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**Notice of Appeal.**

(Filed Feb. 21, 1931.)

**In Chancery of New Jersey**

(65-389)

Between

METROPOLITAN LIFE INSURANCE  
COMPANY,

Complainant,

*and*

AARON P. SUSSMAN,  
Defendant.

On Bill &c.  
Notice of Appeal.

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The complainant, Metropolitan Life Insurance Company, a corporation, hereby appeals from the final decree made by the Chancellor, on the advice of Hon. James F. Fielder, Vice-Chancellor, in the above-entitled cause, on the 15th day of December, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, February 20th, 1931.

30

PERKINS & DREWEN,  
Solicitors for and of counsel  
with complainant.

I conceive there is good cause for appeal in the above-entitled cause.

JOHN DREWEN,  
Of counsel with complainant.

40



# **Petition of Appeal.**

(Filed March 4, 1931.)

## **NEW JERSEY COURT OF ERRORS AND APPEALS.**

10 Between

METROPOLITAN LIFE INSURANCE  
COMPANY,  
Complainant-Appellant,

*and*

AARON P. SUSSMAN,  
Defendant-Appellee.

On Appeal from  
the Court of  
Chancery.

Petition of  
Appeal.

20

*To the Honorable the Court of Errors and  
Appeals in the Last Resort in All Causes:*

The Petition of Metropolitan Life Insurance Company, a corporation, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable James F. Fielder, one of the Vice-Chancellors, bearing date December 15th, 1930, in a certain cause in the said Court of Chancery where-  
in the petitioner, Metropolitan Life Insurance Company was complainant and the said Aaron P. Sussman was defendant, in this respect, to wit: That the said decree adjudges that petitioner, as complainant in said cause, did not sustain the allegations of its bill of complaint that  
the defendant in his application to complainant



*Petition of Appeal.*

for insurance made certain false statements as in the said bill of complaint alleged, knowing them to be false, and with intent to deceive complainant; and that petitioner, as such complainant, failed to sustain the allegations of its bill of complaint that such statements made by defendant as aforesaid materially affected the acceptance of the risk and hazard assumed by complainant, as insurer, in the policy and policies of insurance issued by it to the defendant, as in said bill of complaint alleged; and that complainant's said policy and policies of insurance were not obtained by any fraud on the part of defendant; and that defendant did not make any representations material to the acceptance by complainant of the risk and hazard resulting to complainant in the issuing of said policy and policies of insurance to the defendant; and that the complainant's said bill of complaint be dismissed; and that the restraint contained in and imposed by the orders of the Court of Chancery made in the said cause on September 12, 1927, and November 14, 1927, against the institution, prosecution or continuance by the defendant of any action at Law on the policy and policies of insurance issued by complainant to the defendant be dissolved; and that the complainant do pay to the defendant or his solicitor the costs of the said suit in Chancery to be taxed, including a counsel fee of \$2,000.00 allowed by the said Court of Chancery in its said decree to the defendant.

And petitioner, as such complainant, appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that the same should have decreed that petitioner, as complainant in the said cause, had sustained by adequate proof the allegations



*Petition of Appeal.*

10 of its bill of complaint, and that upon such proofs it was entitled in Equity to the relief prayed for in its said bill; and that the restraint prayed for by the said bill of complaint and as imposed by the orders of the Court of Chancery, made in the said cause on September 12, 1927, and November 14, 1927, against the institution, prosecution or continuance by the defendant of any action at Law or in Equity on the policy and policies of insurance issued by the complainant to the defendant, be continued and made absolute; and that the defendant pay to the complainant its costs of said suit in the Court of Chancery to be taxed, including a counsel fee to the solicitors of complainant.

20 Petitioner therefore prays that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

PERKINS & DREWEN,  
Counsel for Metropolitan Life  
Insurance Company, Appellant.

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**Amended Petition of Appeal.**

(Filed Oct. 10, 1931, by consent.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

METROPOLITAN LIFE INSURANCE  
COMPANY,  
Complainant-Appellant,*and*AARON P. SUSSMAN,  
Defendant-Appellee.On Appeal from  
the Court of  
Chancery.Amended Petition  
of Appeal.

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*To the Honorable the Court of Errors and  
Appeals in the Last Resort in All Causes:*

The amended petition of Metropolitan Life Insurance Company, a corporation, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable James F. Fielder, one of the Vice-Chancellors, bearing date December 15th, 1930, in a certain cause in the said Court of Chancery wherein the petitioner, Metropolitan Life Insurance Company was complainant and the said Aaron P. Sussman was defendant, in this respect, to wit: That the said decree adjudges that petitioner, as complainant in said cause, did not sustain the allegations of its bill of complaint that

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*Amended Petition of Appeal.*

the defendant in his application to complainant for insurance made certain false statements as in the said bill of complaint alleged, knowing them to be false, and with intent to deceive complainant; and that petitioner, as such complainant, failed to sustain the allegations of its bill of complaint that  
10 such statements made by defendant as aforesaid materially affected the acceptance of the risk and hazard assumed by complainant, as insurer, in the policy and policies of insurance issued by it to the defendant, as in said bill of complaint alleged; and that complainant's said policy and policies of insurance were not obtained by any fraud on the part of defendant; and that defendant did not make any representations material to the accep-  
20 tance by complainant of the risk and hazard resulting to complainant in the issuing of said policy and policies of insurance to the defendant; and that the complainant's said bill of complaint be dismissed; and that the restraint contained in and imposed by the orders of the Court of Chancery made in the said cause on September 12, 1927, and November 14, 1927, against the institution, prosecution or continuance by the defendant of any action at Law on the policy and policies of insurance issued by complainant to the defend-  
30 ant be dissolved; and that the complainant do pay to the defendant or his solicitor the costs of said suit in Chancery to be taxed, including a counsel fee of \$2,000.00 allowed by the said Court of Chancery in its said decree to the defendant.

And petitioner, as such complainant, appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that the same should have decreed that petitioner, as complainant in the said cause,  
40 had sustained by adequate proof the allegations.



*Amended Petition of Appeal.*

of its bill of complaint, and that upon such proofs it was entitled in Equity to the relief prayed for in its said bill; and upon the ground that the Court erred in holding that the matter falsified by defendant in his application for complainant's policy was not material to the risk; and upon the ground that the Court erroneously declined to consider complainant's proof of fraud according to principles by which fraud is recognized and defined in Equity; and upon the ground that the Court erroneously declined to regard as material any falsity in the application which was not shown by complainant to have induced the issuance of the policy; and upon the ground that the Court erred in permitting defendant to give testimony of statements made orally by him to complainant's agent notwithstanding the express terms of the application signed by defendant that no information conveyed to the agent and not in the said application written shall be chargeable to complainant; and upon the ground that the Court erroneously declined to hold that it was defendant's duty to reveal to complainant the Aetna policy obtained by him after his application to complainant and before delivery to him of complainant's policy; and upon the ground that complainant showed by its proof that it was entitled in Equity to the relief prayed for in its bill of complaint.

Petitioner therefore prays that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

PERKINS & DREWEN,  
Counsel for Metropolitan Life  
Insurance Company, Appellant.

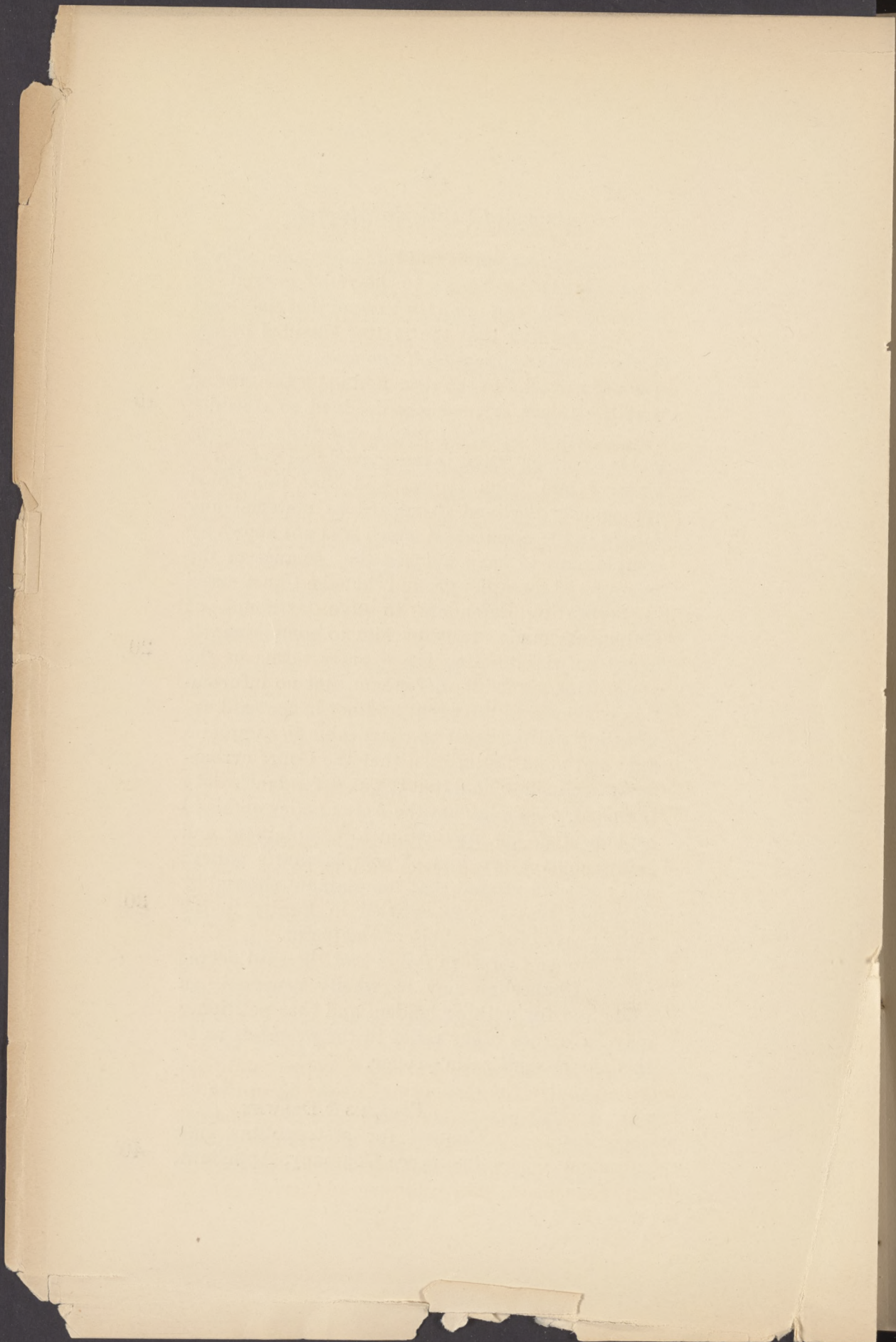
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**Complaint.**

(Filed Sept. 12, 1927.)

## IN CHANCERY OF NEW JERSEY.

*To His Honor, Edwin Robert Walker, Chancellor  
of The State of New Jersey:*

10

Complainant, Metropolitan Life Insurance Company, a corporation duly organized under the laws of the State of New York, and authorized to do business in the State of New Jersey, respectfully shows:

1. That on the 4th day of November, 1926, an application was made to complainant by the defendant, Aaron P. Sussman, for a policy of insurance in the principal sum of Fifteen thousand (\$15,000) Dollars with weekly indemnity of Seventy-five (\$75.00) Dollars against the results of bodily injuries sustained while said policy was in force and caused indirectly and independently of all other causes by violence and accidental means.

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2. That annexed hereto and made a part hereof is a true copy of said application.

3. That in consideration of the statements in said application, the complainant, on the 13th day of November, 1926, issued and delivered to the said Aaron P. Sussman an accident policy of insurance, a true copy of which is hereto annexed and made a part hereof.

30

4. That said policy of insurance recites that in consideration of the statements in the application, a copy of which is attached thereto, the said complainant insured the said Aaron P. Sussman for the term of twelve (12) months from the 13th day of November, 1926, subject to the terms, pro-

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*Complaint.*

visions and limitations therein contained in the principal sum of Fifteen thousand (\$15,000) Dollars with weekly indemnity of Seventy-five (\$75.00) dollars against the results of bodily injuries sustained while the policy was in force and caused indirectly and independently of all other causes by violence and accidental means in accordance with the terms and provisions and limitations of said policy.

5. Said policy further provided that if such injuries were received while the insured was riding as a passenger in or on any public conveyance (excepting aerial conveyances) of a common carrier regularly provided for passenger service, the amount payable for any of the losses enumerated in said policy of insurance should be double.

6. In and by virtue of said policy of insurance, a copy of the application therefor was attached thereto and made a part of the contract of insurance. Said policy provided that it was issued by the company and accepted by the insured subject to the provision, that it should be void if any of the statements in the application were false and such false statements were made with intent to deceive or if such false statements materially affected either the acceptance of the risk or the hazard assumed by the company.

7. That in the application for said insurance, complainant asked the following question, "What life or accident insurance have you in any other company or association?", to which the said Aaron P. Sussman replied, "Aetna Life Insurance Company, accident health policy, principal sum of \$15,000., weekly benefit, \$75.00, Prudential Life Insurance Company, whole life, \$15,000., Manhattan Life Insurance Company, whole life,



*Complaint.*

\$10,000. and Metropolitan Life Insurance Company, twenty-payment life, \$12,000.”

8. That at the time of the signing of said application of the said Aaron P. Sussman, said answers and statements of said Sussman so made in the said application, were false to the knowledge of said Sussman in that the said Sussman had other and undisclosed policies of insurance upon his life among which was a policy in the Commercial Travelers of Utica, dated July 1st, 1922 with weekly indemnity of Fifty (\$50.00) Dollars. 10

9. Complainant shows that the said statements of the defendant were false and such false statements were made with the intent to deceive complainant and that such false statements materially affected the acceptance of the risk and the hazard assumed by the company. 20

10. Complainant further shows that in answer to No. 13 in said application, “Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused?”, the said Aaron P. Sussman made answer, “No”, and that such answer was a false statement made with intent to deceive and materially affected the acceptance of the risk and the hazard assumed by the complainant company. 30

11. Complainant further shows that in answer to question No. 12, “Has any application ever made by you for accident insurance been declined, postponed or withdrawn, or have you failed to receive notice of action thereon?”, the said Sussman answered, “No”. That said answer and statement made by said Sussman was false and materially affected the acceptance of the risk and the hazard assumed by the company. 40



*Complaint.*

12. That the said Sussman, under date of October 21st, 1926, made application to the Aetna Life Insurance Company for an accident policy with a weekly indemnity of Two hundred and fifty (\$250.00) Dollars and that a policy was issued upon said application by the said Aetna Life Insurance Company and delivered to the said Sussman, and at the present time he is collecting and receiving from said insurance company the sum of Two hundred and fifty (\$250.00) Dollars weekly indemnity, or a greater sum.

13. That at the time of making application to the complainant for the said policy of insurance, the said Aaron P. Sussman had either policies or applications pending for the following accident insurance: Commercial Travelers of Utica, \$50.00 weekly indemnity, Aetna Life Insurance Company, \$250.00 weekly indemnity. That said Aaron P. Sussman suppressed in his application information concerning said applications for said policies of insurance and falsely and fraudulently denied that said applications and said policies of insurance pending were in existence.

14. That complainant in said application asked the following question, "Does your weekly income from the above occupation (surgeon dentist and dentistry) exceed the aggregate amount of single weekly benefit provided under this and all other policies of insurance carried by you?", to which said Sussman answered, "Yes".

15. Complainant shows that the aggregate amount of single weekly benefit provided under the policies of accident insurance carried by him, Sussman, was Three hundred and seventy-five (\$375.00) Dollars or more and that double indemnity aggregated Seven hundred and fifty (\$750.00)



*Complaint.*

Dollars or more and that said amount, complainant is informed and believes, is greatly in excess of the defendant's average weekly income from his said occupation of surgeon dentist and dentistry, and complainant is informed and believes it to be true that said answer to said question No. 19 was false to the knowledge of said Sussman and was made with intent to deceive and did deceive the complainant, and it further alleges that such statement materially affected the acceptance of the risk and the hazard assumed by the company. 10

16. Complainant further shows that it is informed and believes that on the 17th day of January, 1927, an accident happened to the said Aaron P. Sussman injuring his right hand and resulting in the amputation of his right index finger and injury to other fingers of his right hand, and that the said Aaron P. Sussman gave notice that he had sustained bodily injury by the accident, and that he was disabled on the 17th day of January, 1927, and claims that his disability is total and that he has no idea how long he expected his disability would continue, and in his notice to complainant, he stated that he had accident insurance in the Aetna Life Insurance Company, \$250.00 per week and the National Casualty Company for \$100.00 per week. 20 30

17. Complainant further shows that all of these statements and answers hereinabove referred to made by the said Aaron P. Sussman in his said application for insurance to complainant were false and fraudulent and were made with intent to mislead and deceive the complainant and were material to the risk and were relied upon by the complainant in issuing its policy of insurance to 40



*Complaint.*

the said Aaron P. Sussman, and that the said false answers and statements acted as an inducement to the complainant to issue such policy of insurance, and materially affected the acceptance of the risk and the hazard assumed by the company.

