached,