INDEX.

TESTIMONY.

For Plaintiff:

For Defendant:

EXHIBITS.

Amended Complaint.

New Jersey Supreme Court,

ESSEX COUNTY.

TEXTILEATHER CORPORATION, a corporation, Plaintiff, vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants.	Action at Law: Amended Complaint.

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FIRST COUNT.

Textileather Corporation, a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business at Newark, Essex County, says that:

(1) Defendant, Great American Indemnity Company, is a corporation organized and existing under the laws of the State of New York, and is in the business of writing indemnity insurance, including the insuring of risks under and by virtue of the Workmen's Compensation Law of the State of New Jersey, and at all times hereinafter mentioned was duly authorized to transact its business within the State of New Jersey.

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(2) Defendant, American Mutual Liability Insurance Company, is a corporation organized and

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existing under the laws of the State of Massachusetts, and is in the business of writing indemnity insurance, including the insuring of risks arising under and by virtue of the Workmen's Compensation Law of the State of New Jersey, and at all times hereinafter mentioned was duly authorized to transact its business within the State of New
10 Jersey.

(3) Plaintiff at all times hereinafter mentioned was in the business at Newark, New Jersey, of manufacturing leather, and in the course of its business employs large numbers of employes in its various manufacturing processes.

(4) That on or about the 18th day of November, 1926, defendant, Great American Indemnity Com-
20 pany, issued its Standard Workmen's Compensation and Employer's Liability Policy, No. C 2509, to the plaintiff, effective between November 18, 1926, and November 18, 1927, among other things indemnifying the plaintiff, as an employer of labor within the State of New Jersey, against loss by reason of the liability imposed upon the plaintiff by the Workmen's Compensation Law of the State of New Jersey for damages on account of injuries to such of plaintiff's employes as were legally employed where-
30 soever such injuries might be sustained within the territorial limits of the United States of America or the Dominion of Canada, a true copy of which policy is hereto annexed, marked Exhibit "A", hereby made a part hereof, and hereby referred to for certainty.

(5) That on or about the 18th day of November, 1927, defendant, American Mutual Liability Insur-
40 ance Company, issued its Standard Workmen's

Compensation and Employers' Liability Policy No. WC38004 B, to the plaintiff, effective between November 18, 1927, and December 1, 1928, among other things indemnifying the plaintiff, as an employer of labor within the State of New Jersey, against loss by reason of the liability imposed upon the plaintiff by the Workmen's Compensation Law of the State of New Jersey for damages on account of injuries to such of plaintiff's employes as were legally employed wheresoever such injuries might be sustained within the territorial limits of the United States of America or the Dominion of Canada, a true copy of which policy is hereto annexed, marked Exhibit "B", hereby made a part hereof, and hereby referred to for certainty.

(6) Plaintiff paid to each defendant as herein mentioned the premium charged by each defendant for issuing such policies to the plaintiff, and the plaintiff has duly performed all the terms and conditions as to each of said policies on plaintiff's part to be performed as conditions precedent to plaintiff's recovery thereon.

(7) That one of the plaintiff's employes employed at its factory northeast corner of Lister Avenue and Brown Street, Newark, New Jersey, between August 8, 1927 and November 26, 1927, in its business covered by each of said policies, was Bruno Iannazzo; that said Bruno Iannazzo died December 8, 1927, as a result of a compensable occupational disease, to wit, poisoning by benzine and its homologues and a derivative therefrom, to wit, benzol poisoning, which occurred during the employment of the said Bruno Iannazzo with the plaintiff between August 8, 1927, and November 26, 1927, in the factory aforesaid.

(8) That the said Bruno Iannazzo was employed by the plaintiff during the period of August 8, 1927 to November 18, 1927, during which said period the policy written by the Great American Indemnity Company was in full force and effect, and the said employment continued from November 18, 1927 to November 26, 1927, during which said period the policy written by the defendant, American Mutual Liability Insurance Company was in full force and effect, and the said Bruno Iannazzo died on December 8, 1927, while the policy of the defendant, American Mutual Liability Insurance Company was in full force and effect, but after the policy period mentioned in the policy of the defendant, Great American Indemnity Company.

(9) Plaintiff alleges upon information and belief that the cause of death of the said Bruno Iannazzo was from either a sub-poisoning from benzine and its homologues and a derivative therefrom, to wit, benzol poisoning, or was cumulative during the periods of each of the policies above mentioned between August 8, 1927 and November 26, 1927, or in the alternative such poisoning occurred during the coverage of the defendant, Great American Indemnity Company, or during the coverage of the defendant, American Mutual Liability Insurance Company, or during the coverage of the defendant, Great American Indemnity Company, plus the cumulative poisoning during the coverage of the defendant, American Mutual Liability Insurance Company.

(10) Plaintiff alleges generally the performance of all conditions precedent under the terms of the policies written by the defendant, Great American Indemnity Company, and the defendant, American

Mutual Liability Insurance Company, except where the said defendants have waived the performance of conditions precedent, or where such defendants are estopped to require the same.

(11) That on January 8, 1928, Grace Iannazzo, widow of Bruno Iannazzo, filed with the Workmen's Compensation Bureau in the Department of Labor at Trenton, New Jersey, a petition claiming compensation for herself as widow and five minor dependent children of Bruno Iannazzo, a copy of which petition is hereto annexed, marked Exhibit "C", made a part hereof and hereby referred to for certainty; on information and belief that said Bureau forwarded said petition to the defendant, American Mutual Liability Insurance Company, as the plaintiff's insurance carrier, and that the defendant American Mutual Liability Insurance Company on January 20, 1928 acknowledged service thereof without notice to the plaintiff, and that the said defendant, American Mutual Liability Insurance Company without any notice to the plaintiff served notice of the pendency of the said proceedings on the defendant, Great American Indemnity Company, together with a notice that at the hearing of the said petition it would be urged that the period of employment of the said Bruno Iannazzo responsible for his death was the period during which the policy of the defendant, Great American Indemnity Company was in force and effect, and that defendant, American Mutual Liability Insurance Company would contend that defendant, Great American Indemnity Company should pay any award of compensation, but the defendant, Great American Indemnity Company did not appear in or defend said action.

(12) That no notice was given to the plaintiff either by the defendant, American Mutual Liability Insurance Company or by the defendant, Great American Indemnity Company, or by the said Bureau, either of the pendency of the said action or of the acknowlegment of service by the defendant, American Mutual Liability Insurance Co., or of the failure or the refusal of defendant, Great American Indemnity Company to defend the said action.

(13) After the filing of the aforesaid petition by Grace Iannazzo, the defendant, American Mutual Liability Insurance Company, employed one Clarence B. Tippett, an Attorney-at-Law of New Jersey, to file an answer to the said claim petition of the said Grace Iannazzo and to defend the said claim of the said Grace Iannazzo for the defendant, American Mutual Liability Insurance Company, but in the name of the plaintiff; that accordingly the said Clarence B. Tippett without in any way consulting or conferring with the plaintiff or any of its officers or agents, and without plaintiff's knowledge filed an answer to the said claim petition in which the defendant, American Mutual Liability Insurance Company in said answer stated:

> "As it is a claim of debt from an alleged occupational disease condition, it is necessary that the actual date of contraction of the said condition be definitely determined and proof of casual relation clearly presented in as much as there are two insurance carriers involved, and payment of compensation, if permissible and proper would require a ruling as to which one or both of said carriers covered the employer at the time of contraction of the alleged occupational disease",

a copy of which answer is hereto annexed, marked Exhibit "D", made a part hereof, and hereby referred to for certainty.

(14) That no notice of the filing of the said answer was given to the plaintiff either by the defendant, American Mutual Liability Insurance Company, or the said Clarence B. Tippett, or any other person, and plaintiff had no knowledge thereof 10

(15) Upon information and belief that after the said defendant, American Mutual Liability Insurance Company had filed the answer aforesaid to the said petition, the Workmen's Compensation Bureau ordered a hearing held on said petition, and before the date set for said hearing, the said defendant, American Mutual Liability Insurance Company, by its agents or attorneys, notified the 20 defendant, Great American Indemnity Company of the said hearing as aforesaid, and called upon the latter to intervene in said action and defend the same or its interests therein.

(15A) That after the filing of the answer mentioned in paragraph 15, a copy of said petition for compensation was served on this plaintiff on April 30, 1928, but this plaintiff was advised by defendant, American Mutual Liability Insurance Company 30 that it was defending said action for and on behalf of this plaintiff.

(16) Plaintiff alleges that no notice that a hearing on said petition had been fixed was given to said plaintiff by either the defendant, American Mutual Liability Insurance Company, or the defendant, Great American Indemnity Company, nor was any notice given to the plaintiff by either the defendant, American Mutual Liability Insurance Company, or 40

the defendant, Great American Indemnity Company, of the notices aforesaid, which upon plaintiff's information and belief were given by the defendant, American Mutual Liability Insurance Company to the defendant, Great American Indemnity Company, and the plaintiff had no notice or knowledge thereof; plaintiff further alleges that it
10 had no notice or knowledge of the attempt of either of said Companies to evade responsibility to indemnify the plaintiff or the said Grace Iannazzo and the dependents of Bruno Iannazzo.

(17) Plaintiff further alleges that the said compensation petition of the said Grace Iannazzo on which the defendant, American Mutual Liability Insurance Company had joined issue by filing the answer aforesaid, came on for hearing before
20 Honorable Harry J. Goas, a Deputy Commissioner of the Workmen's Compensation Bureau, at Newark, New Jersey, on May 9, 1928, in the presence of Raymond H. Cohen, Esq., attorney for the petitioner, and Messrs. McCarter and English, Attorneys-at-Law of the City of Newark, assuming to act as attorneys for the plaintiff herein, but in fact employed by and acting solely in the interests of the defendant herein, American Mutual Liability Insurance Company; that neither the defendant,
30 American Mutual Liability Insurance Company nor the said Clarence B. Tippett (Attorney of record who filed the said answer) nor Messrs. McCarter and English, nor any of them, gave any notice to the plaintiff of the coming on of the said cause for hearing, and none of them consulted or conferred with the plaintiff or any of its officers or agents concerning the defense of the said petition; that the defense of said petition was conducted wholly by
40 the defendant, American Mutual Liability Insur-

ance Company in its own interests and contrary to the interests of the plaintiff, in an endeavor to avoid any and all liability to the plaintiff, Textileather Corporation, Grace Iannazzo, the petitioner, or any other person.

(18) That at the said hearing said defendant herein, American Mutual Liability Insurance Company, did not introduce any evidence in the said cause in defense of the said petition, but through its attorneys aforesaid informed the said workmen's Compensation Commissioner as follows:

> "If your Honor please, before the witness is examined, Your Honor, I wish to make a statement for the record: In this case, Your Honor, the Petitioner's intestate is alleged to have died of benzol poisoning on or about December 8th, 1927. The fact is that the American Mutual Liability Insurance Company was the Compensation carrier for the Respondent from a period running from November 18th, 1927 to and including the time this petitioner's intestate quit work for the respondent, which was on November 26th. Prior to November 18th the respondent was covered for compensation by the Great American Indemnity Company. I am here representing the Respondent inasfar as the American Mutual coverage goes. The Great American Indemnity by reason of the circumstances in the case was served with a formal notice by us to the effect that the allegation here was benzol poisoning and that it would be urged at this hearing that the period of the coverage of the Great American was the responsible period for the contraction, exposure and results which culminated in the man's death. That formal notice was served both on

the Newark office of the Great American Indemnity Company and on the Home Office of the Great American Indemnity in New York, and I hand the Court the original notice to which is attached two original affidavits of service of the notice. In addition to that when this matter was first noted for a formal hearing the American Mutual mailed by registered mail to the Great American Indemnity to its home office notice that the case was coming on for a hearing and that the Great American Indemnity Company was a party in interest. In this case here for the American Mutual, we are not contesting the petitioner's proof, which I assume is to be put before this Court anyway, as to the death from the occupational disease. We do urge and I think it will be plain, from the petitioner's case that the exposure, contraction and poisoning and the result were in the petitioner's intestate's system prior to the date of the coverage on our policy with the result that we think it will be plain as was in the case last week, that the responsible period of the coverage is prior to our coverage."

(19) That prior to the making of such statement neither the defendant, American Mutual Liability Insurance Company nor any of its attorneys, gave any notice to the plaintiff of the said defendant's intention as aforesaid to consent in effect to the entry of judgment in favor Grace Iannazzo and her dependent children against the plaintiff herein, nor did they give to the plaintiff an opportunity to protect itself by claim against the said Great American Indemnity Company, under the terms of plaintiff's policy with the said Great American Indemnity Company.

(20) That the trial of the said compensation proceeding between the said Grace Iannazzo and the defendant, American Mutual Liability Insurance Company, as herein above stated, (the defendant, American Mutual Liability Insurance Company, acting for itself, but in the name of the plaintiff, without any notice to the plaintiff thereof) resulted in a determination being made, a true copy of which is annexed to the original complaint on file, marked Exhibit "A", which is hereby made a part hereof and to which reference is hereby made for certainty.

(21) That the said determination was prepared by the defendant, American Mutual Liability Insurance Company, and its attorneys without notice to the plaintiff, in such a manner as to attempt to exonerate the defendant, American Mutual Liability Insurance Company, from any and all liability to the said Grace Iannazzo for compensation, although making this defendant liable therefor, and in such a manner as to attempt to exonerate or relieve the said defendant, American Mutual Liability Insurance Company, from any and all liability to reimburse the plaintiff for any and all moneys determined by the Compensation Commissioner aforesaid to be payable by plaintiff to Grace Iannazzo and the dependents of the said Bruno Iannazzo.

(22) Plaintiff further alleges that after the said determination had been prepared by the said defendant, American Mutual Liability Insurance Company, and its attorneys, the same was presented by the said defendant, American Mutual Liability Insurance Company, through its attorneys, to Hon. Harry J. Goas, a Deputy Commis-

sioner as aforesaid, and signed by him, and a copy thereof was thereafter filed in the office of the County Clerk of Essex County, pursuant to law, and execution was issued thereon, and plaintiff was compelled under threat of levy and execution upon its factory and other property, to pay the amount declared to be then due under the terms of the aforesaid determination, $1,134.06, which sum included costs, amounting to $716.10.

(23) That thereafter plaintiff has paid the amounts due from time to time under the said determination or judgment as they accrued, but under duress, in order to avoid the further levy of costs and expenses that would have accrued according to law had execution been issued thereon.

(24) That the amount adjudged by the said determination to be payable to the dependents of the said Bruno Iannazzo was as follows:

Grace Iannazzo, widow, 300 weeks— 12/8/27 to 9/6/33 60%	
Mary, daughter, born 9/16/13, 92 4/7 weeks, 12/8/27 to 9/15/29 @ $15.48	1433.00
Philomena, daughter, born 11/9/14, 59 6/7 weeks, 9/16/29 to 11/8/30 55% @ $14.19.....	849.37
Gesualdo, son, born 12/21/16, 110 3/7 weeks, 11/9/30 to 12/20/32 50% @ $12.90.....	1424.53
Donaton, son, born 9/14/18, 37 1/7 weeks, 12/21/32 to 9/6/33 45% @ $11.61.....	431.23
end of 300 weeks—51 5/7 weeks, 9/7/33 to 9/3/34 40% @ $10.32.	533.69
Anthonette, daughter, born 7/18/20, 97 4/7 weeks, 9/4/34 to 7/17/36 35% @ $9.03.....	881.07
Total	$5552.89

and costs as follows:

Funeral expenses.....	150.00
Dr. Fasano.....	25.00
Costs, including stenographer's fee	27.00
Counsel fee Raymond H. Cohen...	500.00
	$702.00

(25) Plaintiff alleges that compensation so as aforesaid ordered and adjudged and determined to be payable by the plaintiff to the aforementioned dependents of Bruno Iannazzo, was awarded by the said Workmen's Compensation Bureau under and pursuant to the Workmen's Compensation Laws of the State of New Jersey, to wit, Chapter 95 of the Laws of 1911 and Chapters 178 and 262, Laws of 1917, State of New Jersey, and all laws supplementary thereto and amendatory thereof, to wit, Chapter 124 of the Laws of 1924 and Chapter 31 of the Laws of 1926 of the State of New Jersey.

(26) Plaintiff demands judgment against the defendants, Great American Indemnity Company and American Mutual Liability Insurance Company, or in the alternative against the defendant, Great American Indemnity Company, or in the alternative against the defendant, American Mutual Liability Insurance Company, for $702, costs paid by the plaintiff as fixed by said determination, with interest thereon from June 7, 1928 and for $5552.89, the amount of compensation awarded against the plaintiff as within stated, with interest on each payment of compensation from the date same was paid by the plaintiff. (A statement of amounts paid by plaintiff to and including August 31, 1929, and the date and amount of each payment being hereto annexed, and made a part hereof and marked Exhibit "E".)

SECOND COUNT AGAINST DEFENDANT
GREAT AMERICAN INDEMNITY COMPANY ALONE.

(1) Plaintiff repeats the allegations contained in the following paragraphs of the first count of the amended complaint with the same force and effect as though they were here repeated at length: Paragraphs, 1, 2, 3, 4, 5, 6, 7, 8 and 9.

(2) Plaintiff alleges generally the performance of all conditions precedent under the terms of the policy written for plaintiff by the defendant Great American Indemnity Company, except where said defendant has waived the performance of conditions precedent, or where said defendant is estopped to require the same.

(3) That on January 8, 1928, Grace Iannazzo, wife of Bruno Iannazzo aforesaid, filed with the Workmen's Compensation Bureau in the Department of Labor at Trenton, New Jersey, a petition claiming compensation for herself as widow and five minor dependent children of Bruno Iannazzo, a copy of which petition is annexed hereto, marked Exhibit "C", made a part hereof and hereby referred to for certainty.

(4) Upon information and belief that on January 8, 1928, or soon thereafter, and before May 9, 1928, the date of the hearing on said petition, the American Mutual Liability Insurance Company sent a registered letter to the Great American Indemnity Company, advising them that the case was coming on for a hearing, and that the Great American Indemnity Company was a party in interest, and also caused to be served upon the said Great American Indemnity Company a formal notice of

the pendency of the hearing on said petition, and that it would be urged at said hearing that the period of coverage of the Great American Indemnity Company was the period during which Bruno Iannazzo received benzol poisoning into his system.

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(5) That no notice was given to the plaintiff by the defendant, Great American Indemnity Company of the service upon the said Great American Indemnity Company of the notice aforesaid, or of the receipt by said Great American Indemnity Company of the registered letter aforesaid.

(6) That upon information and belief, to the knowledge of the defendant, Great American Indemnity Company, the defendant, American Mutual Liability Insurance Company acknowledged service of a copy of said petition of Grace Iannazzo, acting for herself and her children.

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(7) Plaintiff repeats the allegations of paragraph 13 of the first count with the same force and effect as though here repeated at length.

(8) Plaintiff repeats the allegations of paragraph 15 of the first count with the same force and effect as though here repeated at length.

(9) That no notice of the filing of the said answer or the giving of the notice mentioned in paragraph 15 of the first count, and paragraph 4 of the second count was given to the plaintiff either by the defendant, American Mutual Liability Insurance Co., or the defendant, Great American Indemnity Company, or any other person.

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(10 Plaintiff repeats the allegations of paragraph 16 of the first count with the same force and effect as though here repeated at length.

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(11) The plaintiff, Great American Indemnity Company, after receiving notice of the petition of Grace Iannazzo, and of the pendency of a hearing thereunder, took no steps in the said cause either to notify the plaintiff of the pendency thereof, or to defend the said cause on the merits, or to defend the interests of the plaintiff in the said cause, or to put the plaintiff upon notice of the facts in connection therewith, which were possessed by the defendant, Great American Indemnity Company, to the end that plaintiff might take such steps as it deemed advisable for the protection of plaintiff's interest in said cause.

(12) That on or about May 9, 1928, a hearing on the aforesaid petition was had before Hon. Harry J. Goas, and on or about June 4, 1928, an award was made in the said cause, a true copy of which is annexed to the original complaint on file, marked Exhibit "A", which is hereby made a part hereof, and to which reference is hereto made for certainty.

(13) Plaintiff repeats the allegations of paragraph 22 of the first count with the same force and effect as though here repeated at length.

(14) Plaintiff alleges that the defendant, Great American Indemnity Company has breached the conditions of its policy in the following respects:

(a) Said defendant has failed, neglected and refused to pay promptly to Grace Iannazzo and her dependents, the persons entitled thereto under the Workmen's Compensation Law of the State of New Jersey, the entire amount of the sums adjudged as aforesaid to be due her and all installments thereof as they become due.

(b) Said defendant has failed, neglected and refused to pay promptly for the benefit of Grace Iannazzo and the dependents of Bruno Iannazzo, the proper cost determined to be due as aforesaid for medical, surgical, nurse and hospital services, and funeral expenses required by the provisions of the Workmen's Compensation Law in the determination aforesaid. 10

(c) Said defendant has failed, neglected and refused to indemnify the plaintiff as employer against the loss by reason of the liability imposed upon plaintiff by law for damages on account of such injuries to Bruno Iannazzo, an employee of the plaintiff legally employed at plaintiff's factory aforesaid.

(d) Said defendant has failed, neglected and refused to defend in the name and on behalf of this 20 plaintiff the suit or other proceeding which was instituted against this plaintiff by Grace Iannazzo and her minor children, all dependents of Bruno Iannazzo, on account of such injury sustained by Bruno Iannazzo, including the suit or proceeding alleging such injury filed by the said Grace Iannazzo and her minor children as above stated, demanding compensation therefor.

(e) Said defendant has failed, neglected and re- 30 fused to pay all costs taxed against the plaintiff, as employer, in the legal proceedings instituted by the said Grace Iannazzo on behalf of herself and the other dependents of Bruno Iannazzo, and all interest accruing after entry of judgment and all expenses incurred.

(15) Plaintiff repeats the allegations of paragraph 23 of the first count with the same force and effect as though here repeated at length. 40

(16) Plaintiff repeats the allegations of paragraph 24 of the first count with the same force and effect as though here repeated at length.

(17) Plaintiff repeats the allegations of paragraph 25 of the first count with the same force and effect as though here repeated at length.

10 (18) Plaintiff demands judgment against the defendant, Great American Indemnity Company for $702., costs paid by the plaintiff as fixed by said determination with interest thereon from June 7, 1928, and for $5552.89, the amount of compensation awarded against the plaintiff as within stated, with interest on each payment of compensation from the date same was paid by the plaintiff, (a statement of amounts paid by plaintiff to and including August 31, 1929, and the date and amount
20 of each payment being hereto annexed, and marked Exhibit "E".)

THIRD COUNT AGAINST THE DEFENDANT AMERICAN MUTUAL LIABILITY INSURANCE COMPANY.

(1) Plaintiff repeats the allegations contained in paragraphs 2, 3, 5 and 7 of the first count with the same force and effect as though here repeated at
30 length.

(2) Plaintiff paid to the defendant, American Mutual Liability Insurance Company the premium charged by said defendant for issuing such policy to the plaintiff, and the plaintiff has duly performed all the terms and conditions of said policy on plaintiff's part to be performed as conditions precedent to plaintiff's recovery thereon, except where waived or where said defendant is estopped to require per-
40 formance by plaintiff.

(3) That said Bruno Iannazzo was employed by the plaintiff between November 18, 1927 and November 26, 1927, during which period the policy of the defendant, American Mutual Liability Insurance Company was in force and effect, and he died on December 8, 1927, while the policy of the defendant, American Mutual Liability Insurance Company was in full force and effect.

(4) Upon information and belief that the cause of death of the said Bruno Iannazzo was from poisoning from benzine and its homologues and a derivative therefrom, to wit, benzol poisoning, which was cumulative during the period of the policy of the defendant, American Mutual Liability Insurance Company between November 18, 1927 and November 26, 1927.

(5) Plaintiff repeats the allegations of paragraph 11 of the first count with the same force and effect as though here repeated at length.

(6) Plaintiff repeats the allegations in paragraph 12 of the first count with the same force and effect as though here repeated at length.

(7) Plaintiff repeats the allegations in paragraph 13 of the first count with the same force and effect as though here repeated at length.

(8) Plaintiff repeats the allegations in paragraph 14 of the first count with the same force and effect as though here repeated at length.

(9) Plaintiff repeats the allegations in paragraph 15 of the first count with the same force and effect as though here repeated at length.

(10) Plaintiff repeats the allegations in paragraph 16 of the first count with the same force and effect as though here repeated at length.

(11) Plaintiff repeats the allegations in paragraph 17 of the first count with the same force and effect as though here repeated at length.

(12) Plaintiff repeats the allegations in paragraph 18 of the first count with the same force and effect as though here repeated at length.

10 (13) Plaintiff repeats the allegations in paragraph 19 of the first count with the same force and effect as though here repeated at length.

(14) Plaintiff repeats the allegations in paragraph 20 of the first count with the same force and effect as though here repeated at length.

(15) Plaintiff repeats the allegations in paragraph 21 of the first count with the same force and
20 effect as though here repeated at length.

(16) Plaintiff repeats the allegations in paragraph 22 of the first count with the same force and effect as though here repeated at length.

(17) Plaintiff alleges that the defendant, American Mutual Liability Insurance Company has breached the conditions of its policy in the following respects:

30 (a) Said defendant has failed, neglected and refused to pay promptly to Grace Iannazzo and her dependents, the persons entitled thereto under the Workmen's Compensation Law of the State of New Jersey, the entire amount of the sums adjudged as aforesaid to be due her and all installments thereof as they become due.

(b) Said defendant has failed, neglected and refused to pay promptly for the benefit of Grace
40 Iannazzo and the dependents of Bruno Iannazzo,

the proper cost determined to be due as aforesaid for medical, surgical, nurse and hospital services, and funeral expenses required by the provisions of the Workmen's Compensation Law in the determination aforesaid.

(c) Said defendant has failed, neglected and refused to indemnify the plaintiff as employer against the loss by reason of the liability imposed upon plaintiff by law for damages on account of such injuries to Bruno Iannazzo, an employee of the plaintiff legally employed at plaintiff's factory aforesaid.

(d) Said defendant has failed, neglected and refused to defend in the name and on behalf of this plaintiff the suit or other proceeding which was instituted against this plaintiff by Grace Iannazzo and her minor children, all dependents of Bruno Iannazzo, on account of such injury sustained by Bruno Iannazzo, including the suit or proceeding alleging such injury filed by the said Grace Iannazzo and her minor children as above stated, demanding compensation therefor.

(e) Said defendant has failed, neglected and refused to pay all costs taxed against the plaintiff, as employer, in the legal proceedings instituted by the said Grace Iannazzo on behalf of herself and the other dependents of Bruno Iannazzo, and all interest accruing after entry of judgment and all expenses incurred.

(18) Plaintiff repeats the allegations of paragraph 23 of the first count with the same force and effect as though here repeated at length.

(19) Plaintiff repeats the allegations of paragraph 24 of the first count with the same force and effect as though here repeated at length.

(20) Plaintiff repeats the allegations of paragraph 25 of the first count with the same force and effect as though here repeated at length.

Plaintiff demands judgment against the defendant, American Mutual Liability Insurance Company for $702, costs paid by the plaintiff as fixed
10 by said determination, with interest thereon from June 7, 1928, and for $5552.89, the amount of the compensation awarded against the plaintiff as within stated, with interest on each payment of compensation from the date same was paid by the plaintiff, (a statement of amounts paid by plaintiff to and including August 31, 1929, and the date and amount of each payment being hereto annexed, and marked Exhibit "E".)

20 McDermott, Enright & Carpenter
Attorneys for Plaintiff.

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Exhibit "A".

Standard Workmen's Compensation and Employers' Liability Policy

(A Stock Company)

GREAT AMERICAN 10

Indemnity Company C

NEW YORK

"PREMIUM $———."

(Herein called the Company)

Does Hereby Agree with this Employer, named and described as such in the Declarations forming a part hereof, as respects personal injuries sustained by 20 employees, including death at any time resulting therefrom as follows:

1. (a) TO PAY PROMPTLY to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all instalments thereof as they become due,

(1) To such person because of the obligation for compensation for any such injury imposed 30 upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and

(2) For the benefit of such person the proper cost of whatever medical, surgical, nurse or 40

hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

I. (b) To INDEMNIFY this Employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the Company under the terms of this Policy for the amount of the judgment

in said action not exceeding the amount of this Policy.

II. To SERVE this Employer (a) by the inspection of work places covered by the Policy when and as deemed desirable by the Company and thereupon to suggest to this Employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and, (b) upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with law. 10

III. To DEFEND, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceedings alleging such injuries and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent. 20

IV. To PAY all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation negotiation or defense.

V. THIS AGREEMENT SHALL APPLY to such injuries sustained by any person or persons employed by this Employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this Policy is to be computed and adjusted, and, also to such injuries so sustained by the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation. The remuneration of any such desig- 30 40

nated officer shall not be subjected to a premium charge unless he is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman.

VI. THIS AGREEMENT SHALL APPLY to such injuries so sustained by reason of the business operations described in said Declarations which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

VII. THIS AGREEMENT SHALL APPLY ONLY to such injuries so sustained by reason of accidents occurring during the Policy Period limited and defined as such in ITEM 2 of said Declarations.

This Agreement is subject to the following Conditions:

A. The premium is based upon the entire remuneration earned, during the Policy Period, by all employees of this Employer engaged in the business operations described in said Declarations together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman. If any operations as above

defined are undertaken by this Employer but are not described or rated in said Declarations, this Employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance with Condition C hereof, at the rates, and in compliance with the rules, of the Manual of Rates in use by the Company upon the date of issue of this Policy. At the end of the Policy Period the actual amount of the remuneration earned by employees during such Period shall be exhibited to the Company, as provided in Condition C hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this Employer shall immediately pay the additional amount to the Company; if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

B. This Policy may be cancelled at any time by either of the parties upon written notice to the other party stating when, not less than ten days thereafter, cancellation shall be effective. The effective date of such cancellation shall then be the end of the Policy Period. The law of any state, in which this Policy applies, which requires that notice of cancellation shall be given to any Board, Commission or other state agency is hereby made a part of this policy and cancellation in such state shall not be effective except in compliance with

such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancellation determined as herein provided. If such cancellation is at the Company's request, the earned premium shall be adjusted pro rata as provided in Condition A. If such cancellation is at this Employer's request, the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rate premium shall not be less than the Minimum Premium stated in said Declarations.

If this Employer, when requesting cancellation, is actually retiring from the business herein described, then the earned premium shall be computed and adjusted pro rata. Notice of cancellation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

C. The Company shall be permitted, at all reasonable times during the Policy Period, to inspect the plants, works, machinery and appliances covered by this Policy, and to examine this Employer's books at any time during the Policy Period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this Employer while this Policy was in force.

D. The obligations of Paragraph One (a) foregoing are hereby declared to be the direct obligations and promises of the Company to any injured

employee covered hereby, or in the event of his death, to his dependents; and to each such employee or such dependent the Company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the Company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the Company alone or jointly with this Employer. If the law of any state in which the Policy is applicable provides for the enforcement of the rights of such employees or such dependents by any Commission, Board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as if written herein. The obligations and promises of the Company as set forth in this paragraph shall not be affected by the failure of this Employer to do or refrain from doing any act required by the Policy; nor by any default of this Employer after the accident in the payment of premiums or in the giving of any notice required by the Policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this Employer, nor by any proceeding against him as a result of which the conduct of this employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

E. As between the employee and the Company, notice to or knowledge of this Employer of any injury or death covered hereby shall be notice or knowledge, as the case may be, of the Company;

the jurisdiction of this Employer, for the purposes of any Workmen's Compensation Law covered hereby, shall be jurisdiction of the Company and the Company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders or decisions rendered against this Employer in the form and manner provided by such laws and within the terms, limitations and provisions of this Policy not inconsistent with such laws.

F. This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

G. No action shall lie against the Company to recover upon any claim or for any loss under Paragraph One (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, nor in any event unless brought within two years thereafter.

H. If the method of serving notice of cancelation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in

relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

I. No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

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J. If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

K. The Company shall be subrogated, in case of any payment under this Policy, to the extent of such payment to all rights of recovery therefor vested by law either in this Employer, or in any employee or his dependents claiming hereunder, against persons, corporations, associations or estates.

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L. No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the President, a Vice-President, Secretary, or Assistant Secretary of the Company; nor shall notice to any agent, nor shall knowledge possessed by any agent, or by any other person, be held to effect a waiver or change in any part of this contract. Changes in the written portions of the Declarations forming part hereof (except Items 2, 3, and 4) may be made by the agent countersigning this Policy, such changes to bind the Company when initialed by such agent. The personal pronoun herein used to refer to this Employer or to an injured employee or dependents, shall apply regardless of number or gender.

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M. The statements in Items 1 to 6 inclusive, in the Declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This Policy is issued upon such statements and in consideration of the provisions of the Policy respecting its premium and the payment of the premium in such Declarations expressed.

10 In Witness Whereof, the Great American Indemnity Company has caused this Policy to be signed by its President and its Vice-President and Secretary at New York, New York, and countersigned by a duly authorized agent of the Company.

Duplicate

M. P. LINK

cac

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COMPENSATION
AND LIABILITY

4053A For Attachment to Policy No. C-2509

SIX MONTHLY PREMIUM ADJUSTMENT ENDORSEMENT

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The Policy to which this endorsement is attached, is issued and accepted with the understanding and agreement that this Employer will, at the end of each period of six months from the date thereof, furnish to the Company a written declaration of the exact amount of the entire remuneration of all employees during that period, and immediately pay to the Company a premium computed at the rate or
40 rates specified in the Policy, the deposit premium

being applied against the earned premium for the final six months' period.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy, other than as above stated.

GREAT AMERICAN INDEMNITY COMPANY
JESSE S. PHILLIPS
President. 10

F 4053A-10M-7-27

COMPENSATION

4021 For attachment to Policy No. C-2509

The obligations of Paragraph One (a) of the Policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited 20 and described and none other.

Chapter 95, Laws of 1911, Chapters 178 and 262, Laws of 1917, State of New Jersey, and all laws supplementary thereto or amendatory thereof which may be or become effective while this Policy is in force.

This Employer, upon the acceptance of this Policy, agrees that upon the effective date of this Policy, he is bound by the provisions of Section 11 of 30 the above cited Chapter 95, Laws of 1911, and will not, during the policy period, terminate his obligation thereunder as provided in paragraph ten thereof.

If this Employer is a contractor and he subcontracts all or any part of the business operations covered by this Policy to one or more subcontractors, this Employer agrees that he will require each subcontractor to carry Workmen's Compensation 40

Insurance for the protection of such subcontractor's employees in accordance with the terms of the above cited laws. The remuneration of all employees of any such subcontractor who fails to carry this insurance shall be included in the return of remuneration upon which premium is computed. Remuneration so reported shall be considered the remuneration of employees of this Employer for the purpose of computing the premium earned upon this Policy and shall in all respects be governed by the same terms, conditions, requirements, and obligations of the Policy as the remuneration of the direct employees of this Employer. In the event that the Company shall pay or incur any loss or expense because of a claim made by an employee or any subcontractor who has failed to carry such insurance or by the dependents of such employee if deceased the Company shall be subrogated to all the rights of this Employer as established in the above cited compensation Laws to proceed against such subcontractor to obtain reimbursement for such loss or expense.

Notice given by or on behalf of the Assured to any authorized agent of the Company within the State of New Jersey, with particulars sufficient to identify the Assured, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by the Assured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible.

This Policy is issued by the Company and is accepted by this Employer with the agreement that the rates of Premium are subject to modification in accordance with the rate manual and rating plans

established by the Compensation Rating and Inspection Bureau of New Jersey and approved by the Commissioner of Banking and Insurance of New Jersey, such modification, if any, to be expressed by endorsement naming the effective date thereof.

New Jersey

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Countersigned by M. P. LINK
Resident Representative in New Jersey.
cac.

GREAT AMERICAN INDEMNITY COMPANY,
JESSE S. PHILLIPS
President

F .4021-10M-4-27

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COMPENSATION

4019 A For attachment to Policy No. C-2509

The obligations of Paragraph One (a) of the Policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited and described and none other:

Chapter 41 of the Laws of 1914, State of New York, known and cited as the Workmen's Compensation Law, as amended and revised by Chapter 615 of the Laws of 1922 and all laws amendatory thereof or supplementary thereto which may be or become effective while this Policy is in force.

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AGREEMENT SIX of the Policy shall be amended to read as follows: "THIS AGREEMENT SHALL APPLY to such injuries so sustained by reason of the business operations described in said Declarations

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which, for the purpose of this insurance, shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at or from the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places."

10 The first sentence of Condition A of the Policy is hereby wholly eliminated and the following provisions substituted therefor: "The premium for this Policy is based in part upon the entire remuneration earned during the Policy period by all employees of this Employer engaged in the business operations described in said Declarations together with all operations necessary, incident or appurtenant thereto or which may be connected therewith whether conducted at or from such work
20 places or elsewhere in connection therewith or in relation thereto. The remaining part of the premium for this Policy is determined by the application of the approved loss and expense constant applicable to all policies issued in which the remuneration, when the expressed premium rates are applied, results in an annual premium which is less than $400. The final determination of the actual earned constant under this Policy shall be depend-
30 ent upon audit. If the estimated advance premium is more than $400 but the annual earned premium as determined by audit is less than $400. then the constant shall be added. No annual earned premium which includes a constant in whole or in part shall exceed the sum of $400. If the estimated advance premium is less than $400. the constant will be duly expressed in Item 3 of the Declarations."

40 The sixth sentence of Condition B of the Policy

shall be amended to read as follows: "If such cancellation is at this Employer's request, the earned premium shall be computed and adjusted at short rates in accordance with the table printed hereon, but such short rate premium shall not be less than the short rate portion of the minimum premium stated in said Declarations."

The provisions of Condition F of the Policy are so far amended as to include the following additional agreements: "Notice given by or on behalf of this Employer to any authorized agent of the Company within the State of New York, with particulars sufficient to identify this Employer, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by this Employer if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible."

If this Employer is a contractor the subject of whose contract is, involves or includes a hazardous employment and he shall subcontract all or any part of such contract to one or more subcontractors; or if this Employer is an owner of timber other than on farm lands and shall contract with another to carry on or perform work or service in connection therewith, which work or service is, involves or includes hazardous employment, it is agreed that the remuneration of all employees of any such subcontractor as first mentioned as well as the remuneration of all employees of the contractor for timber operations, and the employees of any subcontractor to whom such contractor may sublet all or any portion of such work, shall all be included in the return of remuneration upon which premium

is computed, and such remuneration so reported shall be considered the remuneration of employees of this Employer and shall in all respects be governed by the same terms, conditions, requirements and obligations of the Policy as the remuneration of the direct employees of this Employer. The requirements of this paragraph shall not apply as respects any such contractor or such subcontractor if he has secured compensation for his employees as provided and required by such Workmen's Compensation Law, which security shall be maintained during the period covered by the execution of the work undertaken, and proof of which security shall be submitted by this Employer to the Company in the form of a certificate signed by the insurance carrier which has undertaken the contractor's or subcontractor's risk; or if the contractor or subcontractor is a self-insurer, by means of a copy of the written consent of the Industrial Commissioner under which any such contractor or subcontractor has qualified as a self-insurer.

The provisions of this Policy, including the Declarations forming a part thereof, relating to the liability of the Company as respects personal injuries, including death, sustained by the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation, and to the remuneration of such executive officers of the corporation, are not applicable to corporate employers in the State of New York. The words "who perform duties of superintendent, foreman or workman" shall be eliminated from subdivision 1 (x) of Item 3 of the Declarations, which subdivision shall then be applicable to all individual employers, copartnership employers and executive officers of corporations (meaning those executives elected to their respect-

ive offices under the charter or by-laws of the corporation). All individual employers, co-partnership employers or all executive officers of a corporation irrespective of their duties shall be included in all the undertakings of this Policy if election to accept the provisions of the Workmen's Compensation Law and be so included is evidenced by the insertion of the estimated annual remuneration of such individual employer, members of copartnership employer or executive officers under subdivision 1 (x) of the Declarations as amended. If all are included, the remuneration shall be stated in one amount; if less than all, the remuneration of each included with name, shall be stated separately.

The actual remuneration of all such individual employers, members of co-partnership employer or executive officers, but not in excess of $100 per week for each, shall be disclosed and premium computed thereon in accordance with the method provided in the Policy as hereby amended. If said subdivision 1 (x) contains no estimate of the remuneration of individual employers, copartnership employers or executive officers as herein defined, all such are fully excluded from the operations of this Policy as respects and and all undertakings of the Company therein.

It is agreed that the part of Section 38 of such Workmen's Compensation Law reading, "shall be treated as the happening of an accident within the meaning of this chapter," etc., shall be administered and construed by substituting the word "injury" as defined in Section 2 of such law for the word "accident" if such substitution is more beneficial to the claimant.

This Policy is issued by the Company and accepted by this Employer subject to the rate manual and rating plans established by the Compensation

Inspection Rating Board and approved by the Superintendent of Insurance, with the agreement that the classification and rates of premium are subject to either correction or modification, or both, in accordance with such rate manual and such rating plans, such correction or modification, if any, to be expressed by endorsement naming the effective date thereof.

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GREAT AMERICAN INDEMNITY COMPANY,
JESSE S. PHILLIPS,
President.

New York Standard Endorsement.

F4019A-10M-4-28

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Number C 2509.

Countersigned at . . . By A. J. Corsa and Son. Agent
Former Policy No. New. Broker #6. Sub Agent
Declarations

ITEM 1. Name of this Employer TEXTILEATHER CORPORATION.

P. O. Address. BROWN STREET AND LISTER AVENUE, NEWARK, NEW JERSEY.

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For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.

Individual, co-partnership, corporation or estate? *Corporation.*

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Exhibit "A" annexed to Amended Complaint.

ITEM 2. The period during which the policy shall remain in force, unless canceled as in the Policy provided, (herein called the Policy Period) shall be from *November 18th, 1926,* to *November 18th, 1927,* at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

ITEM 3. Locations of all factories, shops, yards, buildings, premises or other work places of this Employer, by Town or City, with Street and Number *N/E Corner of Lister Avenue and Brown Street, Newark, New Jersey and 122 Hudson Street, New York City.*

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following DIVISIONS as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 All repairs or alterations to premises. 4 Specially rated operations on the premises. 5 Operations not on the premises.

Exhibit "A" annexed to Amended Complaint.

CLASSIFICATION OF OPERATIONS

Note: If more than one classification indicate each other by (b), (c), (d), etc.)

	Estimated Total Annual Remuneration	Rate per $100 of Remuneration.	Estimated Premium
1 (a) Leather Manufacturing—Imitation No nitrating process. .....#4492	234,000.	2.105	4925.70
(x) President, any Vice-President, Secretary or Treasurer of Corporate Employer who performs duties of Superintendent, Foreman or Workman.			
2 (a) Clerical Office Employees.....8810	30,000	.078	23.40 N. J.
(b) Draughtsmen (engaged exclusively in that profession) office duties only 8810	N.Y. If any	.06	
3 New Construction work by employees of this Employer only, classified as			
NOTE—Appropriate classification must be entered above with estimated remuneration, rate and premium extension in each. Not available for contractors. Repairs and maintenance of this Employer's buildings and equipment when accomplished by his Employees only are included in DIVISION 1. New construction, repairs, and maintenance undertaken by contractors must be separately insured.			
4			
5 (a) Erection, installation, repairs or demonstration of Employer's product, classified as			
(b) Outside Salesman, collectors and messengers (wherever engaged) who do not deliver merchandise.....8742	N.J. If any	.217	
(c) Drivers and their Helpers, including stablemen—if not specifically included in DIVISION 1.....7205	N.Y. If any	.16	
(d) Chauffeurs and their Helpers—Commercial, including incidental garage employees—if not specifically included in DIVISION 1.....7380	N.J. If any	2.021	

Minimum Premium for this Policy shall be $20.00 Estimated Deposit Premium..... 2969.46

Exhibit "A" annexed to Amended Complaint.

ITEM 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employees of this Employer while the Policy was in force.

ITEM 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—except as herein stated: *No exceptions.*

ITEM 6. No similar insurance has been canceled by any insurance carrier during the past year —except as herein stated: *No exceptions.*

WJN. 1-10-29.

Exhibit "B".

STANDARD WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY POLICY.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY OF BOSTON

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(Herein called the Company)

DOES HEREBY AGREE

With this Employer, named and described as such in the Declarations, forming a part hereof, as respects personal injuries sustained by employees, including death at any time resulting therefrom as follows:

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I (a) To Pay Promptly to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all installments thereof as they become due.

(1) To such person because of the obligation for compensation for any such injury imposed upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy each of which statutes is herein referred to as the Workmen's Compensation Law, and

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(2) For the benefit of such person the proper cost of whatever medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or, in the

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event of fatal injury whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they apply to compensation or other benefits for any personal injury or death covered by this Policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

I (b) To Indemnify this Employer against loss by reason of the liability imposed upon him by law for damages on account of such injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Company shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by through or under the injured, then an action may be maintained by the injured, or by any other person, claiming by, through or under the injured against the Company under the terms of this Policy for the amount of the judgment in said action not exceeding the amount of this Policy.

Exhibit "B" annexed to Amended Complaint.

II To Serve this Employer (a) by the inspection of work places covered by the Policy when and as deemed desirable by the Company and thereupon to suggest to this Employer such changes or improvements as may operate to reduce the number or severity of injuries during work, and (b) upon notice of such injuries, by investigation thereof and by settlement of any resulting claims in accordance with Law.

III To defend, in the name and on behalf of this Employer, any suits or other proceedings which may at any time be instituted against him on account of such injuries, including suits or other proceeding alleging such injuries and demanding damages or compensation therefore, although such suits, other proceedings, allegations or demands are wholly groundless, false or fraudulent.

IV To Pay all costs taxed against this Employer in any legal proceeding defended by the Company, all interest accruing after entry of judgment and all expenses incurred by the Company for investigation, negotiation or defense.

V This Agreement shall apply to such injuries sustained by any person or persons employed by this Employer whose entire remuneration shall be included in the total actual remuneration for which provision is hereinafter made, upon which remuneration the premium for this Policy is to be computed and adjusted, and, also to such injuries so sustained by the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation. The remuneration of any such designated officer shall not be subjected to a premium

charge unless he is actually performing such duties as are ordinarily undertaken by a superindentent, foreman or workman.

VI This Agreement shall apply to such injuries so sustained by reason of the business operations described in said Declarations, which, for the purpose of this insurance, shall include all operations necessary, incident, or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in said Declarations or elsewhere in connection with, or in relation to, such work places.

VII This Agreement shall apply only to such injuries so sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations.

THIS AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

BASIS OF PREMIUM

A. The premium is based upon the entire remuneration earned, during the Policy Period, by all employees of this Employer engaged in the business of operations described in said Declarations together with all operations necessary, incident or appurtenant thereto, or connected therewith whether conducted at such work places or elsewhere in connection therewith or in relation thereto; excepting however the remuneration of the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation, but including the remuneration of any one or more of such designated officers who are actually performing such duties as are ordinarily undertaken by a superintendent,

foreman or workman. If any operations as above defined are undertaken by this Employer but are not described or rated in said Declarations, this Employer agrees to pay the premium thereon, at the time of the final adjustment of the premium in accordance with Condition C hereof, at the rates, and in compliance with the rules, of the Manual of Rates in use by the Company upon the date of issue of this Policy. At the end of the Policy Period the actual amount of the remuneration earned by employees during such Period shall be exhibited to the Company, as provided in Condition c hereof, and the earned premium adjusted in accordance therewith at the rates and under the conditions herein specified. If the earned premium, thus computed, is greater than the advance premium paid, this Employer shall immediately pay the additional amount to the Company, if less, the Company shall return to this Employer the unearned portion, but in any event the Company shall retain the Minimum Premium stated in said Declarations. All premiums provided by this Policy, or by any endorsement hereon, shall be fully earned whether any such Workmen's Compensation Law, or any part of such, is now or shall hereafter be declared invalid or unconstitutional.

CANCELLATION

B. This Policy may be cancelled at any time by either of the parties upon written notice to the other party stating when, not less than ten days, thereafter, cancellation shall be effective. The effective date of such cancellation shall then be the end of the Policy Period. The law of any state in which this Policy applies, which requires that notice of cancellation shall be given to any Board,

Commission or other state agency is hereby made a part of this Policy and cancellation in such state shall not be effective except in compliance with such law. The remuneration of employees for the Policy Period stated in said Declarations shall be computed upon the basis of the actual remuneration to the date of cancellation determined as herein provided. If such cancellation is at the Company's request, the earned premium shall be adjusted pro rata as provided in Condition A. If such cancellation is at this Employer's request the earned premium shall be computed and adjusted at short rates, in accordance with the table printed hereon, but such short rates premium shall not be less than the Minimum Premium stated in said Declarations. If this Employer, when requesting cancellation, is actually retiring from the business herein described, then the earned premium shall be computed and adjusted pro rata. Notice of cancellation shall be served upon this Employer as the law requires, but, if no different requirement, notice mailed to the address of this Employer herein given shall be a sufficient notice, and the check of the Company, similarly mailed, a sufficient tender of any unearned premium.

Inspection and Audit

C. The Company shall be permitted, at all reasonable times during the Policy Period, to inspect the plants, works, machinery and appliances covered by this Policy, and to examine this Employer's books at any time during the Policy Period, and any extension thereof, and within one year after its final expiration, so far as they relate to the remuneration earned by any employees of this Employer while this Policy was in force.

Exhibit "B" annexed to Amended Complaint.

ENFORCEMENT OF EMPLOYEES RIGHTS

D. The obligations of Paragraph One (a) foregoing are hereby declared to be the direct obligations and promises of the Company to any injured employee covered hereby, or, in the event of his death, to his dependents and to each such employee or such dependent the Company is hereby made directly and primarily liable under said obligations and promises. This contract is made for the benefit of such employees or such dependents and is enforceable against the Company, by any such employee or such dependent in his name or on his behalf, at any time and in any manner permitted by law, whether claims or proceedings are brought against the Company alone or jointly with this Employer. If the law of any state in which the Policy is applicable provides for the enforcement of the rights of such employees or such dependents by any Commission, Board or other state agency for the benefit of such employees or such dependents, then the provisions of such law are made a part hereof, as respects any matter subject thereto, as fully as if written herein. The obligations and promises of the Company as set forth in this paragraph shall not be affected by the failure of this Employer to do or refrain from doing any act required by the Policy; nor by any default of this Employer after the accident in the payment of premiums or in the giving of any notice required by the Policy or otherwise; nor by the death, insolvency, bankruptcy, legal incapacity or inability of this Employer, nor by any proceeding against him as a result of which the conduct of this Employer's business may be and continue to be in charge of an executor, administrator, receiver, trustee, assignee, or other person.

Exhibit "B" annexed to Amended Complaint.