10        18. Complainant further shows that the said  
Aaron P. Sussman, on the 24th day of June, 1927,  
instituted a suit against the complainant in the  
Hudson County Circuit Court by the issuance and  
service of summons and filing, by defendant  
against this complainant on said policy of insurance,  
of complaint claiming that on the 17th day  
of January, 1927, the said Sussman while riding  
as a passenger in a taxicab was injured as a result  
of the door of the taxicab being closed upon his  
20        right hand and that said Sussman has and will be  
wholly disabled and will be prevented from attending  
to his occupation as a surgeon dentist, and in his said  
suit claims that there is now due and owing to said  
Sussman from the complainant the weekly indemnity of  
\$150.00 from the 17th day of January, 1927 to the 23rd  
day of June, 1927, amounting in all to Thirty-three  
hundred (\$3,300) Dollars.

30        19. Complainant further shows that afterwards  
and on the 4th day of August, 1927 and before the  
intervention of the term of the Court or the trial of  
the first suit brought against complainant by the said  
Sussman, he, the said Sussman, instituted another  
suit against complainant in the Hudson County Circuit  
Court by the issuance and service of summons on the  
last mentioned date and of the filing of a complaint  
in said mentioned suit, in and by which the said  
Sussman sues to recover the sum of Nine Hundred  
(\$900) Dollars, which he claims to be due upon said  
40        policy of in-



*Complaint.*

surance from the 20th day of June, 1927, to the 1st day of August, 1927, being the weekly payment of \$150.00 per week.

20. That before the intervention of a term of court or before it was possible for either of said actions to be tried, the said Aaron P. Sussman instituted a third suit against this complainant on said policy of insurance, which suit was brought in the Bayonne District Court on the 23rd day of August, 1927, and claims that there is due from complainant to said defendant the weekly payment of \$150.00 from the 1st day of August, 1927 to the 22nd day of August, 1927, and claims in said suit the sum of Four hundred and fifty (\$450.00) Dollars.

21. Complainant further shows that it is informed and believes it to be true that it is the intention of said Aaron P. Sussman to institute other suits on said policy of insurance brought within the jurisdiction of the State of New Jersey and without its jurisdiction on said policy of insurance and that said suits all in one cause of action against the complainant by the said Sussman constitute a multiplicity of suits.

22. Complainant further shows that on the 4th day of March, 1927, it tendered to the said Aaron P. Sussman \$81.25 in legal tender being the amount of the premium paid by him on said policy of insurance, so issued by complainant together with legal interest thereon, and requested and demanded from him a surrender of said policy which was refused.

Complainant is without adequate remedy in the courts of law, and therefore prays:



*Complaint.*

1. That the said Aaron P. Sussman, the defendant to this suit, may answer the bill of complaint, without oath, and each statement therein made.

10 2. That the said defendant may set forth and discover the truth concerning the matters and things set forth in this bill of complaint, and particularly the accident, health and life insurance policies insuring the said Aaron P. Sussman, which he held on the 4th day of November, 1926, and on the 13th day of November, 1926.

3. That the said Sussman may set forth and discover the truth concerning application made by him for accident insurance, previous to the 13th day of November, 1926.

20 4. That complainant may have a decree that said policy of insurance issued by complainant on the 13th day of November, 1926, was fraudulently obtained, and that the said contract of insurance may be rescinded and surrendered to complainant for cancellation.

30 5. That an injunction may issue restraining the said Aaron P. Sussman from proceeding with the said suits in the Hudson County Circuit Court and the Bayonne District Court, until the determination of this cause.

6. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

PERKINS & DREWEN,  
Solicitors for and of Counsel  
with complainant.

A true copy.

40 PERKINS & DREWEN,  
Solicitors of Complainant.



*Complaint.*

## POLICY

METROPOLITAN LIFE INSURANCE COMPANY

Incorporated by the State of New York  
A Mutual Life Insurance Company

IN CONSIDERATION of the statements in the application, copy of which is attached hereto, and of the payment of the premium of Seventy-nine Dollars and eighty cents 10

Hereby insures Aaron P. Sussman by occupation dentist, classified extra preferred, for the term of twelve months from November 13th, 1926, noon, standard time at the place where the insured resides, and subject to the provisions and limitations herein contained, in the

Principal sum of Fifteen thousand Dollars 20

Weekly indemnity of Seventy-five Dollars

Against the results of bodily injuries sustained while this policy is in force and caused directly and independently of all other causes by violent and accidental means, to wit:—

*Loss of Life, Limb, Sight*—Clause 1. If such injuries, directly and independently of all other causes, shall, from the date of the accident, wholly and continuously disable and prevent the insured from performing any and every kind of duty pertaining to his occupation and if, during the period of such total and continuous disability and within 200 weeks from the date of the accident, such injuries shall, directly and independently of all other causes, result in any one of the losses named in the following schedule, the Company will pay the amount set opposite such loss and, in addition thereto, the weekly indemnity above specified from the date of the accident to the date of such loss. 30  
40



*Complaint.*

Or, if such injuries shall not so disable the insured, but shall, directly and independently of all other causes and within 90 days from the date of the accident, result in any one of the losses named in the following schedule, the Company will pay the amount set opposite such loss.

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*Schedule Referred to in Clause 1*

For Loss of Life—The Full Principal Sum Above Specified.

For Total and Irrecoverable Loss of Sight of Both Eyes—The Full Principal Sum Above Specified.

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For Loss of Both Hands by severance at or above the wrist joints—The Full Principal Sum Above Specified.

For Loss of Both Feet by severance at or above the ankle joints—The Full Principal Sum Above Specified.

For Loss of One Hand and One Foot by severance at or above wrist and ankle joints—The Full Principal Sum Above Specified.

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For Loss of One Hand by severance at or above the wrist joint and the Total and Irrecoverable Loss of Sight of One Eye—The Full Principal Sum Above Specified.

For Loss of One Foot by severance at or above the ankle joint and the Total and Irrecoverable Loss of Sight of One Eye—The Full Principal Sum Above Specified.

For Loss of One Hand by severance at or above the wrist joint—One Half of the said Principal Sum.

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For loss of One Foot by severance at or above the ankle joint—One Half of said Principal Sum.

For Total and Irrecoverable Loss of Sight of One Eye—One Third of the said Principal Sum.



*Complaint.*

Provided always that, if more than one of the losses enumerated in the above schedule shall be sustained, payment shall be made only for the one for which the largest amount is specified.

*Total Disability*—Clause 2. If such injuries shall not result as specified in Clause 1, but, directly and independently of all other causes, shall, within two weeks from the date of the accident, continuously and wholly disable and prevent the insured from performing any and every kind of duty pertaining to his occupation, the Company will pay the insured the weekly indemnity above specified for the entire period of such total disability. 10

*Partial Disability*—Clause 3. If such injuries shall not result as specified in Clause 1, but, directly and independently of all other causes, shall, within two weeks from the date of the accident or immediately following total disability, continuously disable and prevent the insured from performing some one or more important daily duty or duties pertaining to his occupation, the Company will pay the insured one-half of the weekly indemnity above specified for the period of such partial disability, not exceeding 26 weeks. 20

*Double Indemnities*—Clause 4. If such injuries be received (a)—while the insured is riding as a passenger in or on any public conveyance (except aerial conveyances) of a common carrier regularly provided for passenger service (including the platform, steps or running board of such conveyance but not while or in consequence of attempting to enter or leave such conveyance); or (b)—while riding as a passenger in a regular pas- 30



*Complaint.*

senger elevator car; or (c)—in consequence of the burning of any building in which the insured shall be at the commencement of the fire; the amounts payable for any of the losses enumerated in the preceding clauses shall be doubled.

- 10     *Medical Attendance*—Clause 5. If any injury covered by this policy and sustained by the insured does not cause a result for which an indemnity is provided by this policy, but requires and receives treatment by a legally authorized physician, the Company will reimburse the insured for the cost of such treatment, not exceeding one week's indemnity as provided in Clause 2.

- 20     *Identification*—Clause 6. If the insured shall, wholly by reason of injury covered by this policy, be rendered physically unable to communicate with friends, the Company will, upon receipt of a telegram or other message giving this policy number, immediately transmit to the relatives or friends of the insured any information respecting him and defray all expenses necessary to place the insured in communication with and in the care of friends, not exceeding a sum equal to four weeks' indemnity at the rate per week provided in Clause 2.

- 30     *Participation in Divisible Surplus*—Clause 7. This policy is a participating contract and, commencing not later than the end of the third policy year, the Company will annually, if and while this policy is in force, ascertain and apportion any divisible surplus accruing hereon, after setting aside such an amount for a contingency reserve as the directors of the Company shall deem necessary.

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*Complaint.*

*Surgical Operations*—Clause 8. If any injury covered by this policy shall, within ninety days from the date of the accident, directly and independently of all other causes, necessitate any surgical operation named in the Schedule of Surgical Operations endorsed hereon, the Company will pay the insured the sum set opposite the said operation in the said schedule, provided always that, if more than one such operation shall be necessitated as the result of any one accident, payment shall be made only for the operation first occurring. 10

*Risks Excluded*—Clause 9. This insurance shall not cover suicide or any attempt thereat, while sane or insane; nor shall it cover injuries, fatal or non-fatal, sustained while participating in aviation or aeronautics except as fare paying passenger; nor shall it cover accident, injury, disability, death or other loss caused wholly or partly by disease or bodily or mental infirmity or medical or surgical treatment therefor, or by hernia, or by ptomaines or any kind of infection whether suffered accidentally or otherwise (excepting only septic infection of and through a visible wound accidentally sustained). All insurance under this policy shall be suspended if the insured shall engage in military or naval service in time of war or if the insured shall become blind or insane, in which event the portion of the premium unearned during the period of such suspense shall be refunded. 20 30

*Special Provisions*—Clause 10. The copy of the application attached hereto is hereby made a part of this contract. No provision of the charter, constitution, or by-laws of the Company not included herein shall avoid the policy or be used 40



*Complaint.*

in evidence in any legal proceedings hereunder. This policy is issued by the Company and accepted by the insured subject to the following provisions prescribed by law and shall be void if any of the statements in the application are false and such false statements are made with intent to deceive or if such false statements materially affect either the acceptance of the risk or the hazard assumed by the Company. Failure of the insured or beneficiary to comply with any of the provisions or requirements of this policy shall invalidate all claims.

*Renewal Grace*—Clause 11. This policy may, with the consent of the Company, and subject to all of the terms, conditions and provisions of this policy, be periodically renewed upon each successive expiration, for a further period of equal number of months, upon the payment of the premium herein stated, as the premium for each such successive renewal. This provision for renewal shall cease to be in force upon the expiration of the period next preceding the sixty-fifth birthday of the insured. Upon each such renewal a grace of thirty-one days, without interest charge, shall be granted for the payment of the premium, during which period the insurance shall continue in force.

*Standard Provisions*

*Change of Occupation to Greater Hazard*—  
1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the insured is



*Complaint.*

injured after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation. 10

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable. 20

*Alterations*—2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon. 30

*Past Due Premiums*—3. If default be made in the payment of the agreed premium for this pol- 40



*Complaint.*

icy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

10-     *Notices and Claims*—4. Written notice of injury on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury.

20         5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the Company at New York, or to any authorized agent of the Company, with particulars sufficient to identify the insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that that notice was given as soon as was reasonably possible.

30         6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

40         7. Affirmative proof of loss must be furnished to the Company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the



*Complaint.*

Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

*Examination*—8. The Company shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law. 10

*Payment of Indemnity*—9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof.

10. Upon request of the insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each four weeks during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof. 20

11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured. 30

*Change of Occupation to Lesser Hazard*—12. If the insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the insured and surrender of the policy, will cancel the same and will return to the insured the unearned premium. 40



*Complaint.*

*Rights of Beneficiary*—13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

10     *Legal Proceedings*—14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

20     *Statutory Compliance*—15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

30     *Cancellation*—16. The Company may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

40     *Age Limits*—20. The insurance under this policy shall not cover any person under the age of eighteen years nor over the age of sixty-five years. Any premium paid to the Company for any period not covered by this policy will be returned upon request.



*Complaint.*

IN WITNESS WHEREOF the Metropolitan Life Insurance Company has caused this policy to be signed by its President and Secretary in the City of New York, but the same shall not be binding until it has been delivered to the insured and the full premium stated in the policy has been paid to an authorized representative of the Company. 10

HALEY FISKE,  
President.

JAS. S. ROBERT,  
Secretary.

Examined: R.

## APPLICATION

Form of Policy, A1; Principal Sum, \$15,000; Weekly Benefit, \$75.00; Class, Ex. Pref.; Premium, \$79.80. Approved, R. Date, 11/12. 20

APPLICATION TO THE  
METROPOLITAN LIFE INSURANCE COMPANY

Incorporated by the State of New York

Use black ink for answers. Write plainly.  
Print names.

1. What is your full name? (Please print.) 30  
Aaron P. Sussman.

2. Place of birth? Austria. Date of birth?  
May 5, 1880. Nearest birthday? Age, 46 yrs.

3. Height? 5 ft. 6 in. Weight? 165 lbs. Race?  
White. Sex? Male.

4. Residence address? (Please print name of  
street.) No. 79 West 35th Street. Town, Bayonne.  
State, N. J.

5. Place of business? (Please print name of 40  
street.) No. 497 Broadway. Town, Bayonne.  
State, N. J.



*Complaint.*

6. To which address shall notices be sent?  
Place of business.

7. Employment—Member or employee? Member.  
Firm of Dr. A. P. Sussman. Nature of  
whose Business is: Dentist.

10 8. What is your occupation? (If more than  
one, state them all.) Surgeon Dentist.

9. State in full the duties of your occupation.  
Dentistry.

10. Beneficiary in event of accidental death?  
(Please print.) Name in full, Ida E. Sussman.  
Relationship to you, wife. Address, 79 West 35th  
Street.

20 11. What *life* or *accident* insurance have you  
in any other Company or Association?

| <i>Company or<br/>Association</i> | <i>Kind of Policy</i> | <i>Principal Sum</i> | <i>Wky.<br/>Benefit</i> |
|-----------------------------------|-----------------------|----------------------|-------------------------|
| Aetna Life ....                   | A. H.                 | 15,000               | 75.00                   |
| Prudential ....                   | W. L.                 | 15,000               | .....                   |
| Manhattan ....                    | W. L.                 | 10,000               | .....                   |
| Metropolitan                      | 20 Pt. W. L.          | 12,000, 10,000       | .....                   |

30 12. Has any application ever made by you for  
*life* or *accident* insurance been declined, post-  
poned or withdrawn or have you failed to receive  
notice of action thereon? No.

13. Has any policy of accident insurance ever  
issued to you been cancelled, rescinded or renewal  
thereof refused? No.

14. Have you ever received or been refused  
benefit for any accident? Aetna, \$200.00, 1917.

40 15. Have you in contemplation any special  
journey, hazardous undertaking or any change of  
occupation? No.

16. Is your sight or hearing impaired? If so,  
state nature and degree of impairment. No.



*Complaint.*

17. Are you maimed, deformed or crippled in any manner or degree or affected with any form of bodily or mental disease, disorder, infirmity or impairment? No.

18. Have you ever had epilepsy, fits, vertigo, dizziness, rheumatism, diabetes, syphilis, varicose veins, mental disorder, cancer, tumor or any disease of lungs, heart or kidneys? No. 10

19. Does your average weekly income *from the above occupation* exceed the aggregate amount of single weekly benefit provided under this and all other policies of accident insurance carried by you? Yes.

20. Do you certify that no statements have been made nor information furnished to any Agent of this Company or other person, relating to this insurance, other than as written herein, and agree that no statements made nor information furnished shall be binding upon the Company unless written herein and that no insurance will be in force on this application unless and until this application is approved at the Home Office of the Company and a policy is delivered and the premium stipulated in such policy is received by the Company? Yes. 20

21. Is the policy to be issued and the premium to be paid for an annual or for a semi-annual period? Annual. 30

Dated at Bayonne this 4th day of Nov., 1926.

Signature of Applicant: Aaron P. Sussman.

(Please read carefully before signing.)

Witness: George Fink.

Note. Every question must be answered. Write "yes" or "no" or "none" and state facts, if any, necessary to complete the answer. 40

No person other than applicant may sign this application.



**Answer.**

(Filed March 9, 1928.)

## IN CHANCERY OF NEW JERSEY.

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Between

METROPOLITAN LIFE INSURANCE  
COMPANY, a corporation,  
Complainant,*and*AARON P. SUSSMAN,  
Defendant.On Bill &c.  
Answer of  
Defendant.

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Defendant answering the bill of complaint says:

1. He admits the statements contained in paragraph 1.

2. He has no knowledge with respect to the statements contained in paragraph 2. He refers to the application when produced.

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3. He admits that on the 13th day of November, 1926, complainant issued and delivered to him an accident policy of insurance. The remaining statements contained in paragraph 3 he denies.

4. He admits the statements contained in paragraph 4.

5. He admits the statements contained in paragraph 5.

6. He admits the statements contained in paragraph 6.

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7. He admits the statements contained in paragraph 7.



*Answer.*

8. He denies the statements contained in paragraph 8.

And he further says that although the application was signed by him the answers were not written by him but by the agent of complainant, and the agent of the complainant at the time of writing said answers had full and complete knowledge of all of the circumstances and determined what the intent and meaning of the questions propounded to defendant in said application was and what was required thereunder and having knowledge of all the circumstances, wrote the answers as appears in said application and defendant signed said application in good faith and believing that said answers accurately stated the conditions as required by complainant.

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9. He denies the statements contained in paragraph 9.

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10. He admits that question No. 13 in said application is—"Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused?" and that the answer of defendant as written by complainant's agent is "no". He denies the remaining statements contained in paragraph 10, and he further says that although the application was signed by him the answer was not written by him but by the agent of complainant, and the agent of the complainant, at the time of writing said answer, had full and complete knowledge of all of the circumstances and determined what the intent and meaning of the question propounded to defendant in said application was and what was required thereunder and having knowledge of all the circumstances, wrote the answer as appears in said application and defendant signed said ap-

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*Answer.*

plication in good faith and believing that said answer accurately stated the conditions as required by complainant.

10 11. He admits that the 12th question of the application is—"Has any application ever made by you for life or accident insurance been declined, postponed or withdrawn or have you failed to receive notice of action thereon" and that the answer thereto is "No". He denies the remaining statements contained in paragraph 11, and he further says that although the application was signed by him the answer was not written by him but by the agent of complainant, and the agent of the complainant, at the time of writing said answer, had full and complete knowledge of all of the circumstances and determined what the intent and meaning of the question propounded to defendant in said application was and what was required thereunder and having knowledge of all the circumstances, wrote the answer as appears in said application and defendant signed said application in good faith and believing that said answer accurately stated the conditions as required by complainant.

20 12. He denies that under date of October 21, 1926, he made application to the Aetna Life Insurance Company for an accident policy with a weekly indemnity of two hundred and fifty (\$250) dollars. He says that such application was not made until the 9th of November, 1927. He admits that he is collecting and receiving from said Insurance Company a sum of money as weekly indemnity. The remaining statements contained in paragraph 12 he denies.

30 13. He denies the statements contained in paragraph 13. He further says that although the ap-  
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*Answer.*

plication was signed by him the answers were not written by him but by the agent of complainant, and the agent of the complainant, at the time of writing said answers, had full and complete knowledge of all of the circumstances and determined what the intent and meaning of the questions propounded to defendant in said application was and what was required thereunder and having knowledge of all the circumstances, wrote the answers as appears in said application and defendant signed said application in good faith and believing that said answers accurately stated the conditions as required by complainant. 10

14. He admits the statements contained in paragraph 14.

15. He denies the statements contained in paragraph 15 and he further says that the amount which defendant is entitled to receive under the double indemnity clause of the said policy does not apply in any way. 20

16. He admits the statements contained in paragraph 16.

17. He denies the statements contained in paragraph 17.

18. He admits the statements contained in paragraph 18. 30

19. He admits the statements contained in paragraph 19.

20. He admits the statements contained in paragraph 20.

21. He denies the statements contained in paragraph 21.

22. He denies the statements contained in paragraph 22. 40



*Answer.*

23. Further answering the bill defendant says that a suit was started and summons tested June 24, 1927, brought by this defendant against the complainant in the Hudson County Circuit Court to recover upon said policy referred to in the bill of complaint. That defendant (complainant here) filed its answer containing allegations that the policy was void because of alleged false statements made by defendant in the application: (a) that no policy of accident insurance ever issued to defendant had been cancelled, rescinded or renewal thereof refused; (b) that defendant falsely represented that his average weekly income from his occupation as surgeon dentist exceeded the aggregate amount of single weekly benefit provided under said policy and all other policies of accident insurance carried by defendant; (c) that defendant had not made any application for accident insurance which had been declined, postponed or withdrawn, and that he had never made application for accident insurance to any company on which application he had not received notice of the company's action thereon; (d) that defendant falsely suppressed the fact that he had a policy of accident insurance on his life in the Aetna Life Insurance Company for \$250 per week, which policy was dated October 21st, 1926; (e) that defendant falsely represented that he had never had any disease of the lungs, heart or kidneys. Defendant (complainant here), on the 6th day of August, 1927, replied and issue was joined and the case was noticed for trial for the September Term of the Hudson County Circuit Court. That another suit was brought on said policy in the Bayonne District Court, summons tested on the 23rd day of August, 1927. In such suit complainant requested an adjournment which this defendant's attorneys granted, and at the request of complainant's attorney the case was adjourned



*Answer.*

from week to week, and, on or about the 7th day of September, 1927, complainant filed in the said Bayonne District Court a specification of defenses which said specification of defenses contained the same allegations of fraud as contained in the answer filed in the Hudson County Circuit Court. On or about the 4th day of August, 1927, this defendant had commenced another suit in the Hudson County Circuit Court against the said complainant to recover moneys under said policy, and on the 15th day of August, 1927, complainant, through its attorneys, wrote defendant suggesting that the suits be consolidated. It was necessary for defendant to bring the succession of suits because the payments provided for by the policies are in certain installments.

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24. Defendant says that, in the said suits at law, complainant has submitted every defense of fraud which it attempts to have determined in this suit; that said defenses have been received in the suits at law and issue taken thereon; that not until after said first suit at law, the determination of which would settle all of the other suits upon the issues of fraud, did complainant file this bill, and this defendant says that the court of law has full and complete jurisdiction in the premises and that complainant has submitted the determination of such questions to the court of law, and that this court has no jurisdiction under the circumstances, the remedy of the complainant being at law.

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25. The defendant further says that, by reason of the matters and things hereinabove set forth, the court of law has first acquired jurisdiction of the subject matter of the fraud referred to in the bill and that this court should not and will not interfere with the determination at law and that complainant is estopped from now bringing this

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*Answer.*

suit in equity based upon the same grounds upon which it is defending in the law suit.

10       26. This defendant further shows that in the suits at law complainant has set up not only the false representations set up in the bill of complaint herein, but other false representations which, if any of the false representations are cognizable in this court would also be cognizable in this court in this suit, and that the effect of granting relief to the complainant in the present suit would still leave issues of fraud to be determined by the court of law, and would result in piecemeal litigation and multiplicity of suits, and that the complainant, by splitting its charges of fraud, leaving some to be determined in the court of law and some to be determined in this suit, is  
20       harassing the defendant, and is pursuing a course of procedure leading toward and not away from a multiplicity of suits, and that if this bill be maintained, then this court should take jurisdiction of the entire controversy between complainant and defendant and determine by its decree the entire issue.

30       27. Defendant further says that the bill of complaint does not disclose a cause of action cognizable in equity against the defendant; that complainant has a full, complete and adequate remedy at law and that this court has no jurisdiction.

28. Defendant sets up the statements contained in paragraphs 23, 24, 25, 26 and 27 also as if upon a motion to strike the bill and specifically reserves the right to move to strike the bill.

Defendant prays that the bill may be dismissed.



### Replication.

(Replication in common form filed March 13, 1928.)

### Amendment of Bill of Complaint.

(Filed June 3, 1929.)

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### IN CHANCERY OF NEW JERSEY.

Between:

METROPOLITAN LIFE INSURANCE  
COMPANY, a corporation,  
Complainant,

*and*

AARON P. SUSSMAN,  
Defendant.

On Bill, etc.  
Order for  
Amendment of  
Bill.

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This matter being opened to the Court by Perkins & Drewen, solicitors for the complainant, in the presence of Brenner & Kresch, solicitors for the defendant, on motion for leave to amend the bill of complaint filed herein, and the Court having heard the arguments of the respective counsel;

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It is on this 3d day of June, 1929, ORDERED that the said bill of complaint be and the same hereby is amended in the following particulars:

Paragraph 8 is amended so as to read as follows:

That at the time of the signing of the said application of the said Aaron Sussman said answers and statements of said Sussman so made in said application were false to the knowledge of said Sussman in that said Sussman had other and undisclosed policies of in-

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*Amendment of Bill of Complaint.*

10      surance upon his life, among which were a policy in the Commercial Travelers of Utica, dated July 1, 1922, with weekly indemnity of \$50.00, and two policies in the Travelers Insurance Company of Hartford, Connecticut, issued respectively on January 17, 1917, and August 21, 1922, and a policy in the Aetna Life Insurance Company, being designated as Policy PA—129970, with weekly indemnity of \$250. per week.

Paragraph 10 is amended so as to read as follows:

20      The complainant further shows that in answer to question No. 13 in said application, "Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused?" The said Aaron P. Sussman made answer "No", and that such answer was a false statement made with intent to deceive and materially affected the acceptance of the risk and hazard assumed by the complainant company. In truth and in fact, as the said Sussman then knew, a policy of accident insurance which had been issued to him by the Standard Accident Insurance Company was cancelled by the said company on September 8, 1916, and the unearned premiums returned to the said Sussman by the said company.

30      That immediately following paragraph 15 of the said bill and preceding paragraph 16 thereof, the following be inserted:

40      15a. Complainant further shows that in answer to question No. 17 in said application, "Are you maimed, deformed or crippled in any manner or degree or affected with any form of bodily or mental disease, disorder, infirmity or impairment?", the said Sussman answered "No"; that said answer and statement made by said Sussman was false and materially affected the acceptance of the risk and the hazard assumed by the company. In



*Amendment of Bill of Complaint.*

truth and in fact, as said Sussman well knew, he was affected by a bodily infirmity and impairment by reason of an inguinal hernia for which one or more operations had been performed on him and by reason of which hernia he had been receiving a pension from the Government of the United States since 1903.

15b. Complainant further shows that in answer to question No. 14 in said application, "Have you ever received or been refused benefit for any accident?", the said Sussman answered, "Aetna, \$200. 1917"; that said answer and statement made by said Sussman was false and materially affected the acceptance of the risk and the hazard assumed by the complainant. In truth and in fact, as the said Sussman well knew, he had received other accident benefits, among which were the following: From Royal Indemnity Insurance Company on February 19, 1923, for fracture of the nose, \$107.12; from Commercial Casualty Company on February 7, 1921, a benefit for an alleged sprain of the right thumb, and from the Commercial Casualty Company on December 22, 1921, a benefit for an alleged infection of the right thumb; from the Standard Accident Insurance Company for tonsillitis in December, 1914, a benefit of \$23.21; from the Maryland Casualty Company in 1911, a benefit for alleged burns to the face; and from the Maryland Casualty Company in January, 1912, a benefit of \$40.00 for alleged injury to fingers of the right hand; from the Standard Accident Insurance Company in May, 1916, a benefit of \$14.28 for an alleged cut hand; and from the Standard Accident Insurance Company in May, 1916, a benefit of \$25.05 for alleged tonsillitis, and from the Standard Accident Insurance Company in August, 1916, a benefit of \$105.35 for alleged burns to face and eye.

E. R. WALKER,  
C.

Respectfully advised,

JAMES F. FIELDER,  
V. C.

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**Answer to Amendment of Complaint  
and Counterclaim.**

(Filed June 15, 1929.)

IN CHANCERY OF NEW JERSEY.

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Between

METROPOLITAN LIFE INSURANCE  
COMPANY, a corporation,  
Complainant,

*and*

AARON P. SUSSMAN,  
Defendant.

On Bill, etc.

Answer to  
Amendment to  
Bill of Complaint  
and  
Counterclaim.

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The defendant, Aaron P. Sussman, answering the amendment to the bill of complaint herein says that:

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1. As to the amendment of paragraph 8 defendant denies that he made application for the policy of insurance, and says that on November 4, 1926, complainant's agent solicited defendant as he had on numerous previous occasions to accept a Metropolitan Life Insurance Company accident policy written by complainant, which said agent represented would, among other things, provide defendant ample protection against finger injuries. Defendant further says that although the application was signed by him the answers were not written by him, but by the agent of complainant and that the agent of complainant at the time of writing said answers had full knowledge of all the circumstances and determined what the intent and meaning of the questions propounded to the defendant in said application were and what

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*Answer to Amendment of Complaint and  
Counterclaim.*

was required thereunder and having knowledge of all the circumstances wrote the answers which appear in said application, and defendant signed said application in good faith believing that said answers accurately stated the conditions as required by complainant. Defendant further says that he had made previous applications to complainant insurance company, which applications correctly stated the answer to this question as well as to the other questions referred to in the bill of complaint; that the complainant company knew the proper answers to this question and the other questions on said application and with such knowledge accepted the application which its agent had drawn. Complainant did not rely on said application in issuing this policy, and is estopped from denying the validity of said policy.

2. As to the amendment of paragraph 10 defendant admits that question 13 in said application is "Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused" and that the answer of defendant as written by complainant's agent is "No". He denies the remaining statements contained in the paragraph and he further says that although the application was signed by him the answer was not written by him but by the agent of the complainant and that the agent of complainant at the time of writing said answer had full and complete knowledge of all the circumstances and determined what the intent and meaning of the questions propounded to the defendant in said application was and what was required thereunder and having knowledge of all the circumstances wrote the answer which appears in said application and defendant signed said application in good faith



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and believing that said answers accurately stated the conditions as required by complainant. Defendant further says that he had made previous applications to complainant insurance company, which applications correctly stated the answers to this question as well as to the other questions referred to in the bill of complaint; that the complainant company knew the proper answers to this question and the other questions on said application and with such knowledge accepted the application which its agent had drawn. Complainant did not rely on said application in issuing this policy, and is estopped from denying the validity of said policy.

20       3. In reference to paragraph 15a he admits that question 17 in said application is "Are you maimed, deformed or crippled in any manner or degree or affected with any form of bodily or mental disease, disorder, infirmity or impairment" and that the answer of said defendant as written by complainant's agent is "No". He denies the remaining statements contained in the paragraph and he further says that although the application was signed by him the answers were not written by him, but by the agent of complainant and that the agent of complainant at the time of writing said answers had full knowledge of all the circumstances and determined what the intent and meaning of the questions propounded to the defendant in said application were and what was required thereunder and having knowledge of all the circumstances wrote the answers which appear in said application, and defendant signed said application in good faith believing that said answer accurately stated the conditions as required by complainant. Defendant further says

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that he had made previous applications to complainant insurance company, which applications correctly stated the answers to this question as well as to the other questions referred to in the bill of complaint; that the complainant company knew the proper answers to this question and the other questions on said application and with such knowledge accepted the application which its agent had drawn. Complainant did not rely on said application in issuing this policy, and is estopped from denying the validity of said policy. 10

4. In reference to paragraph 15b he admits that the question 14 in said application is "Have you ever received or been refused benefit for any accident" and that the answer to defendant as written by complainant's agent is "Aetna, \$200, 1917". He denies the remaining statements contained in the paragraph and further says that although the application was signed by him the answers were not written by him, but by the agent of complainant and that the agent of complainant at the time of writing said answers had full knowledge of all the circumstances and determined what the intent and meaning of the questions propounded to the defendant in said application were and what was required thereunder and having knowledge of all the circumstances wrote the answers which appear in said application, and defendant signed said application in good faith believing that said answers accurately stated the conditions as required by complainant. The application itself directs "Write yes or no or none and state facts, if any, necessary to complete the answer" and allots a space insufficient for a long statement. Defendant further says that he had 20 30 40



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10 made previous applications to complainant insurance company, which applications correctly stated the answers to this question as well as to the other questions referred to in the bill of complaint; that the complainant company knew the proper answers to this question and the other questions on said application and with such knowledge accepted the application which its agent had drawn. Complainant did not rely on said application in issuing this policy, and is estopped from denying the validity of said policy.

20 5. The answers in said application which complainant alleges are incorrect are not material to the risk assumed by complainant and did not affect the issuance of the policy involved in this and complainant represented to defendant that the answers in said application were sufficient for its purpose, did not have to be in any greater detail and that more specific information given by defendant to complainant's agent was unnecessary and that the application as written by complainant's agent fully met the formal requirements of complainant.