Knowledge and Jurisdiction of Employer

E. As between the employee and the Company, notice to or knowledge of this Employer or an injury or death covered hereby shall be notice or knowledge, as the case may be, of the Company; the jurisdiction of this Employer, for the purposes of any Workmen's Compensation Law covered hereby, shall be jurisdiction of the Company and the Company shall in all things be bound by and subject to the findings, judgments, awards, decrees, orders, or decisions rendered against this Employer in the form and manner provided by such laws and within the terms, limitations and provisions of this Policy not inconsistent with such laws.

Notice of Accidents and Claims

F. This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him.

Action Against Company

G. No action shall lie against the Company to recover upon any claim or for any loss under Paragraph One (b) foregoing unless brought after the amount of such claim or loss shall have been fixed and rendered certain either by final judgment

against this Employer after trial of the issue or by agreement between the parties with the written consent of the Company, now in any event unless brought within two years thereafter.

Special Statutes

H. If the method of serving notice of cancellation, or the limit of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision in relation thereto, in force in the state in which any of the business operations herein described are conducted, such specific statutory provision shall supersede any such condition in this contract inconsistent therewith.

Assignment

I. No assignment of interest under this Policy shall bind the Company unless the consent of the Company shall be endorsed hereon.

Co-Insurance

J. If this Employer carries any other insurance covering a claim covered by this Policy, he shall not recover from the Company a larger proportion of any such claim than the sum hereby insured bears to the whole amount of valid and collectible insurance.

Subrogation

K. The Company shall be subrogated, in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor vested by law either in this Employer, or in any employee or

his dependents claiming hereunder against persons, corporations, associations or estates.

Alterations and Changes in Policy

L. No condition or provision of this Policy shall be waived or altered except by endorsement attached hereto signed by the President and Secretary of the Company, nor shall notice by any representative, nor shall knowledge possessed by any representative, or by any other person, be held to effect a waiver or change in any part of this contract. The personal pronoun herein used to refer to this Employer, or to an injured employee or dependents, shall apply regardless of number or gender.

Declarations

M. The statements in Items 1 to 7 inclusive, in the Declarations hereinafter contained, are true; those stated as estimates only are believed to be true. This policy is issued upon such statements and in consideration of the provisions of the Policy respecting its premium and the payment of the premium in such Declarations expressed.

Contingent Liability

N. This Employer agrees to be bound by all the provisions of the by-laws, of the Company in force at the time this Policy is issued, or which may become in force during the continuance of this Policy, to which by-laws reference is had and which are to be taken as incorporated herein; with the exception, however, that the contingent liability of this Employer during the continuance of this Policy shall in no event be greater than an amount equal to and in addition to the premium herein contracted to be paid.

Exhibit "B" annexed to Amended Complaint.

DIVIDEND

O. This Employer shall be entitled to an equitable participation in the funds of the Company in excess of the amounts required to pay expenses and all the compensation and other policy obligations incurred, together with the reserve and surplus funds required or permitted by law; such distribution shall be made by the Company only in accordance with the insurance law and the charter and by-laws of the Company.

IN WITNESS WHEREOF THE AMERICAN MUTUAL LIABILITY INSURANCE COMPANY has caused this Policy to be signed by its President and Secretary, at Boston, Massachusetts, and countersigned by a duly authorized District Manager of the Company.

CHARLES E. HODGES
President.

H. C. KNEPPENBERG, JR.
Secretary.

.....
DISTRICT MANAGER.

.....
RESIDENT REPRESENTATIVE WHERE
REQUIRED BY LAW.

.....

UNIVERSAL STANDARD WORKMEN'S COMPENSATION AND EMPLOYER'S LIABILITY POLICY.

DECLARATIONS.

ITEM 1. Name of this Employer Textileather Corporation, P. O. Address Brown St. & Lister Ave., Newark, N. J.

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.

INDIVIDUAL, co-partnership, corporation or estate corporation. 10

ITEM 2. The period during which the Policy shall remain in force unless cancelled as in the Policy provided (herein called the Policy Period), shall be from November 18, 1927 to December 1st, 1928, at twelve and one minute o'clock A. M., standard Time, as to each of said dates at the place where any operation covered hereby is conducted, as respects that operation, or at the place where any injury covered 20 hereby is sustained, as respects that injury.

ITEM 3. Locations of all factories, shops, yards, buildings, premises, or other work places of this Employer, by Town or City, with Street and Number N/E Corner of Lister Ave. & Brown st., Essex County, Newark, New Jersey.

All business operations, including the operative management and superintendence thereof, con- 30 ducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following divisions as are undertaken by this Employer. 1 All industrial operations upon the premises. 2 All office forces. 3 All repairs or alterations to premises. 4 Specially rated operations on the premises. 5 Operations not on the premises. 40

Exhibit "B" annexed to Amended Complaint.

CLASSIFICATION OF OPERATIONS

Note: If more than one classification indicate each other by (b), (c), (d), etc.)

	Estimated Total Annual Remuneration	Rate per $100 of Remuneration	Estimated Premium
1 (a) Leather Mfg. (imitation) — no nitrating process .....#4492	230,000	2.364	
(x) President, any Vice-President, Secretary or Treasurer of corporate Employer who performs duties of Superintendent, foreman or Workman.			
2 (a) Clerical Office Employees.....8810			
(b) Draughtsmen (engaged in the profession)—office duties only.....8810	30,000	.057	
3 New Construction work by employees of this Employer only, for which appropriate classifications must be entered above with estimated remuneration, rate and premium extension in each. Not available for contractors. Repairs and maintenance of this Employer's buildings and equipment when accomplished by his employees only are included in Division 1. New construction, repairs, and maintenance undertaken by contractors must be separately insured.	Payroll Audit to be made as above in Item 3.		
4			
5 (a) Erection, installation, repair or demonstration of Employer's product as follows:			
(b) Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise.....8742	if any	.206	
(c) Drivers and Drivers' Helpers including stablemen (if not specifically included in 1.).....7205	if any	1.945	
(d) Chauffeurs and Chauffeurs' Helpers, commercial, including incidental garage employees (if not specifically included in 1) 7380	if any	1.544	

Minimum Premium for this Policy shall be $35.00 Estimated Dep. Premium $3272.58.

Exhibit "B" annexed to Amended Complaint.

ITEM 4. The foregoing enumeration and description of employees include all persons employed in the service of this Employer in connection with the business operations above described to whom remuneration of any nature in consideration of service is paid, allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer, if a corporation is actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Company shall be permitted to examine the books of this Employer at any time during the Policy Period, and any extension thereof, and within one year after its final termination so far as they relate to the remuneration earned by any employee of this Employer while the Policy was in force.

ITEM 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—except as herein stated—no exceptions.

ITEM 6. No similar insurance has been cancelled by any insurance carrier during the past year—except as herein stated—no exceptions.

Exhibit "B" annexed to Amended Complaint.

ITEM 7. The following signature is authorized and accepted by this Employer as his signature.

(Copy of Signature to Proposal)

Proposal Dated Per.....

10 Attached to and forming part of Policy No. W. C. 38004 B of the AMERICAN MUTUAL LIABILITY INSURANCE COMPANY of Boston, Mass.

WC38004 B

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY
20 OF BOSTON

PERIODICAL EARNED PREMIUM ENDORSEMENT

It is understood and agreed that this Policy, subject in all respects to its terms, conditions, agreements and limitations, is issued and accepted with the understanding and agreement that the Insured
30 will, at the end of 6 months from the date of said Policy and every Six months thereafter, furnish the Company with an audit showing the amount of remuneration earned by employees during that period, and will immediately pay to the Company a premium computed at the rate or rates provided for in the Policy, for each One Hundred Dollars ($100.00) of such remuneration.

It is also understood and agreed that the Insured
40 shall pay a deposit premium in advance and the de-

posit premium shall apply against the earned premium for the final period.

CHARLES E. HODGES,
President.

H. C. KNEPPENBERG, JR.,
Secretary.

Countersigned at New York, N. Y. this 18th day of November, 1927. 10

.....
District Manager

.....
Resident Representative

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY OF BOSTON 20

For attachment to Policy No. WC 38004 B

The obligations of Paragraph One (a) of the Policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited and described and none other.

Chapter 95, Laws of 1911, Chapters 178 and 262, Laws of 1917, State of New Jersey, and all laws 30 supplementary thereto or amendatory thereof which may be or become effective while this policy is in force.

This Employer, upon the acceptance of this Policy, agrees that upon the effective date of this Policy, he is bound by the provisions of Section II of the above cited Chapter 95, Laws of 1911, and will not, during the policy period, terminate his obligation thereunder as provided in paragraph ten thereof. 40

If this Employer is a contractor and he subcontracts all or any port of the business operations covered by this Policy to one or more subcontractor, this Employer agrees that he will require each subcontractor to carry Workmen's Compensation Insurance for the protection of such subcontractor's employees in accordance with the terms of the above cited laws. The remuneration of all employees of any such subcontractor who fails to carry this insurance shall be included in the return of remuneration upon which premium is computed. Remuneration so reported shall be considered the remuneration of employees of this Employer for the purpose of computing the premium earned upon this Policy and shall in all respects be governed by the same terms, conditions, requirements, and New Jersey obligations of the Policy as the remuneration of the direct employees of this Employer. In the event that the Company shall pay or incur any loss or expense because of a claim made by an employee of any subcontractor who has failed to carry such insurance, or by the dependents or such employee if deceased, the Company shall be subrogated to all the rights of this Employer as established in the above cited compensation laws to proceed against such subcontractor to obtain reimbursement for such loss or expense.

Notice given by or on behalf of the Insured to any authorized representative of the Company within the State of New Jersey, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by the Insured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and

that notice was given as soon as was reasonably possible.

This policy is issued by the Company and is accepted by this Employer with the agreement that the rates of premium are subject to modification in accordance with the rate manual and rating plans established by the Compensation Rating and Inspection Bureau of New Jersey and approved by the Commissioner of Banking and Insurance of New Jersey, such modification, if any, to be expressed by endorsement naming the effective date thereof.

CHARLES E. HODGES,
President.

H. C. KNEPPENBERG, JR.
Secretary.

This endorsement is countersigned at New York, N. Y. and becomes effective at twelve and one minute o'clock A. M. standard time Nov. 18th, 1927.

.....
District Manager

.....
Resident Representative

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY

UNIVERSAL ENDORSEMENT

It is agreed hereby that the insurance of the policy to which this endorsement is attached, as

respects injuries defined in agreement VI of the Policy, shall be extended as follows:

(1) To provide, as respects traveling salesmen, injured ANYWHERE IN THE WORLD, indemnification of the insured for such payments to doctors, hospitals, the injured and their dependents, as were required because of the application of any workmen's compensation law, the maritime law, common law or any other law.

(2) To provide, as respects employees other than traveling salesmen, indemnification of the insured for such payments to doctors, hospitals, the injured and their dependents, as were required because of the application of any workmen's compensation law other than that of Idaho, Nevada, North Dakota, Ohio, Oregon, Washington, Wyoming, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia or Ontario.

(3) To EXTEND the coverage provided by agreement I (b) of the the policy to accidents occurring ANYWHERE IN THE WORLD.

(4) To provide, at the written request of the insured, made immediately after the occurrence of injuries sustained ANYWHERE IN THE WORLD, as respects an injured employee legally employed but not legally entitled to the benefits of any workmen's compensation act, payments to such injured employee and, in case of his death from such injury, to his widow, and his dependent legitimate children under eighteen years of age, of sums equal in amount to that, which for like injuries similarly sustained, or for the resulting death, would be provided for the injured or for his above defined dependent by the workmen's compensation act, if

any, of the state in which the injured was hired, provided, however, that no such payment shall be made in any case of injury or death wherein the injured or his dependent widow or any dependent child or the legal representative of any of them rejects the offer of such payment or refuses to execute an effective common law release with subrogation to the Company of his rights against a third party.

10

(5) To provide that, as respects injuries from accidents to employees subject to the application of the laws only if localities having no workmen's compensation act, the insured may contract, at the company's expense, for such medical, surgical and hospital treatment as the injury requires, to be rendered at such prices as prevail in the same community for similar treatment to injured persons of a like standard of living but subject to the right of the Company to substitute at any time other treatment therefor.

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And, in consideration of the above extension of policy coverage and added provisions for the benefit of employees, it is agreed hereby that, for injuries by accident subject only to the laws of a locality having no workmen's compensation act, and also for injuries by accident resulting in claims for other than workmen's compensation benefits, as respects which claims the common law defenses of negligence of the injured, negligence of a fellow servant, and assumption of the risk are removed by law, the limits of the Company's liability shall be $10,000 for loss from injury or death of one employee and subject to the same limit for each person, shall be $20,000 for loss from any one accident, except as to injuries to traveling salesmen, for which the coverage shall be unlimited.

30

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Exhibit "B" annexed to Amended Complaint.

IF THE INSURED, WHEN CONTEMPLATING OPERATIONS IN ANY OF THE STATES OR PROVINCES DESIGNATED IN THE PARAGRAPH ABOVE NUMBERED "(2)", WILL SEND THE COMPANY SUFFICIENT ADVANCE INFORMATION AS TO LOCALITY, KIND OF WORK, AND WHETHER EMPLOYEES ARE TO BE SENT FROM THE PLANT OF INSURED OR HIRED ON THE JOB OR BOTH, THEN THE COMPANY, WILL ADVISE AND ASSIST THE INSURED IN THE PRELIMINARY PROCEDURE TO BE FOLLOWED. INFORMATION, MATERIAL TO THE INSURED, AS TO THE VARIOUS SITUATIONS IN WHICH THIS ENDORSEMENT BECOMES OF VALUE, IS CONTAINED ON THE REVERSE SIDE.

It is agreed hereby that the remuneration for traveling salesmen, installation men, mill-wrights, chauffeurs, drivers, clerical and other help contemplated by this endorsement, shall be classified in such manner as to allow the Company's auditor easily to allocate it to the different rates subject to the premium computation in accordance with the provisions of the manual used by the Company for the various localities.

Nothing herein contained shall be held to waive, alter or extend, any condition or provision of the policy other than as above stated.

To be attached to and form a part of Policy No WC 38004 B issued to Textileather Corporation.

CHARLES E. HODGES,
President.

H. C. KNEPPENBERG, JR.
Secretary.

Countersigned at New York, N. Y. this 18th day of November, 1927.

.....
District Manager

It is understood that the insured named in the policy to which this endorsement is attached, will have employees working in various parts of the world in connection with the business described in the declarations of said policy.

It is understood also that whenever the insured has complied with the requirements of a state workmen's compensation act which is of extra-territorial application, employees, hired in said state to work in said state and elsewhere, will be subject to said act, except for maritime accidents, even though injured in some other state or province or elsewhere, and the insurance benefits will apply just as though the injury had occurred in the state of hire, and if the injury results from a maritime accident the policy will cover also.

It is understood further that an employer may not be subject to the workmen's compensation act of a state, for the reason that his employees in such state are not numerically in excess of a certain number, excepted by the act, but an employee, not subject to an extra-territorial act and injured under such excepted conditions as to numbers, is limited to a common law claim, and the employer retains his common law defenses.

Where extra-territorial applications or numerical exception conditions, as above described, do not exist, the following situations may occur:

(1) In a state where the act provides that the employer, in order to be under the act, must elect to be under, in the manner provided by the act, the failure of the employer to so elect leaves the injured with a common law claim only but the employer is deprived of his defenses. Such states are enumerated in column (1) below.

(2) The employer may be subject to an act because it is a compulsory one, and if the employer has not complied with its requirements the injured will have the choice between claiming compensation or suing at common law with the defenses removed. Such states are enumerated in column (2) below.

(3) The employer may be subject to an act because it is one which presumes he has accepted it unless he rejects it in the manner provided therein, and, if the rejection has not been perfected nor the insurance requirements complied with, the injured has the choice between demanding compensation or suing at common law with the defenses removed. Such states are enumerated in columns 3 and 4 below.

In the schedule following, and as of January 1, 1926, the numerals set against the various states represent the maximum number of employees to which an employer is entitled without being subject to the act, and the term "Ex" indicates that the act is of extra-territorial application.

Non Presumptive, See (1) above		Compulsory, see (2) above		Presumptive, see (3) above			
Kentucky	2 Ex	Arizona	2 Ex	Alabama	15 Ex	Nebraska	Ex
Maine	5 Ex	California	Ex	Alaska	4	N. Jersey	Ex
Massachusetts		Hawaii	Ex	Colorado	3 Ex	N. Mexico	3
Michigan	Ex	Idaho	Ex	Conn.	4 Ex	Oregon	
Montana		Illinois	Ex	Delaware	4	Penn.	
Nevada	Ex	Maryland	Ex	Georgia	9 Ex	S. Dakota	Ex
New Hampshire	4	New York	Ex	Indiana	Ex	Tenn.	4 Ex
Rhode Island	5 Ex	N. Dakota		Iowa	Ex	Vermont	10 Ex
Texas	2 Ex	Ohio	2 Ex	Kansas	4	Virginia	10 Ex
W. Virginia	Ex	Oklahoma	1 Ex	Louisiana		Wisconsin	2 Ex
		Utah	2 Ex	Minnesota	Ex		
		Washington					
		Wyoming					

Exhibit "C".

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

TRENTON, N. J.

10

DEPENDENT'S CLAIM PETITION FOR COMPENSATION

GRACE IANNAZZO, *Petitioner,* vs. TEXTILEATHER CORP., *Respondent.*	Received at Trenton ..... Claim Petition No. ..... Date of Accident November 26, 1927

20

Attorney for Petitioner Raymond H. Cohen, 60 Park Place, Newark N. J.
Address

To the Workmen's Compensation Bureau of New Jersey:

Ex
Ex
3 The claimant respectfully alleges the following facts:

30

Ex
4 Ex
10 Ex
10 Ex
2 Ex

1. What was the full name of the decedent? Bruno Iannazzo.
2. Where did decedent live? 59½ Hayes Street
(Street Address)
Newark, N. J.
(City or Town)
3. Sex of decedent Male.
4. Date of birth of decedent March 22, 1870.
(Day, month and year.)

40

Exhibit "C" annexed to Amended Complaint.

5. Give below, in reference to each person claimed to be dependent upon the deceased at the time of accident or death:

Name of Each Dependent	Age at Last Birthday	Date of Birthday	Relation to Decedent
Grace Iannazzo.....	43	March 22, 1884	Widow
Mary Iannazzo.....	14	Sept. 16, 1913	Daughter
Philimena	13	Nov. 9, 1914	"
Gesualdo	11	Dec. 21, 1916	Son
Donato	9	Sept. 4, 1918	"
Anthonette	7	July 18, 1920	Daughter

6. By whom was decedent employed at the time of accident? (Give name and business address)

Textileather Corporation
(Name)

Lister Avenue
(Street Address)

Newark, N. J.
(City or Town)

7. What was the business of the employer? Artificial Leather Manufacturer.

8. Did the decedent give a written notice to the employer at the time of hiring, or later, that the Compensation Law was not to apply to him? No.

9. Did he receive such notice from the employer? No.

10. Did the employer have knowledge of this accident? Yes.

11. Did you notify the employer of this accident? Yes.

12. If so, on what date? November 26, 1927.

13. Have you made claim to the employer for compensation? Yes.

Exhibit "C" annexed to Amended Complaint.

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Worked in the coloring department, and was mixing colors at the time decedent took sick.

15. When did the accident happen? Decedent took sick on November 26, 1927, between 10 and 11 A. M.
(State month, day, year and hour.) 10

16. Where did the accident happen? In factory.

17. What was the nature of the accident, and how did it happen? Decedent took sick while working in the coloring department and died from aplastic anemia due to chronic benzol poisoning.

18. Did deceased work any after the accident? No.

19. If so, give date he was compelled to stop work November 26, 1927. 20

20. Give date of death December 8, 1927.

21. Were his wages fixed by piece work? No.

22. If so, what was his average weekly wage?.....

23. If wages were fixed by the hour, state rate per hour $.47½ per hour.

24. Give number of hours in an ordinary working day 10 hours. 30

25. Give number of days in an ordinary working week 5½ days.

26. State the amount of weekly wages $30.00.

27. How much money have you received from the employer as compensation (not medical aid) since the accident? None.

40

Exhibit "C" annexed to Amended Complaint.

28. Has the employer promised to pay you any compensation? No.

29. If so, how much? None.

30. Was medical aid required? Yes.

31. If so, was this service furnished by the employer? No.

10

32. What other sum did you expend for medical, surgical or hospital service?.....

33. Give name and address of physician and hospital City Hospital, Newark, N. J. Treated by family doctor, Dr. Fasano, 334 Bank St., Newark, N. J. Died at City Hospital on December 8, 1927, while under the care of a County Physician.

20

34. What other facts are there which you believe important? Petitioner is a widow and has six children to support, and at the present time is without any means of earning a livelihood.

35. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? No.

30

If you are unwilling state reasons.....

Your petitioner therefore prays that your Honorable Bureau will determine the amount of compensation due to your petitioner from the said defendant, under the Act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective sched-

40

ule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the Acts supplemental thereto and amendatory thereof, and that your petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper.

And your petitioner will ever pray, etc. 10

(Signed) GRACE IANNAZZO
(Petitioner)
59½ Hayes St.,
(Address)

STATE OF NEW JERSEY }
County of Essex } SS.

20

GRACE IANNAZZO, of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

(Signed) GRACE IANNAZZO
(Petitioner)

30

Subscribed and sworn to before me this 7th day of January 1928, at Newark.

(Illegible)
An Attorney at Law of N. J.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

40

Exhibit "C" annexed to Amended Complaint.

TO THE RESPONDENT.

The foregoing claim petition has been presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act.

10 We hereby notify you that unless an answer shall, within ten days from the receipt of this notice, be filed with the Secretary of the Bureau, in the State House at Trenton, the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the petitioner to prove such facts.

WORKMEN'S COMPENSATION BUREAU.

20 .....

Secretary.

30

40

Exhibit "D" annexed to Amended Complaint.

Form No. 15

Exhibit "D".

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU
TRENTON, N. J.

10

RESPONDENT'S ANSWER TO DEPENDENT'S CLAIM PETITION

GRACE IANNAZZO, *Petitioner,* vs. TEXTILEATHER CORP., *Respondent.*	Claim Petition No. 7776 January 26, 1928

20

Attorney for Respondent Clarence B. Tippett, 247 Park Ave., New York City.
(Address)

In answer to Claim Petition filed in this cause:

1. What was decedent's name? Stated in petition Bruno Iannazzo

30

2. Where did decedent reside? 59½ Hayes Street, (Street Address)

   Newark, N. J.
   (City or Town)

5. Do you question the dependency, age or relation of any of the persons named in question No. 5 of the Claim Petition? If so, specify. Respondent denies knowledge thereof, and leaves petitioner to full proof of dependency, age and relationship of individuals.

40

Exhibit "D" annexed to Amended Complaint.

6. Was the decedent in your employ at the time of the accident? Yes.

7. State your business. Leather Manufacturers.

8. Did you receive written notice from the decedent at the time of hiring, or later, that the Compensation Law was not to apply to him? No.

10 9. Did you give such notice to him? No.

10. When did you first have knowledge of this accident? About Dec. 8, 1927, first learned of illness, but of no accident.

11. Did you receive notice of this accident from the Petitioner? No.

12. If so, on what date?.....

13. Has any claim for compensation been made?
20 Yes.

14. What was the regular occupation of the decedent, and what kind of work was he doing at the time of the accident? Laborer.

15. When did the accident happen? It is claimed November 26, 1927, the day he stopped work.
(State month, day, year and hour)

16. Where did the accident happen? It is claimed at the plant.

30 17. What was the nature of the accident, and how did it happen? It is claimed he took sick while working in the coloring department and died from aplastic anemia due to chronic benzol poisoning.

18. Did the decedent work any after the accident? Ceased work November 26, 1927.

19. If so, give date he stopped work. As above.

40 20. Give date of death. December 8, 1927.

Exhibit "D" annexed to Amended Complaint.

21. Were his wages fixed by piece-work? No.

22. If so, what was his average weekly wage?

23. If wages were fixed by the hour, state rate per hour. 42¢.

24. Give number of hours in an ordinary working day. 10¼.

25. Give number of days in an ordinary working week. 5.

26. State the amount of weekly wages. $21.53. 10

27. How much have you paid as compensation (not medical aid) since the accident? No payments made as yet.

28. Have you promised to pay compensation? See answer to paragraph 34.

29. If so, how much?.....

30. Was medical aid required? No request made to the employer, nor did they have knowledge of compensable injury. 20

31. If so, did you furnish all the medical, surgical, or hospital services, or other expense of last sickness? The employer only learned of his illness on the day he died.

32. Between what dates was service rendered?

33. Give name and address of physician and hospital rendering service at your direction?....

34. What other facts are there which you believe important? If you deny that compensation is payable in this case, explain fully your reason for this conclusion. Respondent alleges the filing of this petition is premature and unnecessary at this moment in that the matter had previously been set down for informal hearing for disposal; and before said hearing date this petition was filed. As it is a claim of death from an alleged occupational disease 30 40

condition, it is necessary that the actual date of contraction of the said condition be definitely determined and proof of casual relation clearly presented, inasmuch as there are two insurance carriers involved, and payment of compensation, if permissible and proper, would require a ruling as to which one or both of said carriers covered the employer at the time of contraction of the alleged occupational disease. Proof of dependency is also in issue and must be submitted in order to afford a true basis for an award. For such reasons, acceptance of said claim is premature on the part of the employer.

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TEXTILEATHER CO.
(Respondent)

Brown St. & Lister Avenue,
(Address)

Newark, N. J.

STATE OF NEW YORK }
County of New York } SS.:

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CLARENCE B. TIPPETT, of full age, being duly sworn according to law, on his oath deposes and says: That he is the agent of respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

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CLARENCE B. TIPPETT
(Respondent)

Subscribed and sworn to before me, this 26th day of January 1928 at New York City.

ETHEL M. GARBY
Notary Public Richmond Co.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

40

Exhibit "E".

STATEMENT OF AMOUNTS PAID BY TEXTI-LEATHER CORPORATION TO AND INCLUDING AUGUST 31, 1929.

Date Paid	Description	Amount Paid
June 21, 1928	Fees and expenses allowed by Court	$539.28
" " "	Medical expenses	41.00
" " "	Funeral expenses	150.00
" " "	27 weeks' compensation	459.00
July 5, "	2 weeks' compensation	34.00
" 19, "	" " "	34.00
Aug. 2, "	" " "	34.00
" 16, "	" " "	34.00
" 30, "	" " "	34.00
Sept. 13, "	" " "	34.00
" 27, "	" " "	34.00
Oct. 11, "	" " "	34.00
" 25, "	" " "	34.00
Nov. 8, "	" " "	34.00
" 22, "	" " "	34.00
Dec. 6, "	" " "	34.00
" 20, "	" " "	34.00
Jan. 6, 1929,	" " "	34.00
" 20, "	" " "	34.00
Feb. 3, "	" " "	34.00
" 17, "	" " "	34.00
Mar. 2, "	" " "	34.00
" 16, "	" " "	34.00
" 30, "	" " "	34.00
Apr. 13, "	" " "	34.00
" 27, "	" " "	34.00
May 11, "	" " "	34.00
" 25, "	" " "	34.00
June 8, "	" " "	34.00
" 22, "	" " "	34.00
July 6, "	" " "	34.00
" 20, "	" " "	34.00
Aug. 3, "	" " "	34.00
" 17, "	" " "	34.00
" 31, "	" " "	34.00
		$2,243.28

Exhibit "A" to Original Complaint.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU.

GRACE IANNAZZO, Petitioner, vs. TEXTILEATHER CORPORATION, Respondent.	On Claim Petition #7776 Determination and Rule for Judgment.

10

A formal petition for compensation having been filed in the above stated cause, to which an answer was filed by the respondent, the case came on to be heard in due course before this Bureau at Newark, on May 9, 1928, which hearing was held in the presence of Raymond H. Cohen, attorney for the petitioner and McCarter and English, attorneys for the respondent.

20

The case involved the death of petitioner's intestate, Bruno Iannazzo, on December 8, 1927. The petition alleged that said death was caused by a compensable occupational disease, benzol poisoning, contracted out of and in the course of Iannazzo's employment with respondent. It appeared without dispute that Iannazzo had been employed by respondent from August 8, 1927, to November 26, 1927, and that during that entire period he had been exposed to benzol in his work for respondent. It further appeared that prior to November 18, 1927, respondent's compensation insurance carrier had been the Great American Indemnity Company and that from November 18, 1927, to and

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including November 26, 1927, when petitioner stopped working for respondent, said carrier was the American Mutual Liability Insurance Company, The American Mutual Liability Insurance Company was represented at the hearing by its attorneys, McCarter & English. The Great American Indemnity Company was not represented at said hearing, despite the fact that said Company had been served with notice of said hearing, which notice stated in detail the situation as to that Company and further, that at said hearing it would be urged that the period of employment, of petitioner's intestate, responsible for his death was the period during which said Great American Indemnity Company covered said respondent for compensation insurance. Proof of the service of said notice upon the Great American Indemnity Company had been filed with this Court.

The testimony clearly showed that Iannazzo, prior to his employment with respondent, had been a healthy, well man but that in August, 1927, shortly after he started working for the respondent he became seriously affected by the benzol to which he was exposed in his employment and during that month exhibited the usual symptoms of benzol poisoning. By the first part of October, 1927, these symptoms had increased to an alarming extent and from that time on he went into a rapid decline and died on December 8, 1927.

Both Doctors Fasano and Martland agree that Iannazzo died of chronic benzol poisoning contracted in August, 1927, and that Iannazzo's condition due to benzol was such by November 1, 1927, as would have resulted in his death thereafter and that the period of employment from November 18, 1927, to November 26, 1927, had no material effect on his subsequent death.

The amount of wages is not disputed,—this is $25.80 per week. The dependents are as follows:

Grace, widow, age 43, born March 22, 1884;
Mary, daughter, age 14, born September 16, 1913;
Philomena, daughter, age 13, born Nov. 9, 1914;
10 Gesualdo, son, age 11, born December 21, 1916;
Donato, son, age 9, born September 4, 1918;
Anthonette, daughter, age 7, born July 18, 1920.

IT IS THEREFORE FOUND AND DETERMINED that petitioner's intestate, Bruno Iannazzo, contracted benzol poisoning, a compensable occupational disease, in August, 1927, as a result of exposure to 20 benzol out of and in the course of his employment with respondent; that prior to November 1, 1927, said Iannazzo had the results of said poisoning in his system which caused his death on December 8, 1927. It is further found that the period of deceased's employment with respondent, responsible for his death, was the period from August 8, 1927 to November 1, 1927, and that the period from November 18, 1927 to November 26, 1927, had nothing material to do with said death. It is further found 30 that the disability of petitioner's intestate commenced within five months of the termination of said exposure.

It is found that the wages of the deceased were $25.80 per week. The dependency is as above stated. Counsel fee has been allowed petitioner's attorney, Raymond H. Cohen, in the sum of $500. to be paid by respondent. Funeral expenses are allowed in the sum of $150. Medical expenses of last 40 illness allowed Dr. Fasano in the sum of $25. Sub-

pœna fees and expenses serving same are allowed in the sum of $22, and petitioner's share of stenographic service $5.00.

IT IS, THEREFORE, on this 4th day of June, 1928, ORDERED that judgment final be entered in favor of the petitioner, Grace Iannazzo and against the respondent, as follows:

Funeral expenses	$150.00
Dr. Fasano	25.00
Costs, including stenographer's fee	27.00
Counsel fee Raymond H. Cohen	500.00
Total	$702.00

Dependents as follows:

Grace Iannazzo, widow, 300 weeks —12/8/27 to 9/6/33 60%	
Mary, daughter, born 9/16/13, 92 4/7 weeks 12/8/27 to 9/15/29 at $15.48	1433.00
Philomena, daughter, born 11/9/14, 59 6/7 weeks, 9/16/29 to 11/8/30 55% at $14.19	849.37
Gesualdo, son, born 12/21/16, 110 3/7 weeks, 11/9/30 to 12/20/32 50% at $12.90	1424.53
Donato, son, born 9/14/18, 37 1/7 weeks, 12/21/32 to 9/6/33 45% at 11.61	431.23
end of 300 weeks—51 5/7 weeks, 9/7/33 to 9/3/34 40% at 10.32	533.69
Anthonette, daughter, born 7/18/20, 97 4/7 weeks, 9/4/34 to 7/17/36 35% at 9.03	881.07
Total	$5552.89

and it is further ORDERED that expenses, counsel fee and weekly payments from December 8, 1927, to

the date of the signing of this order shall be due and owing upon the signing of this order, subsequent payments to be made weekly as hereinbefore set forth; and it is further

ORDERED: That judgment final be entered in favor of the petitioner and against the respondent for the sum of $5552.89, together with the costs of $702.00.

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HARRY J. GOAS,
Deputy Commissioner.

Answer of the Defendant, American Mutual Liability Insurance Company, to Amended Complaint.

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NEW JERSEY SUPREME COURT

ESSEX COUNTY

TEXTILEATHER CORPORATION, a corporation, Plaintiff, v. GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants.	Action at Law Answer to Amended Complaint

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Defendant, American Mutual Liability Insurance Company, a corporation of the State of Massachusetts, duly authorized to do business in the State

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of New Jersey, answering the amended complaint filed in this cause, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge of paragraph 1 of the First Count. 10

2. It admits Paragraphs 2 and 3 of the First Count.

3. It has no knowledge of Paragraph 4 of the First Count.

4. It admits it issued a compensation policy of insurance to plaintiff November 18, 1927. It denies the balance of said paragraph. 20

5. It denies Paragraph 6 of the First Count insofar as said paragraph in any way relates to or refers to it, except it admits plaintiff paid it a certain premium.

6. It denies Paragraph 7 of the First Count, except that it admits that the Bruno Iannazzo there mentioned was an employee of plaintiff and did die December 8, 1927 as the result of benzol poisoning and says that the period of employment, of said Bruno Iannazzo, with plaintiff responsible for the death of said Bruno Iannazzo, was that period prior to November 1, 1927. 30

7. It denies Paragraph 8 of the First Count insofar as it in any way relates to or refers to this defendant, except that it admits the issuance of a Workmen's Compensation Insurance Policy to plaintiff, dated November 18, 1927. 40

Answer of the Defendant, American Mutual Liability Insurance Company, to Amended Complaint.

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8. It denies Paragraph 9 of the First Count insofar as it in any way relates to or refers to this defendant, except that it admits that said Bruno Iannazzo died as the result of benzol poisoning and states that the period of employment with plaintiff responsible for said death of said Bruno Iannazzo was prior to November 1, 1927 and prior to the date of its referred to policy of insurance, namely—November 18, 1927.

9. It denies Paragraph 10 of the First Count insofar as it in any way relates to or refers to this defendant.

10. It denies Paragraph 11 of the First Count as stated, insofar as it relates to or refers to this defendant.

11. It denies Paragraph 12 of the First Count insofar as it relates to or refers to this defendant.

12. It denies Paragraph 13 of the First Count as stated, except it admits an answer was filed and as to the matters and things contained in said Answer, refers to said Answer.

13. It denies Paragraph 14 of the First Count.

14. It admits Paragraph 15 of the First Count.

15. It denies Paragraph 15-A as stated.

16. It denies Paragraph 16 of the First Count insofar as it in any way relates to or refers to this defendant, and states that plaintiff well knew and knows now that this defendant was not and is not in any way responsible for compensation arising

out of the death of said Bruno Iannazzo and further states that plaintiff well knew and knows now that the period of employment responsible for the death of said Bruno Iannazzo was that period prior to November 1, 1927, and prior to the date of this defendant's policy of insurance referred to, namely—November 18, 1927, with which period this defendant neither had, nor has, anything whatever to do.

17. It denies Paragraph 17 of the First Count, except it admits there was a hearing on May 9, 1928 and as to it, refers to the record of said hearing.

18. It denies Paragraph 18 of the First Count, as stated and as to the matters and things which transpired at the hearing referred to, refers to the record of said hearing.

19. It denies Paragraph 19 of the First Count.

20. It denies Paragraph 20 of the First Count, except that it admits a determination was made, true copy of which is part of plaintiff's complaint.

21. It denies Paragraph 21 of the First Count, except that defendant says that the determination referred to shows the true fact as to the period of employment with plaintiff responsible for the death of said Bruno Iannazzo and that said determination does as a matter of common justice and right, exonerate this defendant from liability for compensation resulting from said death, all of which plaintiff well knew and knows now to be true.

22. It denies Paragraph 22 of the First Count, except that it has no knowledge as to an execution

being issued as mentioned, or of any payments of plaintiff thereunder, and leaves plaintiff to its proof thereof.

23. It denies Paragraph 23 of the First Count as stated, except that defendant has no knowledge of payments made by plaintiff and leaves plaintiff to its proof thereof.

24. It denies Paragraph 24 of the First Count as stated, and as to the award made by the Compensation Court, refers to the determination and judgment of said Court.

25. It denies Paragraph 25 of the First Count.

FIRST DEFENSE TO THIRD COUNT.

1. Answering Paragraph 1 of the Third Count, it repeats its answers to Paragraphs 2, 3, 5 and 7 of the First Count.

2. It denies Paragraph 2 of the Third Count, except it admits that plaintiff paid it a certain premium.

3. It denies Paragraph 3 of the Third Count, except it admits the issuance of a Workmen's Compensation Insurance Policy to plaintiff, dated November 18, 1927, and as to the matters and things contained in said policy, it refers to said policy.

4. It denies Paragraph 4 of the Third Count, except it admits that Bruno Iannazzo died of benzol poisoning.

Answer of the Defendant, American Mutual Liability Insurance Company, to Amended Complaint.

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5. Answering Paragraph 5 of the Third Count, defendant repeats its answer to Paragraph 11 of the First Count.

6. Answering Paragraph 6 of the Third Count, defendant repeats its answer to Paragraph 12 of the First Count.

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7. Answering Paragraph 7 of the Third Count defendant repeats its answer to Paragraph 13 of the First Count.

8. Answering Paragraph 8 of the Third Count, defendant repeats its answer to Paragraph 14 of the First Count.

9. Answering Paragraph 9 of the Third Count, defendant repeats its answer to Paragraph 15 of the First Count.

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10. Answering paragraph 10 of the Third Count, defendant repeats its answer to Paragraph 16 of the First Count.

11. Answering Paragraph 11 of the Third Count, defendant repeats its answer to Paragraph 17 of the First Count.

12. Answering Paragraph 12 of the Third Count, defendant repeats its answer to Paragraph 18 of the First Count.

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13. Answering Paragraph 13 of the Third Count, defendant repeats its answer to Paragraph 19 of the First Count.

14. Answering Paragraph 14 of the Third Count, defendant repeats its answer to paragraph 20 of the First Count.

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Answer of the Defendant, American Mutual Liability Insurance Company, to Amended Complaint.

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15. Answering Paragraph 15 of the third Count, defendant repeats its answer to Paragraph 21 of the First Count.

16. Answering Paragraph 16 of the Third Count, defendant repeats its answer to Paragraph 22 of the First Count.

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17. It denies Paragraph 17 of the Third Count.

18. Answering Paragraph 18, defendant repeats its answer to Paragraph 23 of the First Count.

19. Answering Paragraph 19, defendant repeats its answer to Paragraph 24 of the First Count.

20. Answering Paragraph 20, defendant repeats its answer to Paragraph 25 of the First Count.

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SECOND DEFENSE TO FIRST AND THIRD COUNTS.

This defendant is in no way liable to plaintiff under its referred to policy or otherwise, for moneys alleged to have been expended by plaintiff, or for which plaintiff is or may be responsible, for compensation and expenses in connection with or in any way arising out of the illness and death of the mentioned Bruno Iannazzo, deceased.

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THIRD DEFENSE TO FIRST AND THIRD COUNTS.

This defendant does not owe plaintiff anything.

FOURTH DEFENSE TO FIRST AND THIRD COUNTS.

The determination and judgment of the Compensation Court, dated June 4, 1928, which is part of the complaint, fixed and determined the period of the mentioned Bruno Iannazzo's employment with
40 the plaintiff, responsible for Iannazzo's death, as

the period from August 8, 1927 to November 1, 1927. The date of this defendant's policy with plaintiff is November 18, 1927. This defendant is therefore in nowise liable under its policy to plaintiff for moneys alleged to have been expended by plaintiff for compensation, and expenses, in connection with or in any way arising out of the illness and death of the mentioned Bruno Iannazzo, deceased. 10

FIFTH DEFENSE TO FIRST AND THIRD COUNTS.

The period of employment of Bruno Iannazzo with plaintiff, responsible for Iannazzo's death, was that period prior to November 1, 1927. The date of this defendant's policy with plaintiff is November 18, 1927. This defendant is in nowise liable under its said policy to plaintiff for moneys alleged to have been expended by plaintiff, or for which plaintiff is or may be responsible, for compensation and expenses in connection with or in any way arising out of the illness and death of the mentioned Bruno Iannazzo, deceased. 20

OBJECTION IN POINT OF LAW.

This defendant reserves the right prior to or at the trial of this cause to strike out the complaint herein as against this defendant, on the ground that it states no cause of action against this defendant. 30

Attorneys for Defendant, American Mutual Liability Insurance Company, a corp. 40

Answer of the Defendant, Great American Indemnity Company, to Amended Complaint.

Filed Ap. 24/30

NEW JERSEY SUPREME COURT

ESSEX COUNTY

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TEXTILEATHER CORPORATION, a corporation, Plaintiff vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants	Action at law Answer of Defendant Great American Indemnity Company to Amended Complaint.

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The defendant, GREAT AMERICAN INDEMNITY COMPANY, a corporation of the State of New York, duly authorized to transact business in the State of New Jersey, with an office in Newark, New Jersey, says that:

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FIRST DEFENSE TO FIRST COUNT

1. It admits Paragraph 1.

2. It has no knowledge or information sufficient to form a belief as to Paragraph 2.

3. It has no knowledge or information sufficient to form a belief as to Paragraph 3.

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4. It denies Paragraph 4 excepting that it admits the policy of insurance known as Standard Workmen's Compensation & Employees' Liability Policy No. C 2509 was issued by this defendant, but for certainty at the trial of this case will refer to the original policy.

5. It has no knowledge or information sufficient to form a belief as to Paragraph 5. 10

6. It denies Paragraph 6 and says there was a failure on the part of the plaintiff to perform the following terms and conditions of Policy No. C 2509, required by the policy to be performed as conditions precedent to the plaintiff's recovery thereon:

(a) Said policy provided as follows:

"F. This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him." 20 30

The plaintiff failed to perform one or more of the provisions of Condition "F" as follows:

(1) The plaintiff upon the occurrence of the alleged accident set forth in the complaint did 40

not give immediate written notice thereof to the defendant.

(2) The plaintiff upon the occurrence of the said alleged accident did not give to the defendant immediate notice thereof with the fullest information obtainable.

10 (3) The plaintiff did not give to the defendant immediate notice of the claim made on account of said accident.

(4) The plaintiff did not give to the defendant immediate notice with full particulars of the claim made on account of said accident.

(5) The plaintiff did not immediately forward to the defendant the summons, notice or
20 other process served upon it upon the institution of said action or proceeding instituted against the plaintiff in the Workmen's Compensation Bureau by Grace Iannazzo.

Because of the failure of the plaintiff to comply with one or more of said conditions precedent contained in Condition "F" of said policy, the plaintiff is not entitled to recover in this action.

30 (b) Paragraph VII of said policy provides:

"This agreement shall apply only to such injuries," viz., personal injuries sustained by employees, "so sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations," viz., declarations of the plaintiff.

In Item 2 of the plaintiff's declarations it is pro-
40 vided that the period during which the policy shall

remain in force (unless otherwise cancelled) shall be from November 18, 1926 to November 18, 1927. The said alleged accidental injuries sustained by the plaintiff's employee, Bruno Iannazzo, did not occur during said policy period and therefore the plaintiff cannot recover as against this defendant.

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(c) Said policy of insurance provided that the only Workmen's Compensation laws covered by said policy were Chapter 95 of the Laws of 1911, Chapters 178 and 262 of the Laws of 1917 of the State of New Jersey, and all laws supplementary thereto or amendatory thereof, which may be or become effective while said policy is in force. The alleged claim of the plaintiff's employee, Bruno Iannazzo, or that of the Estate of said Bruno Iannazzo was not compensable under the said compensation laws and therefore there is no liability on the part of this defendant.

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(d) Although said policy provided in said Condition "F" aforesaid that the plaintiff should immediately forward to the defendant every summons, notice or other process served upon it, the plaintiff failed to comply with said condition precedent and failed to perform the same, but, on the contrary, informed this defendant that its coverage for said accident was in the American Mutual Liability Insurance Company as the case happened on December 3, 1927, at which time said American Mutual Liability Insurance Company was carrying the liability insurance of the plaintiff, and this defendant believes and therefore alleges that thereafter the agents and attorneys of the plaintiff and said American Mutual Liability Insurance Company

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filed answer to the petition for compensation of the said Grace Iannazzo, prepared the defense of said case and attended at and conducted the trial of said case for the plaintiff. This defendant was therefore relieved from liability, if any, under and by virtue of its said policy of insurance.

10 (e) In the preparation for and trial of said action of said Grace Iannazzo against the plaintiff in the Workmen's Compensation Bureau of the New Jersey Department of Labor, this defendant was not made a party, although it could and should have been made a party under Chapter 178 of the Laws of 1917 if the plaintiff intended to hold this defendant for any judgment rendered against the plaintiff in said Court.

20 (f) Under the terms of said policy of insurance, this defendant was entitled to receive immediately any summons, notice or other process served upon plaintiff as soon as any suit or proceeding was instituted and this defendant was entitled to prepare the defense of such suit or proceeding and make the necessary investigation to conduct such defense and to have its attorney attend and conduct the trial of such suit or proceeding. The plaintiff failed to 30 comply with the provisions of the policy in that respect and thereby prejudiced the rights of this defendant and absolved and relieved this defendant from any liability under the provisions of said policy of insurance."

7. It has no knowledge or information sufficient to form a belief as to Paragraph 7.

8. It has no knowledge or information sufficient 40 to form a belief as to Paragraph 8.

Answer of the Defendant, Great American Indemnity Company, to Amended Complaint.

9. It was no knowledge or information sufficient to form a belief as to the cause of death of the said Bruno Iannazzo. It denies that the disease from which the defendant died was in anyway contracted between August 8, 1927 and November 18, 1927. It is informed and believes that in the petition for compensation, filed by Grace Iannazzo against the plaintiff, the date of the contracting of the disease from which the said Bruno Iannazzo is alleged to have died is stated as November 26, 1927.

10. It denies Paragraph 10. It denies that it has waived the performance of or has been estopped to require the performance of any condition precedent to the liability of this defendant. It repeats and makes a part hereof Paragraph 6 of the First Defense to the First Count of the plaintiff's amended complaint.

11. It has no knowledge or information sufficient to form a belief as to Paragraph 11 excepting that it admits that it did not appear in or defend the action brought by Grace Iannazzo in the Workmen's Compensation Bureau.

12. It has no knowledge or information sufficient to form a belief as to Paragraph 12 excepting that the Workmen's Compensation Bureau served a copy of the petition of Grace Iannazzo on the plaintiff on April 30, 1928.

13. It has no knowledge or information sufficient to form a belief as to Paragraph 13.

14. It has no knowledge or information sufficient to form a belief as to Paragraph 14.

15. It denies Paragraph 15.

15A. It has no knowledge or information sufficient to form a belief as to Paragraph 15A, excepting that it admits that a copy of the petition for compensation was served on the plaintiff on April 30, 1928.

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16. It has no knowledge or information sufficient to form a belief as to Paragraph 16 excepting that it denies that it ever attempted to evade any of its obligations under policy of insurance known as Policy No. C2509, or any other policy of insurance.

17. It has no knowledge or information sufficient to form a belief as to Paragraph 17.

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18. It has no knowledge or information sufficient to form a belief as to Paragraph 18.

19. It has no knowledge or information sufficient to form a belief as to Paragraph 19.

20. It has no knowledge or information sufficient to form a belief as to Paragraph 20.

30 21. It has no knowledge or information sufficient to form a belief as to Paragraph 21.

22. It has no knowledge or information sufficient to form a belief as to Paragraph 22.

23. It has no knowledge or information sufficient to form a belief as to Paragraph 23.

24. It has no knowledge or information sufficient

40 to form a belief as to Paragraph 24.

25. It has no knowledge or information sufficient to form a belief as to Paragraph 25.

26. It has no knowledge or information sufficient to form a belief as to Paragraph 26, excepting that it denies that there is any money due and owing from this defendant to the plaintiff.

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FIRST DEFENSE TO SECOND COUNT

1. Defendant, Great American Indemnity Company, repeats and makes a part hereof its answers to the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the First Count.

2. It denies Paragraph 2. It denies that it has waived the performance of or is estopped to require the performance of any condition precedent to its liability. It repeats and makes a part hereof Paragraphs 6 and 10 of its First Defense to the First Count of plaintiff's amended complaint.

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3. It has no knowledge or information sufficient to form a belief as to Paragraph 3.

4. It has no knowledge or information sufficient to form a belief as to Paragraph 4.

5. It has no knowledge or information sufficient to form a belief as to Paragraph 5.

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6. It denies Paragraph 6.

7. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 13 of the First Count.

8. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 15 of the First Count.

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9. It has no knowledge or information sufficient to form a belief as to Paragraph 9.

10. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 16 of the First Count.

10 11. It denies Paragraph 11.

12. It has no knowledge or information sufficient to form a belief as to Paragraph 12.

13. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 22 of the First Count.

14. It denies Paragraph 14.

20 15. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 23 of the First Count.

16. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 24 of the First Count.

17. It repeats and makes a part hereof its answers to the allegations contained in Paragraph
30 25 of the First Count.

18. It has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 18 excepting that it denies there is any money owing to the plaintiff from this defendant.

First Defense to Third Count

1. Defendant, Great American Indemnity Com-
40 pany, repeats and makes a part hereof its answers

to the allegations contained in Paragraphs 2, 3, 5 and 7 of the First Count.

2. It has no knowledge or information sufficient to form a belief as to Paragraph 2.

3. It has no knowledge or information sufficient to form a belief as to Paragraph 3.

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4. It has no knowledge or information sufficient to form a belief as to Paragraph 4.

5. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 11 of the First Count.

6. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 12 of the First Count.

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7. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 13 of the First Count.

8. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 14 of the First Count.

9. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 15 of the First Count.

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10. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 16 of the First Count.

11. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 17 of the First Count.

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12. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 18 of the First Count.

13. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 19 of the First Count.

14. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 20 of the First Count.

15. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 21 of the First Count.

16. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 22 of the First Count.

17. It has no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17.

18. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 23 of the First Count.

19. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 24 of the First Count.

20. It repeats and makes a part hereof its answers to the allegations contained in Paragraph 25 of the First Count.

SECOND DEFENSE TO ALL COUNTS

Said policy provided as follows:

"F. This employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him."