30 By way of counterclaim against complainant, Metropolitan Life Insurance Company, defendant, Aaron P. Sussman says that:

40 1. Complainant's agent solicited defendant on numerous occasions in October and November, 1926, to accept a Metropolitan Life Insurance Company accident policy written by complainant which said agent represented would, among other things, provide defendant ample protection against various accidents including finger injuries likely to occur in defendant's profession of operative dentistry.



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2. On November 4, 1926, defendant agreed to accept said policy of insurance and signed the application for the same which complainant's agent had procured. Defendant did not make any representations or answers, but complainant company through its agent filled out the application for said policy and obtained defendant's signature thereto by representing to defendant that said application was a mere formality and that it contained all necessary information. Defendant relying on complainant's representations accepted said policy in good faith as a completed contract of insurance.

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3. Complainant had on previous occasions issued other policies of insurance to defendant. The applications for these policies were correctly filled out by defendant and accepted by complainant. The application for defendant's previous policies of insurance secured from complainant stated the correct answers to the questions set forth in the application for complainant's accident policy signed on November 4, 1926, and defendant relied on the representation of complainant's agent that the application in question had been filled out by complainant from the applications annexed to complainant's earlier policies and that the signing of the application in question was a mere formality.

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4. The application of November 4, 1926, for said accident policy although signed by defendant was not prepared nor written by him, but by the complainant or its agent and complainant or its agent at the time of writing of said answer had full and complete knowledge of the facts and circumstances, necessary properly to answer the

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10 questions contained in said application. Through fraud or neglect complainant and its agent did not question the defendant, who was ready and willing and desired to answer all questions fully and completely. Complainant and its agent de-  
20 termined what were the intent and meaning of the questions propounded in said application and what was required thereunder, and having knowledge of all the facts and circumstances and being in a position to obtain such knowledge of all the facts and circumstances wrote the answers which appear in said application and represented to de-  
30 fendant that said answers were accurate and sufficient. Defendant signed said application in good faith and believing that said answers inserted by complainant or its agent accurately stated the information required by complainant.

5. Question #11 in said application is: "What life or accident insurance have you in any other company or association?" Said complainant through its agent inserted the answer: "1. Aetna Life Insurance Company, accident and health policy in the principal sum of \$15,000, weekly benefit of \$75.00; 2. Prudential Life Insurance Company, whole life policy, principal \$15,000;  
30 3. Manhattan Life Insurance Company, whole life policy, principal \$10,000; 4. Metropolitan Life Insurance Company, twenty-payment life \$12,000." Defendant had in addition an accident policy about to expire in the Commercial Travelers Insurance Company of Utica with a weekly indemnity of \$50 and two life policies in the Travelers Insurance Company of Hartford, Conn. Complainant in filling out said application knew  
40 of the existence of said additional policies, and by fraud or mistake after filling the space allotted on



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said application for the answer to said question omitted said additional policies, representing that it was unnecessary to mention said policies in said application.

6. Question #14 in said application is: "Have you ever received or been refused benefit for any accident?" To this question complainant's agent inserted the answer: "Aetna, \$200. 1917". Defendant had received over a long period of years several small benefits under policies he had held, and so advised complainant's agent, who represented to defendant that complainant was not interested in small claims going back many years, but only in claims of a substantial character. Complainant's agent by fraud or mutual mistake selected for insertion in said application from the claims mentioned by defendant the payment of \$200 or thereabouts received by defendant in 1917 from the Aetna Insurance Company.

7. By fraud on the part of complainant and mistake on the part of defendant or by mutual mistake the application procured from defendant by complainant's agent does not in respects aforementioned properly state the facts known to complainant and its agent, and which defendant communicated to complainant and its agent with the intention that all material facts be inserted in said application, all of which complainant's agent agreed to do.

8. On January 17, 1927, defendant while riding in a common carrier was accidentally injured in such manner that the index finger of his right hand had to be and was amputated, and the use of other fingers of his right hand was impaired.



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Counterclaim.*

As a result, defendant has been totally disabled from following his occupation of a dentist.

9. Defendant notified the complainant of said accident within the time specified in the policy and demanded the indemnity provided for under said policy. Complainant, however, refused and still refuses to abide by the provisions of its policy and did not and has not to this time paid to defendant any of the sums due him under the provisions of its policy. Defendant was permanently disabled within the terms of said policy from January 17, 1927, until May 1, 1929, and is entitled to indemnity of \$150 per week for said period. Defendant has been partially disabled within the terms of said policy since May 1, 1929, and is entitled to recover for said partial disability at the rate of \$75 per week for 26 weeks.

This defendant therefore prays, his remedy at law being inadequate:

1. That the said complainant, Metropolitan Life Insurance Company, may answer this counterclaim and each statement herein made.

2. That the answer to question #11 of said application be reformed to read: Aetna Life Insurance Company, accident and health policy, principal sum of \$15,000, weekly benefit \$75.00; Prudential Life Insurance Company, whole life \$15,000; Manhattan Life Insurance, whole life \$10,000; Metropolitan Life Insurance Company, twenty payment life \$12,000; Commercial Travelers Insurance Company of Utica, weekly benefit \$50.00; Travelers Insurance Company of Hartford, Conn., \$5,000 and \$2,000 Limited Payment Life.



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3. That the answer to question #14 may be reformed to read: "Aetna, \$200, 1917, and various small claims over long period of years."

4. That in termination of the entire controversy complainant be decreed to pay defendant the indemnity due under the terms of said policy, with interest, or 10

5. That complainant be restrained and enjoined from asserting or pleading in any actions at law now pending between defendant and complainant or in any actions at law which may be brought by defendant against complainant that any answers contained in the application constitute a forfeiture or avoidance of the policy.

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BRENNER & KRESCH,  
Solicitors for Defendant.

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**Replication.**

(Replication in common form filed June 25, 1929.)

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**Opinion.**

(Filed November 17, 1930.)

## IN CHANCERY OF NEW JERSEY.

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Between

METROPOLITAN LIFE INSURANCE  
COMPANY,  
Complainant,*and*AARON P. SUSSMAN,  
Defendant.On Bill &c.  
Conclusions.

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MESSRS. PERKINS & DREWEN for Complainant.  
MR. ALFRED BRENNER, MR. DAVID STOFFER and  
MR. ARTHUR T. VANDERBILT for Defendant.

FIELDER, V. C.:

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Upon written application made by the defendant under date of November 4, 1926, the complainant issued its policy of insurance on the defendant's life for \$15,000, with weekly indemnity of \$75 in case of bodily injury, the policy providing that if such injury was sustained while riding in a public conveyance, the weekly indemnity should be doubled. The policy recites that it was issued in consideration of the statements contained in the application, a copy of which was attached to the policy.

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January 17, 1927, the defendant suffered an injury to his right hand while riding in a public conveyance and gave notice to complainant of a total disability to continue for an indefinite time.



*Opinion.*

Failing to obtain payment, he instituted several suits at law against the complainant to recover the weekly installments of indemnity. The complainant thereupon filed its bill of complaint wherein it alleged that in his application for insurance, the defendant made certain false statements knowing them to be false, with intent to deceive the complainant, which statements materially affected the acceptance of the risk and hazard assumed by the complainant and the complainant seeks a decree that its policy was obtained by defendant's fraud; that it is rescinded and surrendered for cancellation and that the defendant be enjoined from proceeding with his suits at law. 10

The business of writing insurance is highly specialized and is conducted by corporations who employ men who are experts. These corporations, through their agents, actively solicit business from persons usually of limited insurance experience and with little knowledge of the legal effect of their answers to the questions contained in the application for insurance. Such questions and the policy contract which is to follow, are formulated by the insurer and the applicant, in making answers to the questions, is likely to be guided by the advice and suggestion of the agent who has solicited him to apply for the insurance and who has a financial interest in seeing that the policy is written. The legislature of this state has found it necessary to regulate the business and to safeguard and protect the less informed insured against the expert insurer and we find in Comp. Stat., page 2838 *et seq.* and the amendments and supplements thereto, many sections relating to provisions of policy contracts for the protection of the insured, the like of which are not found in 20 30 40



*Opinion.*

10 legislation relating to other contracts and our courts have laid down the rule that policies of insurance must be liberally construed to uphold the contract for the benefit of the insured and that conditions contained in the policies which create forfeitures should be construed most strongly against the insurer and should never be extended beyond the strict words of the policy (*Carson v. Jersey City &c.*, 43 N. J. L. 300; *Hampton v. Hartford &c.*, 65 N. J. L. 265; *Melick v. Metropolitan &c.*, 84 N. J. L. 437; affirmed 85 N. J. L. 727).

20 One provision of the insurance statute (as amended), for the protection of the insured is that the application for life insurance shall be endorsed upon or attached to the policy and that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties (P. L. 1925 sect. 1 Par 4) and as to this provision our courts have said that a misrepresentation to avoid the policy must be "material and fraudulent; that is to say, if it be a statement of something as a fact, which is untrue and which the insured stated knowing it to be untrue and with intent to deceive, or which he stated positively as true, without knowing it to be true and which had a tendency to mislead; such fact in

30 either case being material to the risk" (*Kerpchak v. John Hancock &c.* 97 N. J. L. 196; *Prahm v. Prudential &c.* 97 N. J. L. 206; *Locker v. Metropolitan &c.* 8 Adv. Rep. 548). The application in this case therefore must be examined with a view of determining whether any of the insured's answers to the questions contained therein are untrue and if untrue whether they were made with intent to deceive the insurer and if no fraud appears, whether any answer by way of representa-

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*Opinion.*

tion of a fact had a tendency to mislead the complainant and induced it to assume a risk which it otherwise would not have assumed.

The policy was solicited by the complainant's agent, Fink. For the further protection of the insured our insurance statute (Comp. Stat. p. 2872, sec. 103) provides that in this situation, Fink is to be regarded as the complainant's agent and not as the agent of the insured. Fink read to the insured the questions contained in the application and wrote the answers appearing thereon. After the answers were written down, the insured signed the application. If there was any information imparted by the insured to Fink or any fact known by Fink which he failed to include in the answers, the complainant is chargeable with knowledge of that information. (Carson v. Jersey City &c. *supra*.) Fink says he correctly transcribed all answers made by the insured but I think it will be apparent that he did not.

The first answer which the complainant charges was untrue and made with intent to deceive, is that made to question 11 on the application. The question and answer are as follows:

What life or accident insurance have you in any other company or association?

(Answer.)

| <i>Company or Association</i> | <i>Kind of Policy</i> | <i>Principal Sum</i> | <i>Weekly Benefit</i> |
|-------------------------------|-----------------------|----------------------|-----------------------|
| Aetna Life ....               | A. H.                 | 15,000               | 75                    |
| Prudential .....              | W. L.                 | 15,000               | ....                  |
| Manhattan .....               | W. L.                 | 10,000               | ....                  |
| Metropolitan..                | 20 P. L. W. L.        | 12,000, 10,000       | ....                  |

It appears on the face of the policies offered as exhibits, in the order in which they were offered, that the following policies were in effect November 4, 1926, the date of the application:



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| <i>Company</i> |           | <i>Date</i> |          | <i>Principal<br/>Sum</i> | <i>Disability<br/>Benefit</i>     |
|----------------|-----------|-------------|----------|--------------------------|-----------------------------------|
| Commercial     | Travelers | July        | 6, 1922  |                          | \$50 weekly                       |
| Prudential     | .....     | Oct.        | 23, 1919 | \$ 5,000 or              | \$48.70 monthly<br>for 120 months |
| Prudential     | .....     | June        | 23, 1921 | 5,000                    | \$50 monthly                      |
| Prudential     | .....     | Nov.        | 4, 1911  | 1,000                    |                                   |
| Prudential     | .....     | Nov.        | 4, 1911  | 2,000                    |                                   |
| Travelers      | .....     | Nov.        | 4, 1916  | 2,000                    |                                   |
| Travelers      | .....     | Aug.        | 21, 1922 | 5,000                    | \$50 monthly                      |
| Metropolitan   | .....     | Feb.        | 2, 1926  | 5,000                    |                                   |
| Metropolitan   | .....     | Nov.        | 20, 1917 | 5,000                    |                                   |
| Manhattan      | .....     | June        | 2, 1921  | 10,000                   |                                   |
| Aetna          | .....     | Oct.        | 27, 1926 | 30,000                   | \$250 weekly                      |
| Metropolitan   | .....     | June        | 30, 1919 | 6,000                    |                                   |
| Metropolitan   | .....     | Mar.        | 29, 1913 | 1,000                    |                                   |
| Metropolitan   | .....     | Sept.       | 15, 1910 | 5,000                    |                                   |

10 The policies mentioned in the application, ex-  
 clusive of those carried with the complainant,  
 total \$40,000 with weekly indemnity for total  
 20 disability of \$75, while the policy exhibits show  
 that the insured was then apparently carrying in-  
 surance on his life in companies other than the  
 complainant, for a total of \$60,000 with weekly  
 indemnity of approximately \$330 and that in his  
 answer he did not disclose that the Commercial  
 Travelers and the Travelers Insurance companies  
 were among his insurers. The difference of \$20,-  
 000 in the total amount of insurance carried on  
 his life is accounted for as follows: He ap-  
 30 parently had \$15,000 more insurance in the Aetna  
 than he stated; \$7,000 in the Travelers was not  
 disclosed and he had \$2,000 less in the Prudential  
 than he then stated. The answer does not disclose  
 the fact that policies in the Commercial Travelers,  
 Prudential and Travelers contained indemnity  
 provisions and the answer gives the weekly benefit  
 under the Aetna policy as \$75 instead of \$250.

The application was made out, filled in and  
 signed at the insured's office. The testimony on  
 behalf of the insured is that prior to that time, all  
 40 policies held by the insured were handed to the



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agent Fink for examination and that those policies did not include the Aetna policy which, although dated October 27, 1926, was actually not then in existence, but did include another Aetna policy for \$15,000 subsequently cancelled. Fink says the insured handed him a bundle of policies and that he (Fink) wrote in the answer to question 11 after examining the policies and that the two Travelers policies could not have been among those handed to him, otherwise he would have listed them in the answer. Taking up the policies which are in dispute, the evidence shows the following situation at the time the application was signed:

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Commercial Travelers policy. This was one of those handed to Fink by the insured who called Fink's attention to the fact that it was soon to expire, whereupon Fink said it was not necessary to list it and Fink omitted it from the answer. This policy lapsed January 6, 1927. There was no attempt at deception about this policy and Fink's knowledge of its existence must be imputed to the complainant.

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Two Travelers policies. The complainant's policy dated February 2, 1926 for \$5,000 has attached to it a photostat copy of the application therefor, from which it appears that Fink was witness to the insured's signature thereon and that application states that the insured carried a Travelers policy or policies for \$7,000 and that some policies there listed carried disability insurance. When Fink filled out the application for the policy here in question, the Travelers policies may not have been produced to him (although the insured says they were) and he may have forgotten that they were listed in the application on which complainant issued its policy nine months

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previously, but he had undertaken the duty of filling in correct answers to the questions contained in the application for the policy here in question, from information furnished him by the insured and part of that information was to be found in the policies which the insured had handed him for examination. Complainant's policy of February 2, 1926 was one of those policies and had he made a careful examination of it, he would have noted the Travelers policies listed in the application therewith and would have been put on inquiry with respect thereto. I take it that the purpose of question 11 is not only to inform the complainant as to the amount of insurance carried by the applicant but also to give it the names of other insurers from whom it may make inquiries concerning the applicant, as an aid in enabling it to reach a determination whether or not to accept him as a risk. The answer to question 11 gave direct notice to the complainant that it had issued other policies on his life and with this knowledge it was its duty to turn to its records of the insured's other policies to assure itself whether the applicant's representations were accurate. If it examined its records and thus learned of the Travelers policies and yet issued the policy in question it cannot say that the insured's failure to list those policies induced it to assume the risk. If it did not examine its records, it neglected to seek information from a source which its question was designated to point out and to which the insured's answer directed it. The testimony of the complainant's chief underwriter was that when an application for insurance shows that the applicant carries other insurance in his company, the record of such other policies is examined and considered in accepting or



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rejecting the pending application. As to whether the failure to list the Travelers policies materially affected the complainant's decision to issue its policy, this complainant's same representative testified that had those policies been listed, a question might have arisen as to whether they carried disability insurance and if they had, then the complainant would have had to decide whether or not such feature was material or not. So that there is no certainty that had the insured's answer given the complainant direct notice of the existence of the two Travelers policies, it would have refused the insured's application for further insurance. Assuming that before issuing the policy here in question, the complainant's underwriting department had followed its usual course of examining its record of the insured's other policies and was thus informed that the insured probably carried Travelers policies for \$7,000, but deemed such fact immaterial to the risk proposed and wrote the insurance, it would be inequitable to permit the complainant to escape liability now on its policy on the ground that the Travelers policies were not disclosed in the insured's answer.

The Aetna policy. The evidence satisfies me that when the insured signed the application for complainant's policy, the only Aetna policy he held was the one listed in the answer to question 11. An agent for the Aetna Company who had written other insurance on the insured's life had, prior to November 4, 1926, solicited the insured to take out further insurance. He had not obtained the insured's signature on an application, but he sent an unsigned application, dated October 27, 1926, to his company with the request that a policy for \$30,000, with \$250 weekly dis-



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ability benefit, to be substituted for the Aetna policy then in effect, be issued thereon and placed in his hands for delivery to the insured in case he (the agent) was able to persuade the insured to accept such new insurance. The new policy was issued, dated October 27, 1926, and was sent to  
10 the agent with the unsigned application, not earlier than November 8, 1926, and on or about that date the agent called on the insured, induced him to accept the new policy and sign an application therefor. The old policy for \$15,000 was then surrendered and cancelled as of the date of the new policy. Attached to the new Aetna policy as offered in evidence, is a copy of the application therefor, which copy bears no applicant's signature and is therefore evidence that  
20 the original application for the policy was not signed up to the time the policy was delivered to the insured. There was no untruth in the insured's answer as to the Aetna policy.

As to the Prudential policy for \$2,000 which appears in the answer to question 11 as being in effect on the date of the application, but which was not produced at the hearing of this cause, it need only be stated that such a policy was in effect at the time the application was signed and  
30 was subsequently allowed to lapse.

As to the listing of but \$75 weekly benefits when it appears at the date of the application the insured had policies carrying an approximate weekly indemnity of \$330, it has been shown why the Commercial Travelers policy carrying \$50 weekly benefit was omitted and why the Aetna policy in force was the one carrying an indemnity of \$75 weekly. This leaves to be explained a Prudential policy carrying \$48.70 monthly for 120 months;  
40 another policy in the same company carrying \$50



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per month and one of the Travelers policies carrying \$50 per month. Both Prudential policies were among those handed to Fink for examination for the purpose of preparing the answer to question 11. An inspection would have informed him of their disability features and for his failure to note them his principal, the complainant, must suffer and what has been said before as to Fink's actual or constructive knowledge of the existence of the Travelers policies applies here and being bound with knowledge of their existence he was put on inquiry concerning their provisions. Moreover the answer to question 11 acquainted the complainant directly of the existence of the Prudential policies and the application for its own policy dated February 2, 1926, acquainted it with the existence of the Travelers policies and that some of the policies mentioned in that application carried disability features and thus the complainant was put on inquiry concerning the disability provisions of policies to which its attention was directed. Aetna policy carried a weekly benefit of \$75, the Commercial Travelers policy \$50, the two Prudential policies and the Travelers together about \$40 and it does not appear that had the insured's answer specifically informed the complainant that his policies carried a total weekly benefit of \$165 instead of \$75 and that the Commercial Travelers policy was shortly to lapse, it would have declined to write the policy here in controversy.

The next answer which the complainant charges was untrue and made with intent to deceive, was to question 12 on the application. The question and answer are as follows:

“Has any application ever been made by you for life or accident insurance been de-



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clined, postponed or withdrawn, or have you failed to receive notice of action thereon? (Answer) No."

10 It is claimed that this answer was false, because at the date of the application the insured either had or did not have the Aetna policy dated Oc-  
tober 27, 1926. It is argued that if he had it, his answer to question 11 was untrue; if he did not have it, but his application therefor was pending, then he failed to receive notice of action thereon and his answer to question 12 was untrue. The facts concerning the Aetna policy have already been stated. Although the insured holds an Aetna policy dated October 27, 1926, it was really not  
20 issued until it was delivered to the insured on or after November 8, 1926. The insured had been solicited for the new Aetna policy prior to November 4, 1926, and he knew that the soliciting agent was having a policy written for the purpose of tendering it to him, but there is no evidence that the insured was in a receptive mood and intended to accept a policy if one was written and offered to him, nor is there any evidence that the fact that an agent of the Aetna was negotiating with the insured for the purpose of selling him  
30 another policy was concealed from the complainant for the purpose of deceiving it.

The next answer which the complainant contends was untrue and made with intent to deceive was to question 14 on the application. The question and answer are as follows:

"Have you ever received or been refused benefits for any accidents? (Answer) Aetna. \$200. 1917."

40 Fink testified that when he asked this question he was informed by the insured that he had had



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a few minor accidents, but had received no indemnity, and that he (Fink) then wrote as the answer the word "No", and that someone, unknown to Fink, subsequently wrote the words "Aetna. \$200. 1917" over the word "No". The insured's testimony was that in answer to this question he told Fink that he had received \$200 from the Aetna in 1917 for an injury and that he could not then recall the other accidents for which he had received benefits, and that Fink replied that small sums were of no importance. The insured further testified that he had suffered four or five accidents for which he had collected from insurance companies a total of less than \$500, and there was no proof of the actual amount he had so collected.

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It is to be noted that the question does not require the insured to state how many accidents he had and the amount received or refused for each. A "yes" or "no" answer would have been sufficient, and had he said "yes" such an answer would not have informed the complainant whether he had received or had been refused benefits and had it deemed the answer material it would have had to make further inquiry or investigation. The answer to the question as it appears in the application does not state whether he had received or been refused benefits by the Aetna, nor does it state that \$200 was the only accident benefit he had received. It at least informed the complainant that the insured might have had one accident for which \$200 had been paid him, and if that information was material, it put the complainant on further inquiry to ascertain the nature of the accident and whether it was the only one which the insured had suffered for, as was said in *Prahm v. Prudential, etc., supra*, if the insured, by the form of a question framed by it is responsible

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for an ambiguous answer, it cannot complain if there is no theory from which the truth or good faith of the answer can be drawn. The insured had been carrying accident insurance since 1911, so that the question put to him in 1926 was, according to the complainant's contention, in effect:

10 "State all accidents which have occurred to you in the past fifteen years and the amount of benefit you received for each." He had suffered accidents and recalled receiving \$200 from the Aetna in 1917, probably because that was his most serious accident. The other three or four he had suffered were minor, and it would not be surprising if he had been unable to recall the amounts he had received for them at the time the agent questioned him. He testified that he had received

20 less than \$300 more than appeared in his answer, which excess, divided among his other accidents, could not have paid him much benefit from any one accident. Did he tell Fink, the agent, that he had suffered other accidents? He says he did. Fink denied writing in the words "Aetna. \$200. 1917", but the application was taken by Fink and sent to the complainant, so someone other than the insured must have written in these words

30 after the application left Fink's hands. If they were not written by Fink, they must have been inserted by someone in the complainant's underwriting department who obtained the information from some source other than the insured, and if the information was obtained in that fashion, then some agent of the complainant knew that the answer "No" was untrue, yet the complainant issued its policy. However, the words which appear as the insured's answer, when compared with the answer written by Fink, appear to be in Fink's

40 handwriting, and if they are, they tend to sup-



*Opinion.*

port the insured's testimony that Fink said the small accident benefits were unimportant and the inference is that he listed the largest one only. Now, as to the materiality of the answer. When questioned on this point, the complainant's chief underwriter testified that knowledge that the insured had received indemnity for other accidents might or might not have affected his company in accepting the risk and that it would depend upon the period when the accidents occurred, their number and character. I do not consider such evidence as sufficient to show that had the complainant been aware of the other accidents for which the insured collected a total of less than \$300, it would have refused to accept the insurance risk on the facts.

10

The next and last answer that the complainant says was untrue and made with intent to deceive, was to question 17. The question and answer are as follows:

20

“Are you deformed or crippled in any manner or degree, or affected with any form of bodily or mental disease, disorder, infirmity or impairment? (Answer.) No.”

The insured testified that at the date of the application he was not deformed, crippled, or affected with any form of bodily or mental disease, disorder, infirmity, or impairment and the only evidence to the contrary is such as can be inferred from the fact that he had been drawing a pension for disability from the United States Government since 1905 growing out of services in the Spanish American war. In 1905 he was suffering from hernia, for which an operation was performed in 1909. Nowhere in the application was he asked to state whether or not he was in receipt of a pension and the question here

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*Opinion.*

is not as to the fact that he was drawing a pension (of which the complainant had knowledge when it issued its policy, as will be shown hereafter) for he may be drawing his pension illegally, or for a reason other than infirmity or impairment of health, but whether the fact that in  
10 1905 he suffered from hernia, is evidence of bodily infirmity or impairment within the meaning of the question asked and if it is, whether the complainant was deceived by his answer and would not have assumed the risk had it known the facts concerning the hernia. Attached to complainant's policies issued to the insured, dated September 15, 1910, and March 29, 1913, respectively, are photostat copies of his application therefor from  
20 which it appears that the first of those applications informed the complainant that the insured had applied to the United States Government for a pension for "neuralgia in war" and for rupture and that he had had an operation in 1909 for hernia, and the second application gave the complainant the same information, except that it stated his pension was for debility following fever and hernia. These two policies were in Fink's hands when he filled in the answer to question 17 and what has heretofore been stated as to the complainant's duty to seek other sources of information in its possession which the insured's answer to question 11 disclosed existed, applies here  
30 and for its failure to examine that information it cannot complain. When complainant's chief underwriter was asked, in effect, if the insured's answer to question 17 had disclosed that the insured had suffered from hernia, and had been operated on for it many years ago, would that have affected the complainant's decision to assume the policy risk, he replied that it might not  
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*Opinion.*

have been considered material. In 1910 and in 1913 the complainant knew that the insured was in receipt of a government pension and that he suffered from and had been operated on for hernia, but it did not consider those facts a sufficient reason for rejecting the insured's application for insurance on his life made in those years and in view of the chief underwriter's testimony, I cannot believe that it would have considered the same facts material, had they been brought directly to its attention by a different answer to question 17 in 1926.

10

The burden of proof is on the complainant to show that the defendant made misrepresentations in his application intending to deceive the complainant, or that his answers which are alleged to be untrue, concealed from the complainant information of which it, by its agent or its records, was unaware and which materially affected its acceptance of the risk. The complainant was bound by its agent's knowledge and it was bound to know the contents of other applications made by the defendant to which his answers referred it and its agent and with such knowledge the complainant must be held to have waived anything those applications and such knowledge disclose which might affect the acceptance of the risk.

20

I conclude that the complainant has not sustained the burden of proof and that its bill of complaint should be dismissed.

30

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**Final Decree.**

(Filed December 15, 1930.)

IN CHANCERY OF NEW JERSEY.

65-389.

10

Between  
METROPOLITAN LIFE INSURANCE  
COMPANY,

Complainant,

*and*

AARON P. SUSSMAN,  
Defendant.

In Equity.  
Final Decree.

20

30

This cause coming on to be heard in the presence of Perkins & Drewen, solicitors of complainant, and Brenner & Kresch, solicitors of defendant, and Arthur T. Vanderbilt, of counsel with defendant, and the Court having read and considered the pleadings and having taken testimony and heard and considered the arguments of counsel thereon; and it appearing that complainant has not sustained the allegations of its bill of complaint that defendant, in his application for insurance, made certain false statements, knowing them to be false, with intent to deceive complainant, and that said statements materially affected the acceptance of the risk and hazard assumed by complainant; and the Court having determined that complainant's policy was not obtained by any fraud on the part of the defendant, and that defendant did not make any misrepresentations material to the acceptance of the

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*Final Decree.*

risk or hazard upon which complainant relied in issuing its policy;

It is on this 15th day of December, 1930, ORDERED, ADJUDGED AND DECREED that complainant's bill of complaint be, and hereby is, dismissed.

It is further ORDERED, ADJUDGED AND DECREED that the restraints contained in the orders of this Court made on September 12, 1927, and November 14, 1927, against the institution, prosecution or continuance by defendant of any actions at law on complainant's policy be, and the same hereby are, dissolved. 10

It is further ORDERED, ADJUDGED AND DECREED that the complainant pay to the defendant, or his solicitors, the costs of this suit to be taxed, including a counsel fee of Two thousand dollars, which is hereby allowed to said defendant and that in default of such payment execution issue therefor against the complainant, according to the practice of this Court. 20

E. R. WALKER,  
C.

Respectfully advised,  
JAMES F. FIELDER,  
V. C.

30

40



**Testimony.**

## IN CHANCERY OF NEW JERSEY.

|    |                                                                                                                                                |   |              |
|----|------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|
| 10 | Between<br><br>METROPOLITAN LIFE INSURANCE<br>COMPANY, a corporation,<br>Complainant,<br><br><i>and</i><br><br>AARON P. SUSSMAN.<br>Defendant. | } | On Bill, &c. |
|----|------------------------------------------------------------------------------------------------------------------------------------------------|---|--------------|

20      Transcript of shorthand notes of testimony taken on final hearing in above stated cause, June 30 and July 1, 1930, at Chancery Chambers, Jersey City, before his Honor James F. Fielder, Vice-Chancellor.

## Appearances:

Messrs. PERKINS & DREWEN, for Complainant.

Hon. ALFRED BRENNER and DAVID STOFFER, Esqs., for Defendant.

30

Mr. Stoffer: I move to dismiss the bill in this cause upon the ground that the remedy at law is adequate.

The Court: I will reserve decision until the close of the testimony.

40



*Aaron P. Sussman, for Complainant—Direct.*

**Complainant's Case.**

AARON P. SUSSMAN, the defendant, called as a witness on the part of the complainant, testifies as follows:

10

*Direct examination by Mr. Perkins:*

Q. You are the defendant in this case? A. I am.

Q. Have you produced the papers required to be produced by the subpoena served upon you?

A. All that I have been able to obtain.

Q. Please produce those that you have?

Mr. Stoffer: I think that I have most of them.

20

Mr. Perkins: I have asked the witness to produce them.

(Witness produces book and some papers.)

Q. Please produce the policies of insurance mentioned in the subpoena served upon you? A. I believe my attorney has those—Mr. Stoffer or Mr. Brenner.

Mr. Perkins: I ask the attorneys to supply them to the witness so that I can use them.

30

Q. Have you produced the original policy of insurance in the Metropolitan Life Insurance Company, dated November 13, 1926? A. I have.

Mr. Perkins: I offer this policy in evidence.

(Marked Exhibit C-1.)

40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Have you produced original policy of insurance issued to you by the Commercial Travellers Insurance Company of Utica? A. Of what date?

Q. Have you more than one? A. I want to be sure that I have the correct date.

Q. Have you more than one? A. No.

10 Q. Produce what you have. A. Here it is.

Mr. Perkins: I offer that policy in evidence.

(Marked Exhibit C-2.)

Q. Have you produced original policy on your life issued by the Aetna Life Insurance Company, bearing date October 27, 1920?

20 Mr. Stoffer: That is not a life policy.

Mr. Perkins: I did not say anything about a life policy.

The Court: The request is to produce a certain policy. Never mind whether counsel made a mistake or not.

Q. Have you it? A. No, sir; I haven't it here.

Q. Where is it? A. It is in the possession of my attorney.

30 Mr. Perkins: I called on him to produce it.

The Court: He says he hasn't it.

Q. You have a policy in the Aetna Life Insurance Company, have you not? A. I have.

Q. No. PA-129970? A. I do not recall the number, but I believe that is correct.

Q. How many policies have you in the Aetna? A. Just that one.

40 Q. You say it is where? A. In the possession of my attorney.



*Aaron P. Sussman, for Complainant—Direct.*

Q. When did you last see the policy that I have just requested you to produce? A. Several months ago.

Mr. Stoffer: I will produce that policy this afternoon. It is only an inadvertence that it is not here. I thought all our policies were in the safe. I will produce it. 10

Q. Have you produced a policy issued by the Prudential Insurance Company of America, known as 3560862? A. I have; 3056862.

Mr. Perkins: I offer this policy in evidence.

(Marked Exhibit C-3.)

Q. Have you produced a policy in the Prudential Insurance Company of America, No. 3056863? A. Isn't that the one that I just gave you? 20

Q. No; that was 3056862. A. I do not seem to have that policy here.

By the Court:

Q. Have you got such a policy of insurance? A. I believe I have one—3056862. That is a policy that expired; that I surrendered to the Prudential Company in 1929. I believe that was issued March 27— 30

Q. I am not speaking about that policy. A. I haven't that policy. I will make an effort to get a duplicate of it.

Q. Have you produced policy of insurance issued by the Prudential Insurance Company of America, No. 3056864? A. No, sir.

Q. Have you such a policy? A. No, sir, I have not. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Did you have such a policy? A. I do not recall. Would you be good enough to give me those two numbers, and I will check up on them?

Q. Have you produced policy No. 3056865 in the Prudential Insurance Company of America?

A. No, sir.

10 Q. What policies of the Prudential Insurance Company of America have you produced? A. 1,404,109; 3,675,335; 1,405,110.

Mr. Perkins: I offer those policies in evidence.