The plaintiff failed to perform one or more of the provisions of Condition "F" as follows:

(1) The plaintiff upon the occurrence of the alleged accident set forth in the complaint did not give immediate written notice thereof to the defendant.

(2) The plaintiff upon the occurrence of the said alleged accident did not give to the defendant immediate notice thereof with the fullest information obtainable.

(3) The plaintiff did not give to the defendant immediate notice of the claim made on account of said accident.

(4) The plaintiff did not give to the defendant immediate notice with full particulars of the claim made on account of said accident.

(5) The plaintiff did not immediately forward to the defendant the summons, notice or other process served upon it upon the institution of said action or proceeding instituted against the plaintiff in the Workmen's Compensation Bureau by Grace Iannazzo.

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Because of the failure of the plaintiff to comply with one or more of said conditions precedent contained in Condition "F" of said policy, the plaintiff is not entitled to recover in this action.

Third Defense to All Counts

Paragraph VII of said policy provides:

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"This agreement shall apply only to such injuries," viz., personal injuries sustained by employees, "so sustained by reason of accidents occurring during the Policy Period limited and defined as such in Item 2 of said Declarations," viz., declarations of the plaintiff."

In Item 2 of the plaintiffs declaration it is provided that the period during which the policy shall remain in force (unless otherwise cancelled) shall

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be from November 18, 1926, to November 18, 1927. The said alleged accidental injuries sustained by the plaintiff's employee, Bruno Iannazzo, did not occur during said policy period and therefore the plaintiff cannot recover as against this defendant.

Fourth Defense to All Counts

Said policy of insurance provided that the only

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Workmen's Compensation laws covered by said

policy were Chapter 95 of the Laws of 1911, Chapter 178 and 262 of the Laws of 1917 of the State of New Jersey, and all laws supplementary thereto or amendatory thereof, which may be or become effective while said policy is in force. The alleged claim of the plaintiff's employee, Bruno Iannazzo, or that of the Estate of said Bruno Iannazzo was not compensable under the said compensation laws and therefore there is no liability on the part of this defendant.

Fifth Defense to All Counts

Although said policy provided in said Condition "F" aforesaid that the plaintiff should immediately forward to the defendant every summons, notice or other process served upon it, the plaintiff failed to comply with said condition precedent and failed to perform the same, but, on the contrary, informed this defendant that its coverage for said accident was in the American Mutual Liability Insurance Company as the case happened on December 3, 1927, at which time said American Mutual Liability Insurance Company was carrying the liability insurance of the plaintiff, and this defendant believes and therefore alleges that thereafter the agents and attorneys of the plaintiff and said American Mutual Liability Insurance Company filed answer to the petition for compensation of the said Grace Iannazzo, prepared the defense of said case and attended at and conducted the trial of said case for the plaintiff. This defendant was therefore relieved from liability, if any, under and by virtue of its said policy of insurance.

Sixth Defense to All Counts

In the preparation for and trial of said action of said Grace Iannazzo against the plaintiff in the Workmen's Compensation Bureau of the New Jersey Department of Labor, this defendant was not
10 made a party, although it could and should have been made a party under Chapter 178 of the Laws of 1917 if the plaintiff intended to hold this defendant for any judgment rendered against the plaintiff in said Court.

Seventh Defense to All Counts

Under the terms of said policy of insurance, this
20 defendant was entitled to receive immediately any summons, notice or other process served upon plaintiff as soon as any suit or proceeding was instituted and this defendant was entitled to prepare the defense of such suit or proceeding and make the necessary investigation to conduct such defense and to have its attorney attend and conduct the trial of such suit or proceeding. The plaintiff failed to comply with the provisions of the policy
30 in that respect and thereby prejudiced the rights of this defendant and absolved and relieved this defendant from any liability under the provisions of said policy of insurance.

Eighth Defense to All Counts

The said judgment in the Workmen's Compensation Bureau of the New Jersey Department of
40 Labor was obtained through the fault or neglect of

the plaintiff and its representatives in one or more of the following respects:

(a) The petitioner, Grace Iannazzo, had no right to institute or maintain said action in her individual capacity.

(b) Said alleged disease of which the said deceased, Bruno Iannazzo, is alleged to have died on December 8, 1927, was not compensable under the said statute, "An act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of his employment, etc., approved April 4, 1911, and the acts amendatory thereof and supplementary thereto." 10

(c) The determination of said Workmen's Compensation Bureau was illegal and unlawful and the testimony taken before said Bureau did not justify or sustain the determination and conclusions of said Bureau. 20

(d) The testimony taken before the Workmen's Compensation Bureau upon which the determination and rule for judgment was made, alleged copy of which is annexed to the complaint and marked Exhibit "A", failed to show any personal injuries sustained by reason of accidents occurring during the policy period of this defendant, and therefore the plaintiff cannot recover as against this defendant. 30

Ninth Defense to All Counts

The policy of insurance of this defendant herein sued on provided that the agreements therein contained shall only apply to personal injuries sus- 40

tained by employes including death sustained by reason of accidents occurring during the policy period. The deceased, Bruno Iannazzo, did not sustain personal injuries by reason of accidents occurring during the policy period of this defendant and therefore the plaintiff cannot recover.

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OBJECTION IN POINT OF LAW

This defendant objects that the first and second counts of the complaint fail to state a cause of action as against this defendant and on or before the trial it will move to strike out said counts.

COLLINS & CORBIN,
Attorneys of Defendant, Great American Indemnity Company.

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Reply to Answer of Defendant, American Mutual Liability Insurance Company, to Amended Complaint.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

TEXTILEATHER CORPORATION, a corporation, Plaintiff, vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants.	Action at Law: Reply to Answer of Defendant American Mutual Liability Insurance Company to Amended Complaint.

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Plaintiff denies all the affirmative allegations in the answer of defendant American Mutual Liability Insurance Company to the amended complaint.

Particularly plaintiff denies each and every allegation in the second defense to the first and third counts.

Plaintiff denies the allegation in the third defense to the first and third counts. 30

Plaintiff denies each and every allegation in the fourth defense to the first and third counts.

Plaintiff denies each and every allegation in the fifth defense to the first and third counts.

Plaintiff joins issue on the answer of the said defendant.

McDERMOTT, ENRIGHT & CARPENTER
Attorneys for Plaintiff. 40

Reply to Answer of Defendant, Great American Indemnity Company, to Amended Complaint.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

TEXTILEATHER CORPORATION, a corporation, Plaintiff, vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants.	Action at Law: Reply to Answer of Defendant Great American Indemnity Company to Amended Complaint.

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REPLY TO FIRST DEFENSE TO ALL COUNTS.

Plaintiff denies each and every allegation in the first defense to all counts.

REPLY TO SECOND DEFENSE TO ALL COUNTS.

Plaintiff denies all the allegations in the second defense to all counts.

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REPLY TO THIRD DEFENSE TO ALL COUNTS.

Plaintiff denies each and every allegation in the third defense to all counts.

REPLY TO FOURTH DEFENSE TO ALL COUNTS.

Plaintiff denies each and every allegation in the fourth defense to all counts.

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Reply to Fifth Defense to All Counts.

Plaintiff denies each and every allegation in the fifth defense to all counts.

Reply to Sixth Defense to All Counts.

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Plaintiff denies each and every allegation in the sixth defense to all counts.

Reply to Seventh Defense to All Counts.

Plaintiff denies each and every allegation in the seventh defense to all counts.

Reply to Eighth Defense to All Counts.

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Plaintiff denies each and every allegation in the eighth defense to all counts.

Reply to Ninth Defense to All Counts.

Plaintiff denies each and every allegation in the ninth defense to all counts.

Plaintiff joins issue on the said answer of the said defendant.

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McDermott, Enright & Carpenter,
Attorneys for Plaintiff.

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Postea.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

TEXTILEATHER CORPORATION, a corporation, Plaintiff, vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants.	Action at Law: Postea. (Iannazzo Case)

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The above entitled cause come on regularly for trial before the Hon. Nelson Y. Dungan, Circuit Judge, to whom the said cause was regularly referred for trial by the Chief Justice, with a jury, at the Essex Circuit, and was tried on May 16 and 19, 1930.

20

At the conclusion of the plaintiff's case the Court granted the motion of the defendant Great American Indemnity Company for a nonsuit.

At the conclusion of the entire case the Court directed a verdict in favor of the plaintiff, Textileather Corporation, and against the defendant, American Mutual Liability Insurance Company, for the sum of $2900.66 damages, being the amount of payments made by plaintiff to Grace Iannazzo and the dependents of Bruno Iannazzo under the terms of the determination made in the case of Grace Iannazzo against Textileather Corporation in the Workmen's Compensation Bureau and dated June 4, 1928, together with interest on each payment to May 14, 1930.

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NELSON Y. DUNGAN
Circuit Judge.

Judgment.

[SEAL OF THE STATE
OF NEW JERSEY]

NEW JERSEY SUPREME COURT.

TEXTILEATHER CORPORATION, a corporation, Plaintiff, vs. AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendant.	Action at Law. On Postea. McDermott, Enright & Carpenter, Attorneys.

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$2900.66
132.92
———
$3033.58

Judgment entered this twenty-second day of May, A. D. nineteen hundred and thirty, in favor of plaintiff and against the defendant for the sum of two thousand nine hundred dollars and sixty-six cents damages and one hundred thirty-two dollars and ninety-two cents costs.

WM. S. GUMMERE,
C. J.

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Notice of Appeal and Grounds of Appeal of Defendant, American Mutual Liability Insurance Company.

NEW JERSEY SUPREME COURT

ESSEX COUNTY

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TEXTILEATHER CORPORATION, a corporation,
Plaintiff,

v.

GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation,
20 Defendants.

(Iannazzo case)
Action at Law
On Appeal from Supreme Court
Notice of Appeal and Grounds of Appeal.

To: MESSRS. MCDERMOTT, ENRIGHT & CARPENTER, Attorneys of Plaintiff, Textileather Corporation, a corporation.

SIRS:

30 PLEASE TAKE NOTICE that the defendant, American Mutual Liability Insurance Company, a corporation, in the above entitled cause appeals to the Court of Errors and Appeals, in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause insofar as it concerns this defendant and the plaintiff on the following grounds, to wit:

1. Because the Supreme Court erred in permit-
40 ting plaintiff's witness, Dr. Harrison S. Martland,

to answer the following question on direct-examination—

"Q. What was the result of your autopsy? What did you find?"

2. Because the Supreme Court erred in permitting the following question to be asked of plaintiff's witness, Dr. Fasano, on redirect-examination: 10

"Q. Doctor, do you think that the fact that Mr. Iannazzo continued to work with the benzol day after day, the continued cumulation had any effect on his system?"

3. Because the Supreme Court erred in refusing to permit the following question to be answered by plaintiff's witness, Bosco, on cross-examination— 20

"Q. There is no question now, is there, in your mind, but that Mr. Iannazzo died of benzol poisoning?"

4. Because the Supreme Court erred in refusing to permit plaintiff's witness, Schumacher, to answer the following question on cross-examination—

"Q. The death of both Mooney and Iannazzo were discussed weren't they?" 30

5. Because the Supreme Court erred in striking out the testimony of plaintiff's witness, Riley, with reference to what appeared on the informal compensation folder.

6. Because the Supreme Court erred in denying this defendant's motion for a nonsuit. 40

Notice of Appeal and Grounds of Appeal of Defendant, American Mutual Liability Insurance Company.

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7. Because the Supreme Court erred in refusing to permit defendant's witness, Crippen, to answer the following question—

"Q. Did Mr. Schumacher in any way indicate that on or after that date Mr. Iannazzo had been exposed to a greater percentage of benzol than he had been before?"

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8. Because the Supreme Court erred in refusing to direct a verdict in favor of this defendant and against the plaintiff.

9. Because the Supreme Court erred in directing a verdict in favor of the plaintiff and against this defendant.

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McCarter & English
Attorneys for Defendant, American Mutual Liability Insurance Company.

FILED
Jul 23 1930
Fred L. Bloodgood.
Clerk

A true copy
Fred L. Bloodgood.
Clerk

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Notice of Appeal and Grounds of Appeal of Plaintiff, Textileather Corporation.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

TEXTILEATHER CORPORATION, a corporation, Plaintiff, vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendants.	(Iannazzo Case) Action at Law: On Appeal from Supreme Court: Notice of Appeal and Grounds of Appeal.

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TO—COLLINS & CORBIN,
Attorneys for Defendant,
Great American Indemnity Company.

TAKE NOTICE that the plaintiff, Textileather Corporation, does hereby appeal to the New Jersey Court of Errors and Appeals, in the Last Resort in all Causes, from the whole and every part of the judgment of non-suit entered in the above entitled cause in favor of defendant Great American Indemnity Company for the following reason:

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Because the learned Judge of the Circuit Court erred in granting a non-suit in favor of the defendant Great American Indemnity Company and against the plaintiff Textileather Corporation.

Respectfully yours,

MCDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Plaintiff.

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Testimony.

NEW JERSEY SUPREME COURT,

ESSEX CIRCUIT.

Friday, May 16, 1930.

10 TEXTILEATHER CORPORATION

vs.

GREAT AMERICAN INDEMNITY COMPANY, a corporation, and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation.

Action at Law.

20 Before Hon. NELSON Y. DUNGAN, *J.*, and a jury.

For plaintiff appear MCDERMOTT, ENRIGHT & CARPENTER (by JAMES D. CARPENTER, JR.).

For defendant Great American Indemnity Company appear COLLINS & CORBIN (by EDWARD A. MARKLEY).

For defendant American Mutual Liability Insurance Company appear MCCARTER & ENGLISH (by GERALD M. F. MCLAUGHLIN).

30

[A jury is called and sworn.]

Mr. Carpenter opens for plaintiff.

Mr. Markley opens for defendant Great American Indemnity Company.

Mr. McLaughlin opens for defendant American Mutual Liability Insurance Company.

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Mr. Markley: I understand that, both from the record of the case and from Mr. Carpenter, that no notice of any kind was given to my client, the Great American Indemnity Company, as required by the terms of the policy. Is that so, Mr. Carpenter?

Mr. Carpenter: We gave no notice to the Great American about that, only——

Mr. Markley: November 21st, when they served a copy of the judgment and award.

Mr. Carpenter: No, I think the 21st of June, 1928.

Mr. Markley: It was after the trial and judgment in the Compensation Court.

Mr. Carpenter: But I understand that the American Mutual gave them some notice, but I do not know about that of my own knowledge; and that is why I did not so state in the opening.

The Court: You have no proof of that?

Mr. Carpenter: The proof is here, but I haven't it in my control; I will have to get it from the other side. They were given notice to defend this case before it was tried.

Mr. Markley: That was a few days before it was tried.

Mr. Carpenter: I will first offer in evidence the policies of both companies; first, the Great American.

[Document referred to is received in evidence and marked Exhibit P-1.]

Mr. Carpenter: And, second, the American Mutual.

[Document referred to is received in evidence and marked Exhibit P-2.]

ETHEL M. MULLEN sworn in behalf of plaintiff.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Miss Mullen, you are the Chief Clerk of the Workmen's Compensation Bureau in Trenton, aren't you? A. Yes.

Q. Have you brought here the Bureau's files in the case of Bruno Iannazzo against Textileather Company? A. Yes; I have it right here.

[Producing documents.]

Mr. Carpenter: I offer in evidence, if the Court please, first, the petition for compensation filed by Grace Iannazzo, to recover, for herself and other dependents of Bruno Iannazzo, which was verified on the 7th day of January, 1928, and filed January 10, 1928. With the permission of Court and counsel, I will substitute a copy for the original.

[Document referred to is received in evidence and marked Exhibit P-3.]

Mr. Carpenter: I now offer in evidence an acknowledgment of service of this petition, signed on January 20, 1928, reading as follows [reading]: "The undersigned hereby acknowledges receipt on 1-20-28 of the claim petition in the above case. H. O. Heyler, Adjuster A. M. L. Insurance Co." That is the American Mutual Liability Insurance Company.

Mr. McLaughlin: Is that the same acknowledgment of service that the Textile acknowledged on?

The Witness: No, it is not, Mr. McLaughlin.

Mr. Carpenter: I next offer in evidence

what is called respondent's answer to the defendant's claim petition, which was filed with the Bureau January 26, 1928; and I substitute a copy made by the Bureau.

[Document referred to is received in evidence and marked Exhibit P-4.]

Q. Was there a letter written by somebody to you, suggesting that this be served on the Textileather? A. Yes. In between the time the service was made on them first, and on March 13th, Mr. Wegner, who conducted the informal hearings in the Newark office, wrote me. 10

Q. He wrote you this letter [indicating document]? A. Yes.

Mr. Carpenter: This is dated March 13, 1928, to Miss Mullen, from Referee Wegner, of the Newark office of the Compensation Bureau [reading]: 20

"I am enclosing herewith the petition in connection with the above case, for the purpose of having same served upon the employer and upon the insurance company.

"It appears that this man died from benzol poisoning, and the American Mutual were only on the risk about one week. Prior to that time the Great American Insurance Company covered. There seems to be a question as to the responsibility, and neither company will pay. 30

"Under the circumstances, the employer should be served with this petition, so that the matter can be adjusted."

Q. And did you then send that to be served on the Textileather Company? A. The papers were in Newark, and I suggested that service be made on the Textileather Company direct. 40

Q. And on April 30th, after the answer had been filed by the Great American on January 26th, this acknowledgment of service was made [reading]: "The undersigned hereby acknowledges receipt——

Mr. Markley: I object to this method. I think the best way to prove these documents is to put them in.

10 Mr. Carpenter: I am offering it, but I will just read the important part.

Mr. Markley: You have not put the other one in.

Mr. Carpenter: I read that into the record.

The Court: Is this a document in the record that has been admitted?

Mr. Carpenter: I will offer it.

The Court: You had better do that first.

20 Mr. Carpenter: I will offer it.

The Court: What is it?

Mr. Carpenter: Acknowledgment of service by the Textileather Company.

[Document referred to is received in evidence and marked Exhibit P-5.]

Mr. Carpenter: I now offer in evidence the acknowledgment of service of the American Mutual, dated January 20, 1928.

30

[Document referred to is received in evidence and marked Exhibit P-6.]

The Court: The letter of March 13, 1928, suggesting service on Textileather should be marked.

Mr. Carpenter: I offer that.

[Letter referred to is received in evidence and marked Exhibit P-7.]

40

Mr. Carpenter: This is P-5 [reading]: "The undersigned hereby acknowledges receipt on April 30, 1928, of the claim petition in the above case. Textileather Corp.—J. Boyle."

I now offer the original determination and rule for judgment.

Mr. Markley: I object to this rule for judgment, on the ground that it is not an adjudication that is binding on this defendant, the Great American; and that, so far as the case against this defendant is concerned, it is immaterial, incompetent and irrelevant. 10

The Court: It will be admitted.

Mr. Markley: Your Honor will allow me an exception?

The Court: Yes.

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court. 20

Exception noted as ground of appeal.

Mr. Carpenter: I will substitute for that, and let Miss Mullen take that back, this notice and demand which was served on the two insurance companies on the 21st of June, 1928—which has a copy of the determination attached to it. 30

[Document referred to is received in evidence and marked Exhibit P-8.]

Cross-examination by Mr. Markley:

Q. As I understand it, Miss Mullen, the petition of the widow against the Textileather for compensation, P-3, was filed with you as Chief Clerk of the Workmen's Compensation Bureau at Trenton, or with the Secretary? A. The Secretary. 40

Q. You are Chief Clerk? A. Yes.

Q. On January 10, 1928? A. Yes, that is right.

Q. The practice is, as I understand it, to file the original and two copies, isn't it? A. The original and one copy, if there is only one respondent.

Q. Well, there was only one respondent here? A. Yes.

10 Q. That is the Textileather Corporation. And then what do you do with it after it is filed with the Bureau? A. We send the copy to our Newark office, or to any district in which the accident occurred, to be served upon the respondent, with acknowledgment of service attached.

Q. That is, you send it to the district where service is to be made, to be served by the process server for the Workmen's Compensation Bureau? A. Yes.

20 Q. And in this instance that district was Newark, was it not? A. Yes.

Q. And you therefore sent it to Newark, to Mr. Kent, I believe? A. Mr. Kent served it, yes.

Q. He was your process server? A. Yes.

Q. What did you say the date of that was? A. It was filed with us on January 10, 1928.

Q. May I look at that a moment? A. [Witness hands document to Mr. Markley.]

30 Q. And it was verified, according to the original petition, on January 7, 1928? A. Yes.

Q. By the widow? A. Yes.

Q. Now, then, after you sent that to Newark for service, you got back from Newark, as I understand it, an acknowledgment of service from Mr. Kent, did you not? A. Yes.

Q. And which one was the first one you got back? A. The one served by the American Mutual Lia-

40 bility.

Q. May I look at that? A. [Witness hands document to Mr. Markley.]

Q. The one signed by the American Mutual is P-6, and that acknowledgment is dated January 20, 1928, by H. O. Heyler, Adjuster for the American Mutual Liability Insurance Company, is it not? A. Yes, that is correct.

Q. And Mr. Kent, whose name is on there, is the man who made the service? A. Yes. 10

The Court: That would indicate, would it not, that, instead of serving that petition upon the respondent, that it had been served upon the American Mutual Insurance Company?

The Witness: As agent of the respondent, yes.

Q. Now, then, thereafter, as I understand it, there was another service made in response to a letter. Where is the letter, first? A. [Witness produces document.] 20

Mr. Markley: Did you put a copy of this letter in, Mr. Carpenter [indicating]?

Mr. Carpenter: I read it into the record and then offered it in evidence.

Q. P-7. This letter of March 13, 1928, was written to you, was it not, as Chief Clerk? A. Yes. 30

Q. On March 13, 1928, by Referee J. C. Wegner? A. Yes.

Q. And he sat at Newark at that time? A. Yes.

Q. And he wrote to you at Trenton as Chief Clerk? A. Yes.

Q. And said he was enclosing the petition in this case for the purpose of having it re-served directly upon the employer? A. Yes.

Q. Now, then, in accordance with that instruc- 40

tion from the Referee, you did have it re-served, did you not? A. Yes, on the Textileather.

Q. And the re-service at Newark was at your direction to Mr. Kent, your process server at Newark? A. Yes, I wrote him on April 27th.

Mr. Markley: I offer the note directing re-service.

10

[The document referred to is received in evidence and marked Exhibit DG-1.]

The Court: And that was in compliance with that letter from Mr. Wegner?

The Witness. Yes.

Mr. Markley: May I read this, your Honor?

The Court: Yes.

Mr. Markley: [Reading]: "Trenton, April 27, 1928. My dear Mr. Kent: *Re* Grace Iannazzo *vs.* Textileather; Compensation Petition 7776. Mr. Wegner thinks it would be advisable to serve a copy of the petition in the above case on the respondent direct. Will you kindly take care of this? Very truly yours, Miss Mullen, Chief Clerk."

20

Q. After you sent the petition for re-service to Mr. Kent, you got back, as I understand it, the acknowledgment of service, which is P-5, made directly by the Textileather Corporation? A. Yes.

30

Q. By J. Boyle? A. Yes.

Q. And that service, according to your record, was made by Mr. Riley? A. Yes.

Q. Of your compensation process server's office in Newark? A. Yes.

Q. Mr. Riley is here, is he not? A. Yes, I think he is here.

40

Q. Now, then, no service was made, as I under-

stand it, on the Great American Indemnity Company? A. No, no service was made on the Great American at all.

Q. Now, you have here in your file the copy—that should be in your file—of the Form C, reporting this accident, by the Textileather Corporation, have you not? A. That is right, yes; that is the original report of the accident to the department [producing 10 document].

Q. That is the original report of this accident to the Department of Labor? A. Yes.

Q. Made by the employer, under the statute? A. Yes.

Q. And that is signed by Textileather Corporation, by W. A. Schumacher, is it not? A. Yes, it is.

Mr. Markley: I offer that.

Mr. Carpenter: No objection. 20

[Document referred to is received in evidence and marked Exhibit DG-2.]

Mr. Markley: May I just read it, your Honor? It is brief.

The Court: Yes.

Mr. Markley: [Reading]: "State of New Jersey, accident blank.

"Report every accident to employees arising 30 out of and in the course of employment whether resulting in disability or not and see that each and every question on this form is answered fully.

"This report of accident is to be prepared in triplicate. The original is to be sent by you to the Department of Labor, Bureau of Industrial Statistics, State House, Trenton, N. J. The two copies are to be sent to American 40

Mutual Liability Insurance Company, 969 Broad street, Newark, N. J.

"Form 'C'. First notice of accident. For use by insuring employers. Name of employer: Textileather Co.

10 "Street address: Brown St. & Lister Ave.

"City or town: Newark, N. J.

"Business: Leather mfg.

"Date of accident: Number of month—11; day of month [that is left blank]; year—27.

"Name of insured employee: Bruno Iannazzo.

"Street address: 59½ Hayes St.

"City or town: Newark, N. J.

20 "Nationality: Italian.

"Sex: male; age: 57; married: yes.

"State fully how accident occurred: Above left factory on 11-26-27 all right—later advised he was ill in City Hospital.

"Exact part of person injured, with nature and extent of injury: No injury.

"If sent to hospital, state name and location: City Hospital, Newark, N. J.

30 "If the wages were fixed by the hour, state rate per hour: .42.

"Give number of hours in ordinary day: 10¼.

"Give number of days in ordinary working week: Five.

"State the amount of weekly wages: 21.53.

"Date of preparing this blank: 12-16-27.

"Made out by Textileather Corp. by W. A. Schumacher."

40

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Miss Mullen, you have the informal file here, haven't you? A. I have, but I believe it is in the room. Mr. Riley will have it, I think.

Q. You haven't it yourself? A. No, I haven't.

Q. And you haven't any record there of a notice sent to anybody regarding an informal hearing? A. No hearing notices at all.

HARRISON S. MARTLAND sworn in behalf of plaintiff.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Dr. Martland, what is your official position in the county? A. I am Medical Examiner of Essex County.

Q. Did you perform an autopsy on the body of Bruno Iannazzo on December 9, 1927? A. I did.

Q. By the way, did you treat him before he died? Did he come under your attention before he died? A. I don't recall seeing him; I may have done. Once in awhile I see an interesting case in the wards before they die.

Q. What was the result of your autopsy? What did you find?

> Mr. McLaughlin: I object to this line of testimony, on the ground that this whole matter has been passed upon and decided by the Compensation Court, and that the statement and determination of the Court is binding as far as compensation and all matters and things decided at that hearing are concerned;

and, if I may save time, I think it is in order, as yesterday, that my objection goes for this entire line of testimony—that was the Court's ruling.

The Court: Yes. The objection will be overruled, and it will be understood, as suggested, that it goes to all the testimony of Dr. Martland relating to the autopsy.

Q. You may proceeed, Doctor. A. Can I have the question now?

Q. What did your autopsy reveal? A. My autopsy revealed that it was a man, a workman, about 57 years of age; 5 feet, 5 inches tall; about 150 pounds in weight; and the autopsy showed that this man had a profound anemia, he was very pale, and that he had evidences of multiple hemorrhages in different parts of his body, on his skin, and in his mouth and his gums, and inside of the body, especially in the heart and the pericardium sac covering the heart, and that his bone marrow showed a condition which we speak of as an a-regenerative or a-plastic anemia in which the bone marrow has been exhausted and lays down and fails to form red and white blood corpuscles; and that he died as the result of this a-plastic, a-regenerative—that is, failure to regenerate, to form new corpuscles, and that he died as the result of this anemia, and that this anemia, in my opinion, was due to chronic exposure to benzol.

Q. Can you tell from your examination, Doctor, when this benzol had entered the system of Mr. Iannazzo? A. No, not at all.

Q. When you say "chronic," what is the period during which chronic benzol poisoning would develop? Here was a man who had been employed

from about the 8th of August until the 26th of November. A. On the cases that I handled as Medical Examiner in this county, I had always refused to be employed by either side as an expert, and always testified under ordinary subpœna as to my opinion as to cause of death, and I prefer to always keep that attitude, if I can.

The Court: From what the doctor says, I assume that he declines to answer an expert question. 10

Mr. Carpenter: I am willing to assume—to pay the doctor a reasonable fee, that either he charges or the Court fixes.

The Witness: I do not desire to accept a fee.

The Court: He says he declines to accept an expert fee from either side.

Mr. Carpenter: Well, you know in the other case yesterday we did have the benefit of that testimony. 20

The Court: I know we did, but the doctor apparently had unconsciously gotten into the difficulty which occurred upon cross-examination by his answers to questions upon the direct-examination, which apparently now he is seeking to avoid by taking time by the forelock.

Q. When you said chronic benzol poisoning, just what did you mean? A. I meant an exposure to benzol which had taken place over a fairly long period of time, to distinguish that from acute benzol poisoning, which is an exposure at one single time to the fumes of benzol, and where the man is either found dead, asphyxiated from the benzol, or, if he is pulled out, he recovers; that chronic benzol means continued exposure over a considerable period of time. 30 40

Q. What do you mean by that "period of time," Doctor? A. Well, as I testified before, chronic benzol may go all the way from three to six weeks to years, and, at the minimum, three to six weeks, it is very unusual for a person to die after that small amount of exposure; usually the average case is much longer than that, but it could occur.

10 Q. Didn't you, in this particular case in the Compensation Court, say this—this is only to refresh your recollection——

Mr. Markley: I object to this. The Doctor has not yet said anything of a surprise nature, and counsel has no right to confront him with testimony, and I object to the form of the question, about testimony given in another proceeding, and no proper basis for it.

20 Q. This is the proceeding of Iannazzo against the Textileather, before the Compensation Bureau. Didn't you in that case say this, Doctor——

Mr. Markley: I object to that.

Mr. Carpenter: This is somewhat contradictory to his testimony here.

The Court: I am inclined to sustain the objection.

30 Q. Doctor, may it not be so: that the period of time may be even less than three weeks? A. As far as I know, I suppose, for instance, you could say that it might be two weeks. I cannot fix any definite time; but chronic benzol poisoning, to absorb enough of benzol to have a toxic effect finally upon the bone marrow, usually takes a much longer time than two weeks or three weeks, or six weeks, I don't care what you say. I suppose two weeks
40 would certainly be the very minimum time for the

production of chronic benzol. I think it would be very unusual and rare to have it in such a short time.

Q. Now, is it the effect, Doctor, of what the man gets on a particular day, or is it the cumulative effect that causes the condition that you found on performing the autopsy?

Mr. Markley: Objected to; in the first place, it is calling for an opinion, and if the doctor is to testify to opinions on direct, I suppose you have a right to ask him on cross; second——

The Court: You have a right to ask the doctor upon cross-examination any proper questions which arise on his direct-examination; but as to whether or not the doctor shall answer expert questions, unless you deny the doctor's qualifications, is not a subject of objection on the part of the parties.

Mr. Markley: May I object to it on the further ground that there is no proof here as to the character of the exposure each day that this man suffered, whether it was greater or less, or so on.

The Court: The question may be answered.

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A. The first and most important thing is the continuous exposure to benzol every day, day after day. It is also important, and can be easily conceived, that after continued exposure a man might be exposed on a certain day to an enormous quantity, for instance, which is different from what he

has been exposed to before, and that one exposure might turn the tide in the course of his disease, so that he has a quick collapse after that one exposure; that is true, that is true of any poison, any accumulative poison. So it works both ways, but, as a rule, the continued accumulative effect is the most important.

Q. Can you, from your autopsy, determine on what day this man had sustained a large amount, or whether he had in fact sustained a large amount? Would an autopsy show that? A. No, because in chronic benzol poisoning the benzol is not recoverable at autopsies. It is a volatile poison. You cannot recover it like you do arsenic or mercury, which is recoverable; so that the diagnosis at autopsies on a chronic case of benzol poisoning rests upon three things: first, you have got to know that there has been exposure to benzol, because you cannot recover it on autopsy, you must have that in the history; second, you have got to find lesions at autopsy which are concomitant with what is known as a-plastic anemia, due to benzol. Now, these a-plastic anemias are due to other causes, too, but you connect it up with benzol from only the history of exposure alone; and, third, you have got to find, in autopsy, that there is no other cause of death. Now, if you have those three factors, you form the opinion that the man died of chronic benzol poisoning.

Q. And what was your death certificate that you issued in this case? A. Well, I don't recall, but I imagine it is somewhat as follows: "A-regenerative anemia, probably occupational, due to benzol poisoning in the artificial leather industry; under further investigation."

Mr. McLaughlin: I think the death certificate is right here in the compensation files, and it would be the best evidence.

Mr. Markley: I have taken that from the compensation files.

Mr. Carpenter: Your testimony is very accurate.

Mr. McLaughlin: He left out a word, I think. [Reading]: "A-plastic anemia, probably occupational, due to chronic benzol poisoning, artificial leather industry." 10

Mr. Carpenter: I would like to offer this in evidence.

The Court: It will be received.

[Document referred to is received in evidence and marked Exhibit P-9.]

Q. Doctor, would it be possible to say, from the facts as you had them, whether on the date of the performance of this autopsy, picking any particular day in the last month or two preceding, that from 20 and after a certain day, assuming the man continued to work from that given date, the additional exposure to benzol could have made no difference in the result that you found?

Mr. McLaughlin: I do not think the doctor, even in an opinion, must deal with possibilities, and I object.

Mr. Carpenter: Do you see what I am getting at, Judge—because of the language of that determination? 30

The Court: It is not the possible effect, but the question is whether it is possible to say, whether it is possible for the doctor to testify.

Mr. McLaughlin: I suppose it is possible for anybody to say anything.

The Court: That presupposes, of course, that what he would say would be an honest statement. 40

Mr. McLaughlin: My thought is that a professional witness on the stand is certainly limited to probabilities.

The Court: Under the conditions; no question about that.

[Question read.]

The Court: Maybe the doctor understands
10 that question, but I do not.

The Witness: It is too obscure. I could not answer that question.

Mr. Carpenter: Well, I think he has answered it, but not in the way I tried to put it.

Q. Your autopsy was performed on the 9th of December, was it? A. Yes.

Q. Now, assuming that this man worked until the 26th of November, and was exposed to benzol in
20 his work from the 1st of November, right up to the last day he worked, the 26th of November—would the exposure to benzol in the last week or two that he worked have made any difference in his condition? A. Oh, yes; certainly; that is, I understand he started to work on the 1st of November?

Q. He started to work in August and worked almost every day right up to the 26th of November.
30 A. And then he stopped working November 26th?

Q. He did not work again until he died. A. And now you are asking me if he was exposed to larger quantities in the last two weeks?

Q. I am asking whether his continued work with benzol had any effect on this condition that you found. A. From August to November 26th?

Q. Was it his continued work from August right on down to the last day he worked, to the 26th of November? A. Whether that had any effect on the
40 conditions as I found them?

Q. Yes. A. Yes, it produced the conditions as I found them.

Q. And could you say what part of that time caused this condition? A. Oh, no.

Q. Well, if he had not worked the last day or two, would that have made any difference, or wouldn't it? A. Oh, I couldn't tell. He might stop in the middle of November and go for a period of three or four months without exposure to benzol at all, and suddenly come down with benzol anemia. It is impossible to tell.

Q. And might he, by the same token, have stopped work in the middle of November and recovered? A. He might have had, yes. Lots of them do.

CROSS-EXAMINATION BY MR. MARKLEY:

Q. In other words, you could not tell when the disease really started, could you? A. No.

Q. All you know is that he died of benzol poisoning? A. All I know is that he died of an a-plastic anemia, and that he had an exposure to benzol which was of a sufficient length of time to produce the conditions found at autopsy. That is all I can say.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. As I understand your testimony, after being exposed to benzol, as he was, from August 8th to the middle of November, he might have at that time ceased being exposed to benzol, and thereafter, within a period of a month or weeks, or two months, have come down with this anemia, which is the result of benzol?

Mr. Carpenter: Objected to.

Mr. Markley: I object to it on the ground

that that is a hypothesis which is not proven in this case.

The Court: I sustain the objection. There is no testimony which is the basis of your question.

Mr. McLaughlin: I submit, sir, that about the third question before the end of the examination, the exact answer was given.

[Question read.]

The Court: I will overrule the objection.

Mr. Markley: The question Mr. Carpenter put was a general one, on a hypothesis not applying to this specific case at all. Now, here, Mr. McLaughlin has incorporated in his assumption that the doctor testified in this case that he, the deceased, might have stopped work on November 15th, and then come down three months later. It seems to me that the application of a general answer as to a general question, when the proof is actually to the contrary, is improper.

The Court: An exception will be noted.

Mr. Markley: Note my exception.

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. [Again read.] A. Yes, that is right.

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. And he might, by the same token, have completely recovered? A. And completely recovered; yes.

By the Court:

Q. When, in your opinion, Doctor, if you choose to answer this question, did he receive the full accumulative dose of the benzol? A. In this case?

Q. Yes. A. Up to the last day he worked and was exposed to it.

Q. That is, at that time he had received the full accumulative dose? A. Yes; I mean the last day of exposure. It is when—I mean, if a man is exposed to benzol for six weeks, and then he works in the seventh week, well, every day in the seven weeks is an additional insult to his bone marrow, so the longer he works the worse it becomes.

GIOVANNI FASANO sworn in behalf of plaintiff.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Dr. Fasano, you were Mr. Iannazzo's personal physician, were you not? A. Yes, sir.

Q. How many years were you his physician? A. Well, for over ten years.

Q. Over ten years? And did you have occasion to treat him in the latter half of 1927? A. Yes, sir.

Q. What was the date that you were called in to treat him? A. November 27th.

Q. November 27, 1927? A. Yes.

Q. When before that had you been called in to give him any medical attention? A. Well, I couldn't recollect that.

Q. A long while before? A. Yes, during the year; during 1927.

Q. Sometime during 1927? A. Yes.

Q. Do you know how long before December it was? A. Well, I couldn't state that.

Q. Was it a matter of months before? A. Yes; months before.

Q. Some months before? A. Yes.

Q. What was the trouble with him at that time, before December? A. I was his lodge doctor, so he would drop in once in awhile for colds, for slight ailments.

10 Q. When you were called in to see him—what was the date? A. November 27th.

Q. What was his condition on November 27th, when you saw him? A. He sent for me on account of bleeding from the gums. That was the main thing he sent for me for.

Q. And was that all you found the matter with him at that time? A. No, I mean that is the main thing he sent me for. Of course he—I don't know 20 whether I can say this—he sent for me because he had been bleeding from his gums from I think the previous day.

Q. The history that he gave you was that the previous day his gums started to bleed? A. Yes, and he did not succeed in stopping the bleeding. I remember he told me that he had kept a handkerchief on his mouth all along since the previous day.

Q. Since the day before he had tried to stop it with a handkerchief and had been unable? A. 30 Yes.

Q. And did he have any nose bleed that day? A. Yes, nose bleeds, yes.

Q. The same day? A. The same day.

Q. And had he had those before? A. Well, I don't know about that.

Q. You did not get any history of nose bleed before the day before? A. No.

Q. And was that all that was the matter with 40 him when you were first called in? A. Well, he

was not feeling well; he was pale, he was a sickly man, a sickly-looking man.

Q. He looked sick? A. Yes.

Q. And looked pale? A. Well, yes; he was very sick.

Q. And what did you do with him? A. Well, I just prescribed something. I kept him under observation for a couple of days, and waited until November 29th, and then I got the suspicion of this benzol poisoning, and advised him to go to the hospital, and he refused it.

Q. It was on the 29th that you believed it was benzol poisoning? A. Yes, that was the first time I had the suspicion of benzol poisoning.

Q. You did not think it was benzol when you saw him on November 27th? A. No.

Q. And then on the 29th did you send him to the hospital? A. Yes, sir; I advised him to go to the hospital, but he refused to go. He did not want to go.

Q. And when did he go to the hospital? A. I think December 2nd, I guess.

Q. December 2nd he went to the hospital? A. They sent for me again on December 2nd, and at that time he acceded to my advice.

Q. And did you treat him in the hospital? A. No.

Q. He was taken care of by the hospital doctors in the hospital? A. Yes.

CROSS-EXAMINATION BY MR. MARKLEY:

Q. How many times did you see him? A. Three times.

Q. The first time was November 27th? A. Yes, sir.

Q. And at that time you did not have any suspicion of benzol poisoning at all, did you? A. No.

Q. And then on November 29th you saw him the second time? A. Yes.

Q. And then you had a suspicion it might be benzol poisoning? A. Yes, sir.

Q. And then you recommended he go to the hospital? A. Yes.

Q. And he would not accede to that request, would he? A. Well, yes; he did not want to go; he refused to go.

Q. And then when you saw him on December 2nd, you advised him again to go to the hospital? A. Yes.

Q. And he went on December 3rd, didn't he? A. Well, I couldn't say that.

Q. And you did not see him after that? A. No; that is the last I seen him.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Benzol poisoning, Doctor, is a rather unusual disease, isn't it? A. From my experience, yes.

Q. And in the history you obtained in the first instance, did you find out about his employment? A. Yes, sir.

Q. And that was generally about him being mixed up with varnish, was it? A. Yes, sir.

Q. And within two days these symptoms of his connected in your mind with benzol, did they? A. Yes, sir.

Q. And thereafter you sent him to the hospital? A. Yes, sir.

Q. In addition, Doctor, to the condition of his gums that you have told us about, and also you said he was pale, didn't you—— A. Yes, sir.

Q. [Continuing.] What else did you observe when

you were there? A. Well, he was feeling weak. He told me he had not slept, he did not sleep the previous night on account of bleeding from this gums, and on account of being nervous.

Q. Did he say anything about dizziness, Doctor? A. Yes, he was feeling dizzy.

Q. You had a history of dizziness, did you? A. Yes, sir.

Q. Did he appear to you to be—— A. [Interposing.] Oh, another thing: spots, I remember now; he showed some spots on his lungs. 10

Q. And did he appear to you to be in an anemic condition? A. Yes, sir.

Q. From the symptoms you observed, coupled with the history that you had of his exposure to benzol, you diagnosed it as benzol poisoning, did you? A. I said "probably benzol poisoning."

Q. And that was confirmed by the autopsy later on? A. Yes, sir. 20

Q. As to Mr. Iannazzo having had chronic benzol poisoning, are you satisfied as to that now, Doctor, that he did have it?

Mr. Markley: I object to that question. The doctor has not said that, and the doctor is not qualified.

The Court: The question may be answered.

Mr. Markley: Exception. 30

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. [Read.] A. Yes, sir.

Mr. McLaughlin: Now, regarding the following hypothetical question, if the Court 40

please, there is some basis for it already in the record, but I will produce and have here in court whatever other additional evidence there will be necessary to complete the basis of the said question.

Q. Doctor, prior to August of 1927, was Mr. Iannazzo healthy, in your opinion? A. Yes, sir.

10 Q. Knowing, as you do, that, prior to August, Mr. Iannazzo was a healthy man, and assuming that on August 8, 1927, he went to work at an occupation in which he was exposed to benzol, and from which you obtained a history of exposure to benzol, and that shortly after going to work he began to develop symptoms characterized by nervousness, dizziness, listlessness, loss of appetite, and generally not feeling well, all of which symptoms became 20 more noticeable by the early part of October, and then, as you say, you saw him on November 27th, with the symptoms that you did find, which you have just testified to—in that situation, Doctor, isn't it probable that this man contracted this benzol poisoning shortly after he started his occupation in August, with the poisoning becoming worse in his system by October?

Mr. Markley: I object to that as immaterial, 30 incompetent and irrelevant. The doctor has not been qualified to testify on benzol poisoning, and there is no proof in the case to sustain many of these alleged facts which Mr. McLaughlin says he is going to prove.

The Court: Mr. McLaughlin promises to produce those facts; and, subject to a motion to strike out, the question may be answered.

Mr. Carpenter: May I now object on this 40 ground: the question asks him the one thing

only: isn't it fair to say that the man contracted benzol poisoning at a particular time, and whether it got worse and he died on that particular time. In other words, the doctor cannot give his opinion. This calls for an answer yes or no.

[Question read.]

10

Mr. Carpenter: We are not concerned with October—what time in October?

Mr. McLaughlin: I am concerned with October.

The Court: The question may be answered and an exception noted.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

20

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A. Yes, sir.

Q. And that, becoming worse in October, he died as a result of that poisoning on December 8th, is that true? A. Yes, sir.

30

Q. Isn't it probable, Doctor, that the result of the poisoning from the exposure to benzol was in the man's system, as testified to, in the early part of October, and that in that situation he had in him at that time what caused his death later on, December 8, 1927? A. I do not understand the question.

[Question read.]

40

Mr. Markley: I object to the question on the same grounds as I urged to the previous question.

The Court: The objection will be overruled and an exception noted.

Mr. Carpenter: Will you allow me one too, Judge?

10 The Court: Yes.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

20 A. Yes, sir.

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. Doctor, do you think that the fact that Mr. Iannazzo continued to work with the benzol day after day, the continued accumulation had any effect on his system?

30 Mr. McLaughlin: I do not think that is proper redirect-examination, and I object to it on that ground.

The Court: The question may be answered.

Counsel for defendant American Mutual Liability Insurance Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

40 A. Yes.

Q. Explain what you mean by that, Doctor. A. What I mean by this?

Q. Yes. A. I mean by continued exposure of this benzol poisoning these benzol fumes had an accumulating effect, and accumulation gathered—what we call cumulative action—that is what I mean.

Q. That is what caused the damage, is it? A. Well, the cumulative action of this poison on the blood and the bone marrow causes this plastic anemia and causes this effect. 10

Q. Well, is it possible to say on what particular day it was complete? A. No, it is not possible.

The Court: What do you mean by "complete"?

The Witness: Well, it is possible it is the date of death; that is the day on which the action is complete. 20

JOSEPH BOSCO sworn in behalf of plaintiff.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Mr. Bosco, you are the foreman of the Textileather Company, aren't you? A. Yes, sir.

Q. And did you know this man Bruno Iannazzo in his lifetime? A. Yes, sir. 30

Q. You were his boss, weren't you? A. Yes, sir.

Q. What work did he do? A. He worked as a strainer.

Q. Straining what? A. Straining what we call dope.

Q. And dope is—— A. A combination of——

Q. The composition which is spread on cloth to make the imitation leather? A. Yes, sir. 40

Q. In the factory you call the material "dope"? A. Yes, sir.

Q. That is the same thing as a paint, isn't it? A. Yes, sir.

Q. And how much of that material did he handle per day? A. Well, I wouldn't say exactly; about 1,500 pounds.

10 Q. And how much benzol was there in the material at that time? A. About twenty-five per cent.

Q. About twenty-five per cent? A. Yes, sir.

Q. This material came to him in what kind of container? A. In a can of about 250 pounds.

Q. And what was it his duty to do with the material in the can? A. He would take it and pour it into another can that had a pump on it, and it went through this pump, through the strainer.

20 Q. What kind of a strainer did you use? A. Well, a strainer of 90-mesh.

Q. Was it iron or bags? A. Well, he strained it through the bag and through this iron mesh also; he used both.

Q. Did he have to put his hands in the material? A. He had a knife to scrape the sides of the can.

The Court: That is, he worked right over the can, did he?

30 The Witness: Yes, sir; right over the can.

Q. This was a matter of pouring one to the other rather than mixing it? A. Pouring it from one can into the other can, and then straining it through this bag or 90-mesh.

Q. And how many hours a day did he work? A. Ten and one-quarter hours.

Q. What kind of a room did he work in? A. Well, a room, I should judge, about 75 feet wide and 150

40 or 125 feet long.

Q. And how close was the nearest window? A. I should judge about 25 feet.

Q. And there was a stairway coming upstairs very close to him, wasn't there? A. Well, the stairway was about 25 feet away.

Q. About 25 feet away? A. Yes, sir.

Q. And this was the upper story of the factory? A. Upper story of the factory; yes, sir. 10

Q. And had you had any other strainers contract benzol poisoning, to your knowledge? A. No, sir.

Q. This was the first one? A. Yes, sir.

Q. And when did Mr. Iannazzo go to work for you. A. Sometime in August, I think.

Q. And what was the last day he worked? A. Sometime in November.

Q. November 26th—we will assume that is the date. We will prove that later. A. Something 20 like that.

Q. Now, as far as you knew and could see, what was his condition up to the last day he worked? A. Well, he seemed to be the same to me. He did not seem to have no change.

Q. Did he work steadily. A. Yes, sir.

Q. He was out just a few half days or a few days between August and the last of November? A. Yes, sir.

Q. And did he complain to you about feeling ill? 30 A. No, sir.

Q. And did he work right on to the end of the day on the 26th of November? A. I think he did.

Q. He did not report to you that he was ill when he left that day, did he? A. No, sir.

Q. You testified in the compensation hearing, where the case was handled by the American Mutual, did you not? A. Yes, sir. 40

Q. Were you consulted at all by the American Mutual or questioned about the facts of this case at all before that trial? A. No, sir.

Q. Were you asked to come by the American Mutual, or were you subpœnaed by the petitioner, Mrs. Iannazzo? A. I was subpœnaed by the petitioner.

Q. You were not even asked any questions by
10 Mr. McLaughlin, who represented the insurance company, were you? A. No, sir.

Q. Did you have other men working close in the factory to Mr. Iannazzo? A. Well, I did, but I don't know their names now.

Q. Who worked closed by him? A. Yes, sir.

Q. Did any of these other men get benzol poisoning? A. No, sir.

20 Cross-examination by Mr. Markley:

Q. His regular hours were ten and one-quarter hours a day? A. Yes, sir.

Q. And he performed his work during those hours? A. Yes, sir.

Q. And did he work overtime? A. I couldn't tell you whether he worked overtime or not.

Q. On Saturdays did he work all day, ten and one-quarter hours? A. Well, he would work eight
30 hours on Saturdays and get paid time and one-half for it.

Q. He worked up until the last day, the 26th of November, 1927? A. Yes, sir.

Q. And made no complaint? A. No, sir.

Q. And he did his work properly? A. Yes, sir.

Q. You noticed no change in him? A. No.

Q. And he was paid a salary right up to that time, wasn't he? A. Right up to that time; yes,
40 sir.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. You told the truth in the Compensation Court, didn't you? A. Yes, sir.

Q. And in telling the truth you testified substantially as you have today, that this man was working in benzol since August 8, 1927?

Mr. Markley: I object to the form of the question. I think the part that "you are now telling the truth" is improper. We assume that is so, without putting the question. 10

The Court: That is the assumption.

Q. Well, it is true that he was working in benzol since the day he started to work in the plant? A. Yes, sir.

Q. And there was no question in your mind, from the time he died, that he died of benzol poisoning, was there? 20

Mr. Markley: I object to that.

The Court: I sustain the objection.

Q. There is no question now, is there, in your mind, but that Mr. Iannazzo died of benzol poisoning?

Mr. Markley: The same objection.