(Policies are marked Exhibit C-4, Exhibit C-5 and Exhibit C-6).

20 Q. Have you produced a policy in the Travellers Insurance Company? A. I have.

Q. How many are there? A. Two.

Mr. Perkins: I offer in evidence policy No. 389288 on the life of Aaron P. Sussman in the Travellers Insurance Company.

(Marked Exhibit C-7.)

30 Mr. Perkins: I also offer in evidence policy No. 836,439 on the life of Aaron P. Sussman in the Travellers Insurance Company.

(Policy is marked Exhibit C-8.)

Q. What other policies have you produced in answer to this subpoena? A. I have a Metropolitan policy here, this one, 4,477,858, a \$5,000 policy, dated February 2, 1926.

Mr. Perkins: I offer that policy in evidence.

40

(Policy is marked Exhibit C-9.)



*Aaron P. Sussman, for Complainant—Direct.*

Q. What else? A. Here is Metropolitan policy, dated November 20, 1917, No. 1,967,733.

Mr. Perkins: I offer that policy in evidence.

(Policy is marked Exhibit C-10.)

Q. What other policies do you produce? A. Here is one of the Equitable Life, No. 4,201,375, dated November 5, 1926.

10

Mr. Perkins: I offer this policy in evidence.

(Policy is marked Exhibit C-11.)

Q. What other policies have you produced? A. Here is another one—Manhattan Life Insurance Company, No. 199,030. That is all.

20

Mr. Perkins: I offer that policy in evidence.

(Policy is marked Exhibit C-12.)

Mr. Perkins: I offer in evidence policy in Aetna Life, which counsel says he will produce in a few minutes.

The Court: I do not think he said "in a few minutes." He said this afternoon.

30

Q. What other policies did you have on the 4th of November, 1926? A. I have given you all that I possess—all that I have.

Q. I said "had"—h-a-d—November 4, 1926. A. I will have to check that, if you will permit me later, or now.

Mr. Perkins: If the Court desires to let him check, I have no objection.

40



*Aaron P. Sussman, for Complainant—Direct.*

10       The Court: I do not see how he can answer your question unless he checks them. Will this do, if Dr. Sussman will make you out at recess a list of all the policies that he had on November 4, 1926, and hand them to you? You can check them up with the policies that have been offered in evidence.

      Mr. Perkins: I would prefer that when he makes up the list——

By the Court:

      Q. I desire you to make up a list of the policies that you had on November 4, 1926. A. I will have it after recess.

20       By Mr. Perkins:

      Q. Are you able now to state all the policies, in addition to those offered in evidence, that you had on November 4, 1926? A. I am.

      Q. Please do so. A. After I look up the records.

By the Court:

      Q. The question, as I got it, was: Are you able to state now all the policies that you had on November 4, 1926? A. No; not now.

30

By Mr. Perkins:

      Q. Dr. Sussman, are you at the present time in receipt of a pension from the United States Government? A. I am.

      Q. How long have you been receiving that pension from the government? A. Since 1904 or 1905.

      Q. For what disability do you receive such a pension? A. A right inguinal hernia.

40       Q. Have you continuously from 1904 received from the United States Government a pension for that disability? A. No.



*Aaron P. Sussman, for Complainant—Direct.*

Q. Have you made application for an increase of that pension? A. Yes.

Q. Have you continuously received from the United States Government a pension since 1904?

A. Either 1904 or 1905—I do not recall exactly—yes.

Q. So that on the original application which you made to the pension department for a pension due to the disability that you have mentioned, the government has every year continued to pay you that pension, has it not? A. Yes. 10

Q. How often do you receive the pension? A. At this time monthly.

Q. How long has that been the practice? A. For several years.

Q. What do you mean by “several”? A. Two or three. Previously it had been the practice of sending it every three months. 20

Q. From the original application which you made in 1904 or 1905 down to the year 1927, how many applications for increase of pension have you made? A. I don’t recollect. Possibly two. I do not just recollect.

Q. You don’t recollect? A. I said I don’t recollect.

Q. When did you make the first application for increase of pension? A. I don’t recollect.

Q. How many years after 1904? A. I know there was one in 1926 or 1927—1927 rather. 30

Q. I am talking about the first one after the year 1905. A. I don’t recollect.

Q. Have you any means of knowing? A. None except my memory. I have no record.

Q. Didn’t you make three applications for increase of pension from the government previous to November 4, 1926? A. I believe I answered that before. 40



*Aaron P. Sussman, for Complainant—Direct.*

Mr. Stoffer: Dr. Sussman is the complainant's own witness. I do not see the materiality of this.

The Court: Objection overruled.

10 Q. (Question repeated) Didn't you make three applications for increase of that pension from the government previous to November 4, 1926? A. I don't recollect. There may have been. I do not recollect.

20 Q. Do you mean to tell the Court that you did not make application to the United States Government at various times after you received the original pension for this disability that you mentioned, on account of an aggravation of your physical disability? A. I answered you and I said I did not recollect. I did not say that I did not make another at all. I said there were several in my earlier answer, but I do not recall if there were three. That may be so. I do not say it is or is not.

Q. I want you, if you please, to tell the Court, within the best of your memory, how many applications you made to the pension department for increase of pension previous to November 4, 1926, for that disability? A. I have answered that to the best of my—

30 By the Court:

Q. Do not argue. If you cannot give any better answer, say: "I cannot give you any better answer than I have already given you". A. I cannot give you any better reply than I have previously.

By Mr. Perkins:

40 Q. When last before November 4, 1926, did you receive from any company an accident benefit? A.



*Aaron P. Sussman, for Complainant—Direct.*

I would have to look up my records. I do not recall that.

Q. When did you first receive from any company an accident benefit? A. I don't recollect.

Q. Can you tell the Court how many different and several companies from November 4, 1926, paid you an accident benefit? A. There were four or five. 10

Q. Name them. A. I would have to look up the record. I am unable to name them from memory.

Q. How many accidents to your body, previous to November 4, 1926, did you collect accident insurance for? A. I could not tell you that.

Q. Are there so many? A. I mentioned before that there were four or five. There may have been six.

Q. Do you know the gentleman standing by the Court, here? A. I do. 20

Q. Who is he? A. Daniel P. Loeb.

Q. Wasn't he your attorney? A. Yes.

By the Court:

Q. The question is: How many accidents have you had to your body? A. Four or five.

By Mr. Perkins:

Q. Previous to November 4, 1927, did you have an accident to your eye? A. That is right; I did. 30

Q. In fact, you had two accidents, two several times, to your eye, didn't you? A. I believe I had but one.

Q. Now, you state that you had but one? A. To the best of my recollection I believe I had but one.

Q. You had an accident to your nose once, did you not? A. I did. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. You had an accident to your thumb three times, did you not? A. I recall twice.

Q. Well, you had an infection of the thumb once and two accidents? A. Possibly. That is possible. I don't just recollect, but it is possible.

10 Q. Do you mean to say now that you had so many of these accidents to your own body, that you cannot recollect? A. In the course of twenty-five years I do not remember all these different little things.

Q. I repeat the question: Do you mean to say now that you had so many of these accidents to your own body that you cannot recollect? A. I beg your pardon.

Q. I am asking you since 1911. A. Four or five since 1911.

20 Q. Please answer the question. A. I have, to the best of my ability. There were four or five since 1911.

Q. Are you able to inform this Court the number of accident policies that you have drawn down benefits on and the nature of the accidents to your body for which you drew those benefits, previous to November 4, 1926? A. By looking up the record I can give you the best information. From memory I could not tell you.

30 Q. Have you injured any finger on the hand, not your thumb? A. When?

By the Court:

Q. The question is: Did you injure any finger on your hand other than the thumb? Never mind when. A. I beg your pardon; yes.

By Mr. Perkins:

40 Q. When? A. At the time of this accident, January 17, 1927.



*Aaron P. Sussman, for Complainant—Direct.*

Q. I said previous to November 4, 1926. A. Yes; I did.

Q. Which finger? A. I don't recollect. It was in the act of pulling down——

By the Court:

Q. He did not ask you how it happened. He 10  
asked you: Which finger? A. I think it was several fingers on this right hand. I do not just recollect.

By Mr. Perkins:

Q. From what company did you draw accident benefits then? A. I would have to refer to the record. I cannot tell you from memory.

Q. From what company did you draw benefits 20  
at the time you bumped your nose in a revolving door? A. I would have to look up the record; I cannot tell you from memory.

Q. When did you last look up the record for these accidents? A. I discussed them about a month ago.

Mr. Perkins: I object to the answer. It is not responsive to my question. I asked: When did you last look up the record for these accidents. 30

Q. When did you last look up the record? A. About a month ago.

Q. When previous to that time did you last look up the record of these accidents and benefits received by you? A. When I turned the policies over to my attorney. That is several years ago.

Q. Are you able to give us the date on that? A. About June, 1927. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. When, previous to the institution of any suit by you against any of the companies whose policies you have produced here today, or the institution against you by any of these companies, did you last look them up? A. I don't recollect.

10 Q. Did you ever look them up? A. Indeed I did.

Q. Do you keep a memorandum of these accidents? A. I do not. I haven't any.

Q. Have you kept a memorandum of these indemnities that have been paid to you? A. No.

Q. Where did you go to look them up? A. By looking at the records that my attorney has.

20 Q. Before the institution of any suit by you or against you, resulting from the accident of January 17, 1927, when did you last look up the record of the payment to you by accident and life companies and of the accidents to your body? A. I do not believe I ever looked them up.

Q. Your memory is just about as good today on that as at any other time, is it not? A. I believe so.

30 Q. So that you are now telling the Court that previous to the institution of suits by or against you on accounts of accidents or insurance, arising out of the occurrence of January 17, 1927, you never looked up these accidents to your body or the payment of indemnity to you? A. That is correct.

Q. How long have you been carrying accident insurance? A. Possibly since 1911, as you have stated.

Q. Do you remember how long you have been carrying accident insurance? A. You have refreshed my memory to the extent—

40 By the Court:

Q. Can you tell? A. I beg your pardon—1911, I presume.



*Aaron P. Sussman, for Complainant—Direct.*

By Mr. Perkins:

Q. How many policies of insurance did you have on your life or your body on the 15th of January, 1927? Can you tell without referring to any memorandum? A. No; I cannot tell without referring to memorandum.

Q. Please tell us, if you can, with the memorandum. A. I have a record of fifteen life insurance policies.

10

Q. How many indemnity policies? A. Three.

Q. Now, as a matter of fact, do not practically all of these policies which you have denominated life policies, carry an indemnity? A. No.

Q. Please tell the Court the indemnity policies which you had on January 17, 1927. A. There were five or six; I am not positive.

20

By the Court:

Q. That is, of the life policies, five or six of them carry indemnity? A. Yes, sir.

By Mr. Perkins:

Q. So that would make eight or nine that carried indemnity on January 13, 1927? A. Will you explain "indemnity" to me, please—what you mean exactly by that?

30

Q. I refer to policies which, under any conditions could pay you money for an accident or disability. A. I think only three policies. These policies are not in that—none of them.

By the Court:

Q. Not in what? A. These policies are not included in the five or six this gentleman asked.

Q. I understood you to say, in answer to Congressman Perkins' question, that you had fifteen

40



*Aaron P. Sussman, for Complainant—Direct.*

life and three indemnity policies on January 17, 1927? A. Yes.

Q. I understood you further to say that of the fifteen life policies, five or six of them carried indemnity? A. Yes, sir.

10 Q. Why did you say they carried indemnity, if you do not know what indemnity is? A. I am referring particularly to the last question the gentleman asked me.

Q. You asked him what he meant by "indemnity"? A. Because they are not accident policies; they are life policies.

20 Q. He did not ask you anything about accident policies. I will ask you once more: In reply to a question Congressman Perkins asked you, you said you had fifteen life insurance policies on January 17, 1927. I asked you if any of those life policies carried indemnity and you said five or six. Do you want that answer to stand or do you want to change it? A. That answer stands.

By Mr. Perkins:

Q. Please tell this Court the total amount of indemnity that you could collect under these policies on the 17th of January, 1927? A. I don't know.

30 Q. Have you never reckoned it? A. No.

Q. Have you any idea? A. Yes.

Q. Tell the Court as near as you can. A. That would be \$425 from these three policies.

Q. A week? A. Yes.

Q. Well, for the balance of the policies? A. About \$60 a week.

Q. Now, add those two together? A. That would be \$485.

40 Q. Now, in case the accident happened in a public conveyance, there would be double indemnity, would there not? A. Yes, sir.



*Aaron P. Sussman, for Complainant—Direct.*

Q. That would be \$800 and how much? A. There are different policies.

Q. Are you able to answer that question? A. Yes.

Q. Please do so? A. \$810.

Q. Does that include the \$50 policy that lapsed on the 6th of January, 1927? A. No. 10

Q. That was in existence on the 4th of November, 1926, was it not? A. Yes.

Q. Did that have double indemnity, too? A. I don't recollect.

Q. You made a claim on that policy against the company, didn't you? A. I did.

Q. Through an attorney? A. I don't know.

Q. You say your attorney was Mr. Loeb? A. That is right.

Q. Didn't Mr. Loeb make a claim on the Commercial Travellers for you? A. I don't know whether he did or not. 20

Q. You know whether you authorized him or not, don't you? A. I gave him all the policies I possessed.

By the Court:

Q. Was the Commercial Travellers the policy that lapsed? A. Yes, sir.

Q. That was one of the policies you turned over to Mr. Loeb? A. Yes, sir. 30

By Mr. Perkins:

Q. Don't you know whether or not the Commercial Travellers ever acted on your claim? A. No; I do not.

Q. Only \$50 a week—you didn't pay any attention to it? A. I do not know really.

Q. So that, according to your contention, if you had a permanent disability arising on the 17th of 40



*Aaron P. Sussman, for Complainant—Direct.*

January, 1927, you would be able to collect from these companies \$810 a week; is that right? A. Yes, that is right.

Q. Besides the pension from the government; is that right? A. Yes.

10 Q. You made an application for increase of pension by reason of the accident which you claim happened on that last mentioned date? A. Yes.

Q. Do you know the number of this Commercial Travellers policy on which you had \$50 a week indemnity? A. No.

Q. Do you know when it was originally written? A. No; I do not.

The Court: Can you prove it without—

20 Mr. Perkins: It is important to prove it in this way, if I am right in my notion.

Q. Well, it had been in existence three or four years, had it not? A. Yes.

Q. And it lapsed on the 6th of January, 1927, didn't it? A. I believe so.

Q. Can you tell the Court the total number of policies that you had on the 17th of January, 1927, including both life and accident?

30 The Court: I thought he had practically answered that. He said fifteen and three.

Mr. Perkins: I want to give him a chance to—

Mr. Stoffer: I object to this method of direct examination.

The Court: I sustain the objection.

40 Q. Will you prepare a memorandum for this afternoon showing the names of all of these policies and the companies and amounts? A. I will try to give you everything that I have.



*Aaron P. Sussman, for Complainant—Direct.*

Q. When you said you had fifteen and three on January 17, 1927, you did not include this \$50 a week Travellers policy? A. No.

Q. Now, tell the Court how many policies you had on the first of October, 1926, if you can? A. The same amount.

Q. Please tell the Court the last income tax return that you made to the United States Government, previous to the 4th day of November, 1926? 10

Mr. Stoffer: I object to that as entirely immaterial to the issues involved in this case. The Congressman has no right to pry into the filing of his income tax return.

The Court: Do you mean to say that some law prevents him from asking that question?

Mr. Stoffer: No. 20

The Court: Objection overruled.

A. 1925.

Q. Mr. Sussman, do you now here in this court say that you filed an income tax return in 1925?

Mr. Stoffer: I object. That is not proper direct examination.

The Court: Objection overruled.

A. I do.

Q. An income tax return in 1925 that was received by the United States Government? A. I do. 30

Q. Were you assessed a tax in 1925? A. I was.

Q. How much? A. I don't recollect.

Q. Did you file an income tax return for the year 1926, previous to November 4, 1926?

The Court: I would not think he did. He did not file until after December 31, 1926.

A. No.



*Aaron P. Sussman, for Complainant—Direct.*

Q. When did you file the income tax return for 1925? A. Some time in 1926.

Q. With whom? A. My accountant took care of that.

Q. With whom did you file it? A. The United States Government.

10

By the Court:

Q. With the Internal Revenue Collector at Newark? A. I think it was the Internal Revenue Collector in Newark.

By Mr. Perkins:

Q. Did you mail it to him? A. No.

20 Q. So that you do not know if you filed one or not, do you? You did not file one? A. No.

Q. You had somebody else file one for you? A. Yes.

By the Court:

Q. Who was the attorney that filed it for you? A. Mr. Bloom.

Q. Where is he? A. In New York—an accountant.

30 Q. Do not let me ask you so many questions. Where is he? A. He is with the Three G Clothing Company on Fourteenth Street.