The Court: I will sustain the objection. 30

Counsel for defendant American Mutual Liability Insurance Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. You say that nobody else in the Textile plant had benzol poisoning? A. I didn't say the Textile plant; I said alongside of him, where he was working. 40

Q. Nobody else that you know of had benzol poisoning? A. Well, I knew somebody else.

Q. And on or about or shortly after the time that Mr. Iannazzo died you people discontinued benzol, didn't you? A. Yes, sir.

Q. And is it true that you have moved or are moving out of the state entirely—the plant?

10

Mr. Markley: I object to that.

The Court: I sustain the objection.

Q. Did you know an employee down at your plant named Peter Osborne? A. I don't remember. There might have been a Peter Osborne, but I don't remember.

Q. Where did you say—what part of the plant did you say Iannazzo worked? A. On the second floor.

20

Q. Isn't it true that Peter Osborne worked on the second floor on or about the time Iannazzo was there, and that Osborne contracted benzol poisoning? A. Not that I know of.

Q. Do you remember Osborne at all? A. I don't remember him; he may have worked there, but I don't remember him.

Q. Other than Mooney, do you remember any other benzol case? A. No, sir.

30

Redirect-examination by Mr. Carpenter:

Q. By the way, those cans that came with 250 pounds of dope in them were covered? A. Yes, sir.

Q. And they went away covered? A. After they were strained, yes.

Q. All he did was to handle them, from the time they came to him covered, put them through a

40

strainer, put on the cover and throw them off again? A. Yes.

RECROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Well, he would scrape the sides of the cans, as you have told us? A. Yes, sir.

Q. Lean over and scrape the sides of the can? A. With a knife, yes. 10

The Court: Were they the benzol cans?

The Witness: No, they are the solution with the benzol in it.

By Mr. Carpenter:

Q. How long a knife did he have? A. Oh, I should judge about fourteen inches long.

20

By the Court:

Q. This solution came already prepared? A. Yes, sir.

Q. That is, you did not make up the solution with the addition of the benzol to it in your plant? A. Well, they made the solution downstairs, and it was brought upstairs, and it was brought to this strainer.

Q. Now, all he did was to strain a solution which had been prepared downstairs, is that right? A. Yes, sir. 30

By Mr. Carpenter:

Q. He had nothing to do with the mixing of the solution at all, did he? A. No, sir.

Mr. Carpenter: I will call Mr. Boyle. I am only calling Mr. Boyle to prove the days this man worked and the days he was out. 40

The Court: If that will be admitted, you need not call him.

Mr. Carpenter: It is made by him, and I have the payrolls made by him to show.

Mr. Markley: I have no objection, if you say that is accurate.

Mr. Carpenter: Mr. Boyle made it. I don't know anything about it. Mr. Boyle made it from the payroll.

Mr. McLaughlin: No objection.

10 Mr. Carpenter: That will save a little time. I will offer in evidence that statement of the time Mr. Iannazzo worked for us, showing his time out.

Mr. McLaughlin: I think the jury ought to know. You can read it if you want, or I will read it.

Mr. Carpenter: Yes. Mark it.

20 [Document referred to is received in evidence and marked Exhibit P-10.]

Mr. Carpenter: I will read this for the information of the Court and jury [reading Exhibit P-10]. The last five weeks he did not lose any time.

WALTER A. SCHUMACHER sworn in behalf of plaintiff.

30

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. What was your position with the Textileather Company, Mr. Schumacher? A. General office work.

Mr. Carpenter: I call on the American Mutual to produce a letter written to them by Mr. Schumacher, dated December 8, 1927.

Mr. McLaughlin: Let me see the carbon,

40 Mr. Carpenter, and maybe we can save time.

Mr. Carpenter: That is the first notice of the claim.

Mr. McLaughlin: No objection.

Mr. Carpenter: Counsel does not produce the original and consents that I use a copy.

[Document referred to is received in evidence and marked Exhibit P-11.]

Mr. Carpenter: I will read it to the jury [reading]:

"Newark, N. J.
December 8, 1927. 10

"American Mutual Liability Ins. Co.
17 William Street,
Newark, N. J.

"Gentlemen:

"Referring to conversation which the writer had with your office this morning, we confirm having advised you that we learned today indirectly that Bruno Yenatzo of 59½ Hayes 20 Street, Newark, was in the City Hospital in a serious condition.

"This is the first knowledge we had of anything being the matter with this party. Our records show that he has not reported for work since Nov. 26 last. We also learned today through other channels that Dr. Fasano is his family physician. Some one from the City Hospital called us up yesterday whose name is 30 Dr. Bevincentis, and stated one of our men is seriously ill and they are trying to diagnose the case and inquired whether any of our men came in contact with any acetanilid.

"Kindly advise us at once about the accident report for the above party.

"Very truly yours,

TEXTILEATHER CORPORATION,
W. A. SCHUMACHER." 40

I call on the defendant to produce a letter written by the plaintiff to the American Mutual, under date of December 13th, 1927.

Mr. McLaughlin: Have you a copy, Mr. Carpenter?

Mr. Carpenter: Yes, but I want the original and the enclosure.

Mr. McLaughlin: Well, I would not have the original.

Mr. Carpenter: Well, why wouldn't you?

10 Mr. McLaughlin: Because I carry copies myself. What date is it?

Mr. Carpenter: December 13th.

Mr. McLaughlin: Well, I have a copy of it —no, here is the original [handing document to Mr. Carpenter].

Mr. Carpenter: I offer the original, produced by Mr. McLaughlin.

[Letter referred to is received in evidence

20 and marked Exhibit P-12.]

Mr. Carpenter [Reading]:

"Textileather Corporation.

"Newark, N. J.
Dec. 13, 1927.

"American Mutual Liability Ins. Co. of Boston,
17 William Street,
Newark, N. J.

30 "Gentlemen:

"We attach hereto letter and statment received from the Newark City Hospital under date of December 10.

"We have written them stating that we have referred this matter to you for your attention.

"Very truly yours,

TEXTILEATHER CORPORATION,
W. A. SCHUMACHER."

40

Have you got the statement from the hospital that accompanied that?

Mr. McLaughlin [Producing document]: This is a statement from the hospital. It is a copy of the statement from the hospital; that is all that I have. If you have anything else, let me know and I will be glad to consent to it. 10

Mr. Carpenter: Here is what I called for. Maybe you have got the receipted copy—a receipted bill from the hospital.

Mr. McLaughlin: No, I have not.

Mr. Carpenter: It says so in this letter. This is the letter from the hospital, which was enclosed.

Mr. Markley: Is this marked, Mr. Carpenter? 20

Mr. Carpenter: It accompanied P-12 [reading]:

"Newark City Hospital, Newark, N. J.

"December 10, 1927.

"Textileather Co.
Newark, N. J.

"Gentlemen:

30

"You are hereby notified that personal injury was received by Bruno Ianazzo, 59½ Hayes St., Newark, N. J., while engaged in your employ, as a laborer, on or about Dec. 3, 1927, and that compensation will be claimed.

"We desire to call your attention to the Act, termed the Employers Liability Act chapter 95 paragraphs 13, 14 and 15 which entitles us to compensation.

40

"We are therefore forwarding statement for treatment rendered, which we trust will receive your prompt attention.

"Very truly yours,

[Signed] EARL H. SNAVELY, M. D.
Medical Director."

Have you got the statement that was rendered by the hospital, Mr. McLaughlin?

Mr. McLaughlin: No, I have not.

Mr. Carpenter: I next call on the defendant to produce a letter written the 19th of December to you.

Mr. Markley: The American Mutual?

Mr. Carpenter: Yes.

Mr. McLaughlin: What is the letter?

[Mr. Carpenter exhibits document to Mr. McLaughlin.]

Mr. Carpenter: Shall I offer this copy?

Mr. McLaughlin: I haven't the original.

Mr. Carpenter: May I use the copy?

Mr. McLaughlin: Yes.

Mr. Carpenter: I will offer, then, these three letters, the letter and the reply—a letter from the American Mutual to Textileather, accident blank, and letter to the American Mutual, enclosing it.

[Documents referred to are received in evidence and marked, as one exhibit, Exhibit P-13.]

Mr. Carpenter: This is a letter from the American Mutual Liability Insurance Company to the Textileather Company *re* Bruno Iannazzo [reading]:

"December 16, 1927.

"Attached you will find an accident report in connection with the above matter. Please

be advised that you are to affix your signature, retain one copy for your records, send one copy to the Department of Labor and return the others to this office.

"Yours very truly,

AMERICAN MUTUAL LIABILITY INS. CO.
M. COHEN, P.
Branch Claims Manager." 10

The next day—no, December 19th—Mr. Schumacher wrote this letter to the American Mutual [reading]:

"Newark, N. J.
Dec. 19, 1927.

"American Mutual Liability Ins. Co. of Boston,
17 William Street,
Newark, New Jersey. 20

"*Re* Bruno Yenctzo.

"Gentlemen:

"Referring to your letter of the 16th, we enclose herewith accident report in connection with the above matter, and have sent one copy to the Department of Labor at Trenton.

"Very truly yours,

TEXTILEATHER CORPORATION,
W. A. SCHUMACHER." 30

Q. Now, Mr. Schumacher, when did you first learn that Mrs. Iannazzo had commenced a proceeding in the Department of Labor and had served a petition for compensation on the American Mutual? A. After the hearing.

Q. Did any copy acknowledged by Mr. Boyle come to your attention? A. No, sir. 40

Q. You are the man who wrote these letters to the American Mutual and filled out the blank, aren't you? A. I did not fill out the blank; I signed the blank.

Q. Who filled in the blank? A. The American Mutual.

Q. And were you at all consulted by them about preparing for trial? A. Not at all.

10 Q. Did they give you any copy of the answer they had filed? A. None whatsoever.

Q. And, after the hearing, what was the next thing that happened? A. After the hearing, yes.

Q. When Mrs. Iannazzo got a judgment for compensation? A. I knew nothing whatever about the case after those letters that I wrote.

Q. Well, do you remember the Sheriff coming down there and paying you a visit? A. I heard

20 about it, yes, later in the day.

Q. He did not see you? A. No.

Q. He did not take you to jail? A. No.

Cross-examination by Mr. Markley:

Q. As I understand it, Mr. Schumacher, you had charge of the compensation matters for your company? A. So far as making out the reports, yes.

Q. And reporting accidents, and so on? A. Re-

30 porting accidents.

Q. Mr. Boyle, who acknowledged the petition for your company, he is the gentleman who was up here just a moment ago, about to take the stand, isn't he? A. Yes.

Q. What was his position there? A. He was timekeeper.

Q. And, as I understand it, this answer which has been offered in evidence as P-4, was not pre-

40 pared by you? A. No, sir.

Q. It was prepared apparently by Clarence B. Tippett, who, according to the record in this case, is an attorney for the American Mutual. Did you know him? A. I met him on another occasion.

Q. Did he consult you before filing this answer? A. No, sir; he did not.

Q. Apparently it is verified by Clarence B. Tippett [reading]: "Of full age, being duly sworn, according to law, on his oath, deposes and says, that he is the agent of respondent named in the foregoing answer." Did you authorize him to file this answer for you? A. I did not.

Q. You sent out these notices to the American Mutual that have just been put in evidence by Mr. Carpenter? A. Yes, sir; I did.

Q. You sent none to the Great American, did you? A. No, sir.

Q. Now, the petition that was served on your company by Mr. Boyle, it appears from Exhibit P-5, the acknowledgment by the Textileather Corporation of the petition appears to have been April 30, 1928—do you know what was done with that petition after you received it? A. No, sir; I never saw it before.

Q. When did you see it? A. Now.

Q. For the first time? A. Yes, sir.

Q. And you do not know what Boyle did with it? A. No, sir.

Q. So that you did not do anything with respect to it yourself? A. No, sir.

Mr. Carpenter: Mr. Boyle was only a bookkeeper.

The Court: Who was Mr. Boyle?

The Witness: He was a timekeeper.

Q. Employed in your plant at Newark? A. Yes, sir.

Q. Back in April, 1927? A. Yes, sir.

Q. Still employed by the company? A. No.

Q. But he was here today, was he not? A. Yes, sir.

Q. And he was employed by your company in April, 1928? A. He was.

10 CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. You mean Boyle never communicated with you at all regarding the service upon him for the company of the petition? A. No, sir.

Q. Of your knowledge, did he talk to anyone else about it? A. I couldn't say that.

Q. Well, have you since learned that he talked to, for instance, Mr. Lippmann about it? A. No, never heard.

20 Q. As far as you know, he kept it a secret that the petition had been served on the company, is that it? A. I don't say that, but I never heard any remarks or anyone talk about it.

Q. Do I understand that you were in charge of compensation matters for your company around the period that we have been discussing? A. As far as taking care of the reports, yes.

Q. And do I understand that you were not con-
30 sulted by the American Mutual about this case? A. No, I was not.

Q. You mean to say that nobody from the American Mutual went over this Iannazzo matter with you? A. Other than the letters that have been put into evidence.

Q. I am talking about a conversation with you. A. Outside of a man—that inspector of yours being down there afterwards and seeing where the man
40 worked.

Q. Then somebody did talk to you about the case? A. Just that one man.

Q. Well, it had to be a person, a human being that would talk to you, wouldn't it? What was his name, Mr. Schumacher? A. The same man that was down on the other case—Crippen, whatever his name was.

Q. Crippen? A. Crippen.

Q. And he went over the entire matter with you, 10 didn't he? A. He went over—wanted to see where the man worked and what he did.

Q. And he wanted to know how long he had been employed? A. I don't recall whether he asked that or not.

Q. Would you say he did not ask you when he first started to work for you? A. He might have asked.

Q. And he found out from you that he had been 20 out on an average of a day a week until the last few weeks of his employment, didn't he? A. I don't believe he asked for that information.

Q. And didn't he find out from you, too, that he had been working daily with a solution, handling 1500 pounds of a solution containing 25 per cent. of benzol? A. No, he did not, because I didn't even know it myself.

Q. Well, did you send him on to Bosco again? 30 A. Not to my knowledge.

Q. You did not send him into the plant at all? A. I believe I went in with him that day, the only time he came down.

Q. And it then developed, didn't it, that Iannazzo had been exposed to benzol? A. He had been exposed?

Q. Yes. I mean that you then told the American Mutual representative that he had been exposed to benzol? A. I don't believe I did. 40

Q. Were you keeping it a secret from him? A. No. Why should I?

Q. You knew that the autopsy showed chronic benzol poisoning? A. I didn't know what the autopsy showed.

Q. Weren't you interested in that? A. Sure, I
10 was interested in it.

Q. You knew that Iannazzo had died of benzol poisoning at that time, didn't you? A. No, I did not.

Q. You know it now, don't you? A. I know it now, from what is reported.

Q. And didn't the representative from the American Mutual call your attention to the fact that the American Mutual policy had only been in effect
20 about a week during this man's employment? A. No, he did not.

Q. You knew that the American Mutual policy went on from November 18th? A. Well, what was —what has that got to do with it?

Q. Did you, at the time the policy went on, tell them about Iannazzo's condition? A. At the time the policy went on?

Q. Yes. A. No.

Q. Why not? A. Why not? Because it wasn't
30 my place to; I didn't have charge of the policies.

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. As far as you know, Iannazzo was all right up until the 26th of November?

Mr. McLaughlin: I object to that.
The Court: I sustain the objection.

Q. Did you know anything was the matter with
40 Iannazzo prior to the 8th of December, 1927?

Mr. McLaughlin: I object to that.

The Court: He may not have known him at all.

The Witness: I didn't know him, no. I never saw him.

JULE D. LIPPMANN sworn in behalf of plaintiff. 10

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Mr. Lippmann, you are the vice-president and general manager of the Textileather Corporation, aren't you? A. Yes, sir.

Q. Did you know Bruno Iannazzo? A. I didn't know him personally.

Q. Were you all the time engaged in the course of your business for the defendant at the plant, Brown street and Lister avenue, Newark? A. Yes. 20

Q. And when were you first informed that a petition had been served for compensation on the American Mutual Liability Insurance Company or on your company? A. In the case of Iannazzo, I don't believe I ever was informed personally about it.

Q. When did you first hear that the case of Iannazzo against your company was going to be tried, or that it was on the list, or anything about 30 it? A. The first I heard—I had been away on a business trip, and when I returned I heard that several of our employees had been subpœnaed by Mrs. Iannazzo to appear at a hearing. That was the first intimation that I had there was going to be a contest of any sort about it.

Q. Were you, or your company, to your knowledge, served with any copy of the petition in that case? A. No, not to my knowledge.

40

Q. Now, what was the next thing you heard? Were you there the day the Sheriff appeared? A. He appeared in my office, yes.

Q. How long was that, do you remember, after this trial in the Compensation Court? A. Why, I should say possibly a week; I don't recall the exact time.

Q. Had any notice been given to you by the
10 American Mutual or by the Great American, or any other insurance company, that they would not take over and pay that judgment?

Mr. Markley: I object to that, as far as we are concerned.

The Court: I will sustain the objection.

Q. Well, as to the American Mutual, had they given you any notice that they would not pay it? A. None whatsoever.

20 Q. The first you knew of it was when the Sheriff appeared? A. Yes, sir.

Q. Was Clarence Tippett, who swore to the answer filed in behalf of the Textileather Corporation, in the employ of the Textileather? A. No, sir.

Q. Had he ever been acting as attorney for your company? A. No, sir; never heard of him before.

Q. And McCarter & English, who appeared and defended the case in court, through Mr. McLaugh-
30 lin, had they ever represented your company before? A. No, sir.

Q. Did your company retain them or authorize them to appear and defend that case for you? A. No, sir.

Cross-examination by Mr. Markley:

Q. I assume your company had its own attorneys at that time—you had your own counsel, didn't
40 you? A. Not represented on the hearing, no.

Q. Not in this case, but I mean generally you had attorneys representing you? A. Yes; we had a general counsel, yes.

Q. And you were, I understand, vice president of the company? A. That is right.

Q. And you say you knew nothing about the hearing coming on in this case in the Compensation Court? A. Nothing at all. 10

Q. Prior to the time it was to come on? A. No, sir.

Q. And you did not appear as a witness at the trial? A. No, sir.

Q. You heard about the Sheriff having been down to your plant a week or so afterward? A. I was present when he came around.

Q. I want to refresh your recollection on knowing about this trial. I want to show you a letter. 20

Mr. Carpenter: Is it his letter?

Mr. Markley: Yes, on May 8, 1928.

Mr. Carpenter: That is not his letter.

Mr. Markley: Won't you let the witness speak?

Q. I want to show you a letter dated May 8, 1928, that you wrote Mr. Goas, and ask you whether that is your letter to Mr. Goas, Deputy Workmen's Compensation Commissioner, which I have taken from the Newark file of the Workmen's Compensation Bureau, with a subpœna therewith enclosed—do you remember that [handing witness documents]? A. [Examining.] Yes, I do, now that you refresh my memory. 30

Q. Having had your memory refreshed, the fact is, is it not, that on May 8, 1928, you were served with a subpœna for you to appear, and the sub- 40

pœna is annexed to the letter, on May 9th, at ten o'clock? A. That is right; I recall that.

Q. At the Department of Labor Building, 9 Franklin street, Newark, to testify in this case, is that correct? A. That is correct.

Mr. Markley: I would like to mark these in evidence as one exhibit.

10 Mr. Carpenter: We do not object.

[Documents referred to are received in evidence and marked Exhibit DG-3.]

Mr. Markley: May I read this exhibit?

The Court: Yes.

[Mr. Markley reads Exhibit DG-3.]

Mr. Markley: Attached to that letter is the
20 subpœna from the New Jersey Department of Labor, Workmen's Compensation Bureau, State of New Jersey, to J. D. Lippmann, care of Textileather Corporation, Lister avenue, Newark [reading].

At one o'clock the Court takes a recess until two o'clock P. M.

30

AFTER RECESS.

JULES D. LIPPMANN resumes the stand.

CROSS-EXAMINATION [continued] BY MR. MARKLEY:

Q. Now, Mr. Lippmann, as I understand it, as the result of this letter, you did not appear on the hearing of this case? A. That is right.

Q. Is that right? A. That is right.

40 Q. Whom did you turn it over to? A. Mr. Lott.

Q. And Mr. Lott, he appeared, as I understand it? A. Yes, sir.

Q. And was a witness in the Compensation Court? A. That is right.

Q. Now, then, when you got this notice, which showed that there was a case pending against your company, did you have any recollection of that case at all, that there was such an employee and there might be such a claim or suit? A. I heard so in the office.

Q. You had heard of it previously in the office? A. Yes.

Q. And who in your office had charge of compensation matters for your company? A. Mr. Schumacher.

Q. And the giving of any notice shoud have been given by him, as I understand it? A. Yes.

Q. You did not refer this to your attorney at all? A. No.

Q. You did nothing about it other than what, turn it over to Mr. Lott? A. Turn it over to Mr. Lott, to answer and see what would develop at the hearing.

Q. Now, then, have you in your files the compensation petition that was served on your company, on Mr. Boyle of your company? A. I don't know.

Q. You don't know whether it is in the files or not? A. I do not.

The Court: I understood it would be admitted that it was a copy of the petition that is in evidence in this case.

Mr. Carpenter: All we know is that the acknowledgment was on file there. I do not know any more than that.

Q. Mr. Boyle is here, isn't he? A. He was this morning.

Mr. Carpenter: I let him go, and it was admitted that that statement went in. I cannot dispute the fact that we got it.

Mr. Markley: You do not dispute the fact you got it?

10 Mr. Carpenter: I cannot. This is before the trial, the last of April.

The Court: April 30th is the date of the acknowledgment?

Mr. Carpenter: Yes, April 30, 1928.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. You had attended the hearing in the Mooney case at the Compensation Court on May 2, 1928, had you not? A. I attended the hearing; I don't 20 know the date.

Q. It was before the hearing in the Iannazzo case? A. That is right.

Q. At that time weren't you yourself advised by Mr. Kohn, of the American Mutual, that the Iannazzo case was coming up on the 9th, and that it would be best for you to be present? A. I don't recall it, but it is possible.

Q. You were not in direct touch with compensa- 30 tion matters, were you, Mr. Lippmann, at that time? A. Not directly, no.

Q. And Schumacher and the others in the plant were looking after those things, were they? A. The details, yes.

Q. Did you, at the plant, have a conference with Mr. Schumacher and Mr. Lott and Mr. Bosco, or any of them, or anybody else, regarding conditions at the plant which had resulted in the deaths of 40 Iannazzo and Mooney? A. Yes.

Q. And was that in December? A. It possibly was; I don't remember.

Q. December, 1927? A. It was immediately after——

Q. The deaths? A. Yes.

Q. And at that time the claims of both were pending, weren't they? A. Yes.

Mr. Carpenter: By that you mean they had served notices of the claims?

Mr. McLaughlin: By that I mean that the claims, respectively, of Mooney and Iannazzo were pending. 10

The Witness: I should say that is right.

Q. And was it around that time or later that you, or someone in your plant, was called before the Commissioner of Labor to explain about this benzol condition?

Mr. Carpenter: I object, unless there were any. 20

The Court: I think the facts should precede the time.

Mr. McLaughlin: I will withdraw the question temporarily.

Q. It is a fact that you or some other representative of your company was called before the Commissioner of Labor, regarding the benzol conditions at your plant, is it not? A. We were requested by the Commissioner to attend a conference. It was not a subpœna; it was an invitation to attend a conference. 30

Q. And did you attend? A. Yes, sir.

Q. And, as a result of that, and the deaths and perhaps other things, benzol was discontinued at your plant, was it not?

Mr. Carpenter: I object to that.

The Court: I will sustain the objection. 40

Q. Isn't it a fact that after the deaths of Mr. Iannazzo and Mr. Mooney, that the use of benzol was discontinued in your plant? A. Yes.

Q. And isn't it the fact that you are moving or have moved your plant out of New Jersey? A. We are in the process of moving.

Q. On receiving the subpœna for attendance at
10 Franklin street, at the hearing in the Iannazzo case, you had a talk with Schumacher and Mr. Lott about the case, didn't you? A. I presume I did. I don't recall it. I imagine I would. On receipt of the subpœna I probably would have a conversation with them about it.

Q. This letter, DG-3, in its last paragraph, says that [reading]: "I am sending the superintendent of this plant, Mr. DeForest Lott, with all particu-
20 lars that will be necessary for the trying of this case, and if my testimony is necessary I will be available on Friday, May 11th." With that refreshing you, Mr. Lippmann, it is the fact that you did have a talk with at least Mr. Lott? A. That is right.

Q. And arranged with him to have all the particulars necessary for the trying of the case at the Department of Labor on the 9th of May, at the hearing? A. Yes.

30 Q. I also note in the letter that you had informed attorney Raymond H. Cohen, over the telephone, of your prior engagement; that is true, is it? A. Yes.

Q. But you did not inform the American Mutual of your prior engagement, and that you would not attend? A. I did not, because I heard nothing from the American Mutual.

Q. With the situation before you that the case
40 was going to be tried on the 9th of May, and with

you subpœnaed for trial, and with you arranging to have Mr. Lott attend with all the particulars necessary, is it true that you did not inform the American Mutual, or have that company informed, of what you were doing? A. I did not personally inform them.

Q. You did not leave instructions to have them so informed, did you? A. No.

Q. But, in any event, you arranged that all the particulars necessary for a full presentation of the case be at the Compensation court room at the hearings?

Mr. Carpenter: I object. That is the third time counsel has asked that question.

The Court: The objection will be sustained.

Q. Mr. Schumacher was at that conference called by the Commissioner of Labor? A. I believe he was.

Q. And at that conference, which I think you fix as around the time of the deaths—— A. I think it was immediately afterwards.

Q. [Continuing.] The deaths of both Mooney and Iannazzo were discussed, weren't they?

Mr. Carpenter: I object, What has that got to do with this case?

The Court: I sustain the objection.

Mr. McLaughlin: It has this to do with it, your Honor, because Mr. Schumacher on the stand, if I recall his testimony correctly, said that he did not know anything about the Iannazzo case.

The Court: They all knew about the death of this man, because a report was made by the company. It is not a question of when he died, but whether they knew about the petition,

and the hearing before the Compensation Court.

Mr. McLaughlin: I do not mean to say that he did not know about the death of said he did not know about the death, but I do say that the inference, from his testimony, was that he did not know anything about the compensation matters arising from Iannazzo's death until after the hearing, as I remember his testimony.

The Court: It seemed to me, from what was said, that the conference was with reference to the use of benzol, in view of the fact that he said it was discontinued.

Mr. McLaughlin: And he has already——

The Witness: [Interposing.] I can enlighten the Court on it.

Mr. McLaughlin: And I think he also said that at the conference the deaths of Mooney and Iannazzo were discussed.

The Court: I will sustain the objection.

Counsel for defendant American Mutual Liability Insurance Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. This Mr. Cohen, whom you say you called up, he was the attorney for Mrs. Iannazzo, was he not? A. That is right.

Q. Didn't he inform you that he is the one that had you subpœnæd? A. I believe he did, yes.

Q. That is the reason you got in touch with him? A. That is the only reason I got in touch with him.

DeForest Lott sworn in behalf of plaintiff.

Direct-examination by Mr. Carpenter:

Q. What is your position with the Textileather Company? A. Superintendent.

Q. Did you know Bruno Iannazzo in his lifetime? A. I did.

Q. Did he work under your supervision? A. Yes, sir. 10

Q. Did you have any knowledge, prior to the day that he left, which was November 26, 1927, that he was ill or claimed to be ill? A. No.

Q. Did he make any complaint to you, or ask to go off, or anything? A. No.

Q. He simply left on November 26th, and did not come back, as far as you knew? A. That is right.

Q. I show you a paper and ask you when this was given to you [handing witness document]. A. 20 [Examining.] I should say about two or three days before the 9th of May, as near as I can recall it.

The Court: That is a subpœna, is it?

Mr. Carpenter: That is a subpœna to testify. On the back it says [reading]:

"Kindly take notice you are required to produce, before said time and place, all records pertaining to the employment of the said Bruno Iannazzo, deceased, otherwise known, according to your records, as B. Yenatzo, Clock No. 259." I offer it. 30

[Document referred to is received in evidence and marked Exhibit P-14.]

Q. Mr. Lott, was any evidence produced on behalf of or by the American Mutual, in advance of this Iannazzo claim—any witnesses called at all by the American Mutual? A. Not as I recall, no. 40

Q. By whom were you called to the stand to testify? A. By Mr. Cohen.

Q. Attorney for whom? A. Mrs. Iannazzo.

Q. Was anybody down at the plant representing the American Mutual, to see you about this case before the trial? A. I didn't see anyone.

Q. Nobody talked it over with you before the
10 trial? A. No, sir.

Q. When was the first you knew that a petition for compensation had been filed in the Compensation Court by Mrs. Iannazzo? A. I don't know that I ever knew it, until this subpœna came in.

Mr. Markley: No questions.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Iannazzo worked under your supervision, did
20 he? A. Yes, sir.

Q. And do you remember when he came to work? A. Not distinctly, no. I know what time he did come.

Q. You were there when he did come? A. Yes, sir.

Mr. Carpenter: We have got the record here that shows it.

30 Mr. McLaughlin: The date is August 8, 1927.

Q. When you say you do not remember distinctly, you mean at this time you do not remember the calendar date? A. Yes.

Q. But you do remember that when he came there you were there and he worked under you? A. Yes.

Q. And when he came there, Mr. Lott, wasn't he healthy, as far as you could observe? A. As far as
40 I know, yes.

Q. He seemed a normal, healthy man? A. Yes.

Q. And thereafter, as shown by the record, he was out approximately, beginning the week of August 23rd, a day a week, until the week ending October 30, 1927, as shown by your record?

Mr. Markley: I object to that. That is not an accurate record. According to my records, it is only six and one-quarter days that he was out. 10

The Court: I will sustain the objection.

Mr. Markley: The first day was August 24th.

The Court: The first was August 24th, and the last was October 18th, and that was six and one-quarter days.

Mr. Carpenter: That is right; that is what our records show.

20

Q. And in accordance with the record, handing you P-10, can you tell us why he was out on the days the record shows he was out? A. No.

Q. Have you anything with you, or available, that would show why he was out? A. No.

Q. Do you know whether he was out those days because of illness? A. No, I do not.

Q. In his work at the plant he was working with a benzol solution, was he not? A. Yes.

Q. And is it correct that he handled about 1,500 pounds of that solution daily? A. That is right. 30

Q. Which solution contained about twenty-five per cent. of benzol? A. That is right.

Mr. Markley: I just have a question with respect to Mr. McLaughlin's cross-examination.

40

CROSS-EXAMINATION BY MR. MARKLEY:

Q. As I understand it, Mr. Lott, Mr. Iannazzo worked in what was known as the tub-room, didn't he? A. That is a typographical error. It is the dope room.

Q. And, as I understand it, that room had about forty or fifty windows, didn't it? A. Yes.

Q. And it also had a blower? A. Yes, sir.

Q. And it had a number of doors? A. Yes.

Q. Is that right? A. That is right.

Q. And the ventilation, as I understand it, was very good in that room? A. Yes, I think it was; yes.

Q. Now, Mr. McLaughlin says to you that this man handled this material. That is not accurate, is it? He did not handle the material, did he? A. Well, by that you mean getting his hands in it?

Q. Yes. A. No.

Q. What happened was, as I understand it, he would transfer—what would you call it? A. He poured from one can to another.

Q. It was a liquid material? A. A viscous material.

Q. He poured from a large can into a small one, and then into a strainer? A. That is right.

Q. And the large container was covered, as I understand it? A. Yes.

Q. And the small container would that be—— A. While the pump was in operation, it was covered.

Q. Would the pump pump it from the large container to the small one? A. No. He would dump it into a container attached to the pump, and it would go through the pump into another one.

Q. And then through this strainer? A. Yes.

Q. Would the pump put it through the strainer? A. Yes.

Q. So that his hands did not come in contact with the material at all? A. No.

RECROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Do I understand that while he was pouring from the large container to the smaller container, that the large container was covered? A. No, no. It had to be uncovered while material was being taken from it.

Q. When you say it was covered, you mean that it was covered when it was being brought from downstairs to upstairs? A. And while it was standing there.

Q. Waiting for use? A. Yes.

Q. And while it was in use it was uncovered? A. Right.

Q. And it is the large container and perhaps the small container that Iannazzo would scrape after he had poured most of the viscous material out? A. That is right.

Q. And in scraping the material, and in working with these cans, you are not able to say that he never touched that material, are you? A. No.

Q. As a matter of fact, he probably did, didn't he? A. It is possible that he did.

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. How many of those cans of that material would he probably pour out or handle a day? A. Possibly fifty.

Q. About five an hour? A. I should think so, yes.

By the Court:

Q. I think somebody said that those cans weighed 250 pounds a piece, is that right? A. The larger ones do; yes, sir.

Q. Fifty cans at 250 pounds each, would be 12,500 instead of 1,500 pounds. A. That is a mistake on my part. My arithmetic is rather poor.

10

By Mr. Carpenter:

Q. How many cans would it be? A. It came to him in various-size cans, some of which are 300, and some may contain as low as 10 or 15 pounds.

The Court: Six 250-pound cans would be 1,500 pounds.

20 Q. How do you know it was about 1,500 pounds? A. Well, it is the average amount of dope which we use, which is put through that operation.

The Court: He handled it all?

The Witness: No, sir.

Q. You took the gross you used a day, and divided it by the number of pumps, and you know, because of that, each pump handled about 1,500 pounds a day? A. Yes, sir.

30 Q. Is that the way you got at it? A. That is right.

Mr. Carpenter: I now offer in evidence a computation of these payments, made by Mr. Stern.

The Court: What do they amount to, Mr. Carpenter?

Mr. Carpenter: They amount to payments, up to May 14th, of $2,682.06. Interest on those

40

several payments to May 14th aggregates $218.60; and the gross to May 14th, $2,900.66.

Mr. Markley: We are willing, your Honor, that this may go in as though the representative might testify as to the correctness of it, but we do not wish to agree on the amount calculated in this case.

The Court: If there be any miscalculation of interest, it is consented by everybody that the Court may correct it when called to its attention. 10

Mr. McLaughlin: And my allowing it to go into evidence is substantially as Mr. Markley stated.

The Court: The objections will be overruled and an exception on behalf of both defendants will be noted. 20

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Counsel for defendant American Mutual Liability Insurance Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal. 30

CHARLES F. RILEY sworn in behalf of plaintiff.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Mr. Riley, have you the file of the Newark office of the Compensation Bureau, in the case of Iannazzo against the Textileather Company? A. 40

Yes, sir. This is the informal and this is the formal [producing documents].

Q. Now, was there an informal hearing in this matter before the Compensation Bureau? A. Yes, sir.

Q. On what date? A. Here is the date right here [indicating]. There was an informal hearing on January 30th.

10

Mr. Markley: May I ask, for the record, what the witness is referring to?

The Court: I believe it is the informal file?

The Witness: It is the informal file; yes, sir.

The Court: What in the informal file?

Mr. Carpenter: This is a notation on the inside of the cover of the informal file——

Mr. Markley: Made by whom?

The Witness: By Mr. Wegner, who was the

20 Referee at that time.

Q. What does that show? A. It shows "the petitioner appeared not." He did not appear.

The Court: When was the informal hearing?

Mr. Carpenter: January 30, 1928.

Q. Who appeared for the dependents? A. Mr. Cohen appeared for dependent, and Mr. Kohn for the American Mutual.

30

The Court: Who?

The Witness: Mr. Kohn for the American Mutual.

The Court: Mr. Kohn?

The Witness: Yes, sir; Kohn.

Mr. McLaughlin: The same name, but spelled differently, your Honor.

Q. Was there another informal hearing? A. Yes,

40 sir.

Q. What was the date? A. The next date was on February 14, 1928.

Q. February 14, 1928? A. Yes, sir.

Q. Who appeared? A. Mr. Cohen appeared for the dependent.

Q. And did anybody appear for the American Mutual? A. Yes; Mr. Kohn.

Q. Anybody for anybody else? A. Then there is another one—and Mr. Dunbar for the Great American. 10

Q. [Reading]: "American Mutual willing to compromise by paying fifty per cent.", is that right? A. Yes, sir.

Q. [Reading]: "Great American will not recognize the claim, claiming policy cancelled"? A. Yes, sir.

Q. [Reading]: "To be heard formally," and then marked "closed"? A. Yes, sir. 20

Q. [Reading]: "Attorney advised to file another formal, to be served upon company"?

Mr. Markley: What is the object of that?

Mr. Carpenter: Just a memorandum. There is no date. It follows the other.

I offer in evidence, from the file, a letter from the defendant American Mutual, dated January 7, 1927, to the Compensation Bureau. 30

Mr. McLaughlin: No objection.

[Letter referred to is received in evidence and marked Exhibit P-15.]

Mr. Carpenter: [Reading Exhibit P-15]:

"American Mutual Liability Insurance Company of Boston.

"January 7, 1929.

"Workmen's Compensation Bureau,
9 Franklin Street,
10 Newark, N. J.

"*Re:* Bruno Iannoazzo (Deceased)
Vs: Textileather Company
Acc. 11.?.27.

"Gentlemen:

"The above is a death case, the deceased having died of alleged Benzol Poisoning, and we understand that he left surviving him a widow
20 and several children, the widow's name being Grace Iannoazzo, who reside at No. 59½ Hayes St., Newark. We also understand that she is represented by Attorney Raymond H. Cohen, of the Military Park Building, Newark.

"The writer would appreciate your placing this case on your informal hearing calendar at Newark at your earliest convenience, advising Mr. Cohen, the attorney, as to the date of
30 such hearing.

"We would appreciate your noting this case on your informal hearing calendar at your earliest possible moment, and oblige.

"Very truly yours,

AMERICAN MUTUAL LIABILITY
INSURANCE COMPANY.
MAURICE KOHN, W.
Branch Claims Manager."

40

Q. You now hand me the formal file, so called, from the Bureau? A. Yes, sir.

Mr. Carpenter: I now offer in evidence, from the Bureau, a notice to the Great American Indemnity Company from C. B. Tippett, and McCarter & English, and an affidavit of service thereof upon the American Mutual.

Mr. Markley: I object to this exhibit, your Honor, not on the ground that it is necessary to call here these two affiants who made affidavit as to service of the notice attached on May 8, 1928, on the Great American, but I do object to it on the ground that the notice is immaterial, incompetent and irrelevant here, because it is a notice that was served on May 8th for a hearing on May 9th, by the American Mutual, by McCarter & English, representing them, and in no way binding on us in this case, as far as the plaintiff is concerned.

The Court: It will be admitted, and an exception may be noted.

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Carpenter: It is a notice, not being dated, but which is proved to have been served on the 8th of May, 1928.

Mr. Markley: For May 9th hearing.

Mr. Carpenter: It is notice that the formal hearing in this case will be held on May 9th, at ten A. M.

[Document referred to is received in evidence and marked Exhibit P-16.]

Mr. Carpenter: I will read it.

Mr. Markley: I think the affidavit of service should be read also.

Mr. Carpenter: I will read that afterwards [reading Exhibit P-16].

The next affidavit is that of a Joseph B. Hintlemann [reading].

Mr. Markley: What time?

10 Mr. Carpenter: The time is not stated. I find a letter here in the file, addressed to Mr. McLaughlin, of McCarter & English, dated June 13, 1928. Have you got that, Mr. McLaughlin—the original?

Mr. McLaughlin: Whom is it from?

Mr. Carpenter: I do not know, but I presume from Mr. Goas.

Mr. McLaughlin: No, I haven't the original; and it is entirely immaterial, incompetent and

20 irrelevant here.

Mr. Markley: The answer of Mr. McLaughlin is in the other file, I believe, to that letter; in the Mooney file.

Mr. Carpenter: Is that the one you offered yesterday?

Mr. Markley: No.

Mr. Carpenter: Do you object to my offering this?

30 Mr. McLaughlin: I do.

Mr. Carpenter: Well, did you receive the original of it?

Mr. McLaughlin: I object to this colloquy, too.

Mr. Carpenter: What is that?

The Court: There is no answer to the question, Mr. Carpenter.

Mr. Carpenter: Very well, you may cross-

40 examine.

CROSS-EXAMINATION BY MR. MARKLEY:

Q. Is the Mooney file here? A. No, sir.

Q. It will only take a few moments to get it, won't it? A. Yes, sir.

Q. You had it here yesterday? A. Yes, sir.

Q. Under our subpœna? A. Yes, sir.

Q. Now, looking at the informal envelope—that is the proceeding which was marked "closed"? A. Yes, sir. 10

Q. By Referee Wegner? A. Yes, sir.

Q. As appears from his handwriting on the cover of the file? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. In that file you refer to the fact that there was, in his handwriting, a note of an informal hearing on January 30th? A. Yes, sir.

Q. Attended by Mr.—— A. [Interposing.] Cohen. 20

Q. Which Cohen? A. Both Mr. Kohn, from the American Mutual; and Mr. Cohen, from dependent's attorney.

Q. That was on January 30, 1928, was it? A. Yes, sir.

Q. Does anything else appear under date of January 30, 1928? A. No, sir.

Q. Now, then, I show you a letter in the file from Mr. Raymond H. Cohen. A. Yes, sir. 30

Q. An original letter, dated January 26, 1928. A. Yes, sir.

Q. That is in your informal file, isn't it? A. Yes, sir.

Q. And comes from it? A. Yes, sir.

Mr. Markley: I offer that letter.

Mr. Carpenter: I do not object. I do not know what it means, but I do not object to it, anyway. 40

Mr. McLaughlin: I object to that letter here, on the ground that it is irrelevant, immaterial and incompetent, and not binding on us.

Mr. Markley: The purpose of it, your Honor, is to show that Mr. Cohen, who represented the Petitioner, on January 26th, had stated that he wanted a formal hearing. [Document handed to the Court.] I got the enclosure that goes with that, and I suppose I ought to let your Honor see that—addressed to the American Mutual [handing additional document to the Court].

10

The Court: I will sustain the objection.

Mr. Markley: May I have them marked for identification?

The Court: Yes.

Mr. Markley: The letter and the enclosure.

20

[Letter referred to marked Exhibit DG-4 for identification; attached enclosure marked Exhibit DG-4A for identification.]

Q. Now, I show you another letter, written by Mr. Raymond H. Cohen, attorney of the petitioner, dated February 15th, which comes from your informal file, addressed to Hon. J. C. Wegner, Workmen's Compensation Bureau, and ask whether that was part of the files you produced here today. A. Yes, sir.

30

Mr. Markley: I offer that.

Mr. McLaughlin: I object to that as incompetent, irrelevant and immaterial here.

The Court: Most of these letters, or copies, have been admitted without objection, but where there is an objection I am inclined to agree with Mr. McLaughlin, that they are not in any way bound by a letter that Mr. Cohen, who was the attorney for the petitioner, wrote to these parties.

40

Mr. Markley: Your Honor, this is in connection with this reading by Mr. Carpenter of the record. If any part of this record is to go in, it is my contention that the part applicable to that record ought to go with it.

The Court: I will sustain the objection.

Mr. Markley: Will your Honor allow me to mark it for identification?

The Court: Yes; of course.

[Document referred to is marked Exhibit DG-5 for identification.]

Q. Now, then, referring to your direct-examination, with respect to the memorandum in the Referee's handwriting on the cover, were you there when he wrote it? A. No, sir.

Q. Were you present at either one of those informal hearings? A. No, sir.

Q. You had no part in them? A. No, sir.

Q. And you do not know anything about them, except what you read to Mr. Carpenter from the cover? A. Yes, sir.

Mr. Markley: Then I ask that the witness' testimony in respect to that be stricken out.

The Court: Any objection to that?

Mr. Carpenter: It is the only record there is of the informal hearing, that is all; and that is the only reason I offered it. I think it is proper, because both were represented.

Mr. McLaughlin: I think, as long as that notation has gone in without objection, the testimony should stay.

The Court: It did not appear at that time whether or not the witness was present and knew of this of his own knowledge; and it does not appear to be any formal record of anything, but just a memorandum which was made by the Referee. The testimony with reference

to what appears on the folder will be stricken out, and an exception to that ruling may be noted on behalf of the defendant American Mutual and the plaintiff.

Q. Looking at the formal file, I call your attention to a letter from Clarence B. Tippett, dated January 26, 1928. Is that part of your formal file? A. Yes, sir.

10 Mr. Markley: I offer that letter in evidence.
Mr. McLaughlin: No objection.
The Court: It will be admitted.

[Document referred to is received in evidence and marked Exhibit DG-6.]

Mr. Carpenter: I think it is conceded in the answer, your Honor, that Mr. Tippett who signed that was the attorney of the American Mutual.

20 The Court: Yes, I think that appears.
Mr. Markley: Yes. [Reading]:

"Bacon & Tippett
Attorneys and counsellors at law
247 Park Avenue, New York.

"January 26, 1928.

"Mr. W. E. Stubbs, Secretary,
Workmen's Compensation Bureau,
State House,
30 Trenton, N. J.

"Dear Sir:

"*Re:* Claim Petition No. 7776.
Grace Iannazzo *vs.* Textile Leather Corp.

"We send you herewith for filing respondent's answer in duplicate.

"Very truly yours,

40 CLARENCE B. TIPPETT."

Q. I show you a notice of hearing for ten A. M., April 11, 1928, addressed to Clarence Tippett, with acknowledgment of due and legal service by him, under date of March 16, 1928. Is that part of your formal file? A. Yes, sir.

Mr. Markley: I offer that.
Mr. McLaughlin: No objection.

[Document referred to is received in evidence and marked Exhibit DG-7.] 10

Mr. Markley: May I read it, sir?
The Court: Yes.
Mr. Markley: [Reading]:

"New Jersey Department of Labor, Workmen's Compensation Bureau, Trenton, N. J.

"Notice of Hearing.

"Grace Iannazio, Petitioner, *vs.* Textileather, Respondent. 20

"7776-39-28.

"To Clarence Tippett, Atty., 247 Park Ave., New York.

"I hereby notify you that the above claim petition will be heard by me on 10 A. M. Wednesday, Aprl. 11, 1928, at 9 Franklin St., Newark.

"If you fail to appear the petition will be disposed of in your absence. 30

"Harry J. Goas, Deputy Commissioner, 9 Franklin St., Newark, N. J.

"Due and legal service of a copy of the above notice of hearing is hereby acknowledged Mar. 16, 1928.

"C. B. TIPPETT.

"Kindly sign one copy of this notice and return it to the Official issuing it." 40

Q. Referring to the formal file again, I call your attention to the carbon copy of a letter dated June 13, 1928, addressed to attorney Gerald McLaughlin, McCarter & English, attorneys, Prudential Building, Newark, N. J.; *re* Textileather Company *vs.* Iannazzo and Mooney; No. 7776 and 7748. Is that part of your formal file? A. Yes, sir.

10 Mr. Markley: I would like to mark this, your Honor, for identification. I understand Mr. McLaughlin objects to it as this time, as he did a moment ago.

[Document referred to is marked Exhibit DG-8 for identification.]

Mr. Markley: In view of my subpœna with the witness, I would like to have the witness go and get the other file, in the Mooney case, 20 which is the correspondence in respect to this question, which I understand will only take a few minutes.

The Court: Yes. The witness will get the Mooney file.

Mr. McLaughlin: No questions.

Mr. Carpenter: I call on Mr. McLaughlin to produce the notice of the April hearing that was served by McCarter & English.

30 Mr. Markley: The only one I have been able to find, Mr. Carpenter, is the one of May 9th, of which you put in a copy.

Mr. McLaughlin: There has been no statement made in this case or outside of this case, that McCarter & English served any notice of the hearing of April 9th. We were not in the case at that time, but notice was served direct by registered mail by the American Mutual upon the Great American.

40

Mr. Carpenter: What was the date?

Mr. McLaughlin: April 9th.

Mr. Carpenter: I call on you to produce the notice served by the American Mutual, served by Great American on April 9th.

Mr. Markley: I haven't any such formal notice.

Mr. McLaughlin: A registered letter. 10

Mr. Markley: I haven't got that, either. I looked for it and I cannot find it.

Mr. Carpenter: Is Mr. Kohn here, who wrote this letter?

Mr. McLaughlin: Mr. Kohn is right here.

Mr. Carpenter: Take the stand, Mr. Kohn.

MAURICE KOHN sworn in behalf of plaintiff. 20

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Mr. Kohn, are you in any way connected with the American Mutual Insurance Company? A. Not at the present time, no, sir.

Q. Were you on April 9, 1928? A. I was.

Q. What was your position? A. Branch Claim Manager.

Q. Did you on that date write a letter to the 30 Great American Indemnity Company? A. I believe I did. May I see it?

[Document handed to the witness.]

The Witness [Examining document]: The letter is dated April 9, 1928.

Q. What did you do in connection with that letter? A. I had this letter—I dictated this letter, signed it, had it registered, and addressed to the 40

Great American Indemnity Company, No. 1 Liberty street, New York City.

Q. What is this copy that you have in your hand? A. That is a copy of the original letter which was mailed to them on that day, advising them that a hearing——

10 Mr. Markley: I object to what the letter says.

Q. How was that copy made? A. This is the copy of the original letter.

Q. Well, how was it made? How do you know it is a copy? A. It was taken from the files of the company.

Q. Well, was it copied, or is it a carbon copy? A. That is a carbon copy of the original.

20 Q. Have you got the registry receipt for that letter from the post office? A. I believe it is in the file; yes, sir.

Mr. Carpenter: I call on Mr. McLaughlin to produce it.

Mr. Markley: Where was it sent?

The Witness: No. 1 Liberty street, New York City.

The Court: Is that admitted to be the ad-
30 dress of the Great American?

Mr. Markley: Yes, that is the address.

The Court: And the date is?

The Witness: April 9, 1928.

Mr. McLaughlin: Would you mind letting me see the copy for a moment, please?

[Document handed to Mr. McLaughlin.]

Mr. McLaughlin: I do not see any regis-
40 tered receipt here.

Mr. Carpenter: I gave Mr. Markley notice to produce this letter. Have you got it, Mr. Markley?

Mr. Markley: No, I have not.

The Witness: I had it last night, and I put it in the other file.

Mr. McLaughlin: Well, I can produce it.

The Court: What do you mean, the Mooney file? 10

The Witness: Yes.

Q. Do you mean that you have the original receipt for this letter from the Great American? A. Yes, sir.

Q. Where is it now? A. It is in the files of the case which is similar to this.

Q. Well, what is the name of that case? A. The case of Mooney *vs.* The Textileather Company.

Q. Where is that file that has that registry receipt in it? A. In Mr. McLaughlin's office, I believe. 20

Q. You belive it is in Mr. McLaughlin's office? A. Yes, sir.

Q. But you have proof that this letter was received by the Great American, have you? A. Yes, sir.

Mr. Carpenter: I now offer it in evidence.

Mr. Markley: I object to it as not proper proof. 30

The Court: I suppose that is subject to objection.

Mr. Carpenter: May I call your Honor's attention to this: we now have proof that this is a carbon copy of a letter written to the defendant.