By Mr. Perkins:

Q. Did you file an income tax return to the United States Government for 1924? A. In the same manner.

Q. Please answer the question.

40 The Court: That is an answer to the question. He did it in that same way.



*Aaron P. Sussman, for Complainant—Direct.*

Mr. Perkins: I want to get him accurately on this.

The Court: That means that he did not mail it to the Internal Revenue Collector but did it through Mr. Bloom.

Q. That is your answer? A. Yes.

10

Q. Do you know whether or not Mr. Bloom did mail it? A. I believe so.

Q. Were you assessed a tax for 1924 by the United States Government? A. To the best of my recollection I believe so.

Q. You state positively that you paid taxes for 1925, don't you? A. Yes.

Q. How much tax did you pay the government for 1925? A. I don't recollect.

Q. Have you copies of your income tax returns for 1924, 1925 and 1926? A. 1926 I have.

20

Q. I am asking also about 1924 and 1925? A. I have not.

Q. Did you ever have a copy? A. I might have had.

Q. Now, I want to know whether you positively say that you caused to be filed an income tax return for 1925? Did you or did you not? A. I did.

Q. And you paid a tax to the United States Government for the year 1925? A. I believe so.

30

Q. I want to know whether you did or did not. A. To the best of my recollection.

Q. Don't you keep books of any kind? A. Such as I have, I have them with me.

Q. Don't you know whether you paid for 1925? A. I will have to look up my record.

Mr. Stoffer: I object to this method of direct examination.

The Court: He is examining the defendant as his own witness. I will give him some latitude.

40



*Aaron P. Sussman, for Complainant—Direct.*

By the Court:

Q. Have you got your record for 1925 before you? A. As to the payment of any income tax? No, sir; I have not.

10 Q. Where is it? A. I would have to look up a book that I have at the office.

Q. What kind of a book? A. A check book or some record.

Q. A check book or what? A. A check book or some other record.

Q. What other record? A. A memoranda that I keep in some of the different books, or that was kept.

By Mr. Perkins:

20 Q. You were subpoenaed to present before this Court copies of return of income made by you to the United States Government for the purpose of assessment of income taxes for the years from 1922 to 1930 inclusive? A. I was.

Q. Did you produce them? A. I did not.

Q. Did you make any effort to find out whether you paid an income tax for the year 1924 or the year 1925? A. I made an effort to get a copy of these records.

30 Mr. Perkins: I object to the answer and move to strike it out.

The Court: Strike out the answer.

Q. The question was whether you made any effort to find out whether you paid a tax in 1924 or 1925? A. I did.

40 Q. Will you produce in this Court tomorrow, in this court room, your checks drawn to the United States Government for income tax for 1924 and 1925? A. I cannot produce them.



*Aaron P. Sussman, for Complainant—Direct.*

Q. Why not? A. I have not the records. I looked for it.

By the Court:

Q. He asked you if you would produce the checks. Have you the checks? A. No; I have not.

Q. When did you destroy them? A. A lot of these things were lost in moving. 10

Q. You did not destroy them? A. No.

By Mr. Perkins:

Q. You lost them? A. Yes.

Q. Also the receipts given to you by the Internal Revenue Collector? A. I haven't any receipts.

Q. You never had any receipt? A. I presume I had one when I paid it. 20

Q. Did you or did you not have a receipt from the Internal Revenue Collector for the payment of taxes for 1924? A. I did.

Q. You positively swear to that? A. I do.

Q. And you positively swear you paid for 1925? A. To the best of my recollection.

Q. I want it better than that. A. I am giving you the very best that I can. I don't remember. This was incidental. This was a few years ago. This is 1930. I am giving you the very best of my recollection and the very best I can find of my records. 30

Q. When did you last see this Mr. Bloom? A. Four or five months ago.

Q. When did you last communicate with him? A. I tried to get in touch with him—

By the Court:

Q. When did you last communicate with him? A. About three weeks ago. 40



*Aaron P. Sussman, for Complainant—Direct.*

By Mr. Perkins:

Q. What is his address? A. Fourteenth Street, New York, with the Three G Clothing Company.

Q. I want his address? A. I will give you that tomorrow.

10 Q. What is his first name? A. Lewis.

Q. Where does he live? A. I do not know his home address.

Q. Did you ever know it? A. I knew a phone number, but not the address.

Q. What is his job? A. He is confidential man with the Three G Clothing Company.

By the Court:

20 Q. What is a confidential man with a clothing company? A. He takes care of their finances.

By Mr. Perkins:

Q. Who is the Three G Clothing Company? A. Goldman & Company, I think it is.

Q. Don't you know? A. I have just told you what I do know.

Q. You said you thought. A. I believe it is Goldman & Company. It is a large concern.

30 Q. Do you know any person or any officer connected with the co-called Three G Clothing Company? A. I do not.

Q. Have you ever been in the establishment? A. I have.

Q. When? A. Several years ago.

Q. How many? A. Two years ago.

Q. When did Mr. Bloom make out for you the last income tax return? A. A month ago, I believe.

40 Q. How long ago? A. About a month ago.



*Aaron P. Sussman, for Complainant—Direct.*

By the Court:

Q. Was that the 1929 return? A. Yes.

Q. Did he make out a return for 1928, 1927 and 1926? A. Yes.

By Mr. Perkins:

10

Q. You knew, for the purpose of your suit, that it was very important for you to have access to Mr. Bloom, didn't you? A. I believe it was important for me to see him; yes.

Q. For the accident case which was recently tried a second time? A. Yes.

Q. And you have not seen him in four months? A. About that.

Q. When last up to that time did you see Mr. Bloom? A. I met him on a jitney somewhere in Bayonne. 20

Q. When? A. A few months ago.

Q. Did you tell him you had some cases coming on and you would need his attention? A. At that time I did not.

Q. At any time? A. I have; yes.

Q. He knows that you wanted him to come to court, does he not? A. Now, I don't know whether he knows or not.

Q. He did know it, didn't he? A. I don't know whether he did know it. 30

Q. Didn't you just tell us he did? A. I called him on the phone.

Q. What number? A. Algonquin 4200.

Q. How old is Mr. Bloom? A. I don't know.

Q. How long have you known him? A. About eight years—seven or eight years.

Q. Did you swear to an income tax return for 1924 and 1925? A. Surely.

Q. Before what officer? A. I don't recall. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Before an officer in what state? A. In this state.

Q. In what city? A. In Bayonne.

Q. In what office? A. I don't recollect.

10 Q. Did you have an attorney here attending to your income tax return for you? A. I don't recall that. I do not believe I did.

Q. Did you say to the Court that Mr. Bloom came from New York to Bayonne to make out these income tax returns for you? A. I did not say that.

Q. Where was it made out? A. It was made out in New York.

Q. And sworn to in Bayonne; is that it? A. I believe so.

20 Q. And mailed from Bayonne to Newark, to the Internal Revenue Collector? A. Yes, sir.

Q. By whom? A. I don't recall that; I don't recall that.

Q. Now, you were telling us that the income tax return was made out in New York, brought over to New Jersey and sworn to in Bayonne and mailed to the Internal Revenue Collector; is that right? A. Yes.

30 Q. Are the books, papers and documents, from which you made that income tax return, available now to this Court? A. All that I could secure.

Q. Tell the Court what books and what papers are not now available, from which you made the income tax return for 1925 and 1924? A. Records of losses and investments—various investments.

Q. In what kind of a book were they kept? A. A regular book for that purpose.

Q. And the book is lost? A. Yes.

Q. When did you lose it? A. I don't know.

40 Q. When did you last see it? A. I have not seen it in months.



*Aaron P. Sussman, for Complainant—Direct.*

Q. When did you last see it? A. Maybe several years ago.

Q. You have no idea when you last saw it, have you? A. I didn't have any interest in it—no thought of it.

Q. Please answer the question. A. Not now; no, sir.

10

Q. Did any official representing the United States Government examine your books for the purpose of finding out whether or not you made a correct return for 1924 or 1925? A. No.

Q. And you did not keep the fundamental documents in which the information contained in these returns was kept did you? A. Some of the attorneys may have it.

Q. Please answer my question: And you did not keep the fundamental documents in which the information contained in these returns was kept, did you? A. No.

20

Q. So that if the United States Government came to examine your books you could not produce them, could you?

Mr. Stoffer: Objected to.

The Court: Objection sustained.

By the Court:

30

Q. These books in which you kept your record of losses were books or a book—which? A. A book.

Q. You had used that book for how many years? A. Quite a number of years.

Q. Well, how many years? "Quite a number" does not mean anything. A. I have had it about ten years.

Q. You had it in 1926, didn't you? A. Yes.

40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Did you use the book for your 1926 entries, too? A. Yes.

Q. Did you use it for 1927 entries? A. I don't recollect.

By Mr. Perkins:

10 Q. Where are the copies of your income tax return for 1924 and 1925? A. I have not them.

Q. Where are they? A. I haven't any.

Mr. Stoffer: I object.

The Court: I think the witness has already testified that he lost them or has not got them.

By the Court:

20 Q. Have you lost them? Did you have copies? A. I had copies, but they are lost.

By Mr. Perkins:

Q. Didn't you testify several weeks ago in the trial of a case in the court house that those copies were in the possession of Mr. Bloom at the present time?

Mr. Stoffer: I object to that.

30 The Court: Objection overruled.

A. I might have said that.

Q. Didn't you say it? A. Possibly I did; I don't recollect.

Q. Are they in the possession of Mr. Bloom? A. I don't know.

Q. Then, if you do not know, you did not lose them, did you? A. I thought they were in the possession of Mr. Bloom and we called him up and he said he hadn't them, and I have looked high  
40 and low for them.



*Aaron P. Sussman, for Complainant—Direct.*

The Court: When was this testimony given?

Mr. Perkins: Ten days ago—two weeks ago Thursday.

By the Court:

Q. I thought you had not communicated with Mr. Bloom for several months? A. My nurse 'phoned. We tried to get in touch with him. 10

By Mr. Perkins:

Q. What number did you call him on? A. Algonquin—I believe it is 4200 or 4800—Algonquin 4200.

Q. Is it Algonquin? A. Algonquin.

Q. You did not say at the trial at the court house that it was Lackawanna, did you? A. That is possible. 20

Q. So that it is possible, within ten days, it was not Algonquin but it was Lackawanna? A. I think it is Algonquin.

Q. I am asking you whether you said it was Lackawanna? A. I might have said that. If you have a record to that effect, I will say you are right.

Q. I want direct and positive testimony. I show you a paper which has at the top in type "Notice of Accident," and ask you if that is your signature? A. It is not. 30

Q. Do you know who signed your name there? A. I see there now it is Mr. Loeb.

By the Court:

Q. Was it signed by your direction? A. Yes.



*Aaron P. Sussman, for Complainant—Direct.*

By Mr. Perkins:

Q. You authorized Mr. Loeb to sign all necessary notices of accidents to the various companies in which you had accident insurance? A. That is correct.

10 Q. And in which cases you delivered the policy to him? A. Are you asking me a question?

Q. It sounds like it. A. I beg your pardon. I answered your question a moment ago. You are not completing your questions. I do not know what you refer to.

Q. I will reframe it. You authorized Mr. Loeb to file claims with the companies named in the policies that you delivered to Loeb? A. Yes.

20 Mr. Perkins: I offer this paper in evidence.

(Marked Exhibit C-13.)

30 Q. Dr. Sussman, you have told the Court that you had eighteen policies on your life at the time of your accident, but you have only produced twelve and your counsel has agreed to produce one. Where are the others? A. One is matured with the Prudential; one with the Metropolitan which I surrendered to your company. I will have to check up for the rest. I will try to explain any discrepancies.

Q. I show you a paper called "Statement of Claim," and ask you if that is your signature? A. No, sir.

Q. Who signed it, do you know? A. No; I do not.

Q. Did you authorize anybody to sign that paper? A. I do not recollect; I presume so.

40 Q. That is a Statement of Claim to the Metropolitan Life Insurance Company for the accident



*Aaron P. Sussman, for Complainant—Direct.*

suffered on the 17th of January, 1927; is it not?

A. Yes.

Q. You say you did not sign it? A. I did not sign that.

Q. Do you remember authorizing anybody to sign it? A. I do not recollect.

Q. Did you authorize anybody to make that "Statement of Claim," to the Metropolitan Life Insurance Company, arising out of that accident? 10

A. I authorized Mr. Loeb.

Q. Do you know whether he signed it or not? A. I don't know.

Q. Did you give any person the information contained in this statement, in writing? A. In writing, I did not.

Q. Did you give anybody the written information that is on this statement? A. No. 20

Q. You did not? A. No.

Q. Did you authorize any other person than Mr. Loeb to file a claim on this policy or any other policy? A. I don't think so.

Q. Can't you tell the Court whether you did or not? A. To the best of my recollection, I do not believe I did.

Q. You do recall, don't you, that you received accident insurance for a broken nose at one time? A. I did. 30

Q. That was previous to November 1, 1926, was it not? A. Yes, sir.

Q. And at that time you had your nose broken by a swinging door? A. That is correct.

Q. Now, you did receive accident indemnity for acid falling on your face and burning your face previous to November 1, 1926, didn't you? A. Yes.

Q. And you did receive accident insurance arising from an injured thumb previous to November 1, 1926, didn't you? A. Yes. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. You also received accident insurance for injury arising to another finger previous to November 1, 1926, didn't you? A. That burn on the face also affected a finger, I believe—a hand was burned—I do not know whether it was another one; it might be.

10 Q. You did receive indemnity for an infected thumb previous to November, 1926, didn't you? A. You have mentioned that once before, I believe. I believe you have mentioned that before.

Q. Please answer the question. A. I do not recollect.

Q. You do not recollect any such injury? A. I do not recollect any other. I recollect the one that you mentioned in reference to the injury to the thumb.

20 Q. You filed a claim with the Commercial Casualty Insurance Company once, didn't you, for an injury resulting to your thumb when you were forcing on a crown in the jaws of a patient, didn't you? A. That is possible. If you have a record of it, it must be so.

Mr. Perkins: I ask that the last part of the answer be stricken out.

30 By the Court:

Q. What is your recollection about it? Did you have an accident to your thumb when you were forcing on a crown? A. To the best of my recollection, it is possible.

Q. It is always possible, being that you are a dentist. Are you a dentist? A. Yes.

Q. I imagine it is possible for all dentists to have that accident. The question is did you have such an accident? A. I might have had it; I don't recollect it.

40



*Aaron P. Sussman, for Complainant—Direct.*

By Mr. Perkins:

Q. Do you remember getting indemnity from an insurance company for having such an accident? A. I don't remember. I would have to refer to the records.

Q. On the 4th of November, 1926, did you know or did you not know that you had once received indemnity for an injury to your thumb? A. No. 10

Q. You don't know anything about it? A. I don't remember any such thing.

Q. Where is your place of business? A. 569 Broadway, Bayonne.

Q. How long have you been there? A. Since February of this year.

Q. Where were you previous to that? A. 497 Broadway. 20

Q. How long had you been there? A. About twenty years.

Q. So that the loss of your documents due to moving happened in February of this year, didn't it? A. Not entirely.

Q. That is the only move you made? A. There was a fire at the office.

Q. One fire and one move; is that right? A. That is right.

Q. When did the fire take place? A. I think it was in March, 1924. 30

Q. I am talking about the records for the income tax returns of 1924 and 1925, which you said you lost? A. You just asked me when the fire took place and, I beg your pardon, I have answered the question.

Q. If the fire took place in 1924, the records for your income tax return could not have been burned in that fire? A. Certainly not.

Q. So that when you told the Court that the record book must have been lost, you said it was due 40



*Aaron P. Sussman, for Complainant—Direct.*

to moving? A. Possibly it is lost. I have looked for it.

Q. And that moving from one office to another took place in February, 1930, didn't it? A. Yes; that is correct.

10 Q. During a time when all these suits were pending by you and against you? A. Will you please repeat the question? What is it you want?

Q. I want you to say yes or no or I don't know. I said: "During a time when all these suits were pending by you and against you?" A. I don't get it.

By the Court:

Q. You do not get the question? A. No, sir.

20 Q. I will give it to you. In February, 1930, were these suits pending by and against you? A. Yes.

Q. That is what he asked you? A. I did not get it.

By Mr. Perkins:

Q. And at that time you knew the extreme importance of preserving your records of income, didn't you? A. Yes.

30 Q. And you lost them? A. When I looked for them I didn't have them; they were not there; I was away from my office for more than two years.

Q. And all that time you knew of the extreme importance of preserving your records of income, didn't you? A. Yes.

Q. And you knew the extreme importance of preserving the records of income in case the Government should desire to check up on your returns, didn't you?