The Court: He says he has the proof, but that is not produced here. 40

Mr. Carpenter: That is all right. We do not have to have more than proof of mailing. We now have proof not only that this is a true copy, but that it was sent by mail to the defendant, receipt was acknowledged by the regular channels of the post office, and I have given notice to the defendant to produce this particular letter. That being so, I think we have complied with the secondary evidence rule. We do not have to produce the original registry receipt. If this man says this was mailed in a United States post office box, that is enough; but he says it is temporarily out of hand, and I think that strictly complies with even larger proof than you usually have of proof by mail.

Mr. Markley: I do not see any reference to that in the notice. This is the notice to produce [indicating document]. I still object to it, that the proof is not sufficient.

Mr. Carpenter: That notice said "writings and demands concerning the compensation claims above-mentioned, and the compensation action and dependency thereof, commenced by Grace Iannazzo against the plaintiff, sent, delivered or mailed to the defendant by McCarter & English, or American Mutual Liability Insurance Company, or any officer or adjuster of American Mutual, or by Clarence B. Tippett." That is as broad as I could make it.

Mr. Markley: Nothing about this particular letter.

Mr. Carpenter: All letters.

The Court: I will sustain the objection, and an exception may be noted.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. I show you a letter of February 7, 1928,—rather, a copy of a letter, and ask you did you write such a letter [handing witness document]. A. [Examining] I did.

Q. And is that a carbon copy of the original? A. This is a carbon of the original that was sent to the Great American Indemnity Company, addressed "1 Liberty street, New York City."

Mr. McLaughlin: I call on the defendant Great American to produce the letter of the American Mutual of February 7, 1928, to it [handing document to Mr. Markley].

Mr. Markley: I haven't got this letter, Mr. McLaughlin. The notice that I have is this one that has been put in, and that Mr. Carpenter served; that is all I have been able to find.

Q. After signing that letter, was the letter mailed in due course to the Great American, Mr. Kohn? A. The letter was mailed to the Great American; yes, sir.

Mr. McLaughlin: I ask that that be marked for identification.

Mr. Carpenter: I would like to have the other one marked for identification.

The Court: It will be.

[Document referred to is marked Exhibit DA-1 for identification.]

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. Was that sent by United States mail? A. Yes, sir.

The Court: Which one are you referring to now?

Mr. Carpenter: The second one which has been produced.

10

Q. How was that sent by mail? A. Ordinary mail.

Q. Who mailed it? A. I personally mailed it.

Q. Who mailed the first one I showed you? A. I did.

Q. By United States mail? A. Registered.

Q. Registered? A. Receipt.

The Court: Anything on the envelope?

20 The Witness: The envelope was the American Mutual Liability Insurance Company envelope.

Q. Did that letter ever come back to you? A. Which letter?

Q. Were either of these letters returned by the mail as undelivered? A. They were not.

Mr. Carpenter: I now renew my offer.

30 Mr. Markley: I object on the ground, first, that it has not been proven that we have received it, and that these letters are incompetent, irrelevant and immaterial.

The Court: It was for lack of proof that has just been put in that I sustained the objection, so I am inclined now to admit it. If it was mailed as the witness had previously failed to testify, and had a return card on it, or the name of the sender, and it has never been re-

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turned, the presumption is that it was received. Therefore, the letter will be admitted.

Mr. Markley: May I also put my objection on the ground that, assuming that it was properly mailed and received, that it is incompetent, immaterial and irrelevant as far as binding this defendant.

Before it is marked, I would like to ask a question about it. 10

By Mr. Markley:

Q. Were you in the practice of mailing these letters yourself? A. My registered mail; yes, sir.

Q. You were the manager of the office? A. Yes, sir.

Q. Did you have an office boy? A. No, sir.

Q. Did you have a girl stenographer? A. I had several girls; yes. 20

Q. Who ordinarily sent out the mail? A. The mail girl.

Q. You had a mail girl to do that, did you? A. Yes, sir.

Q. And you, as manager, did not have the duty thrust upon you, as manager, to take care of and deliver mail to the post office, did you? A. The mail was never delivered to the post office. We had a post office box in the building. 30

Q. Well, did you deliver it to the box in the building? A. No, sir.

Q. You had many letters going out, didn't you? A. Ordinary mail; yes, sir.

Q. How many? A. Oh, I should say, offhand, probably 100 or more.

Q. And you now say that you can remember personally going to the post office? A. Yes, sir.

Q. With this letter of April 9th? A. Yes, sir. 40

Q. And personally delivering it there yourself? A. Yes, sir.

Q. And getting a receipt for it? A. Yes, sir.

Q. Can you pick out any other occasion in 1928 when you did that? A. I only registered two letters in 1928.

Q. You, personally? A. Yes, sir.

10 Q. But you had many that were registered, didn't you? A. No, sir.

Q. You mean to say that all during 1928 the American Mutual, in its Newark office, only had two registered letters? A. As far as I can remember, those were the only two registered letters sent out from the Newark office; there were two.

The Court: I thought you said this letter of February 7th was ordinary mail.

20 The Witness: That was ordinary mail. That was another letter, pertaining to the other case, which was registered.

Q. Now, this one, I understood you to say, that Mr. McLaughlin produced, you also mailed that? A. That was mailed in the ordinary mail.

Q. Did you put it in the mail? A. I did, sir.

Q. So your mail girl did not take care of that? A. No, sir.

30 Q. You personally went out and mailed it? A. That letter was put on my desk and signed late at night.

Q. And you remember distinctly going out to the mail box in the building and mailing it, do you? A. Yes, sir.

Q. Do you remember any other occasion in 1928 when you did that with ordinary mail? A. There were several occasions when I signed the mail, at 40 night, when the girls were gone, and mailed them.

Q. Can you remember any other specific letter? A. Well, there were very many of them.

Q. But you can pick this one out and specifically remember this, in all of the hundreds of letters that went out? A. I remember that one very well; yes, sir.

[Document referred to is received in evidence and marked Exhibit P-17.] 10

The Court: That is the letter of April 9th.

Mr. Carpenter: I offer the other one in evidence, your Honor.

The Court: It will be admitted.

Mr. Markley: Subject to my objection that I stated with respect to the first letter.

By the Court:

Q. This letter, you say, was mailed by you? A. 20 Yes, sir.

Q. This one of February 7th? A. That is the registered letter that you referred to.

Q. Did it have your company's card on it? A. Yes, sir.

Q. And I suppose it had postage on it? A. Postage; yes, sir. The envelopes are stamped; stamped envelopes.

Q. And it has never been returned? A. Never 30 been returned.

The Court: It will be admitted.

Mr. Carpenter: I now offer DA-1 for identification in evidence.

[Document referred to is received in evidence and marked Exhibit P-18.]

Mr. Carpenter: I will now read them in the correct order of their dates, rather than their 40

marking [reading document dated February 7, 1928, marked Exhibit P-18].

The other one, dated April 9, 1928, is from the American Mutual to the Great American Indemnity Company, *re* Bruno Iannazzo [reading Exhibit P-17].

10 This letter is not registered; return receipt requested.

RECROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Mr. Kohn, after writing the letter of February 7, 1928, notifying the Great American Indemnity Company of the informal hearing on February 14, 1928, did you appear at the informal hearing, as has been testified to here? A. I did. I was 20 present at two hearings. I was present at both hearings.

Q. By "both hearings" do you mean there were two informal hearings? A. Two informal hearings; yes, sir.

The Court: When was the informal hearing in April?

The Witness: April 16th I believe was the first formal.

30 The Court: Does that give the date—P-17?

Mr. McLaughlin: The letter of April 9th speaks about a hearing April 11th—that is the first date of the formal hearing, that is not informal. From April 11th there was an adjournment to May 9th, at which time the formal case was heard.

Q. But you are speaking of informal hearings? 40 A. Informals; yes, sir.

Q. You were at the first informal hearing of January 30, 1928, is that right? A. I was.

Q. And at that time was the informal put over to February 14, 1928? A. It was adjourned to that date; yes, sir.

Q. And your letter of February 7th was to give notice to the Great American Indemnity of the adjourned date, February 14th?

Mr. Markley: I object to that as improper. 10

The Court: I will sustain the objection.

Q. On February 14th, Mr. Kohn, did you appear at the informal hearing? A. I did.

Q. Did anyone appear at that hearing in this case for the Great American Indemnity Company? A. Yes, sir.

Mr. Markley: I object to that as immaterial, incompetent and irrelevant. 20

The Court: That was the one of February 14th?

Mr. McLaughlin: Yes, sir.

The Court: The answer may remain.

Counsel for defendant Great American Indemnity Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal. 30

Q. Who appeared for the Great American? A. A Mr. Dunbar.

RECROSS-EXAMINATION BY MR. MARKLEY:

Q. Mr. Dunbar is now employed by your company, isn't he? A. I don't know. I am no longer connected with the American Mutual.

Mr. Carpenter: Plaintiff rests. 40

Mr. Markley: In behalf of the Great American Indemnity Company I respectfully move for a nonsuit on the following grounds:

Under the contract or policy of insurance of this defendant, the plaintiff, upon occurrence of any accident, shall give immediate written notice thereof to the company—that is, to the defendant—with the fullest information obtainable. Plaintiff shall give like notice, with full particulars, of any claim made on account of such accident. If thereafter any suit or other proceedings are instituted against the employer, he shall immediately forward to the insurance company every summons, notice or other process served upon him; nothing else contained in the policy shall relieve the employer of his obligations to the insurance company with respect to notice, as herein imposed.

Now, we urge that the plaintiff failed to perform that condition precedent in the policy in one or more of the following respects:

First: The plaintiff, upon the occurrence of this alleged accident or injury, did not give immediate written notice thereof to the defendant.

Second: Plaintiff did not immediately upon the occurrence of this alleged accident or injury, give to the defendant immediate notice thereof, with the fullest information obtainable.

Third: The plaintiff did not give to the defendant immediate notice of the claim made on account of this accident or injury.

FOURTH: The plaintiff did not give to the defendant immediate notice, with full particulars, and forward the summons, the notices or other process served upon it, on the institution of the action or proceeding instituted against the plaintiff by Grace Iannazzo. As a matter of fact, no notice of any kind was given to the Great American Indemnity Company in this case until after the award of the Compensation Bureau.

SECOND: After the death of Bruno Iannazzo on December 8, 1927, the plaintiff, Textileather Corporation, sent notice to the defendant, American Mutual Liability Insurance Company, together with the forms. The American Mutual was thereafter in charge of the case. The proof is undisputed that they filled out the forms, sent them to the plaintiff who executed them and returned them. The proof is undisputed that the answer was filed by the American Mutual after those forms were filled out and the entire handling of the case was in charge of the American Mutual in connection with the plaintiff. The proof is that the notice of claim, that the papers that came from Grace Iannazzo to the plaintiff, were sent with a notice of claim by the plaintiff to the American Mutual and that the defendant, American Mutual, in response to the notice of claim received from the Textileather Company, sent in the forms and sent in the correspondence, requested the execution of the compensation forms by the plaintiff and those forms were executed by the plaintiff and returned by the plaintiff to the American Mutual and the

American Mutual continued to handle the matter.

THIRD: We therefore say that the plaintiff and the American Mutual together took charge of the matter.

FOURTH: The plaintiff did not make any claim or demand on the defendant, Great American Indemnity that the alleged claim of Grace Iannazzo came within the terms of the Great American Indemnity's policy of insurance or request or demand that the Great American Indemnity do anything with respect to said alleged claim until after the judgment had been rendered, when for the first time, notice was served by McDermott, Enright & Carpenter of what had transpired. We say, therefore, that the plaintiff cannot now recover as against the defendant, Great American Indemnity Company.

FIFTH: The plaintiff permitted the American Mutual to take over the defense of the alleged claim, sent the notice of claim to the American Muntual, sent the proofs of claim to the American Mutual, sent the forms with respect to the claim to the American Mutual and did not call upon this defendant to do anything. Therefore the plaintiff has no cause of action against the defendant Great American Indemnity Company.

SIXTH: The plaintiff elected to hold the American Mutual as its insurance carrier for this alleged claim for the death of Iannazzo. Therefore there can be no recovery as against this defendant.

SEVENTH: The plaintiff is estopped from asserting that it has any claim under the policy of this defendant by reason of its course of conduct outlined above.

EIGHTH: The American Mutual is estopped to deny by its conduct that it was the insurance carrier for this claim. 10

NINTH: The plaintiff in this action has failed to prove that the claim for the death of Iannazzo and the judgment resulting therefrom is within the coverage contained in this defendant's policy. As a part of that point I refer to Paragraph 7 of our policy, which provides, and, as stated in our third defense, "This agreement shall apply only to such injuries, personal injuries, sustained by employees and by reason of accidents occurring during the policy period limited and defined as such in Item 2 or the Declarations." Item 2 of the Declarations provides that the period covered by the policy is from November 18, 1926 to November 18, 1927. The alleged accidental injury sustained by Bruno Iannazzo did not occur within the policy period, and therefore the plaintiff cannot recover. 20 30

The plaintiff, according to the proof in this case, was well and worked his full time and his full hours; as a matter of fact, during the policy period the entire time lost, according to the undisputed proof, was only six and a quarter days. He worked steadily and was a hard worker, and in good health up until December 3, 1927, and earned his full wages and overtime up until that time, and there was no 40

disability proven, actually or otherwise, in this case, during the coverage of the defendant.

TENTH: The compensation award is not binding on this defendant or *res judicata* as to this defendant.

10 ELEVENTH: This defendant was not a party to said compensation proceedings—and I point this out in our sixth defense—although, under the law, if it were the purpose of the plaintiff to bring us in and make us a party, they could have done so under Chapter 178 of the laws of 1917, which provides that in the event that it is desirable or desirous to hold an insurance company, they can be sued in name for the accident which occurred during their policy
20 period. That was not done here.

TWELFTH: It is our contention, under the proofs, that this accident occurred on November 26, 1927, and that therefore there is no liability under our policy and there should be no recovery.

THIRTEENTH: The petition for compensation in the Compensation Court for the death
30 of Bruno Iannazzo does not allege any claim for compensation for injury arising out of or during the policy coverage of this defendant. That petition limits the claim to a claim for death occurring on December 8, 1927. Therefore there is no liability on the part of this defendant.

[Argument.]

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Mr. McLaughlin: On behalf of the defendant American Mutual, I respectfully move for a nonsuit upon the following grounds:

1. That there has been no cause of action made out by the plaintiff under its complaint against this defendant.

2. It has not been shown in the plaintiff's case that the responsibility for the death of Iannazzo was within the coverage period of the policy of the American Mutual. 10

3. The responsibility under the Compensation Law of this state for the death of Iannazzo has not been shown to be within the coverage period of the American Mutual.

4. The determination and judgment of the Compensation Court, dated June 4, 1928 which is part of the complaint, fixed and determined the period of Iannazzo's employment with the plaintiff, responsible for Iannazzo's death, as the period prior to November 1, 1927. The date of this defendant's policy with the plaintiff in November 18, 1927; and under the testimony this defendant is in no wise liable under its said policy to the plaintiff for moneys alleged to have been expended by plaintiff, or for which plaintiff is or may be responsible for compensation and expenses in connection with or in any way arising out of the illness and death of the said Iannazzo. 20 30

5. The period of employment of Iannazzo with the plaintiff, responsible for Iannazzo's death, as shown by the plaintiff's proofs, was that period prior to November 1, 1927. The 40

date of this defendant's policy with plaintiff was November 18, 1927; and, as the case stands, this defendant is in no wise liable, under its said policy to plaintiff, for moneys alleged to have been expended by plaintiff or for which plaintiff is or may be responsible for compensation and expenses arising out of or in any way connected with the illness and death of the said Iannazzo.

The Court: The motion for nonsuit on the part of the defendant the American Mutual will be denied.

The motion on behalf of the Great American will be granted.

Shortly, the reasons for that are these; it may be that the proof on the subject of the occurrence of the accident, or the disease, is in a somewhat different position from what it was in the Mooney case yesterday, but still I think that it has not been proven, by that particularity which is required, that the accident or the illness which caused the death did occur prior to November 18, 1927.

It is true that Dr. Martland in this case testified that, in performing the autopsy, he found a condition of profound anemia, with multiple hemorrhages in different parts of the body and a-regenerative and a-plastic anemia, which affected the marrow of the bones, and that, in his opinion, it was due to chronic exposure to benzol. He did say that he could not tell when the benzol had entered into the body of the deceased, but that it was exposure to benzol which had taken place over

a fairly long period of time—I think it was from three to six weeks, to years; that to affect bone marrow it usually takes longer than three to six weeks, but the first and most important consideration in his diagnosis of the condition which he found upon his post mortem was the continued exposure to benzol, and that it was the continued accumulative effect which was the most important.

He did say, however, that he could not say what part of the time that the deceased was in the plaintiff's employ caused this condition. He said that he might have stopped in the middle of November and recovered; and, if I read correctly the Massachusetts case, if that be the situation—that he might have stopped in the middle of November and recovered—then we must take, as the time when the accident or illness occurred, the time when he became sick and unable to perform labor.

Dr. Fasano had been the family physician for over ten years. He said that while he had treated Mr. Iannazzo during the year 1927, that he would drop in for a cold or a slight illness—he did not indicate that at any time during the year 1927, until the 27th day of November of that year, did he find any symptom of benzol poisoning, and even then, on that date, he did not diagnose it as benzol poisoning, and it was not until the 29th—two days after that—that he had a suspicion of benzol poisoning, and he advised the hospital. The man went to the hospital on December 2nd, and, of course, admittedly died of benzol poisoning.

Now, under Dr. Fasano's testimony, his treatments of the decedent, as I have already said, during the whole of the year 1927—which includes, of course, the time when he was in the employ of the plaintiff, which was from August 8th to the date he stopped, the 26th day of November—were for slight colds and slight illnesses. He did say, in answer to the hypothetical question put to him, that, in his opinion, this disease was contracted soon after August 8th, that it became worse and the man died of that poisoning in December, and that on October 1st he had in his system this condition of which he died later; but, upon further examination, he said that it was a continuing cumulative effect that produced the disease, and the continuous exposure that had this cumulative action, and that it was not possible to say on what particular day it was complete, until the day of his death. That is substantially his testimony.

Of course, we have the testimony of Bosco, who observed this man, and who said he could not see any difference in his appearance. That may be entitled to very little weight. He was not a medical man, and probably did not observe the appearance of Mr. Iannazzo as a person would who was called upon to treat him.

Aside from all that, I am treating with this condition more particularly at this time, because it was the condition upon which the nonsuit was granted in the Mooney case yesterday, rather than as being necessarily controlling in this case, because I think that the control-

ling fact in this case is not necessarily the matter of when this disease was contracted, but whether or not the plaintiff in this case has given the notices required by its policy to the Great American. Admittedly, the first notice given by the plaintiff to the Great American, of any action against it, was on June 21, 1928, after the adjudication in the Compensation Court, and after any opportunity which that company might have had to participate in that hearing, and to defend, on behalf of the plaintiff, or even on behalf of itself. It is true that, before that adjudication, the American Mutual had sent notices of a preliminary hearing on the 11th of April, by its letter of February 7th. This letter is to this effect: "At the request of the Workmen's Compensation Commission, we are writing to advise you that the above case is noted for informal hearing before the Commission in Newark, on Tuesday, February 14th, at 9:30 A. M., at 9 Franklin street, Newark. It is suggested that you have a representative present"—to take part in the preliminary hearing? No, but "in order to see if this case cannot be amicably adjusted between all parties interested, and thereby avoiding the necessity of a formal hearing and additional expenses."

Now, there was a Mr. Dunbar present, who, it is insisted, was a representative of the Great American. I do not know that that is proven in the case, that he was their representative, but assuming that he was, I do not see that that makes any difference, because he went there, if we are to rely upon this letter of Feb-

ruary 7th, to see if the case could not be amicably adjusted. Of course, this letter to the Great American was an indication perhaps to the Great American that the American Mutual was going to insist that there was some liability on the part of the Great American, but it is no indication to the Great American that this plaintiff, the plaintiff in this case, was going to insist upon that, or that the plaintiff in this case expected to enforce its claim, or attempt to enforce its claim, or claim that the Great American was in any way liable.

To the same effect are the letters of April 9th, advising of the hearing of, I think it was, April 16th; and the letter of May 8th advising of the hearing of the 9th, to which the April 16th meeting had been adjourned.

It is true that all these letters may have been notice to the Great American that the American Mutual was going to try to get out from under—I mean, to pass its liability, or a portion of it, to the Great American, but no indication that there was any claim on the part of the plaintiff in this case, the Textileather Corporation, that the Great American was in any way liable.

Now, if it had been the claim of the Textileather Corporation that it intended to rely upon the policy of the Great American, then there ought to have been some notice of some kind given to the Great American, certainly a notice which would comply with condition F of the policy, which required the Textileather Corporation to give immediate written notice to the company, with the fullest information

obtainable of the occurrence of the accident; and the Textileather Corporation gave no notice or any information of any kind to the Great American of the occurrence of this illness, although it did notify the American Mutual on the very day of the death of this man, that he was ill, and, later, of his death. So June 21st, as I have already said, after this hearing, after the adjudication in the Compensation Court, was the first intimation given by the Textileather Corporation of any intention upon its part to hold the Great American; and I think that prevents the Textileather Corporation from recovering. Now, I am not going to say that, in the event of this suit having been by the representative of the deceased man—that is, referring to the widow and the children—that they would have been prevented from recovering against the Great American on that account—I think I have been told in this case that the decisions are rather to the contrary, where suit was brought by or on behalf of the person injured, or those who represented him. This is a suit directly by the corporation whose duty it was to give this information, and to give this notice.

Therefore, a nonsuit will be entered as to the Great American, and an exception to that ruling, as ground of appeal, may be noted in the minutes.

Mr. McLaughlin: May I have an exception, your Honor, to the denial of my motion?

The Court: Yes.

Defendant American Mutual Liability Insurance Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: I am just wondering if my reasons, without re-stating them, for refusal to grant a nonsuit yesterday in the Mooney case, may not take the course of your reasons for nonsuit, and be made applicable to this case, so far as they apply.

Mr. McLaughlin: Yes, sir.

10 The Court: Now, that brings this case down to your defense; and I am just wondering what you are going to do about that.

Mr. McLaughlin: That will take some time, your Honor.

The Court: You are practically through. Will you need your witnesses here for rebuttal, Mr. Carpenter?

Mr. Carpenter: No, I will not.

20 The Court: Then we will come back Monday morning.

At 4:26 P. M. court adjourns to Monday, May 19, 1930, at ten o'clock A. M.

SECOND DAY.

MONDAY, May 19, 1930.

30 Continued pursuant to adjournment.

For plaintiff appear McDERMOTT, ENRIGHT & CARPENTER (by JAMES D. CARPENTER, JR.).

For defendant appear McCARTER & ENGLISH (by GERALD M. F. McLAUGHLIN).

The Court: Now, I guess we are ready for

40 the defense.

Mr. Carpenter: Your Honor, juror No. 12 is not here yet.

The Court: I do not know what has delayed the juror. I am wondering whether you are willing to proceed with eleven jurors.

Mr. McLaughlin: I am.

The Court: How about you, Mr. Carpenter?

Mr. Carpenter: I am.

Mr. McLaughlin: I offer in evidence the transcript of the testimony in the Compensation Court, in the case of Grace Iannazzo against the Textileather Company, it having already been agreed, as the Court knows, that it is not necessary to call the compensation stenographer, nor to prove the fact that it is a true transcript; and the theory of the offer is that this is the testimony on which the Compensation Court made its award and found its determination and judgment, which is already in evidence in the plaintiff's case.

The Court: It will be admitted, if there is no objection.

Mr. Carpenter: I am not going to object to it.

[Transcript referred to is received in evidence and marked Exhibit DA-2.]

JOSEPH M. CRIPPEN sworn in behalf of defendant.

DIRECT-EXAMINATION BY MR. MCLAUGHLIN:

Q. Mr. Crippen, in 1927 and 1928, were you connected with the American Mutual Liability Insurance Company? A. I was.

Q. In what department? A. In the claim department.

Q. At Newark? A. At Newark.

Q. And did you have to do with compensation matters? A. I did.

Q. Do you remember the claim arising out of the death of Bruno Iannazzo? A. I do.

Q. And were you engaged in connection with that claim for your company? A. I was.

10 Q. Did you go to the Textileather Company in connection with that claim? A. I did.

Q. About when was that, Mr. Crippen? A. Along about December the 18th or 19th, 1927.

Q. Was that after the claim had been filed? A. That was after we had notice from the Textilleather Company.

Q. And whom did you see in the Textileather Company? A. Mr. Schumacher.

20 Q. He was the man, as has been testified to here, who had charge of the compensation work? A. He was.

Q. What was your conversation with him, and what did you and he do at the time you were there? A. I went to the plant and I talked the matter over with Mr. Schumacher, and asked Mr. Schumacher if he would take me to the department where Mr. Iannazzo was employed previous to the time that he left the company, which he did.

30 Q. Did you have any conversation with Mr. Schumacher respecting the exposure, if any, of Mr. Iannazzo to benzol? A. I did. He showed me the room where Mr. Iannazzo was working—he termed it, what he called the dope room, and he said the solution that they used in the finishing of the leather contained about twenty-five per cent. of benzol, and that Mr. Iannazzo had been in their employ from the previous August.

40 Q. And did you find out whether or not he had

been working with that solution since August? A. That he had been working in that department, with that solution, since August, up to the time that he left, which was in December.

Q. Do you recall when the American Mutual policy was issued—the date of it?

Mr. Carpenter: I object. That speaks for itself. It is in evidence. 10

Mr. McLaughlin: All right. The date of it is November 18th

The Witness: 1927.

Mr. McLaughlin: 1927.

Q. Did Mr. Schumacher in any way indicate that on or after that date Mr. Iannazzo had been exposed to a greater percentage of benzol than he had before?

20

Mr. Carpenter: I object to that. Schumacher was not there working with him. He was only a man in charge of compensation.

The Court: I will sustain the objection.

Mr. McLaughlin: Your Honor, if that is the basis of the objection, Mr. Schumacher was the man with whom Mr. Crippen had to deal, and he has testified that he was familiar, generally, with the——

The Court: I think Mr. Schumacher is present, and you may call him for further examination. 30

[At this point juror No. 12 entered the court room.]

The Court: Are you willing that he should assume his place?

Mr. Carpenter: Yes.

Mr. McLaughlin: Yes. 40

[Juror No. 12 resumes his seat in the jury box.]

The Court: As has been suggested, Mr. Carpenter, both Mr. Schumacher and the Vice-President and General Manager testify that Mr. Schumacher was the man who was in charge of——

Mr. Carpenter: Making out these records.

10 The Court: Mr. Schumacher goes further than that; he says that he was in charge of compensation cases. I believe I am going to permit this testimony.

[Last question read.]

The Court: I would suggest the question as to whether or not he said anything about it, one way or the other.

20 Q. Did he say anything about it, Mr. Crippen? A. Why, I don't think that there was anything said about any greater quantities. He had been working under the same conditions right along.

The Court: Is that what he told you?

The Witness: That is what he told me.

Q. What else was said, Mr. Crippen? A. I inquired of Mr. Schumacher at that time who was 30 the previous insurance carrier on the risk before the American Mutual went on it, and he informed me that it was the Great American.

Q. And after that, what else, if anything, was said? A. Then later there was a petition for a formal hearing, which was served on the American Mutual, or a representative of the American Mutual, and I went down to the Textileather Company and informed Mr. Schumacher that we would 40 file an answer in response to the petition.

Q. And did you tell him anything regarding the situation of the American Mutual being only on since November 18, 1927?

Mr. Carpenter: That is very leading.

The Court: He may answer that yes or no.

A. What was that?

Q. [Read.] A. I explained to Mr. Schumacher that it was my opinion that the matter was up to the Great American and not up to the American Mutual, due to the fact we had only been on the risk ten days or two weeks when the death occurred. 10

Q. And what was his reply to that, Mr. Crippen? A. He simply said that was up to the insurance company.

Cross-examination by Mr. Carpenter:

Q. Have you got any memorandum in your file of that conversation, made at the time? A. I made a memorandum in my book, which I haven't got since; I have destroyed that since I have been out of the employ of the American Mutual. 20

Q. Did you make any memorandum or report to the American Mutual of that conversation you have just related to the jury? A. I think I did.

Q. Have you got it here? A. I haven't got it with me; no, sir.

Q. Where is it? A. It may be in the file, if Mr. McLaughlin has it. 30

Mr. Carpenter: I call on you to produce it, Mr. McLaughlin.

Mr. McLaughlin: I haven't it.

Q. Are you testifying entirely from recollection of this conversation of a couple of years ago? A. I am testifying from recollection, because I was very familiar with this matter, Mr. Carpenter. 40

Q. How long since you have been in the employ of the American Mutual? You left their employ when? A. On the 15th of June.

Q. What year? A. 1928.

Q. You have been away from their employ nearly two years, is that right? A. Yes, sir.

Q. You are doing investigating work now, aren't you, and have been ever since? A. Well, I haven't
10 been doing as much investigating work now as I did when I was with the insurance company.

Q. And you have handled a great many cases since this, hasn't you? A. Several cases; yes, sir.

Q. A great many? A. Well, I wouldn't say a "great many"; probably forty or fifty.

Q. Now, you say that you have no memorandum that you made from which you have refreshed your recollection about this conversation with Schu-
20 macher? A. No memorandums that I have personally; no, sir.

Q. Have you looked for any memorandum in the files of the American Mutual as near as two years ago? A. I went over the facts with Mr. Kenny, of the American Mutual.

Q. When? A. About two months ago.

Q. Did you go over them with him last week? A. No, sir.

30 Q. Now, was it your idea? Are you the one that suggested to the American Mutual that you try to avoid responsibility yourself and put it over onto the Great American Indemnity Company?

Mr. McLaughlin: I object to that.

The Court: I think the form of that question indicates that there is such testimony in the case.

Mr. Carpenter: I will consent that it be stricken out and ask this one:

40

Q. Did you suggest to the American Mutual Liability Insurance Company, your employer, that you try to avoid responsibility of this case and stick it onto the Great American?

Mr. McLaughlin: I object to that.

The Court: The question may be answered.

A. No, sir. 10

Q. Do you know whether that was the attitude taken by your company? A. That I don't know.

Q. Do you know who it was that took the responsibility for that decision?

Mr. McLaughlin: I object to that.

The Court: I will sustain the objection.

Q. You told Mr. Schumacher that your company would take over the defense of the compensation case and file an answer? A. I said we would file the answer. 20

Q. When did you tell him that? A. On my second visit down there, after the petition was served on the company.

Q. Do you know the date? A. I think it was something about—was it January 7th or February 7th the petition was served?

Q. Your company had first taken care of an informal hearing in the Compensation Bureau before that, hadn't you? A. Well, that I had nothing to do with. 30

Q. Did you have anything at all to do with the hearings before the Compensation Court?

Mr. McLaughlin: You mean the hearings?

Mr. Carpenter: Any hearings.

A. No, sir.

Q. That is, in the Iannazzo case against the 40

American Mutual and the Textileather. A. I had nothing to do with that; no, sir.

Q. You did not even know that they were being held, did you? A. No, I didn't have anything to do with them, Mr. Carpenter.

Q. Did you have anything to do with acknowledging service of the petition for compensation? A. No, sir.

Q. Did you even know it had been served on your company? A. After I had been given a memorandum to go down and see Mr. Schumacher.

Mr. McLaughlin: I will call Mrs. Iannazzo. I do not know whether the lady will require an interpreter or not. The young man with her is her son.

The Court: She speaks Italian?

Mr. McLaughlin: Yes, sir.

The Court: Then you may send for an interpreter.

Mr. McLaughlin: I see Mr. Riley is here with the compensation records. Perhaps we can call him and put those in. They apply to both Mooney and Iannazzo. We called him the other day and he said he had taken them back and left them with the Compensation Board.

The Court: Yes.

Mr. Carpenter: Mr. Riley, will you step up?

CHARLES F. RILEY, previously sworn, recalled in behalf of plaintiff.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Mr. Riley, have you brought this morning the papers that you were asked to bring Friday afternoon, of the Mooney file? A. Yes, sir.

Q. Particularly a letter to Mr. McLaughlin from the Compensation Board, or a letter or acknowledgment from him? A. Yes, sir. 10

Q. Have you got the reply? A. [Witness produces document.]

Q. This is a carbon. A. [Witness produces another document.]

Mr. Carpenter: I now offer in evidence letter to Mr. McLaughlin, dated June 13, 1928, from Harry J. Goas, Deputy Commissioner, and Mr. McLaughlin's reply of June 16, 1928, regarding this case and also the Mooney case. 20

Mr. McLaughlin: I object to them as incompetent, irrelevant and immaterial.

The Court: May I see them?

[Documents handed to the Court.]

The Court [After examining]: They may be admitted. 30

Counsel for defendant prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

[Letter dated June 13, 1928, is received in evidence and marked Exhibit P-19.]

[Letter dated June 16, 1928, is received in evidence and marked Exhibit P-20.] 40

Mr. Carpenter [Reading Exhibit P-19]:

"June 13, 1928.

"Atty. Gerald McLaughlin,
McCarter and English, Attys.,
Prudential Bldg.,
Newark, N. J.

10 "*In re:* Textile Leather Company
vs. Iannazzo—Mooney
No. 7776 No. 7748

"Dear Sir:

"Since signing the Determinations in the above cases it has come to my attention that it might be well to change their phraseology somewhat by reducing my findings to the facts that usually obtain in the average Determination and eliminate any opinion that has been included.

"I would accordingly request that you see me this coming Tuesday morning, June 19th, 1928 at 10 A. M. in conjunction with the others connected with these two cases for an informal discussion on the subject.

"Yours very truly,

HARRY J. GOAS,
30 Deputy Commissioner."

40

[Reading Exhibit P-20]:

"McCarter & English,
Counsellors at Law,
Prudential Building—765 Broad Street,
Newark, N. J.

"June 16, 1928.

"*Re* Textileather *ads* Mooney and Iannazzo
No. 7748 No. 7776 10

"Honorable Harry J. Goas,
9 Franklin Street,
Newark, New Jersey.

Dear Sir:

"I beg to acknowledge your letter of the 13th in the above, suggesting that I see you next Tuesday, the 19th, at 10 A. M., regarding these cases. 20

"From the looks of things now, this will be a physical impossibility for me at that time. It happens that I have a prior Chancery engagement for that morning and four or five cases in the Passaic and Essex Circuits, one of which I will be actually trying that day. If convenient for you, and whoever else is to be present, may I suggest next Saturday morning, the 23rd, at any time you see fit. Please let me hear from you as to this. 30

"Very truly yours,

GERALD MCLAUGHLIN."

Q. Was there any hearing held on that Saturday, as suggested? A. That I cannot say.

Q. Nothing in the file that shows it? A. No, sir.

40

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Any further letter in there from Commissiioner Goas to me, suggesting anything further, or anything whatever to me? A. [Consulting file.] No.

10

GRAZIA IANNAZZO sworn in behalf of defendant (through the interpreter).

DIRECT-EXAMINATION BY MR. MCLAUGHLIN:

Q. Does "Grazia" mean "Grace"? A. Yes.

Q. Are you the widow of Bruno Iannazzo? A. Yes.

Q. Did your husband ever work for the Textileather Company? A. Yes.

20

Q. When did he start work for the Textileather Company? A. In the month of August.

Q. What year? A. 1927.

Q. Before he went to work for the Textileather Company what was your husband's condition of health? A. Good.

Q. Did you notice any change in his condition after he went to work for the Textile? A. After a few months he started, he didn't want to eat much.

30

Q. Before he had gone to work for the Textile, how was his appetite? A. Good; he would be eating regularly.

Q. What else did you notice regarding his condition after he went to work for the Textile? A. He became very pale, and one day in the month of August he had a nosebleed.

40

Q. Anything else that you noticed? A. He was

always going backwards; he was becoming very skinny.

Q. Tell us whether or not his clothes fitted him as they had before he went to work for the Textile. A. They were all too large for him; they were lacking.

Q. They were what? A. They were too large for him, entirely too large.

Q. Did you notice anything regarding his nerves? 10
A. In the house he did not want to hear anything, not even the children talking. He wanted to go to bed.

Q. How did he sleep after he went to the Textile to work? A. He would not be sleeping freely and sound.

Q. Do you remember whether or not he had a nosebleed or nosebleeds in October?

Mr. Carpenter: I object to that. That is 20
very leading. That suggests everything to her.

The Court: I will sustain the objection.

Q. You said that he had a nosebleed in August. Did he have any other nosebleeds? A. I said in the month of October.

Q. October? A. Yes.

Q. Before he went to work for the Textile, did he ever have nosebleeds? A. Never.

Q. Around the time when he had the nosebleed 30
in October, what was his appearance? A. Not very bad.

Q. With respect to his looks, how did he look, Mrs. Iannazzo? A. He looked a little bad, but it did not appear so very bad.

Q. As later on, you mean? A. Yes.

Q. And at that time, in October, how was he sleeping? A. He did not sleep so very well; a little bad. 40

Q. And how was his appetite? A. Little.

Q. Did you notice anything around that time with respect to dizziness on the part of your husband? A. I didn't watch out.

Q. Was he dizzy at that time?

Mr. Carpenter: What time? I object.

Mr. McLaughlin: In October.

10 The Court: I suppose dizziness would be a subjective symptom, unless he did something to manifest it, wouldn't it?

Mr. McLaughlin: I guess it would, your Honor.

Q. What was his condition regarding his nerves, as far as you saw, in October, Mrs. Iannazzo? A. He was a little bad. At night he did not want to stay up too much; he wanted to go to bed.

20

Q. Will you tell us whether or not you noticed these things in some degree shortly after he went to work for the Textile? A. After a month of work it started; he didn't want to eat any more.

Q. And at that time did you observe whether or not he lost any weight? A. He was starting to get bad, but the weight was never examined.

Q. And at that time, Mrs. Iannazzo, had you noticed whether or not he had become pale? A. Yes, quickly the color changed.

30

Q. Isn't it true that by the time he had been working in the Textile a couple of months, which would bring it to about early in October, that these conditions which you have testified to had become very noticeable?

Mr. Carpenter: I suggest that is very leading.

40 The Court: I will sustain the objection.

Q. Will you tell us whether or not these conditions, which you noticed shortly after Mr. Iannazzo went to work for the Textile, gradually became worse?

Mr. Carpenter: Again that is leading.

The Court: You see, there is no alternative.

Mr. McLaughlin: I will withdraw the question.

10

Q. Regarding these conditions, Mrs. Iannazzo, what happened from the time you first noticed them? A. I don't understand the question.

Q. [Repeated.] A. From the first time that he told me about his nose in October, he was going backwards.

Q. Did you testify as follows in the Compensation Court, Mrs. Iannazzo——

Mr. Carpenter: I want to object to that, because it is improper. 20

The Court: I will sustain the objection.

Mr. McLaughlin: May I ask the ground?

The Court: Well, manifestly, it is cross-examination of your own witness, and, unless you are surprised at her testimony and you wish to contradict her testimony, you are surprised at what she has now stated, then you may do that.

30

Q. After the nosebleed in October, Mrs. Iannazzo, what happened to your husband? A. Nothing happened, but he was always bad, always nervous.

Q. And as to his color, how was his color? A. Before, it was well, but after it was going backwards, always white.

Q. And your husband died on December 8th, didn't he, 1927? A. Yes.

Q. At the City Hospital, Newark? A. Yes. 40

CROSS-EXAMINATION BY MR. CARPENTER:

Q. Mrs. Iannazzo, the first nosebleed that you noticed was in October, wasn't it? Not in August? A. In October.

Q. And it was at the end of the month of October, wasn't it? A. I don't remember the date.

Q. And isn't it so that your husband worked continuously right up until the 26th of November? A. Yes, he always worked.

10

Q. He worked every day during the month of November, didn't he, up until the 26th? A. Yes. When there was work, he would always work.

Q. And he put in full hours every day, didn't he? A. Yes.

Q. And will you tell the jury whether it was not in the last of November that he began to look badly? A. No. On the 27th of November he got up in the morning and he had his blood from his nose.

20

Q. Well, was he all right up to the 27th of November? A. Until the 27th; he went to work the 26th.

Q. And when he came home on the 26th, was he all right, as far as you knew? A. No. He felt a little bad that night; a little weak.

Q. Well, when he went to work on the morning of the 26th, was he all right that morning, and able to go to work? A. Yes, he could go to work.

30

Q. And this attack then came on suddenly on the 27th, did it? A. What can I know now?

Q. Well, is that your recollection, that it came on suddenly on the 26th or 27th? A. What can I know?

The Court: Did he have any nosebleeds between October and this nosebleed on November 27th?

40

The Witness: No.

Q. And did he eat his meals with the family right up until the 26th of November? A. He would eat his meals, but not much; very little.

Q. And did you call a doctor in to see him before the 27th of November? A. No.

Q. And, so far as you knew, he didn't call on any doctor before the 27th of November, did he? 10 A. No, not until the 27th.

Q. Did you suggest that he get another job at any time? A. When?

Q. Before the 26th of November. A. No. He would never say nothing against the work.

Q. And you did not notice any sickness that he had prior to this 27th of November, except the one nosebleed in October? A. Nothing.

20

REDIRECT-EXAMINATION BY MR. MCLAUGHLIN:

Q. But you did notice, from the time shortly after he went to work for the Textile, that he had become pale, had lost weight, had lost appetite, and did not sleep well and was restless, as you have testified to on your direct-examination, isn't that true?

Mr. Carpenter: I object. This is not proper redirect. 30

The Court: I will sustain the objection. It is already in the evidence.

HENRY H. KESSLER sworn in behalf of defendant.

DIRECT-EXAMINATION BY MR. MCLAUGHLIN:

Q. Doctor, you are a practicing physician in this state? A. I am. 40

Q. How many years have you been practicing? A. Ten years.

Q. And a graduate of where, Doctor? A. Cornell University Medical College.

Q. And connected with what hospitals, if any, at the present time? A. Newark Beth Israel Hospital, Newark City Hospital, Hospital for Crippled
10 Children, and Irvington General Hospital.

Q. With special reference to occupational diseases and, in particular, to benzol, will you tell us briefly what your qualifications are as to those? A. I am Medical Director of the New Jersey State Occupational Disease Clinic here in Newark; I am Chairman of the Committee of the American Public Health Association on Standards for occupational disease; I am a Fellow of American Public
20 Health Association; a member of the International Congress of Industrial Accidents and Occupational Disease, before whom I lectured on benzol poisoning in Budapest in 1928. I am a member of the Society of Medical Jurisprudence; President of the Industrial Physicians and Surgeons of Northern New Jersey; I am Vice-President of the New Jersey Tuberculosis League, and Chairman of its Committee in Industry; and Chairman of the Committee on Industrial Health of the Essex County
30 Health Council; and I am Sub-chairman of the Committee on Lead Poisoning of the American Public Health Association.

Q. With reference to benzol, Doctor, what is your experience as to it? A. Why, in the past ten years, since I have been associated with the Department of Labor, I have examined close to one thousand individuals who have been exposed to benzol. I have also contacted with all the hospitals in Essex
40 County relative to any cases of occupational disease

which they might have, and have their cooperation in this state, and seeing those patients. I also saw almost all the fatal cases of benzol poisoning that died in the Newark City Hospital.

Q. Do you recall, Doctor, whether or not you actually saw Bruno Iannazzo? A. I cannot say positively, unless I saw the hosiptal record, but it is my belief that I did see him. 10

Q. Assuming that Bruno Iannazzo was a man of the age of fifty-seven or fifty-eight, as I recall the testimony, and prior to August 8, 1927, was a healthy, well man, who never had had nose-bleeds, and he had had a healthy appetite and slept well, and a good color prior to that time; that on August 28, 1927, he went to the Textileather Company, being employed in the "dope" room, straining the dope finish, using a solution of approximately 1,500 pounds in amount daily, which solution contained twenty-five per cent. of benzol; and that in the course of his straining the solution, which was a viscous material, he would pour it from one can to another, the cans being open at the time; and that after he had finished getting rid of all the free material out of the large can he would scrape it with a knife, about fourteen inches long, to get rid of the rest of it, and that he worked with this solution daily from August 8, 1927, to November 26, 1927, with a lapse of six and one-half days, approximately; that is, he was not working for six and one-half days during that entire period, at intervals; that in October physical changes were noticed in him: he became pale, he was nervous, restless, he did not sleep well, he had lost his appetite, would not eat very much; that in October, the date not being fixed, he had a nosebleed; that among other things the loss of weight was so appar- 20 30 40

ent that his clothes did not fit him, they were too large for him; that on November 27th he called a doctor, and the doctor found that he was bleeding
10 from the gums, with a history of having been bleeding from the gums for the entire twenty-four hours previous; and that he had eruptions or break-outs over his skin, particularly on the legs and body; that he was so dizzy that he had to either sit down or lie down, and at that time he had a real ashy, pale color; that he was sent to the City Hospital, arriving at the City Hospital on or about December 3, 1927; and that he died in the City Hospital, with Dr. Martland making the autopsy and giving as the cause of death aplastic anemia, probably occupational, due to chronic benzol poisoning in arti-
20 ficial leather industry, and that part of the autopsy, the anemia, showed that it had worked itself into the bone marrow—given those things, Doctor, can you tell us whether or not, in your opinion, Mr. Iannazzo had the effects of the chronic benzol poisoning in his system prior to November 18, 1927, from which he died on December 8, 1927?

Mr. Carpenter: I object.

30 The Court: What is the objection? Of course, there are certain facts stated which I have not before heard in this case, but you apparently had in your hand the testimony, from which you were reading, in the Compensation Court, which is in evidence?

Mr. McLaughlin: Yes, sir; that is in evidence.

The Court: And you were reading accurately from that testimony?

Mr. McLaughlin: I was; yes, sir.

The Court: I assumed that you were. Then
40 I will overrule the objection.

Mr. Carpenter: My objection was because of asking for the effect of this at a particular time, mentioning the month of November on, and there is nothing in the evidence.

The Court: I suppose the preliminary question should be as to whether or not he has an opinion.

Mr. Carpenter: Furthermore, that is the fact that the Court and jury have to determine. That is not a matter of expert opinion. That is a matter of finding by the Court. 10

The Court: The objection will be overruled.

A. I will have to ask one question before I answer that. Was there any change in the type of work that he did after November 18?

Q. I am sorry I left that out. There was no change in the type of work he did or in the quantity of the material he worked with. A. Well, if that were the case, I would say yes, I have an opinion. 20

Q. What is that opinion, Doctor? A. That this man was sufficiently poisoned by benzol prior to November 18th to have occasioned his death, regardless of what took place after November 18th.

Q. Why do you say that, Doctor? A. For several reasons: in the first place, in the hypothetical question there is a history of symptoms relative to benzol poisoning, nosebleeds, irritability, nervousness, loss of weight, signs of anemia, as shown by pallor; in the second place, the pathological condition, once it is started, goes on to an inevitable conclusion, regardless of treatment and regardless of cessation from work; in the third place, this man —most of the cases that I saw of my own experience occurred during the summer time, when 30 40

the exposure was greatest, due to the fact that the volatility of the benzol was greater in the summer months than in the winter months, so that the exposure was greater during the period of August and September; and then finally he was exposed almost four months, and he was sufficiently poisoned during that time, so that the end result was inevitable, so that one—provided there was no change in the concentration of the vapor to which he was exposed, that one week could make no difference.

CROSS-EXAMINATION BY MR. CARPENTER:

Q. Now, Doctor, why do you take the 18th of November as the date when he had all this in his system, rather than some other date? A. That is the date given me in the question; but it is my opinion that prior to November 18th he was sufficiently poisoned.

Q. Your opinions go back as far as August? A. I wouldn't say August.

Q. And was it in August when you assumed that he started to work?

Mr. McLaughlin: The date given to him in the question was August 8th, which was the date in the testimony.

The Court: Yes, that was in the hypothetical question.

Q. Would a man who had sufficient benzol in his system to die from it be able to work every day? A. Yes, sir.

Q. For how long? A. I had a half a dozen cases——

The Court: No—for how long?

Q. For how long would he be able to work every day? A. A variable period of time.

Q. And isn't it a fact that the continued absorption of benzol, day after day, is what finally causes a break-down? A. No. The most important thing is the effect of the poison initially.

Q. Well, now, suppose—— A. [Interposing.] Benzol does not accumulate by itself in the blood, it is not stored. The effects of it may be cumulative but benzol itself is not stored. It is—within a few hours or a few days it is dissipated through the body, exhaled through the lungs.

Q. It is the same as if a man drinks whiskey? A. Very similar.

Q. He drinks a pint of whiskey and it gets all through his system, doesn't it? A. Yes.

Q. And then if he does that the second day, he just adds that much more? A. No, he doesn't add the whiskey to his system, but the pathological effect of it may be added.

Q. If he does that, or drinks a quart a day, right on down for three months, he has got a little bit more in his system every day? A. No; then something else begins to take place. He begins to adapt and accommodate himself. There are certain individuals who can drink a glassful of whiskey and not feel it; there are others who will drink a little thimblefull and feel it immediately. That is due to the ability to adapt themselves.

Q. But delirium tremens do not come on until he has taken his last heavy dose of it, isn't that so? A. You cannot compare alcohol exactly to benzol, but it is a fact, in benzol poisoning, that they do adapt themselves. Up to a certain state there will be pathological effects due to benzol; beyond that state the body will throw it off, just as certain

individuals will throw off alcohol. There is an analogous condition, but it is not the same.

Q. Then it is the last heavy dose of whiskey that gives the man the delirium tremens, isn't it? A. I cannot qualify on the question of alcoholism. The condition is not the same thing.

Q. It is the last heavy dose of benzol which causes the man finally to collapse, and his gums to break out, and his nose to bleed, and cause his death, isn't it? A. If it is an unusual dose, in excess of that to which he has been exposed to over a long period of time, yes.

Q. What is it that indicates whether it is an unusual dose or not? A. The amount of vapor to which he was exposed; the amount of benzol, concentration in the air.

Q. The amount of benzol which he inhales? A. Yes.

Q. Now, then, isn't one of the things which is indicative of what he has been able to stand right along, isn't that his ability to work day after day, full hours continuously, right up to a certain point? A. Not always.

Q. Isn't that the proper or usual way of determining it? A. No, not in benzol.

Q. You are making a difference between benzol and other poisons? A. I am talking about benzol.

Q. How about lead poisoning, for instance? A. Lead poisoning is cumulative, because the lead is stored in the bones. Benzol is not stored. Benzol is not cumulative in the sense that it is stored. The effects are cumulative, but benzol is not stored.

Q. Isn't it a fact that men may work for years with benzol and not collapse until they get a sudden—— A. [Interposing.] Yes, if they get an unusual amount of exposure, then they collapse; or

if their general resistance breaks down as the result of infection, as a result of degenerative disease in their heart or vascular system.

Q. You say that benzol is not stored in the body? A. No, it is not stored in the body. It is excreted through the lungs within a few hours or days, or it is broken down into its by-products, mucenic acid and phenol.

Q. Then benzol is not stored in the body, but is thrown off within a few hours? A. Within a few hours or a few days. 10

Q. That being so, if a man had been exposed to benzol until, say, the 1st of November, and then was not exposed again, and he did not die until December, he certainly would have thrown off, would he not, all the benzol between the 1st of November and the 1st of December? A. But he could not throw off the pathological changes which had already taken place in his bone marrow, and that is the cause of his death. 20

Q. Don't you know that lots of men who work in these plants, where benzol is used, work there for several months, and leave, and are never sick? A. And I also know——

Q. Just answer the question. A. Yes, that is true.

Q. And isn't it so that you cannot tell whether a man, who has been exposed to benzol, and then quits and goes to some other employment will live or die—you cannot tell that, can you? A. Oh, yes; you can. 30

Q. You can? A. Oh, yes; you can. If you examine his blood you can tell.

Q. So that if this man's blood had been tested and examined on the 18th of November, you would have been able to tell, would you, whether he was going to recover or not? A. Yes. 40

Q. Would transfusion have any effect? A. No.

Q. You say not? A. No.

Q. How could you tell, from examining his blood on the 18th day of November, how that would be affected by the later exposure to benzol, over a period of a week or ten days, when he has sustained exposure every day? A. In this way: that if his blood on that date showed a reduction in the red cell count, the white cell count and, particularly, the blood-platelets count, there was an evidence that destruction had already taken place in the bone-forming elements in his bone marrow, to the extent that he could not recover from it.

Q. How long does it take the benzol to get into the bone marrow? A. As soon as it is inhaled.

Q. As soon as inhaled? A. As soon as there is a complete cycle of the blood circulation.

Q. Can that come in a day? A. Within a few minutes.

Q. So isn't it entirely possible that this man could have got this benzol poisoning into his blood and his system, and into his bone marrow, all on the 26th day of November, 1927? A. Not if he was exposed continuously from August 8th.

Q. How do you know he was exposed all that time? A. That is the way the question was given to me.

Q. Well, suppose he was exposed continuously from August 8th to November 26th, but it had not had any effect on him; might it not be that he would get enough to kill him on November 26th? A. Well, then you will have to make me believe that he did not have a nosebleed sometime in October, and he did not have other symptoms of benzol poisoning before that date.

Q. You are basing your entire supposition or

opinion on the fact that he had a nosebleed in October? A. Not entirely; the history of the exposure, the nosebleeds, and the ultimate findings.

Q. Men have nosebleeds from many causes, don't they? A. Yes, sir.

Q. What is the result of that? A. An ulceration in the nose, a little congestion in the nose.

Q. A pick in the nose? A. Yes; ulceration, I mentioned. 10

Q. And high blood pressure? A. Anemia; a great many causes.

Q. You did not pay any attention to the fact that this man worked every day for the last five weeks before his death, did you? A. Not if the concentration to which he was exposed, the concentration of benzol to which he was exposed, was no different from that to which he was exposed prior to November 18th. 20

Q. But you did not know that, did you? A. No, I did not know that.

Q. Nobody can tell? A. If it was measured it could be told what the exposure was. There is an apparatus which will determine that.

Q. Isn't it a fact that the quantity handled might be the same, but his inhalation of fumes on the last day may have been a great deal larger than it was any other day during the period? 30

Mr. McLaughlin: I object to that.

The Court: The question may be answered.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A. I don't know what the concentration was. If the concentration to which he was exposed after 40

November 18th, was greater than that prior to November 18th, it would have had a definite effect.

Q. What would that effect be? A. It might have an effect to aggravate the benzol already in his system.

By the Court:

10 Q. Doctor, you made one statement, that I observed, about the effects being greater in the month of August. A. Yes.

Q. I suppose, during the winter time these industrial plants are kept pretty well closed with a temperature of what, 68 to 70? A. Yes.

Q. Well, then, during the month of August, I suppose usually the windows and doors are all open, aren't they? A. Yes.

20 Q. Well, then, I do not quite understand the theory of the greater evaporation in those months, and the greater danger from the evaporation in those months, than it is during the months when the doors and windows are closed. A. This is the explanation: There is a difference between ventilation and the volatilization of the benzol. The benzol contained in the tub volatilizes, vaporizes more quickly in a warm atmosphere or climate, 30 than it does in a cold climate, so that there would be more vapor, more benzol in the air at any one given moment in the summer time than in the winter time. Now, that is volatilization.

Q. Yes, but if summer time temperature be maintained in the winter time in the room, how does that explain it? A. I don't understand that question.

Q. If a summer time temperature be maintained 40 in the room where the benzol is used, in the winter

time? A. Then the exposure would be greater, if there was no ventilation, and increase the volatilization.

Q. Except upon rare occasions, the summer temperature, mean summer temperature, is not above 70, is it, in these plans? A. Well, it is much more than that. My own visits to these plants show that.

By Mr. Carpenter:

Q. Have you ever been in the Textileather plant? A. Yes, sir. 10

By the Court:

Q. It is all a matter of temperature, isn't it, the volatilization of it? A. The volatilization of it is a matter of temperature?

Q. I did not mean to interrupt your explanation. A. I did not complete it. Well, there are so many factors to remember. The vaporized or volatilized 20 benzol is heavier than air and does not rise up in the air, so that with natural ventliation you still have your exposure. It drops to the ground. If you have downward exhaust ventilation, you can remove that vapor. It has been my experience, in the plants I have seen, even some of the best ventilated plants, that there was always a large concentration of benzol beyond what we would call the lethal dose, that is, more than 100 parts per million 30 of air. Furthermore, in the cases I have examined, I have always found in the summer time signs of incipient benzol poisoning more than I have in the winter.

By Mr. Carpenter:

Q. You did not testify in the Compensation Court in this case at all, did you? A. No.

Q. You make a practice of going around and 40

giving expert testimony for people in court, do you not? A. When I am called upon; yes.

Q. When you are called upon and paid? A. I expect to be paid; yes.

Q. And you testify very frequently in Compensation Courts, do you not? A. No.

Mr. Carpenter: That is all.

10 Mr. McLaughlin: That is our case, your Honor.

The Court: Any rebuttal?

Mr. Carpenter: Is Mr. Schumacher here? Take the stand.

WALTER A. SCHUMACHER recalled in behalf of

20 plaintiff in rebuttal.

DIRECT-EXAMINATION BY MR. CARPENTER:

Q. Did Mr. Crippen, the claim investigator of the American Mutual, come to your plant and tell you that he would file an answer to the compensation proceedings, or did he tell you anything about that proceeding? Did he say anything to you about

30 that at all? A. No, sir.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Don't you remember, Mr. Schumacher, that at that time he inquired of you who was your prior insurance carrier? A. No, sir; I do not.

Q. And you told him it was the Great American? A. No, sir.

Q. And don't you remember a conversation

40 about that time, when Mr. Crippen told you that, in

his judgment, under the facts as given to him by you, that the American Mutual being on that risk a week, it looked very unlikely that the man had suffered the results of the benzol and died as the result of it during that week? A. No, sir.

Q. And don't you remember that he told you that the answer of the American Mutual would set up these facts fully and fairly? A. No, sir. 10

Q. You do not remember any of that at all, do you? A. No, sir.

REDIRECT-EXAMINATION BY MR. CARPENTER:

Q. He never sent you a copy of any of the answer filed, did he? A. No, sir.

Q. Did he ever send you any notice that they were trying to fasten this on to the other insurance company? A. No, sir. 20

Mr. Carpenter: That is our case, your Honor.

The Court: Is the case closed?

Mr. Carpenter: Yes.

Mr. McLaughlin: On behalf of the American Mutual, your Honor, I move for a direction of a verdict on the grounds urged in the nonsuit, and on the additional grounds that the proof now clearly shows, without contradiction, that under the points urged for the nonsuit, and repeated here for the motion on directing a verdict, that the coverage of the American Mutual is not the responsible coverage in this case, and that the plaintiff has not made out a cause of action against the American Mutual under its complaint. 30 40

Mr. Carpenter: I now move for the direction of a verdict in favor of the plaintiff, Textileather Corporation, against the American Mutual Liability Insurance Company, on these grounds:

First, because the American Mutual Liability Insurance Company took over the defense of this case in the Compensation Court, filed an answer, first, however, having taken care of and attended to what they call an informal hearing.

The Court: I wonder if that is pleaded.

Mr. Carpenter: Yes, it is pleaded in my complaint.

The Court: Will you refer me to that pleading?

Mr. Carpenter: It is quite a voluminous complaint, as you have seen.

The Court: Yes, I have read the complaint and some other portions of it.

Mr. Carpenter: Thirteen, fourteen and fifteen, page five [reading]. We allege that, prior to the making of that statement in court, neither the defendant American Mutual nor any of its attorneys gave any notice to the plaintiff of the defendant's intention to the entry of judgment in favor of Mrs. Iannazzo, in favor of the plaintiff, nor did they give the plaintiff an opportunity to protect itself against the Great American, under the terms of the plaintiff's policy of the Great American. Now, we relied upon that, under the decisions which I have given to your Honor, that it is pleading estoppel as accurately and precisely as can be stated.

The first is on the ground of estoppel. Second, that we have proved, by the testimony of

Dr. Martland, and the attending physician and, in fact, Mrs. Iannazzo herself, that Mr. Iannazzo worked continuously until the 26th of November, and she, his wife, said that she did not notice his inability to work, although he looked pale and he got thinner, and did not eat or sleep so well, she did not see any reason for calling in a doctor to attend her husband until the 27th of November. He had worked every day, every working day, for five weeks prior to that. The record shows that he worked every day in the week of October 30th, November 6th, 13th, 20th and 27th—every week, without a break, without loss of an hour; and she says that it was not on November 26th that he had the bleeding mouth and the nosebleed, but the 27th, and then she called the doctor, and the doctor said that when he came—he came the next day, the 27th—he found the history that he had was that he had been taken ill the day before, when he had returned from work; and that testimony, coupled with the testimony of Dr. Martland and the testimony of the attending physician, Dr. Fasano, is sufficient to compel the direction of a verdict in this case for the plaintiff, irrespective of this hypothetical testimony of Dr. Kessler.

Now, there has been offered here the testimony before the Compensation Board. I consented to the admission of that, because it will show the absolute lack of justification for putting into the determination of that board what was in there about this man having contracted the benzol poisoning, from which he died, prior to the 1st of November.

The Court: I do not believe it is necessary

to argue that, because I have already decided that question.

Mr. Carpenter: But in this case there is absolutely nothing that justifies that.

The Court: I think in this case Mr. McLaughlin has offered testimony which would indicate that he is not entirely relying, at this stage of the case, upon the finding of the Compensation Court by Mr. Goas. This medical testimony that he put in, that is, the calling of Mrs. Iannazzo and Dr. Kessler, indicates that in this case they have attempted to meet that issue squarely as a matter of fact. Am I correct about that, Mr. McLaughlin?

Mr. McLaughlin: The reason we put the testimony in is because of the Court's ruling right along in the case.

The Court: In the former case?

Mr. McLaughlin: Yes, sir.

The Court: That is what I meant, to meet the rulings of the Court in the former case.

Mr. McLaughlin: Yes, sir.

[Argument.]

The Court: During the interval between last Friday and the present time, I have been studying, with considerable interest, giving such time to it as I have had at my disposal, the subject of the effect of the defendant taking over the defense of this action in the Compensation Court. This question I had not the opportunity to study before rendering my decision in the other case, and that decision was, of course, rendered mainly on the subject of the lack of proof of any fatal effect upon Mr. Mooney prior to the issuance of the defendant's policy of November 18th. I would like to hear you upon that, particularly, Mr. McLaughlin.

Mr. McLaughlin: The testimony in this case is that under its policy and under the evidence in the case, the policy itself, this claim being made during the coverage of the American Mutual policy, that the American Mutual had to defend, even though the claim were groundless. That is the language of the policy.

The Court: Will you refer me to that provision of the policy, please? 10

Mr. McLaughlin: Roman number three.

The Court: Perhaps if you have a policy form, I can find it.

Mr. Carpenter: I have, your Honor. All these policies are alike, of all companies. [handing form to the Court].

The Court: What do you think that means, so far as this suit is concerned? As I read that, I am a little in doubt, that that does not mean that the claim of the employee is wholly groundless, false and fraudulent. 20

Mr. Carpenter: That is what it means.

The Court: I expect it does not mean, does it, any suit as not covered by the policy?

Mr. McLaughlin: I think it also means that, and not only can be interpreted to mean that, but its every-day practice taken as meaning that. If a claim occurs during a policy period, whether or not that policy actually covers that claim, it is the everyday, invariable practice that the company covering defends, and in this situation, where the claim was valid of itself, or where it was valid under its coverage, the company, under its policy had to defend that, otherwise there is a breach of warranty, as far as the policy itself is concerned. 30

The Court: I am just wondering as to 40

whether that means as between the employer and employee; that is, whether it was groundless, false and fraudulent as between the employer and the employee, or whether or not it can be construed to mean as between the insured and the insurer. That is what I have in mind.

10 Mr. McLaughlin: I understand, and on that, your Honor, I am frank to say I haven't any law on it. It is the one thing that I haven't any law on right here; but I do know the reason I haven't it here is that this is a matter of common practice, with a claim occurring within a policy period, the company which is on during that period, defends. If it happens that the claim is not covered by the particular policy, nevertheless, the company will still de-
20 fend. The company won't pay and is not liable or responsible for loss, but the company will defend. I do not know whether your Honor has had cases in that regard in the Circuit here or not, but, as between insurer and insured, it is an ordinary, common occurrence.

My thought is here that, under the language of the policy, the company has to come in, even though the claim be groundless, as far as the
30 policy goes, because, after all, the only contract in which the insurance company is at all involved or concerned, is the policy contract, embracing, as it does, the Workmen's Compensation Act.

[Argument.]

40

Court's Decision.

The Court: This case has presented many difficulties, and it has been a most interesting case on that account, as well as the case which preceded it.

The motion for the direction of a verdict has now been made substantially upon two grounds: one, that the evidence shows that the accident, or the disease, which caused Mr. Iannazzo to cease his employment, and from which he died on the 8th of December, occurred during the coverage of the defendant's policy of insurance; and, second, that the defendant is estopped to deny now its liability, on account of having taken over the entire defense of the action of the widow of Iannazzo against the plaintiff and this company.

The original Workmen's Compensation Act speaks only of accidents and injuries, apparently not including occupational diseases, and it was not until 1924 that occupational diseases were specifically included in the act. There seems to be, in the occupational disease amendments to the act, no provisions relating particularly to the contracting and development and culmination of those occupational diseases, culmination either in injury sufficient to cause the employee to cease work or resulting in his death, which, in circumstances such as the present, naturally lead to controversies such as have arisen in this case, and which will always call for disputes between covering insurance companies, where the contracting and developing of the disease is during one period, and the period of disability and of death is during another coverage; and it seems that this calls for a consideration by our legislature of this subject, as to whether or not it ought not to cover it.

As is stated in one of the cases I have examined, the law of averages would seem to indicate that there should be distinctly stated which of the insur-

ance companies should be liable. However, it is a condition which now confronts us, as Mr. Cleveland has said, and not a theory. That is not the state of the law, even though it perhaps ought to be; and, of course, I am not very much impressed with the argument that something was "put over" on anybody, on the one hand that the Textileather Company put over on the American Mutual the coverage of employees who were in a bad state of
10 health, because of the exposure to benzol which they have had. It is perfectly proper and open to the covering insurance company to investigate before taking the insurance, and to ascertain the fact that benzol was being used in the manufacture of the artificial leather; that there had been employees in the factory who had been exposed to the benzol fumes for a length of time, which might result, certainly, in contraction incipiently of a disease resulting from that exposure, and provide against
20 it by its policy or refuse to issue a policy. On the other hand, I am not inclined to attribute to the American Mutual any action which was knowingly improper at the time, although what I have to say now may rather indicate to the contrary.

A verdict was directed in the Mooney case largely upon the ground that there was no evidence which would justify the jury in determining that the "injury", which is the only word used in the
30 statute, and which, of course, must mean occupational disease, occurred at any other time than the date when Mr. Mooney was obliged to cease work, which was the 3rd of December in that case. I am not so sure that the proofs in this case stand in the same position. Where there are disputed facts from which the jury would have any right to find that the accident or injury occurred during an-
40 other period, then, of course, that presents a ques-

tion of fact, which the Court ought not to take away from the jury.

In this case I am inclined to think there are facts which would make that question one for the jury, as to whether or not the disability arising from this occupational disease occurred. So I would feel disinclined, upon that ground alone, to direct a verdict against the defendant. 10

As I stated sometime ago, when another matter was being argued, I have spent considerable time investigating the effect of the action taken by the defendant company, in its defense of this suit, and in an endeavor to determine whether or not the evidence shows that the defendant is estopped at this time from denying its liability.

Referring, first, to the Miller case, to which reference has been made by the attorney of the plaintiff, 20 in the Mooney case, this was the case of *Miller* v. *Union Indemnity Company,* reported in 209 App. Div., at page 455, in which the Court held that there had been an estoppel, in these words [reading]:

> "The defendant with full knowledge of the falseness of Loree's statement in all its details undertook the conduct of Loree's case in the former action." This is a case in which the de- 30 fendant sought to evade liability on account of false statements on the part of the insured. "Shortly previous to the time of the trial of that action, the defendant's lawyers requested Loree to sign an instrument stipulating that the defendant's conduct of his case at that trial should not be taken as a waiver on the part of the defendant of any defense under the policy in any action brought by the plaintiff." 40

Now, here was a case not only in which there was knowledge on the part of the insured of the attitude of the insurance company towards him, but in which they attempted to get him to waive any advantage which he might take of the defendant's conduct of his case.

> "Loree declined to sign this and demanded that the defendant conduct his case as it agreed in its policy. A letter was then written to Loree by the attorneys for the defendant stating that the defendant would conduct the defense, but adding, 'It is the claim, however, of the said company (the defendant) that you have violated the terms of the policy mentioned by you and that all obligations on their (the company's) part has ceased thereby.' "

Now, that is certainly very much stronger than anything that appears in this case. There is nothing in this case beyond the mere statement, that is, that there was any notice to this company that the defendant company denied liability, unless it is to be found in the testimony of Mr. Crippen, and I have had that written out, so as to be sure that I would have it right. He said: "I inquired of Mr. Schumacher who was the previous insurance company on the risk before the American Mutual went on it, and he informed me that it was the Great American. Then later there was a petition for a formal hearing, which was served on the American Mutual, or a representative of the American Mutual, and I went down to the Textileather Company and informed Mr. Schumacher that we would file an answer in response to the petition." That is all denied by Mr. Schumacher; but that makes no difference, so far as this motion is concerned, because that denial simply raises a question of fact;

but here is what Mr. Crippen said: "I explained to Mr. Schumacher that it was my opinion"—no claim, but just an opinion,—"that the matter was up to the Great American and not up to the American Mutual, due to the fact that we had only been on the case ten days or two weeks when the death occurred. He simply said that was up to the insurance company." That is the only thing there is of notice up to a certain time—that is, I think, up to about the time witnesses were subpœnaed at the formal hearing—of any distinct claim on the part of the American Mutual that it was up to the Great American.

I have examined carefully another case in the Appellate Division; that is the case of *Utterback-Gleason Co.* vs. *Standard Accident Insurance Co.*, which is reported in volume 193 of the Appellate Division at page 646. In that case it seems there was a settlement made and the case then tried, and I am reading now from the syllabus: "In that case it was held that the defendant, by continuing to defend the case, brought against the present plaintiff after said settlement made by the plaintiff, waived its right to take the position that such settlement was fraudulent and the result of a conspiracy, and is estopped from raising the question, and is liable upon its policy of insurance." Now, that case is not just an Appellate Division case; it was taken up to the Court of Appeals and affirmed in 233 N. Y., at page 549.

Now, there is another case in the Appellate Division, which is along similar lines, and that is the case of *Farrell* vs. *the Merchants Mutual Automobile Insurance Company,* reported in 203 Appellate Division, at page 118. The facts are stated in the syllabus, and that is all that is necessary to state in this case. Of course, this case does differ a little,

but it is the principle which we must get at. "In an action against an insurance company for the amount of a judgment against one of its policyholders obtained in a negligence action arising out of an automobile accident, brought after an execution against such policyholder had been returned unsatisfied because of his insolvency, it appeared that the assured, instead of giving immediate written notice of the accident, notified the broker who on the next morning telephoned the agent; that when served with the summons and complaint the assured delivered the same to the broker through whom he obtained the policy who in turn delivered them to the company's general claim agent; that the claim agent delivered to the broker a receipt for the summons and complaint specifically reserving the company's rights under the delayed notice clause in the policy but that the broker did not inform the assured concerning this receipt; that the company, with full knowledge that notice of the accident had not been given it in the manner required by the policy, assumed control of the action, negotiated for its settlement, and being unsuccessful, defended at the trial, although it gave the assured notice shortly before the trial and nearly nine months after it had assumed control of the action that he must assume all responsibility for the trial.

"*Held,* that the company by thus taking control of the action waived the required notice of the accident.

"*It seems,* that an insurance company with full knowledge of all the facts, in a case like the present, must elect whether it will stand on its rights and disclaim liability or whether

it will waive the defense and claim the right, under the policy, to control both the defense and the settlement of the action."

Now, reference is also made to this Rhode Island case, *Humes Construction Company* v. *Philadelphia Casualty Company,* which is found in 79 Atl., page 1, which is to the same effect; but we are not obliged, it seems to me, in this case, to rely upon these cases in other courts, because of the decision in the case of *Horn* v. *Commonwealth Casualty Company,* in which the opinion is written by Mr. Justice Bodine, who says, in that case, in his opinion:

"It appears that on September 8, 1924, the plaintiff sued in tort Alexander Szumski and the Eagle Provision Company. The action grew out of the negligent operation of an automobile, and was defended at the instance of the present defendant, the Commonwealth Casualty Company, by its attorney. After final judgment, an execution issued against Alexander Szumski and Eagle Provision Company was returned unsatisfied by the Sheriff of Passaic County.

"The plaintiff has requested the Commonwealth Casualty Company to pay the judgment, and it has refused so to do, stating that it carried no insurance for Alexander Szumski or Eagle Provision Company at the time of the accident.

"The defendant by its policy covered the car which injured the plaintiff. It defended the suit growing out of the accident over a period of years. It is now too late for it to say that there is no proof of the permission by the

named assured, or some member of her household, for the operator of the car on the day of the accident to use the same. The defendant company by its very act has solemnly and in a court of law admitted the point. Its conduct is proof of the fact and the trial court could not have found otherwise."

10 Now, in this case, notice of the accident, as was required under the policy, was given to the plaintiff in this suit, to this company, and no other company. The defendant company here prepared the report for the Textileather Company without submitting it at all to the Textileather Company. After that, a petition was filed on behalf of the claimant, and the service of that petition was acknowledged by the defendant in this case. This 20 defendant filed the answer, and this defendant, by its own attorney—not the attorney of the plaintiff here, but by its own attorney—prosecuted that suit to a final determination. It is insisted it was obliged to do that under the terms of its policy, under Roman numbered paragraph 3, which obliged it to defend, in the name and on behalf of this employer, any suits or other proceedings which may at any time be instituted against it, on account of 30 such injuries, including suits or other proceedings alleging such injuries, and demanding damages or compensation therefor, although such suits, other proceedings, allegations or demands are wholly groundless, false and fraudulent.

From reading the other sections of this policy, it seems very plain that that means not whether there is any liability as between the plaintiff and the defendant herein—that is, the assurer and the 40 assured—but whether or not the claims of the em-

ployee, or those who bring the action, as representing the employee, are wholly groundless, false or fraudulent; and it seems to me this ought to be so, and this case is an illustration of why it ought to be so.

There does not seem to have been, from anything in this case, notice given to the plaintiff in this suit of a claim, on the part of the American Mutual, that it denied liability, as between it and the plaintiff in this case, until after this adjudication in the Compensation Court. The result of that was, so far as the plaintiff here is concerned, that no notice whatever was given to the Great American, sufficient to hold it, of its obligation to the plaintiff herein; and that has resulted, in this very case, for that reason, in a nonsuit in favor of the Great American and against this plaintiff.

It seems to me, therefore, under the cases which I have cited, that the American Mutual, because of the action which it took upon receiving the notice of this accident from the plaintiff, in taking the responsibility to file all pleadings, to defend this case, without any notice to the plaintiff that it disclaimed liability, as between it and the plaintiff, is now estopped from denying that liability, which results in the granting of a motion for the direction of a verdict, and an exception to that ruling will be noted on the minutes as ground of appeal.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Carpenter: I wish you would state whom you are directing a verdict for.

The Court: For the plaintiff.

Mr. Carpenter: I knew that, but you did not state so on the record. That will be for the amount as agreed upon?

The Court: The amount you will agree upon.

10 Mr. Carpenter: $2,900.66.

The Court: I assume that you will make the same arrangement in this case as you did in the other.

Mr. McLaughlin: Any interest computed in that?

Mr. Carpenter: One week's interest more than I have computed here.

The Court: If there is no dispute, a verdict will be directed for that amount. Therefore, gentlemen, that will be the order of the Court: that you should 20 render a verdict in favor of the plaintiff and against the defendant, the American Mutual Liability Insurance Company, for the sum of $2,900.66; and an exception to that ruling as ground of appeal may be noted in the minutes.

30

40

Form No. 21

Exhibit P-6.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Trenton, N. J.

10

ACKNOWLEDGMENT OF SERVICE

GRACE IANNAZZO, Petitioner, vs. TEXTILEATHER CORP., Respondent,	Claim Petition No. 7776 Jan 21 1928

20

To be signed by a representative of the respondent and returned to the Compensation Bureau, State House, by the process Server.

The undersigned hereby acknowledges receipt on 1/20 1928 of the Claim Petition in the above cause.

H B HUYLER 30
(Person receiving Claim Petition)

Adjuster A M L INS CO.
(Office or position in Firm or Company)

40

Exhibit P-7.

STATE OF NEW JERSEY

DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

9 Franklin St., Newark, N. J.

10 ANDREW F. McBRIDE, M. D., Commissioner of Labor, Chairman of Bureau.

HARRY J. GOAS, Deputy Commissioner.

In reply please refer to file No. #30259

March 13th 1928

Mar 20 1928
(Rubber stamped)

MISS MULLEN:—

20 *RE:* Ynatzo B.
vs.
Textile Leather Co.

I am enclosing herewith the petition in connection with the above case for the purpose of having same served upon the employer and upon the insurance company. It appears that this man died from benzol poisoning, and the American Mutual were only on the risk about one week, prior to that 30 time the Greater American Insurance Company covered.

There seems to be a question as to the responsibility, and neither company will pay. Under the circumstances the employer should be served with this petition, so that matter can be adjusted.

Yours very truly,

J A WEGNER
Referee

40

Exhibit P-8.

To Great American Indemnity Company and American Mutual Liability Insurance Company:

Take notice that annexed hereto is a copy of a determination and rule for judgment entered in the New Jersey Department of Labor, Workmen's Compensation Bureau, on June 4, 1928, in the matter pending in said Bureau therein Grace Iannazzo was the petitioner and Textileather Corporation was the respondent, by which judgment was found in favor of the petitioner and against the respondent in the sums set forth in the determination and rule for judgment annexed hereto.

Take further notice that the judgment set forth in said determination and rule for judgment has been docketed in the Court of Common Pleas of the County of Essex and State of New Jersey.

Take further notice that an execution was issued upon said judgment and a levy intended to be made upon the property of Textileather Corporation in the County of Essex and State of New Jersey and that Textileather Corporation, by reason of said execution and to prevent the petitioner from enforcing the immediate collection of the entire amount of the award or judgment, was required to and did pay to the petitioner and her attorney, the sum of $1,134.06 upon account of said judgment.

Take further notice that Textileather Corporation calls upon you to forthwith reimburse it for the amount so advanced and demands that you assume the payment to the petitioner of further

compensation as provided by said judgment and costs of execution.

TAKE FURTHER NOTICE that unless you so reimburse Textileather Corporation and assume and pay to the petitioner the balance of the compensation as provided in said judgment, that Textileather Corporation will hold you and each of you responsible for the sum which it has paid and any sums which it will be obliged to pay by reason of said judgment, together with lawful interest, and will take immediate action for the enforcement of its rights against you.

This notice is given by reason of the fact that you and each of you issued to the Textileather Corporation a policy covering said Corporation for liability under the Workmen's Compensation Act of the State of New Jersey during the period of the employment of Bruno Iannazzo, husband of the petitioner, by said Textileather Corporation under the terms of which policy or policies you are liable to the petitioner for the judgment.

Dated—June 20th, 1928.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Textileather
Corporation.

Exhibit P-9.

CITY OF NEWARK

Essex County, State of New Jersey

[NEWARK CITY SEAL
INCORPORATED, 1836]

UNITED STATES OF AMERICA

I, W. J. EGAN, City Clerk of the City of Newark, Essex County, State of New Jersey, do hereby certify that the following is a true and correct transcript from the Record of Deaths in my office.

1 PLACE OF DEATH
City Newark, N. J. No.....City Hospital St.....

2 FULL NAME Bruno Iannazzo
(a) Residence No. 59½ Hayes St.

Length of Residence in city or town where death occurred yrs. mos. ds. How long in U. S., if of foreign birth? yrs. mos. ds.

PERSONAL AND STATISTICAL PARTICULARS

3 SEX	4 Color or race	5 Single, Married, Widowed or Divorced
M	W	Married

5a If married, widowed or divorced
HUSBAND of
(or) WIFE of Grazia Faruolo

6 DATE OF BIRTH Mar. 22, 1870

7 AGE Years	Months	Days	If LESS than 1 day,.....hrs. or.....min.
57	8	16	

8 OCCUPATION OF DECEASED
(a) Trade, profession or particular kind of work Laborer
(b) General nature of industry, business, or establishment in which employed or employer.....
(c) Name of employer.....

9 BIRTHPLACE Italy

PARENTS
10 NAME OF FATHER Gesualdo Iannazzo
11 Birthplace of Father Italy
12 MAIDEN NAME OF MOTHER Mary
13 Birthplace of Mother Italy

14
Informant Patient.
(Address) .....

15
Filed 12/10, 1927
W. J. Egan, Registrar.

MEDICAL CERTIFICATE OF DEATH

16 DATE OF DEATH Dec. 8, 1927. 10

17
I HEREBY CERTIFY That I attended deceased from .....19....., to.....19.....
that I last saw h.....alive on.....19.....
and that death occurred on the date stated above at...M

THE CAUSE OF DEATH* was as follows:
Aplastic Anemia. Probable Occupational due to Chronic Benzol Poisoning in Artifical Leather Industry.

.....(duration).....yrs.....mos.....ds.

CONTRIBUTORY 20
(Secondary)

.....(duration).....yrs.....mos.....ds.

18 Where was disease contracted if not at place of death? Newark, N. J.
Did an operation precede death? No. Date of.....
Was there an autopsy? Yes.
What test confirmed diagnosis? Autopsy.
Signed H. S. Martland, M. D.
(Address) Chief Med. Exam.

19 Place of Burial, Cremation or Removal	Date of Burial
Holy Cross Cemt.	12/12 1927
20 Undertaker	**Address**
A. Tamburro	C.

30

WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said city this 14 day of December A. D. 1927.

[SEAL]

W. J. EGAN,
City Clerk. 40

Exhibit P-10.

BRUNO IANNAZZO

	1927					
W/E	Aug	14	Worked All Week			
		21	"	"	"	
					Aug 24	
		28	"	5 Das.	Out 1 Day	1
					Sept 1	
	Sept	4	"	4 Das.	Out 1 Day	1
		11	"	All Week		
					Sept 14	
		18	"	5 Das.	Out 1 Day	1
		25	"	All Week		
					Sept 30	
	Oct	2	"	4¼ Das.	Out ¾ Day	¾
					Oct 4	
		9	"	5 Das.	Out 1 Day	1
					Oct 12	
		16	"	5½ Das.	Out ½ Day	½
					Oct 18	
		23	"	5 Das.	Out 1 Day	1
		30	"	All Week		
	Nov.	6	"	"	"	
		13	"	"	"	
		20	"	"	"	
		27	"	"	"	
	Dec	4	Out	"	"	
		11	"	"	"	6¼

Exhibit P-16.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

GRACE IANNAZO, Petitioner, vs. TEXTILEATHER CORP., Respondent.	On Petition for Compensation. Affidavit

10

STATE OF NEW JERSEY }
County of Essex } SS:

J. FRANCIS PATTERSON being duly sworn upon his oath according to law deposes and says:

20

On the 8th day of May, 1928, I served a copy of the attached Notice in the case of Grace Iannazo *v.* Textileather Corporation on Fred B. Fischer, the agent of Great American Indemnity Company, by giving him a copy of said Notice in his office at 772 Broad Street, Newark, N. J., at 3:53 P. M. On the outside of the door is a brass plaque Great American Indemnity Company, Fred B. Fischer, Agent.

30

J. FRANCIS PATTERSON

Sworn to and subscribed }
before me this 9th day }
of May, 1928. }

LOUISE T. GRUNBERT
[SEAL] Notary Public of N. J.

40

Exhibit P-16.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

GRACE IANNAZO, Petitioner, vs. TEXTILEATHER CORP., Respondent.	On Petition for Compensation Affidavit

10

STATE OF NEW JERSEY }
County of Essex } SS:

JOSEPH P. HINTELMANN being duly sworn upon his oath according to law deposes and says:

20 On the 8th day of May, 1928, I served a copy of the attached Notice in the case of Grace Iannazo *v.* Textileather Corporation on the Great American Indemnity Company, by leaving a copy of same with the man in charge of the matter at the offices of said company on the 11th floor of the building at 1 Liberty Street, New York City, New York.

JOSEPH P. HINTELMANN

30 Sworn to and subscribed }
before me this 9th day }
of May, 1928. }

LOUISE T. GRUNBERT

[SEAL] Notary Public of N. J.

40

Exhibit P-16.

NEW JERSEY DEPARTMENT OF LABOR

Workmen's Compensation Bureau

Grace Iannazo Petitioner vs. Textileather Corp., Respondent.	On Petition for Compensation Notice

10

To the Great American Indemnity Company:

Sirs:

Take notice that the formal hearing in the above entitled cause will be had Wednesday, May 9th, 1928, at ten o'clock in the forenoon at the Workmen's Compensation Bureau, 9 Franklin Street, Newark, New Jersey. 20

Take further notice that the above entitled cause involves the death of Petitioner's intestate alleged to have been caused by benzol poisoning, an occupational disease arising out of and in the course of the employment of the respondent.

Take further notice that at said hearing it will be urged that said Petitioner's intestate contracted 30 said poisoning during the period your company covered said respondent for compensation insurance and that the alleged sole cause of the death of said Petitioner's intestate was the contraction of benzol poisoning and its subsequent results during the said period in which your company insured said respondent for compensation insurance.

T. B. Tippett
McCarter and English 40

[Stamped:]

NEW JERSEY

Exhibit P-17.

27-WC-38004-B-7 April 9, 1928 231

10

Great American Indemnity Co.,
#1 Liberty Street,
New York City, N. Y.

Re: Bruno Iannoazzo—(Dec'd.)
Vs: Textileather Company
Acc. 11.?.27

Att'n. Claim Manager

GENTLEMEN:

20

The above case is an alleged benzol poisoning case at the Textileather Company and same is to be heard before the Department of Labor at Newark on Wednesday, April 11th at 9:00 A. M.

Your company is a party respondent and we are therefore notifying you of this fact so that you may have one of your representatives present at that hearing.

Yours very truly,

30

AMERICAN MUTUAL LIABILITY INS. CO.

MK:MW Branch Claims Manager

This letter sent registered
Return receipt requested.

[Stamped:]

NEWARK TO BOSTON
APR 9 1928 NEWARK TO NEW YORK

40

[Stamped:]

NEW JERSEY

Exhibit P-18.

27-WC-38004-B-7 February 7, 1928 231

GREAT AMERICAN INDEMNITY CO.,
1 Liberty St., 10
New York City, N. Y.

Re: Bruno Iannoazzo—(Dec'd.)
Vs: Textileather Co.—
Acc. 11.?.27

GENTLEMEN:

At the request of the Workmen's Compensation Commission, we are writing to advise you that the above case is noted for informal hearing before the 20 Commission at Newark on Tuesday, February 14th, at 9:30 A. M., at #9 Franklin St., Newark.

It is suggested that you have a representative present in order to see if this case can not be amicably adjusted between all parties interested and thereby avoiding the necessity of a formal hearing and additional expenses.

Very truly yours,

AMERICAN MUTUAL LIABILITY INS. CO. 30

MK:MW Branch Claims Manager

[Stamped:]

NEWARK TO BOSTON
FEB 7 1928 NEWARK TO NEW YORK

40

Exhibit DG-3.

TEXTILEATHER CORPORATION

MAUMEE PLANT
Dayton Street
Toledo, Ohio

NEWARK PLANT
Brown St. and Lister Ave.
Newark, New Jersey

"The Custom-Built Coated Fabric"

COTTON FABRICS
Bleachers, Mercerizers, Dyers
& Finishers

In Reply Address Office at

NEWARK, N. J.
May 8, 1928.

10 HARRY GOAS, Deputy Commissioner of Compensation,
New Jersey Department of Labor,
Newark, N. J.

DEAR SIR:—

The writer was served with the attached subpœna today and tried to get in touch with you at 9 Franklin St., in an effort to be excused from this hearing on account of the absolute necessity of my being in
20 Detroit, Michigan on Wednesday, May 9th.

I imformed Attorney Raymond H. Cohen over the telephone of this condition and he reported that he also tried to get in touch with you in an effort to release me.

The business that is taking me out of town involves approximately $100,000.00 and the writer believes that you will accept this as a legitimate excuse for non appearance.

30 I am sending the Superintendent of this plant, Mr. DeForest Lott with all particulars that will be necessary for the trying of this case, and if my testimony is necessary, I will be available on Friday, May 11.

Very truly yours,

TEXTILEATHER CORPORATION,
J. D. LIPPMANN,
J. D. LIPPMANN,
40 JDL: BH Vice-President.

Exhibit DG-3.

Form 27

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU
OF THE STATE OF NEW JERSEY } SS.
District No.....

To J. D. LIPMAN
c/o Textileather Corporation
Lister Ave., Newark, N. J.

10

Greeting:

You are hereby commanded, that, setting aside all business and excuses whatsoever, you be and appear in your proper person before me at a certain hearing to be held the 9th day of May, 1928, at ten o'clock A. M., at Dept. of Labor Bldg. 9 Franklin St. in the County of Essex, to testify the truth according to your knowledge in a certain claim petition now pending and undetermined between Grace Iannazzo petitioner and Textileather Corporation respondent, and this you are not to omit under penalty which may ensue.

20

WITNESS my hand and the official seal of the Workmen's Compensation Bureau in the year of our Lord one thousand nine hundred and twenty-eight.

30

HARRY J. GOAS,
Deputy Commissioner of Compensation.
(SEAL)

40

Exhibit DA-2.

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

Newark, Essex County, District

GRACE IANNAZO,
Petitioner

10 vs.

TEXTILE LEATHER CO.,
Respondent

Transcript of stenographic notes of the testimony taken in the above entitled matter before Hon. HARRY J. GOAS, Deputy Compensation Commissioner at the Department of Labor Building, 9 20 Franklin Street, Newark, New Jersey, on the ninth day of May, A. D. 1928 at 10:45 A. M. in the forenoon.

Appearances.

RAYMOND COHEN, Esq., for the Petitioner

GERALD MCLAUGHLIN, Esq., for the Respondent (MCCARTER & ENGLISH, Esqs.)

30 By consent of counsel Antoinette Manzi was sworn in to act as interpretress.

GRACE IANAZZO, the Petitioner, being duly sworn upon her oath, testifies as follows (through interpreter):

DIRECT-EXAMINATION BY MR. COHEN (through interpretress):

Mr. McLaughlin: If your Honor please, be-
40 fore the witness is examined, Your Honor, I

wish to make a statement for the record: In this case, Your Honor, the Petitioner's intestate is alleged to have died of benzol poisoning on or about December 8th, 1927. The fact is that the American Mutual Liability Insurance Company was the Compensation carrier for the Respondent from a period running from November 18th, 1927 to and including the time this petitioner's intestate quit work for the respondent, which was on November 26th. Prior to November 18th the respondent was covered for compensation by the Great American Indemnity Company. I am here representing the Respondent inasfar as the American Mutual coverage goes. The Great American Indemnity by reason of the circumstances in the case was served with a formal notice by us to the effect that the allegation here was benzol poisoning and that it would be urged at this hearing that the period of the coverage of the Great American was the responsible period for the contraction, exposure and results which culminated in the man's death. That formal notice was served both on the Newark office of the Great American Indemnity Company and on the Home Office of the Great American Indemnity in New York, and I hand the Court the original notice to which is attached two original affidavits of service of the notice. In addition to that when this matter was first noted for a formal hearing the American Mutual mailed by registered mail to the Great American Indemnity to its home office notice that the case was coming on for a hearing and that the Great American Indemnity Company was a party in interest. In this case

here for the American Mutual, we are not contesting the petitioner's proof, which I assume is to be put before this Court anyway, as to the death from the occupational disease, we do urge and I think it will be plain, from the petitioner's case that the exposure, contraction and poisoning and the result were in the petitioners intestate's system prior to the date of the coverage on our policy with the result that we think it will be plain as was in the case last week, that the responsible period of the coverage is prior to our coverage.

Mr. Cohen: If your Honor please, of course, I am not interested in what relation the American Mutual Liability Insurance Company has with the Great American Indemnity and any fact with respect to the prior case, a different case, has no relation to this present case. That is the testimony I object to.

The Court: He is just simply putting that in the record as a matter of record and I take it that is a matter to be fought out between the respondent and the carriers, but he is making it for the purpose of the record, that's all.

Mr. Cohen: This is a benzol poisoning case and I represent Mrs. Grace Ianazzo, and we are going to prove that the decedent died as the result of benzol poisoning contracted during the course and scope of his employment.

The Court: It may be they will admit some of your claims.

Mr. McLaughlin: We admit the employment, we admit the wage which was $21.53 per week.

Mr. Cohen: That is where we differ. We

have some testimony to show he made $27.00 a week.

Mr. McLaughlin: Well, as I understand it it is forty-two cents an hour. There cannot be any question about that, and I understand 65½ hours a week.

(Further discussion.)

The Court: All right, go on. 10

Q. Are you the widow of Bruno Ianazzo? A. Yes.

Mr. Cohen: Before I proceed further I want to advise the Court this interpretress is related to the woman on the stand, have you any objection?

Mr. McLaughlin: I haven't any objection.

Q. In August, 1927 did your husband work for 20 the Textile Leather Company? A. Yes, sir, in August, 1927 he worked for the Leather Company.

Mr. McLaughlin: Can we have the date in the month, please?

The Interpretress: She don't remember the date but she knows the month.

Q. What was the condition of your husband's health before he worked for the Textile Leather Corporation? A. She says he was always healthy 30 before he went to work for this company.

Q. Did you notice any change in his condition after he was employed by the Textile Leather Corporation? A. After a couple of months she noticed he used to come home, he was always pale and complained of his stomach, didn't want to eat so much and he felt restless, he wanted to go to bed.

Q. He wanted to go to bed right away? A. Yes, and he felt dizzy like. 40

Q. Before he worked for the Textile Leather Corporation, when he came home from work did he go right to sleep? A. Not before he worked there, but a couple of months that he was working there.

Q. He felt dizzy? A. He felt dizzy.

Q. And pale? A. And pale, and couldn't eat so very well.

Q. Was he a hearty eater before he worked for
10 the Textile Leather Corporation? A. Yes, he was a hearty eater and then he could hardly eat a sandwich.

Q. How did he sleep at night when you say in a couple of months when you noticed this change? A. Restless.

Q. He was restless? A. Restless.

Q. Was he a good sleeper before that? A. Yes, he was a good sleeper.

20 Q. Now, around November 26th of 1927, on a Saturday afternoon when he came home from work did you notice his condition? A. Yes, I did notice, he had his gums full of blood.

Q. Is that the condition you noticed? A. I noticed it Saturday, in the afternoon.

Q. Did he complain that he wasn't feeling well? A. He wasn't feeling well.

Q. Anything else about his condition, any blood running from his nose? A. From the nose and
30 gums.

Q. Did you call a doctor right away? A. The following day, on Sunday morning.

Q. What doctor did you call? A. Dr. Fessano.

Q. Did he come Sunday morning on the 27th of November? A. Yes.

Q. Did he treat him? A. Yes sir.

Q. On December 3rd was your husband taken to the City Hospital at Newark, New Jersey? A.
40 Yes.

Q. What was his condition at that time? A. He was very weak.

Q. Well, just describe his condition at that time, tell what his condition was, was it the same as the previous week when he came home from the plant? A. It was worse.

Q. Was worse? A. Yes.

Q. How many children have you got? A. Six.

Mr. Cohen: At this time I would like to offer the birth certificates of all the children. Have you any objection? 10

Mr. McLaughlin: No objection.

The Court: In evidence?

Mr. Cohen: Yes.

Mr. McLaughlin: Let me hear who they are, the dates and ages.

Mr. Cohen: All right, I will read them into the record. I will read the names and the ages of your children and the dates of birth, and will ask you whether these are correct. Mary Ianazzo, fourteen years old, born September 16th, 1913? 20

A. Yes.

Q. Philomena Ianazzo, thirteen years old, born November 9th, 1914? A. Yes.

Q. Gesualdo, eleven years old, December 21st, 1916? A. Yes. 30

Q. Donado, nine years old, September 4th 1918? A. Yes.

Q. Antoinette, seven years old, July 18th, 1920, is that correct? A. Yes.

The Court: The certificates will be marked P-1.

(The five birth certificates above referred to entered in evidence and marked as one exhibit P-1.) 40

Q. When were you born? A. March 22nd, 1884.

Mr. Cohen: May I move at this time, your Honor, to amend the date of her birth in the petition from 1844 to 1884.

The Court: All right.

Q. Did you visit your husband at the hospital on April 3rd, where he was taken at the direction of Dr. Fassano? A. Yes sir.

Q. Were you there on December 8th, the day he died? A. Yes sir, she was there day and night.

Q. Did his condition become better or worse during that period of time? A. It was getting worse every day.

Q. Were you dependent upon your husband for support? A. Yes sir, she wouldn't have nobody else.

Mr. Cohen: That's all.

Cross-examination by Mr. McLaughlin:

Q. When were you married, Mrs. Ianazzo? A. October 20th, 1912.

Q. Are any of your children working? A. None of them working.

Q. None of them, they all go to school, do they? A. Yes.

Q. Your husband was well, healthy, before he went to work for the Textile Leather? A. Yes sir, very healthy.

Q. And had a good color, did he? A. Sure.

Q. And physically was fit? A. Yes, always healthy and strong.

Q. And shortly after he went to work for the Textile Company you began to notice changes in him, is that right? A. Yes, she did notice on him that he wasn't feeling so extra as before.

Q. Among other things, Mrs. Ianazzo you noticed that he lost weight, didn't you? A. Yes, she did notice on his clothes too, his clothes didn't fit him.

Q. The clothes were too large for him? A. Yes.

Q. Did you notice that his color had become pale? A. Real pale, he never had the complexion he had before.

Q. He lost his appetite? A. He hardly could eat anything. 10

Q. By the time he had been working there a couple of months, which I suppose would put it quite early in October, these conditions had become very noticeable, hadn't they? A. Yes, she noticed them, his condition wasn't very well, he couldn't hardly eat or do anything.

Q. And that it was getting worse? A. Yes sir, day by day he was growing worse.

Q. And around that time, Mrs. Ianazzo in the early part of October your husband would have these nose-bleeds commence, didn't they? A. She says around the end of October when he came home one day she said that his nose was bleeding and they thought it was a cold. 20

Q. And this same condition, Mrs. Ianazzo, that you noticed shortly after he went to work for the Textile Company in August, and which became more noticeable in the early part of October, as I understand it got worse and your husband finally died on December 8th, is that right? A. She says that is the way he was, he was always, you know, a little worse every day until sickness spread out and he did go to the hospital, he was told to go to the hospital. 30

Q. Does she understand my question. I would just take part of it at a time, and you tell her. A. Yes. 40

Q. These same conditions, namely loss of appetite, loss of weight, dizziness, restlessness, nervousness, and so on, that you told us about, which you first noticed shortly after he started work for the Textile Leather Company, and which became more noticeable in October, as I understand it those conditions got worse and he finally died on December 8th? A. Yes sir.

Mr. McLaughlin: That's all.

Mr. Cohen: That's all.

Dr. Giovanni Fasano, a witness on behalf of the Petitioner, sworn.

Direct-examination by Mr. Cohen:

Q. Dr. Fasano, are you a practicing physician in the City of Newark? A. Yes sir.

Q. How long have you been practicing medicine? A. Fifteen years.

Mr. Cohen: Will you admit the doctor's qualifications, Mr. McLaughlin?

Mr. McLaughlin: Yes, surely.

Q. Qualifications admitted. Did you have as a patient of yours a man by the name of Ianazzo, Bruno Ianazzo? A. Yes.

Q. How long have you known him? A. I have known him about ten years.

Q. Do you know what his condition was up till around August, 1927? A. I think he was a normal man, in fair condition.

Q. Did you have occasion to treat him before that time? A. Yes, occasionally, for colds, and slight ailments.

Q. No particular disease? A. No.

Q. Doctor, you were called to his home on November 27th, 1927 to treat him. What condition did you find him in at that time? A. Well, the main complaint was bleeding from the gums.

Mr. McLaughlin: When was this?

A. This was Sunday morning, November 27th, 1927. 10

Q. Did you notice anything else about his condition? A. Oh yes, he told me he had been bleeding since the night before and said he was always with a handkerchief on the mouth to control the bleeding, trying to control the bleeding. At that time he didn't complain about nose-bleeding, and another thing I noticed was burned spots all over his skin, especially on the legs and body. Dizziness, he was so dizzy that he had to either sit down or lay down. He couldn't stand up. Another thing that struck me was his color. 20

Q. What was his color? A. It was real ashy, real pale.

Q. Anything else about his condition? A. Well, that was what I noticed the first day.

Q. You never found him in that condition before, did you? A. Oh no, never.

Q. I mean prior to August, 1927. A. No. 30

Q. You never treated him before August, 1927, did you? A. Before August? Oh yes.

Mr. McLaughlin: He said he treated him for colds and so on right along.

A. For colds and such things?

Q. Did you see him again after November 27th? A. I was called, sent for again November 29th.

Q. Was his condition any better? A. No, he was 40

worse, and at that time I had the first suspicion of the nature of his sickness.

Q. What condition did you come to the conclusion he had? A. I inquired about his occupation, so I came to the conclusion it might be benzol poisoning.

Q. Did you make any recommendation? A. Yes, that day I recommended he go to the hospital, on the 29th, November 29th.

Q. Did you see him at the hospital after that day? A. No, I didn't see him in the hospital, he didn't go to the hospital on that date, he went to the hospital December 2nd, that is the time I made the slip for his admission to the hospital.

Q. After his admission to the hospital did you see him? A. No, I didn't see him since.

Mr. Cohen: That's all.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Doctor, on November 27th when you first saw him, besides the dizziness and burned spots which you noticed particularly on his legs, and the bleeding from his gums, the man also appeared thin, didn't he? A. Well, I couldn't say that.

Q. He didn't appear in a healthy condition, did he? A. Oh no.

Q. He did appear in what might be termed an anemic condition? A. Yes.

Q. He seemed rather irritable, nervous? A. Well, in my presence he wasn't nervous.

Q. He wasn't so nervous? A. No.

Q. From the symptoms which you did observe, doctor, coupled with the history you had of the exposure to benzol, caused you to diagnose the case as chronic benzol poisoning, didn't it? A. On my slip, you see, on my slip——

Q. I am not so much concerned about you slip, but about your statement now. A. "Suspicion of benzol poisoning".

Q. Suspicion of benzol poisoning, which was later confirmed by Dr. Martland's autopsy, wasn't it? A. Yes.

Q. You are now confident that the man did have chronic benzol poisoning, is that right? A. Yes. 10

Q. Doctor, here we have a situation where this man, according to the testimony, and according to your observation prior to August was a healthy man, in August, 1927 he goes to work at an occupation from which you obtained the history of exposure to benzol and shortly after going to work begins to develop symptoms characterized by nervousness, dizziness, restlessness, loss of appetite, generally not feeling well, all of which symptoms became 20 more noticeable by the early part of October, and then as you say you saw him on November 27th with the symptoms that you did find and so on, in that situation, doctor, isn't it fair to say that this man contracted this benzol poisoning shortly after he started his occupation in August with the poisoning becoming worse in his system by October? A. Yes.

Q. Becoming worse in October and that he died as the result of that poisoning in the early part of 30 December, is that right? A. Yes.

Q. In other words, doctor, isn't it fair to say that the result of the poisoning from the exposure to the benzol were in the man's system as testified to in the early part of October and that in that situation had in him what caused his death later? A. Yes, sir.

Mr. McLaughlin: That's all.

Mr. Cohen: That's all. 40

DR. HARRISON MARTLAND, a witness on behalf of the Petitioner, sworn.

DIRECT-EXAMINATION BY MR. COHEN:

Mr. Cohen: You will admit the doctor's qualifications?

Mr. McLaughlin: Certainly.

10 Q. Doctor, did you perform an autopsy on December 8th on one Bruno Ianazzo? A. On December 9th.

Q. I mean December 9th. A. 10:30 A. M., twelve and a half hours after death.

Q. What did you find was the cause of his death? A. I found the cause of his death was ar-regeneration or ar-plastic anaemia, probably occupational, due to a bad chronic benzol poisoning.

20 Mr. Cohen: At this time, I merely called Dr. Martland, I know he is a very busy man, I don't want to keep him here, but I expect to prove the deceased was exposed to benzol poisoning during the course of his employment. I have such proof. This testimony is based on the supposition he was exposed to benzol poisoning.

The Court: Very well, you can take it in the 30 regular course, subject to being connected up later.

Q. Did you find anything else about his condition, doctor? A. Any other disease?

Q. Yes. A. No. The body showed excessive anemia of this ar-plastic type, with a hemmorhagic tendency. There were multiple hemorrhages apparent in the skin, bleeding from the gums, mucous membrane, and right kidney. There was no other 40 cause of death.

Q. Did you know the history of this man's employment at the time you made the autopsy? A. From the history at the City Hospital, while he was a patient there, I ascertained the fact that he was a suspected benzol case. He had been employed in a plant in which benzol was being used, and with the autopsy findings and with that history I was of the opinion that it was a chronic benzol case. 10

Q. Just what do you mean by a chronic benzol poisoning, doctor? A. Chronic benzol poisoning is due to exposure to small quantities of benzol over a considerable period of time. More than once, ranging all the way from the period of two weeks to months or years.

Q. Would you say that a man was employed in a leather factory where he was exposed to benzol for a period of three or four months, would you say 20 that he was a victim of chronic benzol poisoning? A. If he showed these facts at the autopsy?

Q. Yes. A. Yes, that would be my opinion.

Q. Do you know what portion of benzol poisoning, or what percentage of benzol would be sufficient to kill a person? A. Breathing it every day, or every working day, that is working in an atmosphere with benzol and is around, even to as low as 100 parts per million in a patient that is susceptible 30 to chronic benzol poisoning might develop it any time.

Mr. Cohen: That's all.

CROSS-EXAMINATION BY MR. MCLAUGHLIN:

Q. Doctor, as I understand it the Petitioner's case will show that this man we are talking about was working in a small finishing room with which you are familiar, in respondent's plant, using daily 40

a composition in quantity about 500 pounds, of which was 25% benzol, and that the finishing room was, as you know an ordinary room, ventilated by windows which were closed sometime, particularly in the cold weather. The testimony is that he went to work for the Respondent early in August of 1927 and prior to that he was a healthy man, had a
10 cold once in a while but nothing organically wrong with him. Shortly after he went to work and was exposed to the benzol it was noticed that he showed signs of dizziness, was restless, couldn't eat very well, while he had been a good eater before that, and while he had been a good sleeper before that he didn't sleep very well, and generally he complained of not feeling very well, which was contrary to prior to the time he had gone to work there in
20 August. Within two weeks as the testimony of the petitioner will also show, within two weeks of his employment he started losing approximately a day a week. Dr. Fasano treated him just prior to his death, his physician, thought from the signs he noticed, confirmed later by the autopsy, that in his judgment that this Mr. Ianazzo had the poisoning in his system early in August and that it had developed considerably by October. In that situation, with that testimony, is it your judgment that
30 Mr. Ianazzo had contracted the effect of benzol at or around the time these symptoms were first noticed on him? A. Am I supposed to answer it?

The Court: If you can keep all that in mind.

A. I mean I am not testifying as an expert, I am testifying as to the facts on the autopsy and the signing of the death certificate of this man.

40

Q. Well, is it embarrassing to answer, doctor? A. No, not at all, I can answer it.

The Court: There is only one point involved, doctor, that is, to what extent, if any, the exposure took effect in a short period of time.

A. I don't think there is anyone under the blue canopy of the heaven can tell when, accurately, the disease started except during the time he was exposed to benzol. All the symptoms you have described fit in with early benzol poisoning but when the actual blood centers go bad no one can tell.

Q. Would you base your opinion on these symptoms which are declarative of an early stage of the poisoning? A. Yes, but they occur with other diseases too.

Q. But in this case given the latest development and final result in your autopsy you would say that the symptoms here were symptoms in this case of a benzol poisoning? A. I would be of that opinion, yes.

Mr. McLaughlin: That's all.

Mr. Cohen: That's all, doctor. I would like to offer at this time the death certificate.

Mr. McLaughlin: No objection.

(Certificate marked in evidence as Exhibit P-2.)

De Forrest Lott, a witness on behalf of the Petitioner, sworn.

Direct-examination by Mr. Cohen:

Q. Mr. Lott, are you associated with the Textile Leather Corporation? A. I am.

Q. In what capacity? A. Factory manager.

Q. As such officer are you familiar with the records of your employees with respect to the wages and so forth and the particular departments employed in? A. I am.

Q. Have you any records with respect to the employment of one Bruno Ianazzo? A. I have the record of the time and also his hourly rate.

Q. When was he first employed by your company? A. August 8th, 1927.

Q. In what department? A. In what we call the tub room.

Q. About how many people do you employ in that tub room? A. I should estimate about ten to twelve.

Q. Don't you employ sometimes when you are very busy more than ten or twelve, possibly thirty? A. No, not in that particular department, no.

Q. What means of ventilation have you in that Dope room? A. We have, I should estimate between forty and fifty windows and a blower and several doors.

Q. Are those windows opened continuously throughout the year or are they closed in cold weather? A. They are closed to some extent in cold weather. They are not, I don't believe, all of them are never closed, in the summer, all of them are open, and in the winter not so many of them.

Q. What were the duties of Mr. Ianazzo in this tub room? A. To operate a straining pump.

Q. Can you please describe to the Court what you mean by that? A. We have what is known as a peroxalin solution, it is dumped into one can and poured through the pump and comes out strained through a fine mesh strainer, comes out strained at the other end.

Q. Does this solution contain any benzol? A. It does.

Q. Will you describe to the Court the contents of the solution? A. Contains nitro-cellulose, oils, pigments, alcohol, ethyl acetate and benzol.

Q. What percentage of that solution would you say was benzol? A. About 25%.

Q. Did you say that the deceased was working right in the solution? A. In it? 10

Q. I mean working with it. A. Yes.

Q. At any time while these windows were closed will you say any of these benzol fumes remained in the room for any length of time? A. I should think so, yes.

Q. Have you any record as to the time Mr. Ianazzo quit his employment? A. The last day he worked was November 26th. 20

Q. Could you state the weekly wage he earned during that time? A. His rate was 42¢ an hour on the basis of 51½ hours. That is our standard week. His average earnings would probably be about $25.80 I think. Saturday is overtime but he worked Saturday as a rule.

Q. Do you have any record to show he ever worked overtime? A. Yes, he would have worked Saturday.

Q. What would he usually earn, working overtime? A. Approximately $26.00, between $25.00 and $26.00. 30

Mr. Cohen: That's all.

Cross-examination by Mr. McLaughlin:

Q. Without the overtime, Mr. Lott, what are the man's weekly wages? A. $21.52, 51¼ hours.

Q. $21.52 for 51¼ hours? A. Yes. 40

Q. Have you a record there, Mr. Lott, I think you have, showing when this man started to stay off? A. No, I haven't the individual daily attendance record at all.

Q. You have something there that will show that he was out a day in the week beginning August 27th? A. I don't think so, no, I have nothing here that would show you that.

Q. I show you, Mr. Lott, a copy of the time record which I think if you will examine you will see is a true copy of the record. From that will you please tell us when after his employment was the first date that Mr. Ianazzo stayed out? A. Why, according to this, that is the week of August 27th.

Q. Then, after that, Mr. Lott, when is the next time? A. The week ending September 4th.

Q. That is one day that week? A. Yes.

Q. After that? A. The week ending September 18th, one day.

Q. Any other? A. October 2nd, a half day.

Q. After that? A. October 9th, one day.

Q. Any more? A. Twenty-third, one day.

Q. 23rd of October? A. Yes.

Q. Any more? A. That's all.

Q. Those are the days that he was away from the factory? A. According to this record.

Mr. McLaughlin: That's all.

Mr. Cohen: That's all.

JOSEPH BOSCO, a witness on behalf of the Petitioner, sworn.

DIRECT-EXAMINATION BY MR. COHEN:

Q. Mr. Bosco, are you associated with the Textile Leather Corporation? A. Yes sir.

Q. In what capacity? A. General foreman.

Q. Were you familiar with the services of the deceased, Bruno Ianazzo? A. Well, I used to go through that room three or four times a day, see, because I had to go to the different departments.

Q. What room are you referring to? A. The room that Mr. Ianazzo was working in.

Q. What room is that? A. That is the tub room.

Q. Do you know what his duties were in that tub room? A. His duties in the tub room were as a strainer, he used to strain the tub.

Q. Do you know what solution was contained in that strainer? A. Yes, the solution was made of cellulose and pigments, oil, alcohol, benzol, and ethyl.

Q. What percentage of benzol was contained in that solution? A. I should judge about twenty-five percent.

Mr. Cohen: That's all.

Mr. McLaughlin: No questions.

Mr. Cohen: If your Honor please, I have another witness worked right alongside of the victim. If you think we need his testimony I will produce him.

The Court: I don't think so.

Mr. Cohen: I also subpœnaed one of the other members of the company who was unable to appear but I don't need him now.

The Court: What would he testify to?

Mr. Cohen: Just what Mr. Lott testified to. I offer the report of the Board of Health in the case, to be put into the record. That is our case, your Honor.

Mr. McLaughlin: There is no testimony to offer on behalf of the Respondent.

(Case closed; decision reserved.)

* * * * * *

New Jersey Court of Errors and Appeals

TEXTILEATHER CORPORATION, a corporation, Plaintiff-Respondent, vs. GREAT AMERICAN INDEMNITY COMPANY, a corporation, Defendant, AND AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, a corporation, Defendant-Appellant.	**Action at Law.** **On Appeal from Supreme Court.** **Brief of Defendant-Appellant.**

Statement.

This is an appeal by the defendant-appellant, American Mutual Liability Insurance Company, from a judgment of the Supreme Court, entered May 22, 1930, against it and in favor of the plaintiff-respondent, Textileather Corporation, in the sum of $2,900.66.

Facts.

The defendant issued to the plaintiff a Workmen's Compensation insurance policy which applied "only to such injuries so sustained by reason of accidents occurring during the Policy Period, limited and defined as such, in Item 2 of said Dec-

larations" (p. 47, line 15) and the Policy Period was "from November 18, 1927, to December 1, 1928" (p. 55, line 15). Under the Policy, the defendant was bound to defend any claims or suits, against the plaintiff, because of injuries sustained by reason of accidents occurring during the Policy Period (p. 46, line 12).

At the time said policy was issued the plaintiff was, and had been for at least six or seven years prior thereto, engaged in the manufacture of artificial leather in Newark and in the making thereof used large quantities of benzol.

Bruno Iannazzo, deceased, had been an employee of plaintiff since August 8, 1927. From that time on he worked in plaintiff's "dope" room, straining the "dope" finish. This contained a large quantity of benzol to which he was constantly exposed. He stopped work on November 26, 1927, *just one week after the issuance of defendant's policy.* He died December 8, 1927, from the results of chronic benzol poisoning, a compensable occupational disease.

Iannazzo had been in good health up to August 8, 1927, when he started working for plaintiff (p. 226, line 25). Within a short time his condition radically changed. By October, 1927, he had lost weight, become pale, nervous, lost appetite, unable to sleep, had at least one nose bleed, was always going backward (pp. 226, 227, 228, 229). He had contracted chronic benzol poisoning shortly after he started work in August (p. 142, line 26) and by October had in his system the results of the poisoning from which he died December 3, 1927 (p. 143, line 32; p. 144, line 21).

After Iannazzo's death, claim for compensation was made by his dependents. Informal hearings were held. Testimony that representatives of defendant and of co-defendant Great American Insurance Company appeared was first admitted in

evidence and afterwards stricken out (pp. 180, 181; p. 187, line 40; p. 188, line 1). Later a claim petition was filed—this was served both on defendant and on plaintiff (p. 121, line 1). The reason it was served on the plaintiff was because the Compensation Bureau had ascertained that the defendant had only been on the risk a week, that there was a question of responsibility, that neither company would pay and therefore under the circumstances felt the employer should be served (p. 119, line 20).

Prior to the petition being served, a representative of the defendant went to plaintiff's factory and went over the matter with Mr. Schumaker, in charge of compensation for plaintiff. Schumaker stated that Iannazzo had been exposed to large quantities of benzol since the previous August (p. 216, line 30); and that, since that time to the time he left, had been working under the same conditions (p. 218, line 20). Later, after the petition was served, the representative of the defendant again went to plaintiff's plant and had a further talk with Schumaker. He told Schumaker that an answer would be filed but that in his opinion, the matter was up to the Great American Insurance Company, co-defendant here (who Schumaker had said was his corporation's prior insurance carrier) due to the fact that the American Mutual had only been on the risk ten days or two weeks when the death had occurred (p. 218, line 34; p. 219, line 11). Schumaker replied "that it was up to the insurance company" (p. 219, line 15).

An answer was thereafter filed setting up what had been learned from plaintiff. A week before the Compensation hearing, the president of the plaintiff corporation was told of the date by the defendant and asked to be in Court (p. 168, line 25). Prior to the hearing he was served with a subpœna to testify on behalf of the petitioner. He thereupon

wrote the Compensation Commisioner stating that he had to be out of town and that in his place he would send his superintendent, Mr. Lott, "with all particulars that will be necessary for the trying of this case" (p. 165, line 28; p. 167, line 24; D. G. 3, p. 272).

At the hearing the attorney for this defendant, in open court, in the presence of Mr. Lott, superintendent of the plaintiff and Mr. Bosco, foreman for plaintiff, stated that he thought the true facts would show that the responsibility for the disease was prior to the coverage of this defendant (p. 275). Testimony was taken, including that of Lott and Bosco and on June 4, 1928, the Written Determination and Judgment of that Court was entered in the Compensation Bureau. The Determination, put in evidence by the plaintiff (p. 121, line 5), was in strict accord with the evidence (D. A. 2, p. 274) and decided as follows (p. 80):

> "It is therefore found and determined that petitioner's intestate, Bruno Iannazzo, contracted benzol poisoning, a compensable occupational disease, in August, 1927, as a result of exposure to benzol out of and in the course of his employment with respondent; that prior to November 1, 1927, said Iannazzo had the results of said poisoning in his system which caused his death on December 8, 1927. It is further found that the period of deceased's employment with respondent, responsible for his death, was the period from August 8, 1927 to November 1, 1927, and that the period from November 18, 1927 to November 26, 1927, had nothing material to do with said death. It is further found that the disability of petitioner's intestate commenced within five months of the termination of said exposure."

The period responsible for the death of Iannazzo not being within the coverage of this defendant, it refused to pay the award. Plaintiff thereafter

started paying the award. Sometime later it brought the present suit against this defendant and the co-defendant Great American Indemnity Company, the prior carrier, for the amount it had paid up to that time.

At the trial of this case below, the trial Court held that the fixing of the time of the occurrence of the occupational disease was not a necessary part of the decision of the Compensation Court, therefore not binding on the Court below and permitted testimony to be taken on this point (p. 127, line 33; p. 128, lines 1-10).

At the conclusion of the plaintiff's case, this defendant moved for a nonsuit (p. 207) on among other grounds that it had not been shown that the responsibility for the death of Iannazzo was within the coverage period of this defendant's policy and that the Determination of the Compensation Court had fixed the period as prior to said coverage. The motion was denied. The motion of the co-defendant, Great American Company, was granted on the ground that plaintiff had not given that defendant proper notice under its policy.

At the end of the whole case this defendant moved for a direction of verdict on the same grounds as advanced in the nonsuit motion. That was denied. Plaintiff moved for a direction of verdict, on the grounds first, that this defendant was estopped from denying its liability and second, that the testimony showed that the occurrence of the disease was within the coverage of this defendant (pp. 246-247). The Court held the second point to be a jury question (p. 253). A verdict was directed in favor of the plaintiff and against the defendant on the first ground (p. 259).

I. The trial Court erred in directing a verdict in favor of the plaintiff and against this defendant.

The trial Court in directing a verdict against this defendant on the ground that it was estopped from denying its liability said (pp. 258, 259):

> "Now, in this case, notice of the accident, as was required under the policy, was given to the plaintiff in this suit, to this company, and no other company. The defendant company here prepared the report for the Textileather Company without submitting it at all to the Textileather Company. After that, a petition was filed on behalf of the claimant, and the service of that petition was acknowledged by the defendant in this case. The defendant filed the answer, and this defendant, by its own attorney —not the attorney of the plaintiff here, but by its own attorney—prosecuted that suit to a final determination." * * *
>
> "There does not seem to have been, from anything in this case, notice given to the plaintiff in this suit of a claim, on the part of the American Mutual, that it denied liability, as between it and the plaintiff in this case, until after ths adjudication in the Compensation Court. The result of that was, so far as the plaintiff here is concerned, that no notice whatever was given to the Great American, sufficient to hold it, of its obligation to the plaintiff herein; and that has resulted, in this very case, for that reason, in a nonsuit in favor of the Great American and against this plaintiff.
>
> "It seems to me, therefore, under the cases which I have cited, that the American Mutual, because of the action which it took upon receiving the notice of this accident from the plaintiff, in taking the responsibility to file all pleadings, to defend this case, without any notice to the plaintiff that it disclaimed liability, as between it and the plaintiff, is now

> estopped from denying that liability, which results in the granting of a motion for the direction of a verdict, and an exception to that ruling will be noted on the minutes as ground of appeal."

Exception was duly taken to this (p. 259, line 34) and it is defendant-appellant's ninth ground of appeal.

The notice of accident from plaintiff to this defendant gave as its only date, November 26, 1917 (p. 153, line 26). The Compensation Bureau first notice form was of necessity based on this (p. 126). The trial Court mistakenly thought, as stated in the first part of the above quotation, that form was not submitted to the plaintiff. The fact was that plaintiff's man in charge of compensation, Mr. Schumaker, signed the report under the statement "made out by Textileather Corporation" (p. 125, line 18) and mailed it to the Compensation Bureau (p. 157, line 25).

After that, defendant ascertained from plaintiff that Iannazzo had been working exposed to benzol since the previous August. Informal hearings were held which were attended by both this defendant and the co-defendant, who was the plaintiff's compensation insurance carrier prior to November 18, 1927. The formal petition for Compensation due to the fact that there was a question of responsibility, was not only served on this defendant but also on the plaintiff. That petition alleged the date of accident as November 26, 1927 (p. 69, line 8).

Under its policy this defendant was bound to defend any claims or suits against the plaintiff because of injuries sustained by reason of accidents occurring during the Policy period (p. 46, line 12; p. 47, line 17). This claim came directly under that contractual obligation because of the date

alleged and it had to defend or breach its policy. The trial Court as the ground for asserting estoppel against this defendant, states that the latter did not deny liability until after the adjudication of the Compensation Court. But this defendant could not do otherwise. It had no knowledge that the death in question was caused by what had happened before November 18th. With indications that Iannazzo had been exposed to benzol for three and one-half months prior thereto and with it, only on the risk a scant seven days, it suspected it was not responsible. However, it did not know what the petitioner would prove and with the date of the disease alleged as November 26th, within its policy period, it had no recourse but to defend the action and could only disclaim at its peril.

It therefore did the only thing it could do. It told the plaintiff it would file an answer but that due to the fact it was only on the risk ten days or two weeks prior to the death that, in the opinion of its representative, "The matter was up to the prior insurance carrier." This, in topical language advised the plaintiff of the then precise situation. This defendant could not disclaim on mere suspicion for if the facts showed it liable it was bound to pay. The only knowledge it could, and did have, was after the trial and adjudication of the Compensation Court and then it promptly disclaimed.

There were no rights of the plaintiff impaired by this defendant. The plaintiff was the only one possessing real knowledge prior to the trial. It was an old hand at benzol, had been using it for the last six or seven years. Right at this time another of its employees had died from its effects (Mooney). It knew the slow action of the poison. It knew that the American Mutual policy had only been in effect a week. It knew that when this defendant came on the risk there were two practically dying employees in its plant. It knew that

under all the circumstances that it had to notify its former insurance company in order to protect itself. Therefore whatever it did or did not do is entirely its own concern and its own responsibility.

In the *Mooney case,* No. 122, October Term 1930, which was tried at the Circuit, just prior to the one at hand, the trial Court held that it was not neecssary for the Compensation Court to fix the time of the occurrence of the disease. If that holding should be correct, this defendant had no way of knowing the date of the disease until a suit on the policy had been brought and decided. In that situation there was no possible conflict between the interests of the plaintiff and the defendant in the Compensation Court and the former could not have been harmed in any way by the defendant not actually withdrawing at that time. Any notice by the defendant would be pointless, for the Compensation trial under the Circuit's ruling, had nothing whatever to do with the time of the occurrence of the disease. Under such facts the defendant not only was bound to defend by its contract but in self protection had to, for it would be liable for the compensation award unless in a later action it proved that the poisoning took place before its policy period.

An attempt was made at the trial, and will doubtless be made here, to say that this defendant moulded the determination of the Compensation Court, unfairly, and so obtained an advantage over the plaintiff. Fortunately, the Compensation testimony is in evidence (D. A. 2, p. 274). A reading of it will show that the Determination follows the testimony with the utmost exactitude and that evidence with respect to the thing that killed Iannazzo, namely, exposure to benzol, was given by plaintiff's Superintendent Lott who was sent there by the plaintiff's Vice President "with all the particulars that will be necessary to the trying of this case"

and by plaintiff's foreman Bosco. The evidence in the present case, despite frantic efforts to change it, is substantially the same, plus the strong additional testimony of the foremost expert on industrial diseases in this state, Dr. Kessler (p. 235, line 25). It shows the most substantial foundation of the Compensation decision.

In attempted justification of the estoppel doctrine the following four cases were relied on:

Horn v. *Commonwealth Casualty,* 147 at 483:

This involved an automobile liability policy, which provided that, anyone using the car with the permission of the assured was an additional insured under the policy. The car in question was involved in an accident and Horn sued the driver thereof. The insurance company defended and admitted the car was being used with the owner's permission. Later the judgment being uncollectible against the defendant, the plaintiff sued the insurance company under the 1924 Act. The Court held that the insurance company could not then defend such suit on the ground that the judgment was against a person not named in the policy.

The facts in the case at bar are entirely different. First, the assured is not the plaintiff in the *Horn case.* Second, the theory of the *Horn case* is not that Horn relied on the action of the insurance company in defending, to his detriment, and third, in the present case there was no admission of any sort in the Compensation Court that the disease occurred within the policy period of this defendant.

In *Utterback-Gleason Co.* v. *Standard Accident Insurance Co.,* 184 N. Y. S. 862, affd. 135 N. E. 913, all the facts were known to the Insurance Company prior to defending. Nothing was changed after trial. In the present matter the facts did not develop until after trial. Up to that time it might have been under the American Mutual pol-

icy and if it had so developed, the latter would have paid. It did not and the result was a prompt disclaimer.

The case of *Farrell* v. *Merchants Insurance Co.,* 196 N. Y. S. 383, is not between assured and insurer. It involves a question of waiver, rather than estoppel. The insurance company had full knowledge of all the facts when it waived the notice of accident, which is the point of the case.

In *Miller* v. *Union Indemnity Co.,* 204 N. Y. S. 730, there was a suit in an automobile accident case prosecuted to judgment, with the insurance company defending. The plaintiff in the negligence action then sued on the policy under the New York statute. The Court held that the company was estopped from setting up the failure of its assured to give it notice.

As is seen, the suit is not between the assured and insurer as here. The basis of the decision as stated at page 732 is:

> "When confronted with the situation, assuming that the alleged defence (lack of notice) was valid, the defendant was put to an election. It could stand on its defence and refuse to go on or it could abandon such defence and conduct the assured's side of the action. It could not do both."

Again the facts were all in the possession of the insurance company before it acted. Here the period of poisoning could not and did not appear until after the compensation hearing. Certainly this defendant was not forced to elect without knowledge of the facts.

Humes Co. v. *Philadelphia Casualty Co.* (*R. I.*), 79 Atl. 1:

In this case an insurance company defended and thereafter appealed a suit against its assured under a Workmen's Compensation policy, despite the fact

that the plaintiff was not an employee of the assured. The company had full knowledge of all the facts prior to defending but through a mistake of law, supposed itself liable. The Court held it could not later raise that defence.

It is seen that the decisions in all four of the above cases are based on far different situations than the one at hand.

On the question of knowledge, the opinion in *Stearns Co.* v. *Traveler's Insurance Co.,* 150 S. W. 991 (Wis.), is quite in point. In that case there was a question of illegal employment. The insurance company did not have knowledge of the fact, until after trial and then, as here, disclaimed. The Court said (p. 992):

> "So, appellant, was not not, in any event obliged to change its attitude towards respondent until judgment was rendered in the Circuit Court, grounded on the particular circumstance."

The Court said as to the question of estoppel (p. 993):

> "But it does not apply efficiently here, because there was neither knowledge actual or constructive of the facts."

In *Mason-Henry Press* v. *Ætna Insurance Co.,* 105 N. E. 826 Ct. App. N. Y., there was much the same sort of notice given by the insurer as here. There was a charge of illegal employment and the company wrote the assured saying that if such proved the case "this case would not fall to us for attention". The Court said (p. 828):

> "While this language is somewhat colloquial, the notice as a whole was evidently fully understood by the appellant and I do not think that the subsequent conversation with respondent's agent which was not given on the first but only on the second trial, served to obliterate the effect of this notice. It did not withdraw

> the written notice or destroy its meaning and whether this notice was regarded as 'formal' or informal it called to the attention of the insured that there was a charge of violation of law causing the accident, which was not covered by the policy and the further statement that the insurer was 'going on with the case and was going to take care of it' did not at all destroy the proposition, that if at the end of that case, it should be determined that the accident resulted from a cause not covered by the policy, the insurer would not be liable."

In that case as in the one at bar, the insurer was compelled to defend. The Court said as to this (p. 828):

> "The appellant's attitude from beginning to end was that it had been guilty of no violation, that the allegation of violation was false and that the insurer under its policy was compelled to defend the action."

In *Rosenberg* v. *Maryland Casuatly Co.*, 3 N. J. Misc. 1132, affd. on opinion 102 N. J. L. 724, a liability insurance policy was involved and the Supreme Court said (p. 1134):

> "The defendant's refusal to defend the action against the plaintiff was in direct violation of the terms of the policy * * *."

In *Sargent Mfg. Co.* v. *Traveler's Insurance Co.*, 130 N. W. 211 (Mich.), the Court said:

> "That contract provided among other things that if thereafter, any suit, even if groundless, should be brought against the assured to recover damages on account of such injuries as are covered by the policy, the company would at its own cost, defend against such suit in the name and on behalf of the assured.
>
> "It is clear therefore, that it was the duty of the defendant to appear for the insured and undertake the defence of the case in the first instance. Had a judgment been rendered

under the original declaration, defendant's liability under its policy would have been certain."

In *Compton Co.* v. *General Corporation,* 190 S. W. 382, at 387, the Court said:

> "While defendant may have readily discovered, as plaintiff now claims, to its own satisfaction at least, that plaintiff's failure to place a guard around the machinery was the cause of the accident and exempted it from liability, yet it may be seriously contended that the defendant insurer, notwithstanding its belief in that respect, could not know in advance of the bringing of the damage suit on what ground of negligence the injured party might assert liability and produce evidence to sustain the same.
>
> * * * * *
>
> "Since an insurer in this form of policy can refuse to defend an action for damages only at its peril, it ought not to be held to have waived its rights by defending, so long as any peril exists."

In *Ford Hospital* v. *F. & C. Co.,* 183 N. W. 656 (Neb.), the Court said (p. 659):

> "The insurer by its policy had bound itself to defend any suit against the hospital to enforce any claim for a liability covered by the insurance 'whether groundless or not.' The action against the hospital for damages was a suit to enforce such a claim. The action was well founded but even if it had been 'groundless' the insurer had agreed to defend it."

In *Murch Co.* v. *F. & C. Co.,* 176 S. W. 399 (Mo.), the Court said (p. 407):

> "When the Casualty Company abandoned the defence, with the issues in it, one for which it was liable, the other not, it took the chance of judgment being rendered on either. The verdict here establishes the reasonableness

of the amount at which the cause was compromised. It also established the fact that the accident involved was one arising out of a cause for which the Casualty Company was liable."

In *Holland Laundry* v. *Traveler's Ins. Co.*, 152 N. Y. S. 92, affd. 117 N. E. 1071, the Court said (p. 93) as to question of illegal employment:

"But how, without trial and judicial ascertainment of the facts, could the fact of age be known? It is alleged in the complaint but the allegation may be untrue and if untrue the insurer must defend.

* * * * *

"The defendant could have refused to defend but that would be at the peril of proving the case fell within the exception. The policy was alive and demanded fulfillment; the exception was inoperative unless the actual facts proven brought the case within it."

Under the above facts and law it is respectfully submitted that the direction of verdict by the trial Court on the theory of estoppel was erroneous and should be reversed.

II. That part of the determination of the Compensation Court fixing the period of the employment responsible for the occupational disease, was binding, on the trial Court.

This point arises under defendant's 1st ground of appeal, also under the 6th and 8th grounds (pp. 127, 207, 245).

A companion case to the one at bar, the *Mooney case*, No. 121, October 1930 Term, was tried immediately prior to this case, at the Circuit. The same above point was passed on in that case and gone into

at length. When the question came up in this case, it was decided by the Court without comment, reference being had to the Court's language in the *Mooney case.* The *Mooney case* is being argued with the present one and, of necessity, reference must be made to that case for the Court's reasons in refusing to recognize as binding that part of the Compensation decision fixing the period of employment responsible for the occurrence of the occupational disease. The argument advanced under this point is, therefore, identical with the argument of this defendant in its brief in the *Mooney case* (with two slight additions, namely, references to the decision of *Smith* v. *Fisher Co.,* 147 Atl. 455, and to the attempt by plaintiff to have the Compensation Decision changed by that Court).

It is frankly conceded by the trial Court (p. 291, line 1, *Mooney case*) and by the attorney for the plaintiff (p. 170, line 35, *Mooney case*) that the Compensation decision is binding in the present suit "as to the matters which the Compensation Court had the right to determine" (p. 291, line 4, *Mooney case*). The Trial Court said that those matters are:

> "that the person who was injured or diseased was an employee of the insured company, that he was injured or diseased, with an occupational disease, under the statute, and that the injury or disease arose out of or in the course of his employment and that the petitioners are entitled to compensation and the amount of that compensation" (p. 291, line 10, *Mooney case*).

The Court continuing, said (pp. 291, 292, *Mooney case*):

> "This may, at times, involve the question of when the injury or the occupational disease occurred. It seems to me that is necessary, under the statute, in certain cases. In this case that was not a necessary determination.

All that was necessary for the Compensation Commissioner to decide, in order to entitle the plaintiff here to recover against the carrier, was that the disease, the occupational disease, arose out of and in the course of the deceased's employment, and was not barred by any limitation of the Compensation Act. Both parties were bound by those matters which it was within the jurisdiction of the Compensation Court to decide. One of the matters which the Compensation Court attempted to decide, apparently, was that the exposure to benzol was for six years prior to Mr. Mooney's death, and that he contracted benzol poisoning prior to November 1, 1927; and that prior to that date had the ultimate results of such poisoning in his system, which brought about his death on December 15, 1927.

"It was absolutely unnecessary for the Compensation Commissioner to so find, and, as to that finding, I have already held it is not *res judicata* as to the plaintiff in this case, seeking to recover against the carrier."

The above is the full thought of the trial Court on the present point.

It is obvious that the decision in *Smith* v. *Fisher Baking Co.,* 147 Atl. 455, is not relevant here. That case involved the question as to whether the judgment against the driver of an automobile was binding as against the owner of said automobile in the latter's separate action arising out of the same accident and this Court held that said judgment was not *res adjudicata* as to the owner's suit.

Here it is admitted that if the Compensation Court had the right to determine the time of the occurrence of the disease that such determination is binding on this action. It is respectfully submitted that in deciding that the Compensation Court did not have the right to fix such time, the trial Court erred.

(a) The Compensation Court had the right to fix the period of the occurrence of the disease.

The Compensation Court, of course, has exclusive original jurisdiction of all claims for compensation arising under the Act (P. L. 1918, Chap. 149, Sec. 3) and the Act applies to certain occupational diseases including benzol (Secs. 22b and f). Occupational diseases to an employee are only compensable when "arising out of and in the course of his employment" (Sec. 22a) and then "only when the exposure stated in connection therewith has occurred during the employment and the disability has commenced within five months after the termination of such exposure" (Sec. 22a).

Certainly under this language the Compensation Court has the power to fix the date of the "arising of" or the occurrence of an occupational disease just as in an accident case, it has the power to, and does in every instance, fix the date of the accident.

Occupational disease cases are far rarer than the ordinary compensation accident case and only one decision in this state on all fours with the one at bar has been found. That case is *Sochaska* v. *Balbach Smelting Co.,* 5 N. J. Misc. 871. There the Compensation Court, from the testimony before it, fixed a particular time, during the employee's term of service for the same employer as the time when the occupational disease was contracted.

The Court said (p. 874):

> "I am, therefore, forced to the conclusion that in the course of his work of breaking up the mattes and handling the pieces and from the other conditions under which he worked at the place of the respondent, he undoubtedly became exposed in such manner to lead poisoning that either by inhalation or absorption he received into his system lead in such quantities, *within a period of five months of his death, that his illness* resulted therefrom in January 1925, and which led to his death in March of the same year."

Further, on page 875, the Court, discussing the testimony, said:

> "indicates to my mind without any question of doubt that the decedent died from an extraordinary or intensive exposure to lead poisoning which occurred within five months of the date of his illness and death.
>
> "And I do so find that the decedent has in the course of his employment been exposed to lead, which exposure arose out of and in the course of his employment and brought about his death within a period of five months or less of the date of his death."

In every case outside the State that has been examined, the Compensation Courts have fixed the dates of the occurrence of the disease. In most instances, under different law and facts, other dates, than those fixed in the instant case by our Compensation Court, have been chosen but that is entirely immaterial. Different periods may be designated, but the vital fact remains the same; namely—that the Compensation Courts outside of Jersey as far as have been seen, decide the responsible period of the disease and are upheld in so doing.

Examples of such cases are *Johnson* v. *London Guarantee Co.,* 104 N. E. 735 (Mass.), where a time was fixed by the Compensation Board and upheld by the Supreme Court. There is no specific provision for occupational diseases under the Massachusetts statute. Also in that state, according to the case, suffering a personal injury is the only important thing. In order to bring the case under the statute the board, therefore, found that the results of the poison in the system of the petitioner resulted in personal injury on a day certain.

Our statute is quite different. It provides (Sec. 7) compensation for "personal injuries to or for the death of such employee *by accident* arising out of and in the course of his employment" or in the

matter of occupational disease—specifically *"arising* out of and in the course of his employment."

In the *Johnson case,* the Court found "that the date on which Johnson became sick and unable to work, was the date of the injury". In our state, injury is not synonymous with accident. This is shown by Sec. 13 of the Act, which reads:

> "No compensation other than medical aid shall accrue and be payable until the employee has been disabled seven days, *whether the days immediately follow the accident* or whether they be consecutive or not."

In *Bergeron's Case* (Mass.), 137 N. E. 739, the Compensation Court fixed a time in another occupational disease case and was upheld. As stated in comment on the *Johnson Case* the date of injury is the primary requisite in Massachusetts and here, even though the man admittedly had lead poisoning in November 1919, the date of injury was when he was incapacitated in June 1920.

In *Employers' Ins. Co.* v. *McCormack* (Wis.), 217 N. W. 738, the employee had died from tuberculosis which is a compensable occupational disease in Wisconsin. Insurance carriers are parties to compensation actions in that state and according to the opinion, page 739, "* * * the Industrial Commission had been given full power to find the facts and to apply the existing law to determine the liability of an insurance carrier for Compensation awarded against an employer". The Commission had not done so and therefore this Court, by virtue of a further statute did so on the appeal. It found the carrier responsible who was on the risk "when the disability occurred", which is apparently the sole test for compensability under the Wisconsin Compensation law (p. 739). In New Jersey, as is seen, there has to be an accident or disease occurring which fixes the responsibility and which, if followed by disability, results in an award.

The important point about the case is that it again shows that the fixing of a time as to an occupational disease is part of the job of the Compensation Court.

In *Schaefer* v. *Eicher* (Wis.), 201 N. W. 396, the Industrial Commission apportioned an award for an occupational disease among three employers and the Supreme Court sustained it. The Commission, as in the *McCormack case* (*supra*) which followed this decision, fixed the date of the disease as "the time he came down with the disease rendering him unfit for work. This was the date at which the liability became fixed."

No case has been found where the right of the Compensation Court, to fix the date of an occupational disease, has been denied. Courts outside the State have fixed different dates. Some have gone past the date of the contraction of the disease and fixed the date as when the injury or disability occurred. This however is merely a difference of opinion, as to the time, not as to the right to fix it.

If the time fixed here was felt to be wrong, effort could have been made to review it, either in the Compensation Court itself, which has the power to review its own decisions; *Rose* v. *Wagner,* 2 N. J. Misc. 118; or by appeal, by certiorari, or otherwise.

Plaintiff realized that such was the correct procedure and did attempt to have the Compensation Determination changed by the Compensation Court. This is shown by plaintiff's own exhibits, P-19, page 224 and P-20, page 225, letter from the Compensation Commission to the attorney of this defendant and the latter's reply thereto. For some utterly unexplained reason, that attempt was abandoned—probably because the determination was based word for word on the Compensation testimony.

(b) The law generally in such case is that a judgment in the former suit (such as is the Com-

pensation judgment here) is conclusive as to the existence of all facts determined therein which are material to a recovery in the second action (such as the present case).

In *American Paper Products* v. *Ætna Life Ins. Co.* (St. Louis Ct. App. Mo. Rehearing denied), 223 S. W. 820, the Court said:

> "As a general rule, in actions upon an employer's liability policy, to recover from the insurer the expenses and the amount paid by the employer in consideration of a judgment against the employer by an injured employee, the judgment roll in the action by the employee against the employer is admissible in evidence in the suit of the employer against the insurer, *whenever by such judgment, a fact material to the issues in the suit of the employer against the insurer has therein been determined.*"

American Candy Co. v. *Ætna Life Ins. Co.* (Sup. Ct. Wis. 1916), 159 N. W. 917. This was a suit by an employer against an insurer on a workmen's compensation policy. The insurer had disclaimed because it appeared that the employee was a boy under 16 years, who was hurt working on a dangerous machine, in violation of law. The boy, after the disclaimer, had sued the employer and recovered, the jury finding that he had been hurt while working on a dangerous machine.

The Court here held that the judgment in the boy's suit against his employer bound the latter in its suit on the policy, and sustained the lower court's non-suit in favor of the insurer.

The Court said (p. 919):

> "It seems clear, therefore, from the record in the two cases referred to, against the plaintiff, on account of the injury complained of and the decision on appeal to this court, that the minor was employed contrary to law, hence the injury was not covered by the policy.

> The only question remaining is whether the former judgments against the appellant are conclusive. We are of the opinion that they are."

Fulton Gas and Electric Co. v. *Hudson River Tel. Co.* (Ct. App. N. Y. 1911), 93 N. E. 1052. Here a workman recovered a judgment in a negligence case against both parties to the present action. The present plaintiff paid the judgment and sued the Hudson River Co. for the amount it had paid, claiming that the Hudson River Co. was liable. An attempt was made at this trial to again go into the merits of the workman's claim. The Court held that this was improper, saying (p. 1056):

> "Therefore, if it appears that the judgment in the *Horning action* was based upon a finding of fact fatal to the recovery in this action, it cannot be maintained. The judgment in the Horning action is conclusive proof that the plaintiff in this action was legally liable to Horning *upon the ground adjudicated, in that action,* if a ground were adjudicated, in the amount of the verdict therein. The record therein may disclose a state of facts showing that the defendant is or is not liable over to the plaintiff. It may disclose that the facts through which the plaintiff demands the indemnity from the defendant were not litigated therein and if they were not, they may be litigated in this action through evidence not produced thereat; and if it is not clear from the record therein upon what ground damages were recovered against the plaintiff here, parol evidence is admissible to show what questions were actually litigated and decided." Citing a large number of cases.

Roth Co. v. *New Amsterdam Cas. Co.* (C. C. A. 8th Cir. 1908), 161 Fed. 709. An employer's liability was also involved here. The employee obtained a judgment against the employer which

then sued the insurer on the policy. The Court said (p. 711):

> "But when the liability over is not as broad as the original liability, the plaintiff in the suit to recover over if he relies on the adjudication made in the former case must show that the very ground of liability against the indemnitor was found to exist and was necessarily adjudicated in the original suit."

In *Washington Bridge Co.* v. *Pa. Steel Co.* (C. C. A. 4th Cir. 1914), 215 Fed. 32, one Benning, an employee of the Steel Co., was hurt. He sued his employer and obtained a judgment. The Steel Co. then brought the present suit under a contract of indemnity. The Court, discussing the judgment in the first suit and its applicability here, said (p. 35):

> "The rule, however, extends the conclusiveness of such judgment to this point: If the record in the Benning case had shown that the negligence of the Steel Company in failing to perform its non-delegable duty of using due care to provide a reasonably safe place for Benning to work, was necessarily due solely to the negligence of the bridge company in not exercising due care to furnish a pier strong enough to bear the superstructure and could not have been due to any independent breach of duty on the part of the Steel Company, then the judgment in the Benning case would be conclusive of the actionable negligence of the bridge company and of its liability to the Steel Company."

In *Standard Oil Co* v. *Robbins Dock Co.* (Dist. Ct. E. D. N. Y. 1928), 25 Fed. (2nd) 339, there had been a judgment by employee of present plaintiff against the latter who now sues the Dock Company on a contract of indemnity. The Court (p. 340), speaking of the former judgment, said:

> "* * * the judgment is conclusive upon the defendant as to the existence of all facts de-

> termined therein, which are material to a recovery against it in an action brought by the defendant, the indemnitee."

(c) The fixing of the responsible period for the disease was necessary in the Compensation case here.

Even assuming the trial Court's contention to be correct, namely—that to have the Compensation decision, as to the time of the disease, binding in this suit, it had to be a necessary part of its determination—under the facts in the Compensation Court, it was necessary to so find.

The Workmen's Compensation Insurance Act of this state (P. L. 1917, p. 525) provides:

> "An employer securing the payment of compensation by any of the methods prescribed in section 4 of this act notwithstanding, shall be liable primarily for the payment of proper compensation for personal injuries or death sustained by his employees. The employer shall have recourse for the amount thereof against his insurance carrier. But the insurance carrier shall be directly liable to the injured employee, or his dependents, in event of the death, insolvency, bankruptcy or other proceedings, as a result of which the conduct of the employer's business may be and continue to be in the charge of an executor, administrator, receiver, trustee or assignee."

Sec. **236-76 provides that Compensation policies "shall provide or be construed to provide" that they are for benefit of employees and dependents "and that such contract may be enforced by any of such employees or their dependents, suing thereon in his or their names as though distinctly made party thereto."

With this law in mind, the fixing of the responsible period of the disease is a paramount necessity to the petitioner in such Compensation case, as the Iannazzo one. If the time is fixed, the peti-

tioner knows who the carrier is, and, in the not improbable event of circumstances having to bring the statute into action, can proceed against such carrier on its direct liability to her. With no time fixed, with the employer insolvent, she has no recourse against anyone.

For both these reasons, the fixing of the time of the disease was necessary in the Compensation case and, therefore, even under the trial Court's ruling, was binding in the present suit.

Conclusion.

It is respectfully submitted that for the reasons urged, the judgment in this case, in favor of the plaintiff and against this defendant, be reversed.

Respectfully submitted,

McCarter & English,
Attorneys for Defendant-Appellant,
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Insurance Company.

Gerald McLaughlin,
Of Counsel.

New Jersey Court of Errors and Appeals

TEXTILEATHER CORPORATION, *Plaintiff-Respondent,* *v.* GREAT AMERICAN INDEMNITY COMPANY, *Defendant,* and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Defendant-Appellant.*	Action at Law. IANNAZZO CASE. Nos. 30 and 31, February Term, 1931. On Appeal from Supreme Court.
TEXTILEATHER CORPORATION, *Plaintiff-Appellant* *v.* GREAT AMERICAN INDEMNITY COMPANY, *Defendant-Respondent,* and AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Defendant.*	

BRIEF IN BEHALF OF GREAT AMERICAN INDEMNITY COMPANY.

1.

Statement of the Case.

There is but one action. The cause is listed twice because there are two appeals. The first appeal is by the defendant, American Mutual Liability Insurance Company from a judgment in favor of the plaintiff. The second appeal is by the plaintiff from a judgment of nonsuit in favor of this defendant, Great American Indemnity Company. This defendant is a party only to the second

appeal. The nonsuit was granted at the close of the plaintiff's case. The correctness of that ruling must be judged by the testimony taken before the motion was granted. After the plaintiff was nonsuited as to this defendant the case proceeded and evidence was admitted in behalf of the defendant American Mutual Liability Insurance Company. Motion was then made by the plaintiff for a direction of verdict at the close of the whole case and the trial court directed a verdict for the plaintiff and against that company. It is to the judgment entered on that verdict that the appeal of the American Mutual is directed.

This suit was brought by the plaintiff to recover the amount paid by it to the estate of Bruno Iannazzo, a former employee, in satisfaction of a judgment entered on an award made by the Workmen's Compensation Bureau in a proceeding under the Workmen's Compensation Act wherein it was claimed that the death of Iannazzo was caused by an occupational disease contracted during his employment with the plaintiff.

The plaintiff after paying that judgment brought this suit against the defendants claiming that one or both was liable to it on a policy of insurance known as the standard form of workmen's compensation policy.

2.

Grounds of Appeal.

The only question presented on the plaintiff's appeal as against this defendant is whether or not the trial court erred in granting its motion for a nonsuit. This defendant contends that there was no error. The motion for nonsuit was based on a number of grounds (p. 202, *et seq.*). The Court in granting the nonsuit relied upon some of the

grounds and finding those sufficient did not consider the others (p. 208, l. 20, *et seq.*).

Counsel for plaintiff at page 2 of his brief purports to set forth the questions involved. However, he does not mention the most important question—the one which resulted in the nonsuit argued in Point II of this brief.

3.

BRIEF OF THE ARGUMENT.

I.

Prefatory Statement.

If any one of the grounds urged in support of the motion for nonsuit was sound then the trial court did not err in granting the motion even though he granted it on a ground that might not be sustained by this Court. *Solomon* v. *P. S. Ry. Co.*, 87 N. J. L. 284. We do not wish to intimate that the grounds upon which the trial court rested his decision are erroneous. Out of an excess of precaution we prefer to rely on all the grounds urged.

While this case is similar to the *Mooney* case (Nos. 28 and 29 on the February Term, 1931 calendar) it is not identical. In the *Mooney* case the trial court rested its decision granting this defendant's motion for a nonsuit on the ground that there was no evidence that the occupational disease of which the deceased died was contracted during the term of the policy of this defendant.

In the case at bar the trial court relied on the absolute failure of the plaintiff to give any notice of its claim to this defendant as required by the terms of the policy (p. 208 and p. 210, l. 40, *et seq.*).

II.

The plaintiff failed to give immediate written notice to this defendant of the occurrence and failed to comply with the other provisions of the policy with respect to giving the defendant the fullest information obtainable of the claim made.

We put this point first in this brief because it deals with the grounds which the trial court sustained in granting the motion for nonsuit. The provision of the policy with respect to notice is as follows (p. 30, ll. 10-25):

> "F. This Employer, upon the occurrence of an accident, shall give immediate written notice thereof to the Company with the fullest information obtainable. He shall give like notice with full particulars of any claim made on account of such accident. If, thereafter, any suit or other proceeding is instituted against this Employer, he shall immediately forward to the Company every summons, notice or other process served upon him. Nothing elsewhere contained in this Policy shall relieve this Employer of his obligations to the Company with respect to notice as herein imposed upon him."

It will be noted that under this provision the plaintiff upon the occurrence was required to give immediate written notice thereof to this defendant with the fullest information obtainable. Also the plaintiff was required to give like notice with full particulars of any claim made on account of the occurrence. These provisions were not complied with. The following facts are undisputed:

After this case was opened to the jury by counsel there was the following colloquy between counsel (p. 117, ll. 1-30):

"Mr. Markley: I understand that, both from the record of the case and from Mr. Carpenter, that no notice of any kind was given to my client, the Great American Indemnity Company, as required by the terms of the policy. Is that so, Mr. Carpenter?

"Mr. Carpenter: We gave no notice to the Great American about that, only—

"Mr. Markley: November 21st, when they served a copy of the judgment and award.

"Mr. Carpenter: No, I think the 21st of June, 1928.

"Mr. Markley: It was after the trial and judgment in the Compensation Court.

"Mr. Carpenter: But I understand that the American Mutual gave them some notice, but I do not know about that of my own knowledge; and that is why I did not so state in the opening.

"The Court: You have no proof of that?

"Mr. Carpenter: The proof is here, but I haven't it in my control; I will have to get it from the other side. They were given notice to defend this case before it was tried.

"Mr. Markley: That was a few days before it was tried."

The deceased Bruno Iannazzo was employed by the plaintiff from August 14, 1927, until November 26, 1927 (p. 266). He worked his regular hours, ten and a quarter hours a day and he performed his work every day including Saturday although on Saturday he only worked eight hours. He made no complaint of illness prior to November 26, 1927. He did his work properly and was paid his full salary (p. 148, ll. 20-40). All during his employment with the plaintiff he worked in connection with benzol (p. 149, ll. 1-20).

On November 26, 1927 he became ill and was attended by his family doctor, Dr. Fasano. He had known Iannazzo for over ten years. He was called in on November 27, 1927 (p. 137). The deceased's

trouble was bleeding of his gums (p. 138, ll. 10-15). However, the deceased was pale and looked very sick. On November 29, 1927 Dr. Fasano had a suspicion for the first time that it was benzol poisoning. He sent the patient to the hospital. The deceased did not want to go but finally did on December 2, 1927. All together Dr. Fasano saw the patient three times, the first time on November 27, 1927, then on November 29, 1927, and finally on December 2, 1927. He did not treat the deceased at the hospital (p. 129, l. 20; p. 140, l. 20). Prior to November, 1927, the doctor always found Iannazzo healthy (p. 142, ll. 1-10). It was the accumulated effect of the entire employment of the deceased to November 27, 1927 that finally brought about the contraction of the disease on November 27, 1927. The doctor was unable to say when the disease was actually contracted, although he thought it was November 27, 1927 (p. 145, ll. 1-20).

Dr. Martland performed an autopsy on Iannazzo on December 9, 1927. Dr. Martland testified that Iannazzo died from anemia which was caused by exposure to benzol (p. 128, ll. 30-35). Dr. Martland could not tell for how long the benzol had caused trouble for Iannazzo (p. 128, ll. 35-40). The exposure resulting in the contraction of the disease may have been three to six weeks (p. 130, ll. 1-10). The doctor further said that the chronic benzol poisoning might occur within two weeks. He could not fix any definite time (p. 130, ll. 30-40). The doctor said that the continued exposure to benzol every day for years is a factor. Also a man might be exposed on a certain day to an enormous quantity and on other days not to so much benzol poisoning (p. 131, l. 5; p. 132, l. 10). He could not tell in this instance whether the disease was contracted as a result of a large dosage

or a small dosage (p. 132, ll. 10-20). As to when the disease was contracted the doctor's final testimony was as follows (p. 134, l. 15; p. 137, l. 20):

"Q. Your autopsy was performed on the 9th of December, was it? A. Yes.

"Q. Now, assuming that this man worked until the 26th of November, and was exposed to benzol in his work from the 1st of November, right up to the last day he worked, the 26th of November—would the exposure to benzol in the last week or two that he worked have made any difference in his condition? A. Oh, yes; certainly; that is, I understand he started to work on the 1st of November?

"Q. He started to work in August and worked almost every day right up to the 26th of November. A. And then he stopped working November 26th?

"Q. He did not work again until he died. A. And now you are asking me if he was exposed to larger quantities in the last two weeks?

"Q. I am asking whether his continued work with benzol had any effect on this condition that you found. A. From August to November 26th?

"Q. Was it his continued work from August right on down to the last day he worked, to the 26th of November? A. Whether that had any effect on the conditions as I found them?

"Q. Yes. A. Yes, it produced the conditions as I found them.

"Q. And could you say what part of that time caused this condition. A. Oh, no.

"Q. Well, if he had not worked the last day or two, would that have made any difference, or wouldn't it? A. Oh, I couldn't tell. He might stop in the middle of November and go for a period of three or four months without exposure to benzol at all, and suddenly come down with benzol anemia. It is impossible to tell.

"Q. And might he, by the same token, have stopped work in the middle of November and

recovered? A. He might have had, yes. Lots of them do.

"Cross examination by Mr. Markley:

"Q. *In other words, you could not tell when the disease really started, could you?* A. *No.*

"Q. *All you know is that he died of benzol poisoning?* A. *All I know is that he died of an a-plastic anemia, and that he had an exposure to benzol which was of a sufficient length of time to produce the conditions found at autopsy. That is all I can say.*

"Cross examination by Mr. McLaughlin:

"Q. As I understand your testimony, after being exposed to benzol, as he was, from August 8th to the middle of November, he might have at that time ceased being exposed to benzol, and thereafter, within a period of a month or weeks, or two months, have come down with this anemia, which is the result of benzol? A. Yes, that is right.

"Redirect examination by Mr. Carpenter:

"Q. *And he might, by the same token, have completely recovered?* A. *And completely recovered; yes.*

"By the Court:

"Q. *When, in your opinion, Doctor, if you choose to answer this question, did he receive the full accumulative dose of the benzol?* A. *In this case?*

"Q. *Yes.* A. *Up to the last day he worked and was exposed to it.*

"Q. *That is, at that time he had received the full accumulative dose?* A. *Yes; I mean the last day of exposure. It is when—I mean, if a man is exposed to benzol for six weeks, and then he works in the seventh week, well, every day in the seven weeks is an additional insult to his bone marrow, so the longer he works the worse it becomes.*"

Petition for compensation under the Workmen's Compensation Act was verified by the Estate of Iannazzo under date of January 7, 1928, and filed on January 10, 1928 (p. 118, ll. 10-20). Service was acknowledged for the plaintiff by the defendant American Mutual Liability Insurance Company under date of January 20, 1928 (p. 118, ll. 30-35). In addition to serving the petition for compensation upon the American Mutual, the Compensation Bureau also served it upon the plaintiff directly on April 27, 1927 (p. 123, l. 20; p. 124, l. 10). No service of any kind was made on this defendant Great American Indemnity Company (p. 124, l. 40; p. 125, l. 10). The original report of the occurrence was made by the plaintiff by its compensation representative, W. A. Schumacher (p. 125, ll. 10-20). The report in full appears at the bottom of page 125 and top of page 126. In this report the plaintiff states that the American Mutual is the interested insurance company (p. 125, l. 40). The accident report shows that the occurrence happened on November 27, 1927 (p. 126, l. 15). In answer to the question how accident occurred the answer is "above (deceased) left factory on November 26, 1927, all right—later advised he was ill in hospital (p. 126, ll. 20-25).

Mr. Schumacher, the manager of the plaintiff's compensation department testified that on December 8, 1927, notice in writing was given to the American Mutual and the communication was produced and is in the record showing that the plaintiff had knowledge on that date that the deceased, Iannazzo, died from occupational poisoning and immediately called it to the attention of the American Mutual (pp. 152, 153). On December 13, 1927, another written communication was sent to the American Mutual by the plaintiff enclosing a statement from the hospital dated December 10

(p. 154). The statement from the hospital was signed by Dr. Snavely and notified the plaintiff that the deceased died from occupational poisoning (p. 155, l. 30). On December 16, 1927, the American Mutual sent to the plaintiff the accident reports which have to be filed with the various departments of the State under the Workmen's Compensation Law which the American Mutual had filled out and that company requested Mr. Schumacher, plaintiff's manager of compensation, to execute the forms and then send one copy to the Department of Labor and the others were to be returned to the American Mutual (p. 156, l. 40, *et seq.*). On December 19, 1927, the plaintiff complied and filed one copy of the report with the Department of Labor and returned the other copies of the report to the American Mutual (p. 157). Mr. Schumacher testified athough he had charge of all compensation matters for the plaintiff, that he at no time gave any notice of any kind to this defendant of the occurrence of Iannazzo's illness or death or of the claims made with respect to his death being due to occupational poisoning (p. 159, ll. 10-20). It was not until June 20, 1928, that any notice was given to this defendant by the plaintiff and that notice was given after there had been a determination and judgment in favor of the estate of Iannazzo on June 4, 1928 (p. 263).

In short, after the petition for compensation had been heard and decided and judgment entered and after execution had been issued on that judgment and levy made upon the property of the plaintiff and that levy satisfied by the payment of the amount due thereon, did the plaintiff give any notice to this defendant (p. 263, ll. 20-30).

Furthermore, the petition for compensation upon which the judgment was entered set forth a cause of action for an occurrence which happened on

November 26, 1927, which of course was after the expiration date of this defendant's policy which date was November 18, 1927, or eight days after this defendant's policy expired (p. 69, l. 10). The date of death was December 8, 1927, according to the petition (p. 69, ll. 20-30). The nature of the accident as set forth in the petition was "decedent took sick while working in the coloring department and died from a-plastic anemia due to chronic benzol poisoning (p. 69, ll. 10-20)."

It is important to note that the answer to this petition was verified and filed by Clarence B. Tippett, an attorney for the American Mutual who in the answer says in the affidavit that he is the agent of the plaintiff in this action for the purpose of filing same (p. 76, ll. 20-30). On the hearing in the Compensation Court the plaintiff was represented by the attorneys of the American Mutual, Messrs. McCarter & English (p. 164, ll. 20-30).

It is perfectly plain that the plaintiff did not make any effort to comply with condition F of the policy so far as this defendant is concerned. It did fully comply with that provision so far as the American Mutual was concerned. The American Mutual, recognizing its liability to the plaintiff accepted notices of claim, filled out the forms of report required by law, had them accepted by the plaintiff and thereafter filed them for the plaintiff. The American Mutual accepted the petition for compensation for the plaintiff and through its attorney filed a verified answer executed by the attorney of the American Mutual as the agent for the plaintiff. Thereafter the American Mutual prepared and defended the action in the Compensation Court. Although the original petition was served upon the American Mutual on January 20th by the Workmen's Compensation Bureau it was reserved on the plaintiff. According to the man-

ager of the compensation department of the plaintiff, Schumacher, it gave no notice of any kind to the Great American that the plaintiff intended in any way to hold the Great American for the death of Iannazzo. It is therefore plain that the nonsuit granted by the trial court was proper. In granting the nonsuit on the ground that condition F of the policy had not been complied with by the plaintiff, the trial court said (p. 210, l. 40, *et seq.*):

> "I think that the controlling fact in this case is not necessarily the matter of when this disease was contracted, but whether or not the plaintiff in this case has given the notices required by its policy to the Great American. Admittedly, the first notice given by the plaintiff to the Great American, of any action against it, was on *June 21, 1928,* after the adjudication in the Compensation Court, and after any opportunity which that company might have had to participate in that hearing, and to defend, on behalf of the plaintiff, or even on behalf of itself. It is true that, before that adjudication, the American Mutual had sent notices of a preliminary hearing on the 11th of April, by its letter of February 7th. This letter is to this effect: 'At the request of the Workmen's Compensation Commission, we are writing to advise you that the above case is noted for informal hearing before the Commission in Newark, on Tuesday, February 14th, at 9:30 A. M., at 9 Franklin street, Newark. It is suggested that you have a representative present'—to take part in the preliminary hearing? No, but 'in order to see if this case cannot be amicably adjusted between all parties interested, and thereby avoiding the necessity of a formal hearing and additional expenses.'
>
> "Now, there was a Mr. Dunbar present, who, it is insisted, was a representative of the Great American. I do not know that that is proven in the case, that he was their representative, but assuming that he was, I do not see that that

makes any difference, because he went there, if we are to rely upon this letter of February 7th, to see if the case could not be amicably adjusted. Of course, this letter to the Great American was an indication perhaps to the Great American that the American Mutual was going to insist that there was some liability on the part of the Great American but it is no indication to the Great American that this plaintiff, the plaintiff in this case, was going to insist upon that, or that the plaintiff in this case expected to enforce its claim, or attempt to enforce its claim, or claim that the Great American was in any way liable.

"To the same effect are the letters of April 9th advising of the hearing of, I think it was, April 16th; and the letter of May 8th advising of the hearing of the 9th, to which the April 16th meeting had been adjourned.

"It is true that all these letters may have been notice to the Great American that the American Mutual was going to try to get out from under—I mean, to pass its liability, or a portion of it, to the Great American, but no indication that there was any claim on the part of the plaintiff in this case, the Textileather Corporation, that the Great American was in any way liable.

"Now, if it had been the claim of the Textileather Corporation that it intended to rely upon the policy of the Great American, then there ought to have been some notice of some kind given to the Great American, certainly a notice which would comply with condition F of the policy, which required the Textileather Corporation to give immediate written notice to the company, with the fullest information obtainable of the occurrence of the accident; and the Textileather Corporation gave no notice or any information of any kind to the Great American of the occurrence of this illness, although it did notify the American Mutual on the very day of the death of this man, that he was ill, and, later, of his death. So June 21st, as I have already said, after this

hearing, after the adjudication in the Compensation Court, was the first intimation given by the Textileather Corporation of any intention upon its part to hold the Great American; and I think that prevents the Textileather Corporation from recovering. Now, I am not going to say that, in the event of this suit having been by the representative of the deceased man —that is, referring to the widow and the children—that they would have been prevented from recovering against the Great American on that account—I think I have been told in this case that the decisions are rather to the contrary, where suit was brought by or on behalf of the person injured, or those who represented him. This is a suit directly by the corporation whose duty it was to give this information, and to give this notice.

"Therefore, a nonsuit will be entered as to the Great American, and an exception to that ruling, as ground of appeal, may be noted in the minutes."

We respectfully submit that the trial court did not err in granting the nonsuit.

III.

The sending of certain notices by the American Mutual Liability Insurance Company to this defendant did not relieve the plaintiff from its duty under the terms of the policy of immediately forwarding to this defendant every summons, notice or other process served upon the plaintiff when any suit or other proceeding was instituted against it.

As appears under Point II no notice of any kind was given to this defendant of the death of Iannazzo or of the proceedings brought for the purpose of obtaining compensation against the plaintiff. The plaintiff sought to overcome this

fatal defect by offering certain notices which were sent by the American Mutual to the defendant. These notices were supposed to have been sent by U. S. Mail although this defendant has no record of receiving one or more of them. These notices sent by the American Mutual did not comply with the policy provision, because they were not sent as required by the policy; they were not timely; they were not sent by the plaintiff, and they were merely notices attempting to draw this defendant into the defense of the compensation suit, which defense had been assumed by the American Mutual. They likewise were sent on the eve of trial (see notices pp. 269, 270, 271). The trial court in granting the motion for a nonsuit held that these decoy letters by the American Mutual to this defendant long after the American Mutual had assumed the defense of the case and prepared it for trial, were not a compliance with the policy provision known as condition "F."

It will also be remembered as pointed out in Point II that in addition to giving an immediate written notice of the occurrence with the fullest information obtainable, and also in addition to giving a like notice with full particulars of any claim made, that thereafter in the event that any suit or proceeding is instituted against the plaintiff, the plaintiff shall immediately forward to the defendant every summons, notice or other process served upon the plaintiff. It will also be remembered as set forth in Point II that although the plaintiff was actually and personally served with the petition for compensation that it did not even send that complaint to this defendant. The trial court in its decision granting the motion for a nonsuit which is quoted at length *supra* in Point II, fully answers the contention that these notices from the American Mutual are a compliance with the condition precedent "F" in the policy.

IV.

The death of Iannazzo was not covered by this defendant's policy and said policy was not in force at the time when Iannazzo's case became compensable under the terms of the Workmen's Compensation Act.

While the trial court did not rest its decision on the ground that the disease was not contracted during the policy period of this defendant, still in passing the trial court clearly demonstrates that on that ground the granting of the motion could have been rested. In order to avoid reiteration we shall quote the trial court's summation of the evidence as to when the disease was contracted, for the purpose of showing that the plaintiff failed to prove that the disease was contracted during the policy period of this defendant. The trial court said (p. 208, l. 20 *et seq.*):

> "Shortly, the reasons for that are these; it may be that the proof on the subject of the occurrence of the accident, or the disease, is in a somewhat different position from what it was in the Mooney case yesterday, but still I think that it has not been proven, by that particularity which is required, that the accident or the illness which caused the death did occur prior to November 18, 1927.
>
> "It is true that Dr. Martland in this case testified that, in performing the autopsy, he found a condition of profound anemia, with multiple hemorrhages in different parts of the body and a-regenerative and a-plastic anemia, which affected the marrow of the bones, and that, in his opinion, it was due to chronic exposure to benzol. He did say that he could not tell when the benzol had entered into the body of the deceased, but that it was exposure to benzol which had taken place over a fairly

long period of time—I think it was from three to six weeks, to years; that to affect bone marrow it usually takes longer than three to six weeks, but the first and most important consideration in his diagnosis of the condition which he found upon his post mortem was the continued exposure to benzol, and that it was the continued accumulative effect which was the most important.

"He did say, however, that he could not say what part of the time that the deceased was in the plaintiff's employ caused this condition. He said that he might have stopped in the middle of November and recovered; and, if I read correctly the Massachusetts case, if that be the situation—that he might have stopped in the middle of November and recovered—then we must take, as the time when the accident or illness occurred, the time when he became sick and unable to perform labor.

"Dr. Fasano had been the family physician for over ten years. He said that while he had treated Mr. Iannazzo during the year 1927, that he would drop in for a cold or a slight illness,—he did not indicate that at any time during the year 1927, until the 27th day of November of that year, did he find any symptom of benzol poisoning, and even then, on that date, he did not diagnose it as benzol poisoning, and it was not until the 29th—two days after that—that he had a suspicion of benzol poisoning, and he advised the hospital. The man went to the hospital on December 2nd, and, of course, admittedly died of benzol poisoning.

"Now, under Dr. Fasano's testimony, his treatments of the decedent, as I have already said, during the whole of the year 1927, which includes of course, the time when he was in the employ of the plaintiff, which was from August 8th to the date he stopped, the 26th day of November, were for slight colds and slight illnesses. He did say, in answer to the hypothetical question put to him, that, in his opinion, this disease was contracted soon after

August 8th that it became worse and the man died of that poisoning in December, and that on October 1st he had in his system this condition of which he died later; but, upon further examination, he said that it was a continuing cumulative effect that produced the disease, and the continuous exposure that had this cumulative action, and that it was not possible to say on what particular day it was complete, until the day of his death. That is substantially his testimony.

"Of course, we have the testimony of Bosco, who observed this man, and who said he could not see any difference in his appearance. That may be entitled to very little weight. He was not a medical man, and probably did not observe the appearance of Mr. Iannazzo as a person would who was called upon to treat him."

The policy of insurance of this defendant insured the obligation of the plaintiff to its employees including Iannazzo, to pay compensation under the Workmen's Compensation Law of New Jersey during the policy period. The policy period was from November 18, 1926, to November 18, 1927.

Under the Workmen's Compensation Act (P. L. 1911, ch. 95 and the supplements and amendment) personal injuries or death by accident are covered provided they arise out of and in the course of employment with certain exceptions respecting self-inflected injuries, intoxication of the employee and hernia cases, etc. Certain occupational diseases are compensable under the 1924 amendment (P. L. 1924, ch. 124), including "benzene and its homologues, and all derivatives thereof" which would include benzol poisoning. With respect to occupational disease the statute (P. L. 1924, ch. 124, par. 22) provides that compensation for personal injuries or death caused by any of the compensable occupational diseases set forth, arising

out of and in the course of the employment, shall be made by the employer and that the compensation payable shall be the same for occupational disease with respect to the amount and duration of the compensation as for death or disability caused by accident. This statute also provides that no compensation shall be payable on account of the death or disability by actual disease of employee unless a notice is given of the claim within a period of five months after the date when said employee shall have ceased to be subject to exposure, unless the employer has actual knowledge.

For an occupational disease to be compensable, it must be proven that the exposure occurred during the employment and that the disability resulting from the disease commenced within five months after the termination of the exposure. Under the Compensation Act no compensation is payable until the employee has been disabled seven days, consecutive or otherwise. Compensation is in the nature of wages and ordinarily computation of the weekly payments is not favored by the courts. There must be unusual circumstances justifying the payment of compensation in a lump sum.

Compensation in case of death shall be subject to a maximum compensation of $20 a week and a minimum of $10 per week which is paid during a period of three hundred weeks unless there are minors under sixteen years of age at the expiration of the three hundred weeks entitled to receive compensation. At the time of the death of Iannazzo the maximum payment was $17 per week.

From the foregoing it is plain that there was no obligation on the part of this defendant to pay any compensation as the insurance carrier of the plaintiff because during the entire year that its policy was in force neither Iannazzo nor his estate was

entitled to receive compensation. On the contrary he worked continuously in apparent good health until November 26, 1927, which was 8 days after the policy of this defendant expired.

Nor is there any proof that he actually suffered from an occupational disease during the policy coverage of this defendant. On the contrary the proof is that while there was the danger and hazard that he might contract a disease by reason of his exposure to benzol as an employee of the plaintiff, the proof is clear and demonstrative that that exposure did not result in the contraction of the disease by Iannazzo until November 26, 1927, with his death resulting on December 8, 1927, twelve days later. Dr. Martland's testimony summarized, *supra*, shows that he could not say that the disease existed for two weeks prior to the death of Iannazzo. In fact it was impossible for him to say from the autopsy that he performed after the death of Iannazzo (he did not see Iannazzo alive) that the disease had existed for any length of time prior to his death.

The trial court therefore very properly concluded that there was an absolute failure of any evidence that the disease occurred prior to the expiration of the coverage of this defendant. To be subject to the hazard of incurring disease and the actual contraction of the disease are two entirely different things. The hazard existed all during the time that Iannazzo worked for the plaintiff.

A reflection upon the foregoing considerations would seem to demonstrate that the test to be applied is, when was the disease actually contracted by the employee, not how long was the employee exposed to the hazard. If that test is applied, that it must be the actual contraction of the disease, then the decision of the trial court is unassailable because there is an absolute failure of proof in the

plaintiff's case that the disease was contracted by Iannazzo prior to the expiration of the coverage of this defendant which expired on November 18, 1927. There is no reported case in this State on this point. Two cases were cited by counsel to the trial court from other states (p. 275, ll. 10-20; p. 294, ll. 10-20), namely, *Johnson* v. *London Guarantee & Accident Co.*, 217 Mass. 388, 104 N. E. 735, and a Wisconsin case, *Employers Mutual Liability Insurance Co.* v. *McCormack*, 217 N. W. 738. These cases, while they do not construe our statute, deal with the point involved here and support the conclusion of the trial court. In the *Massachusetts* case, the Industrial Accident Board of Massachusetts found that the employee since March 13, 1913, had been totally incapacitated from labor because of his physical condition due to the results of lead poisoning. The employee was seventy-two years of age and was employed as a lead grinder continuously for a period of more than twenty years before the date given. The Board further found that he had suffered from lead poisoning fourteen years before March 13, 1913, but apparently had recovered and had had no recurrence of the disease until he became ill and was totally incapacitated from work on March 13, 1913. It also appeared that for a period of twenty years he had been absorbing lead poisoning during his occupation and that this absorption continued for eight months after the compensation act went into effect, when elimination failing the poison stored up manifested itself in the present injury and the incapacity which resulted therefrom.

It will be noted that while the employee had absorbed the lead for twenty years the statute permitting compensation for lead poisoning was only in force for a period of eight months during the period of absorption. The Supreme Judicial Court of Massachusetts held (italics ours):

"In view of the finding of the board that Johnson had suffered from lead poisoning fourteen years before and had had no recurrence of the disease until he became incapacitated for work on or about March 13, 1913, and the further finding that there had been 'an absorption of lead poisoning since July 1, 1912, and that the date when the accumulated effect of this poisoning manifested itself, and Johnson became sick and unable to work, was the date of the injury' we are of opinion that the board were warranted in finding that the injury was received when he became sick and unable to perform labor. *Until then he had received no 'personal injury,' although doubtless the previous absorption of lead into his system since July 1, 1912, finally produced the conditions which terminated in the injury. Sheerin* v. *F. & J. Clayton Co., Ltd.*, 3 B. W. C. C. 583; *Yates* v. *South Kirby, Featherstone & Hemsworth Collieries, Ltd.*, 3 B. W. C. C. 418; *Ismay, Imrie & Co.* v. *Williamson*, 1 B. W. C. C. 232; *Brintons, Limited* v. *Turvey* (1905), A. C. 230; *Martin* v. *Manchester Corporation*, 5 B. W. C. C. 259 (1912); *Alloa Coal Co., Ltd.* v. *Drylie*, 6 B. W. C. C. 398 (1913).

"As the physical incapacity of the employe for work has been found by the board to have been caused by the gradual absorption of poison into his system subsequent to July 1, 1912, resulting in personal injury on or about March 13, 1913, there seems to be no reasonable conclusion other than that such injury arose out of and in the course of his employment. Hurle's Case, and cases cited.

"Decree affirmed."

The gist of the foregoing decision seems to be that while the employee had absorbed the lead for many years there really was no disease or injury until he became sick and was unable to perform labor. In short, until he became incapacitated for work, and therefore the compensation act applied although it was only in force for a

period of eight months of the period of absorption of the lead which was over twenty years.

The other case cited by the trial court is also in point. In the *Wisconsin* case the sole question presented was which of three insurance companies that were successively the carriers of the compensation risk of the employer to his employee, was liable to pay the compensation awarded. The Court held that the answer to the question depended upon when the disability of the employee occurred which entitled him to compensation. The Court held that the company that insured the compensation liability at the time the disability occurred was the one that was required to pay the award of compensation, notwithstanding that the exposure to the absorption of the disease continued during the coverage of all three companies. The Court said that the application of that rule placing the liability upon the insurance company covering the risk when the disability occurred, would work no injustice to any individual insurance company or employer because the law of averages would equalize the burdens imposed by the act.

We respectfully submit that the test must be, when was the disease contracted and when did the disability occur. The employee certainly would not be entitled to any compensation while he was working as an able-bodied man and earning his regular full pay for over ten hours' work per day, six days a week. He was not disabled and he had not incurred any disability and there was no proof of the contraction of any disease prior to the expiration of this defendant's policy. We therefore respectfully submit that the trial court did not err in granting a nonsuit in its favor at the close of the case.

V.

The plaintiff and the American Mutual Liability Insurance Company are estopped to deny the coverage of the American Mutual and the lack of coverage by this defendant.

The facts are fully set forth in the previous points that although Iannazzo became incapacitated on November 26, 1927, and died on December 8, 1927, and although notice of claim was immediately received by the plaintiff on December 8, 1927, and it then had full particulars which plaintiff transmitted to the American Mutual on December 8th and 13th, 1927 (pp. 153, 154), still no attempt was made at all by the plaintiff to give any notice to this defendant as its insurance carrier, or in any way to make any effort to hold this defendant as its insurance carrier. On the contrary, the undisputed evidence is that the plaintiff gave immediate notice and full particulars of the claim and of all subsequent matters with respect to it to the American Mutual, and that company accepted the claim filed with it, used the forms required by statute, had them executed by the plaintiff, and the plaintiff and the American Mutual proceeded to defend the action by preparing it for trial and actually attending at the trial.

We therefore respectfully submit that the following grounds in support of the motion for nonsuit were proper and that on one or more of them the trial court would have been compelled, had he considered them, to grant the nonsuit which he granted on the other grounds urged by this defendant, *supra* (p. 204, l. 25, to p. 205, l. 10):

> "FIFTH.—The plaintiff permitted the American Mutual to take over the defense of the

alleged claim, sent the notice of claim to the American Mutual, sent the proofs of claim to the American Mutual, sent the forms with respect to the claim to the American Mutual and did not call upon this defendant to do anything. Therefore the plaintiff has no cause of action against the defendant Great American Indemnity Company.

"SIXTH.—The plaintiff elected to hold the American Mutual as its insurance carrier for this alleged claim for the death of Iannazzo. Therefore there can be no recovery as against this defendant.

"SEVENTH.—The plaintiff is estopped from asserting that it has any claim under the policy of this defendant by reason of its course of conduct outlined above.

"EIGHTH.—The American Mutual is estopped to deny by its conduct that it was the insurance carrier for this claim."

The cases hold that the American Mutual is estopped from denying its liability by its conduct in accepting the notice of claim, in filling out the forms for the Workmen's Compensation Bureau of the nature and extent of the claim, in acknowledging service of the claim petition, in filing verified answer thereto and in preparing the defense of the case and actually proceeding with the trial and defending the case.

Utterback-Gleason Co. v. *Standard Accident Insurance Co.*, 193 App. Div. 646, affirmed 233 N. Y. 549;

Farrell v. *Merchants Mutual Automobile Insurance Co.*, 203 App. Div. 118;

Humes Construction Co. v. *Philadelphia Casualty Co.* (R. I.), 79 Atl. 1;

Horn v. *Commonwealth Casualty Co.*, 105 N. J. L. 616; 147 Atl. 483.

For the same reasons the plaintiff should be estopped from asserting any claim against this defendant at this time.

VI.

The compensation award is not binding upon or *res adjudicata* as to this defendant.

This defendant was not a party to the compensation proceeding. The petition (p. 111) was against the Textileather Corporation, the plaintiff herein, alone (p. 111, l. 20). The answer was filed on behalf of the Textileather Corporation alone. While this defendant could have been made a party respondent in the compensation suit under Section 10 of the Workmen's Compulsory Insurance Act (P. L. 1917, ch. 178, p. 522—quoted at p. 22 of plaintiff's brief), still that provision of that statute was not taken advantage of and the suit was brought only against the Textileather Corporation. The award in the Compensation Court is therefore not *res adjudicata* here because there was not the identity of the parties in the two proceedings and the subject-matter is not the same. This Court in the recent case of *Smith* v. *Fisher Baking Co.*, 147 Atl. 455, held:

> "But a matter is not *res adjudicata* unless there be identity of the thing sued for, of the cause of action, of the persons and parties, of the equality of the persons for and against whom the claim is made and the judgment in the former suit be so in point as to control the issue in the pending action."

VII.

The Workmen's Compensation Court had no right to attempt to adjudicate which of several insurance companies covered the claim of Iannazzo.

Messrs. McCarter & English represented primarily the American Mutual but on the record in the Compensation Court represented the respondent Textileather Corporation. They sought in that dual capacity to have the Workmen's Compensation Bureau fix a time for the occurrence of this occupational disease which would not be within the period of time covered by the policy of the American Mutual. Succeeding in that procedure the American Mutual refused to pay the award or judgment thereby compelling complainant to do so. It is perfectly apparent that the only reason for such a determination was to eliminate the American Mutual which had estopped itself from claiming that it did not cover the death of Iannazzo. Under the Compensation Act the only question presented for decision was whether the occupational disease arose out of and in the course of the employment. The Workmen's Compensation Bureau or deputy thereof is nothing more than a purely statutory tribunal and as such has no jurisdiction to adjudicate questions not before it for decision under the statute.

This defendant was not a party respondent in the proceeding. The only parties were Grace Iannazzo, petitioner and Textileather Corporation, respondent (p. 67). The determination and award could have no greater force in any event than to determine that the occupational disease was one that was compensable. Such determination was only binding as between the parties to the litigation. *Smith* v. *Fisher Baking Co.*, 147 Atl. 455.

VIII.

No exception was taken by counsel for the plaintiff to the ruling of the trial court entering judgment of nonsuit in favor of the defendant American Mutual Liability Insurance Company.

The record shows that no exception was taken by the plaintiff to the ruling of the trial court granting this defendant's motion for a nonsuit (p. 213, ll. 30-40). It is true that the trial court said that an exception might be noted but counsel for the plaintiff did not take any exception. The failure of counsel to do so is fatal to this appeal.

> *Kargman* v. *Carlo,* 85 N. J. L. 632, 635;
> *Webster* v. *Freeholders of Hudson,* 86 N. J. L. 256, 257.

In *Kargman* v. *Carlos, supra,* this Court said at page 635:

> "But so far as the record discloses the defendant acquiesced in these rulings because no objection or other protest was made against any of them at the time. And the rule is that no ruling relating to the reception or rejection of evidence will be reviewed unless the record discloses that an objection to such ruling was duly made or such ruling otherwise challenged at the time of the ruling.
>
> "The reason for this rule may be gathered from the remarks of Mr. Justice Garrison in *Benz* v. *Central Railroad of New Jersey,* 53 Vroom 197. It is not based on technical or captious grounds, but on the contrary, is essential to the administration of justice with due regard to private interests and the policy against needless litigation. Common sense and common fairness alike require that if counsel thinks the trial judge has fallen into

legal error he should call attention to it at a time and in such manner that the judge may know that his ruling is to be made a ground of appeal, and thereby afford an opportunity to the judge to revise his ruling and to opposing counsel to modify his position so as to save error. *Where at the trial the attention of the judge is not called to an alleged error the abiding presumption will be that the correction of the error at the trial was not desired by the party who complains of it on appeal.*

"Perhaps no better form of expression can be devised to advise the judge that his ruling is to be made the subject of review than for counsel to say: 'I desire to note an exception.'

"It is true that by section 25 of the Practice Act (Pamph. L. 1912, p. 382), 'bills of exceptions and writs of error in civil cases are abolished.' That abolished the old time bills of exception which consisted either in writing out the exception and presenting it to the judge to be signed and sealed, or in handing up a stenographic transcript with the stenographic exceptions noted and having that actually signed and sealed. The objection or exception which must now be noted is no longer 'prayed' by counsel. It is not addressed to the discretion of the judge. It is made and should be noted as a matter of right and the grounds of the objection or exception should be stated as heretofore."

In *Webster* v. *Freeholders of Hudson, supra,* this Court (p. 257) held:

> "The fact that the pleadings and hearing were under the Practice act of 1912 no way operates to change the result, either as to the necessity of challenging adverse rulings of law at the trial, or the appealability of a ruling on mixed questions of law and fact. 'Bills of exceptions' as such are abolished; but the necessity of apprising the trial court that a ruling will be reviewed remains. * * *

> "The only imaginable reason for stating such rulings in the findings is to make them the foundation of a review; and it is quite plain, therefore, that the fundamental rules of review on error, that there must be a ruling, that it must be adverse, *and that the trial court must through the instrumentality of a formal challenge have an opportunity to reconsider and modify or change it, have not been nullified or emasculated by anything contained in the new Practice act or the rules made in pursuance thereof.*"

We therefore respectfully submit that since the plaintiff failed to take an exception to the trial court's ruling as required by law, no legal error is presented to this Court for review and the judgment should be affirmed.

IX.

For these reasons we respectfully submit that the judgment of nonsuit in favor of the defendant Great American Indemnity Company should be affirmed, with costs.

February Term, 1931.

EDWARD A. MARKLEY,
Of Counsel.

COLLINS & CORBIN,
Attorneys of Defendant Great American Indemnity Company.

Filed after the Oral Argument by leave of Court.

New Jersey Court of Errors and Appeals

TEXTILEATHER CORPORATION,
Plaintiff-Respondent,

vs.

GREAT AMERICAN INDEMNITY COMPANY,
Defendant,

and

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Defendant-Appellant.

TEXTILEATHER CORPORATION,
Plaintiff-Appellant,

vs.

GREAT AMERICAN INDEMNITY COMPANY,
Defendant-Respondent,

and

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Defendant.

Action at Law.
Iannazzo Case.

Nos. 30 and 31,
February Term
1931.

BRIEF OF TEXTILEATHER CORPORATION IN REPLY TO BRIEF OF GREAT AMERICAN INDEMNITY COMPANY.

I.

Regarding plaintiff's exception.

Judge Dungan when he granted a nonsuit to the Great American said:

> "Therefore, a nonsuit will be entered as to the Great American, and an exception to that ruling as ground of appeal may be noted in the minutes" (Record, p. 213, line 30).

Plaintiff was the one to whom this exception was given.

The other defendant asked for an exception, but was not in a position, in any event, to take advantage of it.

We submit plaintiff was not required to ask for another exception after one had been given by the Court in the manner aforesaid.

II.

Regarding notice.

Section 11 of the Workmen's Compulsory Insurance Act, P. L. 1917, Chapter 178, page 522, provides that every contract of insurance shall provide or be construed to provide that as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; "that jurisdiction of the employer shall, for the purpose of this act, be jurisdiction of the insurance carrier, *and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation*".

Respectfully submitted.

McDermott, Enright & Carpenter,
Attorneys for Textileather Corporation.

James D. Carpenter, Jr.,
Of Counsel.

(6955) Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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New Jersey Court of Errors and Appeals

TEXTILEATHER CORPORATION,
Plaintiff-Respondent,

vs.

GREAT AMERICAN INDEMNITY COMPANY,
Defendant,

and

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Defendant-Appellant.

TEXTILEATHER CORPORATION,
Plaintiff-Appellant,

vs.

GREAT AMERICAN INDEMNITY COMPANY,
Defendant-Respondent,

and

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,
Defendant.

IANNAZZO CASE.

Nos. 30 and 31.

February Term, 1931.

On Appeal From Supreme Court.

BRIEF OF McDERMOTT, ENRIGHT & CARPENTER, FOR TEXTILEATHER CORPORATION, RESPONDENT IN NO. 30 AND APPELLANT IN NO. 31, FEBRUARY TERM, 1931.

This appeal is quite similar to the appeal in the Mooney case, Nos. 28 and 29, February Term, 1931.

Suit was based upon the same insurance policies of the same Companies.

The deceased employee was Bruno Iannazzo.

In this case as in the Mooney case the Court granted the defendant, Great American Indemnity Company, a non-suit at the end of plaintiff's case.

At the end of the entire case Judge Dungan directed a verdict in favor of the plaintiff against the defendant, American Mutual Liability Insurance Company, for the amount of compensation payments made to Iannazzo's dependents to the date of the trial, to wit, $2900.66.

A slightly different question is raised in this case than in the Mooney case.

The questions involved here are:

(1) Is an Insurance Company estopped to deny liability to an employer under a Workmen's Compensation policy where it acknowledged service of a dependent's petition for compensation; through its own attorney filed an answer, verified by the Insurance Company's attorney; defended the compensation case without consultation with the employer in such a manner as to endeavor to escape liability itself and fasten liability onto the employer, judgment being awarded against the employer?

(2) Is the insurance carrier covering the employer at the time an employee takes sick and at the time he dies responsible for the payment of compensation, although its policy was in effect only about a week before the employee quit work; and

(3) Assuming that an employee is exposed to occupational poisons during the coverage of two insurance companies, are both liable to pay the compensation, or is only the one liable which covered at the time the employee became incapacitated, and died?

POINT I.

Appellant American Mutual Liability Insurance Company is estopped to deny its liability in this case.

The Claim Adjuster of the appellant, American Mutual Liability Insurance Company, on January 20, 1928, acknowledged service in writing of the petition for compensation in the Iannazzo case (Exhibit P-6, p. 261).

On January 26, 1928, Clarence B. Tippett, attorney for the American Mutual, swore to and filed an answer to Mrs. Iannazzo's petition for compensation (Exhibit D, pp. 73 to 76 inc.). In paragraph 34 of this answer the appellant, American Mutual, stated:

> "Respondent alleges the filing of this petition is premature and unnecessary at this moment in that the matter had previously been set down for informal hearing for disposal; and before said hearing date this petition was filed. As it is a claim of death from an alleged occupational disease condition, it is necessary that the actual date of contraction of the said condition be definitely determined and proof of causal relation clearly presented, inasmuch as there are two insurance carriers involved, and payment of compensation, if permissible and proper, would require a ruling as to which one or both of said carriers covered the employer at the time of contraction of the alleged occupational disease. Proof of dependency is also in issue and must be submitted in order to afford a true basis for an award. For such reasons, acceptance of said claim is premature on the part of the employer."

While this answer was signed over the name of the Textileather Corporation, its name was signed by Mr. Tippett, and not by any representa-

tive of the employer. Textileather Corporation had never heard of Mr. Tippett before (p. 164, ll. 20 to 30). Tippett did not consult the plaintiff about the answer and he was not authorized to file it for Textileather Corporation (p. 159, ll. 1 to 12). No copy was sent to it.

On March 13, 1928, Referee Wegner of the Compensation Bureau, suggested by letter (Exhibit P-7, p. 262) that in view of the question of liability between the two Insurance Companies, service should be made on the employer. Accordingly, a copy of the petition was thereupon served on a timekeeper of the employer April 27, 1928 (p. 124, l. 5; bottom p. 159).

The Compensation case was tried before Deputy Commissioner Goas on May 9, 1928 (p. 274). The only notice of this trial given to the employer was a subpoena served on the Vice President (Exhibit DG-3, p. 273) to appear and testify as a witness for the petitioner for compensation.

It appeared on the trial below that on February 7, 1928, after it had filed an answer, the appellant American Mutual wrote a letter to the respondent Great American Indemnity Company about this case suggesting an informal hearing and requesting the Great American to send a representative to see if the case could not be amicably adjusted (Exhibit P-18, p. 271).

On April 9, 1928, the American Mutual wrote a letter to the Great American Indemnity Company informing it of the trial of the Bruno Iannazzo case against Textileather Corporation before the Department of Labor, at Newark, on Wednesday, April 11. This letter stated:

> "Your Company is a party respondent and we are therefore notifying you of this fact so that you may have one of your representatives present at that hearing" (Exhibit P-17, p. 270).

On May 8, 1928, a formal notice was served on the respondent Great American Indemnity Company by the American Mutual of the trial of the Iannazzo case, to be heard in the Compensation Bureau on May 9, at ten A. M. (see notice Exhibit P-16, p. 269; affidavit of service P-16, pp. 267-268).

Mr. Lippmann, Vice President of the Textileather Corporation, testified that the first he knew of the Bruno Iannazzo suit was when he was subpoenaed as a witness (Record, p. 163), and the next thing he heard was when the Sheriff appeared to make a levy and collect the amount of the award (p. 164).

As soon as the Textileather Corporation heard that it was contended that Iannazzo died of an occupational disease, it gave notice by letter to the American Mutual (Letter of December 8, 1927, p. 153; letter of December 13, 1927, p. 154).

The American Mutual on December 16, 1927, forwarded Textileather an accident report and asked them to sign it, retain one copy for its Company, send one to the Department of Labor, and return the others to the American Mutual.

On December 19, 1927, Mr. Schumacher wrote the American Mutual that this was done (Record, p. 157). Mr. Schumacher, who was the employer's agent in charge of compensation matters, first heard that Mrs. Iannazzo had commenced a proceeding in the Department of Labor after the hearing (p. 157, l. 33).

In view of the foregoing, Textileather Corporation did not give any notice whatsoever of Iannazzo's illness and death to the respondent, Great American Indemnity Company. It was for want of such notice that Judge Dungan granted a nonsuit in favor of the defendant, Great American Indemnity Company (Record, pp. 208-213).

We respectfully submit that Judge Dungan was correct in holding that the American Mutual Lia-

bility Insurance Company was estopped by its conduct, from denying its liability for the award that was made against the employer as a result of this defense.

Utterback-Gleason Co. vs. *Standard Accident Insurance Co.*, 193 App. Div., 646, affirmed 233 N. Y., 549;
Farrell vs. *Merchants Mutual Automobile Insurance Co.*, 203 App. Div., 118;
Humes Construction Co. vs. *Philadelphia Casualty Co.*, (R. I.), 79 Atl., 1;
Horn vs. *Commonwealth Casualty Co.*, 105 N. J. L., 616; 147 Atl., 483.

POINT II.

As a matter of law the appellant, American Mutual Liability Insurance Company, is liable, the employee's illness, leading to incapacity and death, occurring during its policy term.

A schedule showing graphically the days Iannazzo worked for Textileather Corporation between August 14, 1927, when he began work, and November 26, 1927, the last day he worked (p. 147, l. 33) is shown on page 266. Iannazzo worked every day between the week ending October 23 and November 26. That day he worked to the end of the day and he did not report that he was ill when he left at the end of the day (p. 147, l. 36).

The only two benzol poisoning cases that the Textileather Corporation ever had were the Iannazzo case and the Mooney case (p. 150, l. 28).

The policy of the Great American Indemnity Company was in effect between November 18, 1926, and November 18, 1927, at 12:01 o'clock A. M., Standard Time (Exhibit A, p. 41), while the policy of the American Mutual Liability In-

surance Company went into effect November 18, 1927 at 12:01 o'clock A. M., Standard Time, (Exhibit B, p. 55).

According to Dr. Martland it was the exposure day after day to benzol which was important. One exposure might turn the tide in the course of his disease so that he has a quick collapse after that one exposure (p. 131, l. 32 to p. 132, l. 7).

We respectfully submit that in occupational disease cases the insurance company should be liable which covers at the time of the actual contraction of the disease, to wit, when the employee because of illness contracted in the employment ceases to work because of such illness.

> *Johnson* vs. *London Guarantee & Accident Co.,* 217 Mass., 388; 104 N. E., 735;
>
> *Employers Mutual Liability Insurance Co.* vs. *McCormack,* 217 N. W., 738 (Wis.).

In the practical operation of insurance business it is well understood that the company which covers at the time of loss is the one that pays. This is so with all kinds of insurance. Insurance is based on the law of averages, and the law of averages, if this rule is applied, will prevent injustice so long as there is a uniform application of this law.

This was recognized in the Wisconsin case, *supra,* which held that the company that insured the compensation liability at the time the disability occurred was the one that should pay the award, notwithstanding that the exposure to the absorption of the poison continued during the coverage of more than one company.

In the Massachusetts case, although the Supreme Court was considering a statute different from the New Jersey statute, it upheld the Com-

pensation Board in finding that an employee received an injury (occupational disease through lead poisoning) when he became sick and unable to perform labor. The Court said:

> "Until then he had received no 'personal injury', although doubtless the previous absorption of lead into his system since July 1, 1912, finally produced the conditions which terminated in the injury" (citing cases).

It is respectfully submitted that as a matter of law the American Mutual Liability Insurance Company is the carrier responsible to pay the compensation award where an employee became ill, incapacitated and died all during the term of its policy.

POINT III.

The determination of the Trial Court is not *res adjudicata* as to when the most benzol was inhaled by Iannazzo.

We submit that the question of *res adjudicata,* fully argued in the Mooney case, need not again be argued in this case.

The issues in the Compensation Court were not the same as those in the Court below; the parties were different, and, moreover, it was not the business of the Compensation Referee to attempt to fasten liability on one insurance company more than another by the way his determination was drawn.

POINT IV.

Answering an unwarranted assertion in appellant's brief.

The last paragraph on page 8 of appellant's brief is wholly unwarranted. It is alleged that the Textileather Corporation

> "was an old hand at benzol, had been using it for the last six or seven years. Right at this time another of its employees had died from its effects (Mooney). It knew the slow action of the poison. It knew that the American Mutual policy had only been in effect a week. *It knew that when this defendant came on the risk there were two practically dying employees in its plant.*"

We submit that this statement is not justified by anything in this Record. Although this employer had been using benzol a number of years, the evidence is that to the knowledge of the employer Mooney and Iannazzo were the only two men who ever became ill of benzol while in their employ (p. 150, ll. 28 to 30).

Schumacher did not even know that Iannazzo had died of benzol poisoning until long afterwards (p. 162, l. 12).

Mr. Lippmann admitted that after the deaths of Iannazzo and Mooney his plant discontinued the use of benzol (p. 170, l. 3).

Mr. Lott, superintendent of the Textileather Corporation, had no knowledge prior to the day Iannazzo quit, November 26, 1927, that he was ill or claimed to be ill. He made no complaint (p. 173, ll. 10 to 15).

The Court will remember the record in the Mooney case, which was to the effect that Mooney worked steadily up to the time he quit. The day

he quit he went to his foreman, said he felt ill and asked permission to go home.

The Court will also remember that Mr. Komarowski, a man fifty-six years old, worked at the machine next to Mooney and that he testified that he had never been made ill by benzol, and that Mooney had appeared to be perfectly well up to the day he quit.

We submit that the reference in counsel's brief above referred to is unwarranted by anything in the record, and we trust the Court will not be misled by it.

POINT V.

The Court below erred in nonsuiting the plaintiff as to the defendant Great American Indemnity Company.

The motion of the Great American Indemnity Company for a nonsuit was based upon lack of notice to that Company of the illness and death of Iannazzo, and of the commencement of the suit in the Compensation Court (motion, pp. 202-206 inc.).

Plaintiff proved in this case by calling Mr. Kohn, Branch Claim Manager of the American Mutual, that he wrote a letter to the Great American Indemnity Company April 9, 1928, informing it of the pendency of the case in the Compensation Court (Record, p. 191; letter Exhibit P-17, p. 270); also proved the letter (Exhibit P-18, p. 271, offered p. 195), and the notice of the trial served on the Great American by the attorneys for the American Mutual (Exhibit P-16; affidavit of service P-16, pp. 267-268-269). Not one of said notices was ever sent to the plaintiff by either Insurance Company.

While it is true that the plaintiff below gave no notice to the Great American Indemnity Company as required by the policy, nevertheless if the Great American was liable under its policy in this case, the plaintiff should be given the benefit of the notices aforesaid which were given to the Great American by the American Mutual.

The Great American cannot well claim in view of these notices given to it by the other Insurance Company that it did not in fact have due and timely notice of the pendency of the Iannazzo case, so that had it desired to do so it could have appeared and contested the case on the merits.

Instead of doing that it stood aside and let the case in the Compensation Court take its course.

We submit that if this Court should determine that the compensation award be apportioned between the two insurance carriers; or should it hold for any reason that the American Mutual is not liable, then and in that event it was error for the trial court to nonsuit the plaintiff as to the Great American Indemnity Company.

We submit that if the judgment against the American Mutual should for any reason be reversed, that the judgment in favor of the Great American should also be reversed, to the end that the entire cause may be tried over again with the rights of the plaintiff against the two Insurance Companies adequately protected under the law as it may be laid down by this Court.

Conclusion.

It is respectfully submitted that the judgment below in favor of the plaintiff and against the American Mutual Liability Insurance Company for the amount of compensation payments made by the plaintiff under the Iannazzo award to the date of trial, should be affirmed; that if for any

reason the judgment of the plaintiff against the American Mutual should be reversed, then the judgment in favor of the Great American Indemnity Company for nonsuit should also be reversed, and the cause sent back under proper instructions as to what the law is as to the liability between these Insurance Companies to the plaintiff below.

Respectfully submitted,

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James D. Carpenter, Jr.,
Of Counsel.