Mr. Stoffer: Objected to.

40

The Court: Objection sustained.



*Aaron P. Sussman, for Complainant—Direct.*

Q. Did you lose your record book in the moving? A. I don't know.

Q. When did you last see the record book? A. In 1926.

Q. So you have not seen these record books since the writing of the insurance, have you? A. No.

Q. (Showing witness) Is that your signature? A. Yes; that is my signature.

10

Mr. Perkins: I offer this paper in evidence.

Mr. Stoffer: No objection.

(Marked Exhibit C-14.)

Q. You did, before November 4, 1926, collect indemnity for a burned face, didn't you? A. Yes.

20

Q. And at another time, at least two years removed from the time mentioned in the previous question, for a burned eye, didn't you? A. No.

Q. You say you did not? A. That was the same time—one and the same accident.

Q. Then you did not have two accidents when you were burned? A. No.

Q. Once you were insured in the Royal Indemnity, were you? A. Yes.

Q. You collected accident insurance from the Royal Indemnity Company in the year 1923 for a broken nose, didn't you? A. I do not recall the year.

30

Q. Well, you collected for a broken nose?

The Court: He has already testified that he did.

Q. Didn't you collect indemnity from the Commercial Casualty for a sprained thumb once? A. Possibly. I do not recollect.

40



*Aaron P. Sussman, for Complainant—Direct.*

Q. You have no recollection as to whether you collected indemnity from that company for a sprained thumb? A. I do not recollect.

Q. Didn't you collect, at a different time, ten months later, from the Commercial Casualty for an infected right thumb? A. I don't recollect.

10

By the Court:

Q. Do you recollect whether you collected indemnity for two injuries to the thumb? A. No; I do not recollect.

Q. You have no recollection? A. I might have. It is possible.

By Mr. Perkins:

20

Q. You collected from the Standard for an infection of the throat, didn't you? A. I don't recollect.

Q. You were insured in the Standard Insurance Company, were you not? A. I don't recollect.

Q. Didn't you collect from the Maryland Casualty Company for a burn to the face? A. I think I did.

By the Court:

30

Q. That is two burns? A. Only one.

The Court: That is the same burn you talked about before?

Mr. Perkins: Acid burn twice, although he said once.

By Mr. Perkins:

40

Q. Didn't you again collect from the Maryland Casualty for an injury to a finger on the right hand? A. I don't recollect. It is possible that I might have.



*Aaron P. Sussman, for Complainant—Direct.*

Q. Didn't you at any time collect from the Standard Accident Company for a cut hand? A. I do not recollect.

Q. Didn't you, at a slightly later time, collect from the Standard Accident Insurance Company for trouble with your throat? A. You have mentioned that just a moment ago.

10

Q. I am mentioning it again. A. I don't recollect.

Q. Didn't you a second time collect from the Standard for burns to the face and eye? A. There is only one that I recollect. That included the eye.

Q. In 1911 didn't you collect from the Maryland Casualty for a burn to the face? A. I don't recollect.

Q. Did you, in 1916, recover from the Standard Accident for burns to the face and eye? A. I believe that is correct.

20

Q. How much money have you collected *in toto* previous to the 4th of November, 1926, in accident insurance? A. I am quite sure it is less than \$500.

Q. You have gotten down to a sum that you are sure of? A. Quite so.

Q. These things that you say you have no recollection about, you are putting them in that figure? A. Yes.

30

Q. So that in your answer now you are inserting figures that you have no recollection of at all? A. Will you repeat this question? Any and all accidents, up to the time of January, 1927, that \$500 covers.

Q. After that time?

Mr. Stoffer: I object to any question as to indemnity drawn after that date.

The Court: Objection overruled.

40

A. About \$15,000, I believe.



*Aaron P. Sussman, for Complainant—Direct.*

By the Court:

Q. How much? A. \$15,000.

By Mr. Perkins:

10 Q. That is from the accident indemnity companies, is it not? A. Something like that.

Q. I am referring to collections due to disability arising out of an accident? A. Yes; accidents.

Q. \$15,000? A. Yes; about \$15,000, I believe.

Q. That is, from companies that insured you in one way or another—insurance companies? A. Yes.

Q. You have not included the money that you have collected from the government in increased pensions, have you? A. No.

20 Q. Are you able to tell the Court now the names of the companies in which you had insurance in the nature of accident indemnity insurance on the 4th of November, 1926, and previous thereto, on which you collected insurance?

Mr. Stoffer: That has been asked four times, I believe, and Dr. Sussman said he would prepare the list during recess.

30 The Court: There is a novelty in this question: "On which you collected insurance."

A. No; I am unable to do that.

Q. But we do have it clear that you had eighteen policies on the 17th day of January, 1927? A. That is correct.

Q. And you had the same number and one additional on the 4th of November, 1926? A. I don't know; I will give you the list that I have gladly.

40 Q. I did not ask for that. I asked for your answer. A. I don't know.



*Aaron P. Sussman, for Complainant—Cross.*

Q. You already answered it once, didn't you?

The Court: Why repeat it, then?

Mr. Perkins: I want to see if he will answer in the same way again.

The Court: No, no, he is your witness.

Mr. Perkins: Not my client, though.

10

*Cross-examination by Mr. Stoffer:*

Q. When did you suffer the inguinal hernia concerning which you testified?

Mr. Perkins: I object.

The Court: Objection overruled.

A. July, 1898, on a transport in the United States service.

Q. In connection with the Spanish-American War? A. Yes. 20

Q. Did you have an operation for the attempted cure of the hernia?

Mr. Perkins: I object; it is not proper cross-examination.

The Court: It is proper cross-examination. I will allow it.

A. I did.

Q. What year? A. 1909.

Q. Who was the agent who solicited the Metropolitan policy which is now in suit? 30

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Doctor, I show you Exhibit C-1, which is the policy in suit and ask you whether that is a photostat copy of the application?

Mr. Perkins: I object.

The Court: Objection sustained.

40



*Aaron P. Sussman, for Complainant—Cross.*

Q. Did you have any conversation with any representative of the complainant company concerning the accident benefits which you have been asked about?

Mr. Perkins: I object.

10

Mr. Stoffer: The Congressman spent a great portion of his direct examination going into the minutest details of the accident benefit. I think I have a right to ask whether any representative of the complainant company had any discussion with him on that subject.

The Court: The only question I have is whether it is proper cross-examination.

20

Mr. Perkins: Not only is this not proper cross-examination, but he is now attempting to bring in oral evidence of a conversation apparently with some one this man thinks is connected with the complainant company, in the face of the contract that nothing should be considered except the written application.

The Court: I will sustain the objection.

30

Q. At the time of the issuance of the policy in suit what was your weekly income?

Mr. Perkins: I object unless he produces the best evidence. This man's memory is far removed from the best evidence.

The Court: Objection overruled.

A. My weekly receipts for the fifty-two weeks of the year was over \$750 per week.

40

Q. That was true November 4, 1926, when you signed the application for the policy in suit? A. Yes.



*Aaron P. Sussman, for Complainant—Cross.*

Q. On your income tax return which you have been asked about, did you have losses which were deducted from your professional income and income from other sources?

Mr. Perkins: I object because he is calling for the contents of a document not in evidence. 10

The Court: Objection overruled.

A. I did.

Q. Can you give us an approximate idea of the amount of known losses during the years 1924, 1925 and 1926?

Mr. Perkins: I object to an approximation. 20

The Court: Objection sustained. 20

Q. What was the amount of your losses during 1924, 1925 and 1926 from all sources which were deducted from your income tax return? A. I cannot give you the exact figure; I can give you an approximate figure from different sources.

Q. What are the sources? A. The Stearns-Richards Company.

Q. What is that? A. A dress concern—a ladies' dress shop; they had four stores. 30

Q. Did you have an investment in that company?

Mr. Perkins: Objected to.

The Court: Objection overruled.

A. I did.

Q. How much? A. Over \$30,000.

Mr. Perkins: I object to the approximation. 40

The Court: Objection overruled.



*Aaron P. Sussman, for Complainant—Cross.*

Q. What was the amount of your loss? A. It totalled over \$45,000.

Mr. Perkins: I object to the approximation.

The Court: I suppose the motion is to strike out the answer.

10

Mr. Perkins: I move to strike it out.

The Court: Motion denied.

Q. What other sources do you refer to in connection with your losses? A. \$6,000. That is an amount loaned to someone at my request—a complete loss—I had to make good. I guaranteed it.

Q. What was the year of that loss? A. About 1924 or 1925.

20

Q. What was the year of your previous loss that you referred to in this dress company? A. It stretched over a period of years from that time—

By the Court:

Q. A period of years from what time? A. From 1924.

Q. When did you deduct it—in what return? A. From the different returns since that time.

30

Q. Each year? A. Yes.

Q. When did the loss occur? A. They were in business—

Q. When did the loss occur? A. They failed.

Q. When did they fail? A. I think it was 1925.

Q. Did you deduct it in the 1925 taxes? A. I did.

Q. Then, you did not deduct it in 1926, too, did you? A. No; I could not, but if there was a larger amount of loss it would carry through.

40

Q. If there was, of course. A. That is what I mean. There was. That is what I mean to say.



*Aaron P. Sussman, for Complainant—Cross.*

Q. You mean to say that you deducted it in 1925, but the amount of the loss was greater and you deducted it in 1926? A. I had to pay it gradually. I had notes in the bank which I could not count as loss because I had not paid them at that time.

10

By Mr. Stoffer:

Q. Subsequently they matured? A. Yes.

Q. You paid them? A. Most of them; yes.

Q. You deducted those that you had paid from your income tax return? A. I did.

Q. What other losses did you suffer? A. Stock market losses.

Q. How much and when? A. About 1922.

Q. How much? A. Between \$12,000 and \$15,000.

20

Q. Any subsequent to 1922? A. I have suffered losses at different times. I do not just recall each item.

By the Court:

Q. You are now talking about stock market losses? A. Yes.

Q. Each year since 1922? A. No. That is the only one that I had just recently.

30

By Mr. Stoffer:

Q. What other losses did you suffer which were deducted from your income tax return? A. Property losses.

Q. What do you mean by "property losses"? A. Taking a loss on the purchase of property that I had to sell.

Q. How much of that character of loss and when? A. There has been quite some loss. I do

40



*Aaron P. Sussman, for Complainant—Cross.*

not just recall all the different items. There was \$1,800 that I had loaned to a friend of mine for which I secured his note and I have not been able to collect. I have quite a few notes in the safe that are for moneys loaned that are of no value, that I have counted in as losses.

10 Q. Now, was there any other loss that you can remember at this time? A. No; I just don't recollect.

Q. I show you Exhibit C-3, C-4, C-5 and C-6, policies in the Prudential Insurance Company, and ask you what you regarded those policies as covering, on the 6th day of January, 1926?

Mr. Perkins: I object.

20 Mr. Stoffer: Intent is one of the subjects considered here.

The Court: Objection sustained.

Q. Referring to Prudential policies, did you, on November 4, 1926, know that they contained any provision for indemnity?

Mr. Perkins: I object.

The Court: Objection sustained.

30 Q. Did any of the representatives of the complainant company see these policies?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Will you tell us the amount of indemnity that you have received under the four Prudential policies? A. I received not quite \$50 per month.

Q. How much on each of those policies? A. On one policy that has an indemnity clause.

40 Q. There is only one of these policies that has an indemnity clause?



*Aaron P. Sussman, for Complainant—Cross.*

Mr. Perkins: I object. The policies show for themselves.

The Court: Objection sustained.

By the Court:

Q. You say you have received indemnity under one Prudential policy only; is that right? A. Yes. 10

Q. What is the number of it? A. No. 3,675,335.

By Mr. Stoffer:

Q. Is that the only one of the Prudential policies under which you received indemnity?

The Court: He said that was the only one. 20

Q. Now, the \$15,000 indemnity referred to as having been received by you after January 17, 1927, will you tell us in what company and under what policy you received that? A. From the Aetna Casualty Company.

Q. As a result of the accident which occurred January 17, 1927? A. Yes.

Q. As a result of which you lost your finger? A. Yes. 30

Mr. Perkins: I move to strike that out. I do not think counsel has a right to put in his question a fact that does not appear in this case at all—a fact which may not be a fact.

The Court: He is cross-examining your witness.

Mr. Perkins: He has put on the record that an accident happened on a certain date. 40



*Aaron P. Sussman, for Complainant—Cross.*

The Court: Your bill of complaint must say something about it. Objection overruled.

Mr. Perkins: This man is to return after recess with some information.

10 By Mr. Perkins:

Q. The losses that you say took place in 1922, 1924 and 1925, were recorded in the book that was lost, too, were they not? A. That is right.

Q. So, the book of losses was lost as well as the investments; is that it? A. Yes.

Q. And you say that they appear in the return which you caused to be filed by the United States Government for income tax purposes? A. Yes.

20 Q. And they show in that return? A. Yes.

Q. You are swearing to this fact; it is not what you think; it is what you know? A. Yes.

Q. Absolutely; is that right? A. Yes; that is correct.

Q. How much appeared in 1922? A. I could not tell you.

Q. No recollection at all? A. That is right. I just do not recall.

Q. Do you recall what your income was in 1922? A. I have records here that will show that.

30

Q. I asked you if you recalled what your income was in 1922? A. No; I do not.

Q. What losses appeared in 1923 in your income tax return? A. I could not tell you.

Q. Do you recall what your income was in 1923? A. No; I do not.

Q. What losses appeared in the 1924 income tax return? A. I do not recollect.

40 Q. Do you recollect what your income was in 1924? A. I know they were all pretty well over \$20,000.



*Lawrence K. Farrell, for Complainant—Direct.*

Mr. Perkins: I move to strike the answer out as not responsive.

The Court: Strike it out.

By the Court:

Q. The question was: What was your income in 1924? A. I cannot tell you. 10

By Mr. Perkins:

Q. Do you recall what losses appeared in the 1925 income tax return? A. No, sir; I do not.

Q. Do you know what your income was for 1925? A. No.

Mr. Perkins: That is all, with the exception that this man returns after recess. 20

LAWRENCE K. FARRELL, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Perkins:*

Q. Where do you live? A. 84 Aspen Street, Floral Park, New York.

Q. What connection have you with the complainant company? A. I am chief underwriter in the accident and health divisions, home office of the Metropolitan Life Insurance Company. 30

Q. How long have you been connected with that company? A. About nine years.

Q. What functions do you perform? A. I am in charge of a staff of underwriters who have the responsibility of considering applications for accident and health insurance and either approving those applications or rejecting them. 40



*Lawrence K. Farrell, for Complainant—Direct.*

Q. What is the limit of insurance, weekly indemnity insurance, that your company grants?

A. Why, the limit that we undertake on any particular risk depends upon the classification of the risk. In any event it is not more than \$150 a week, depending on classifications. Some occupations do not get as much as that.

Q. If it is a first preferred classification? A. I do not quite get that.

Q. If it is the highest classification? A. "Select" is what we consider the most favored.

Mr. Brenner: I object, because the policy speaks for itself.

The Court: Why isn't that so? I sustain the objection.

20

Q. Mr. Farrell, in answer to question No. 11 in the application annexed to and forming part of the policy in this suit, Exhibit C-1, the defendant here, in answer to question eleven: "What life or accident insurance have you in any other company or association?" answered: "Company or association—Aetna Life. Kind of policy—A-1. Principal sum, \$15,000. Weekly benefit—\$75. Prudential—W L \$15,000. Weekly benefit—Nothing. Manhattan, W L—Principal sum—\$10,000. Nothing under weekly benefit. Metropolitan—20 P L W L, \$12,000, \$10,000." Did the question as to other insurance, indemnity insurance and life insurance on the life of the applicant, on the date of the application affect the risk with your company? A. A very important factor in our position, yes.

30

Q. Important in regard to what? A. For the reason that it is contrary to our practice to engage any risk where a combined weekly benefit, un-

40



*Lawrence K. Farrell, for Complainant—Direct.*

der all policies of this type, exceeds \$150. There is a published rule to that effect.

Q. Had insurance on the life of Aaron P. Sussman in the nature of accident insurance and indemnity which amounted to over \$400 a week been disclosed to your company would you have written this policy?

10

Mr. Stoffer: I object to that. It has not been shown that the accident insurance in force November 4, 1926, when this policy was written, amounted to \$400. The only policy then in force which they show was the Aetna policy and the Commercial Travellers, I think it is, which expired January 6th. Nothing else has been shown as yet. This is a false assumption of fact to the witness.

20

Mr. Perkins: Mr. Sussman testified that his accident indemnity amounted to \$410 a week.

Mr. Stoffer: January 17, 1927.

Mr. Perkins: He also said that the same policies were in existence then as on November 4.

The Court: Objection overruled.

A. We would not.

30

Q. Would the fact that the complainant had suffered from a hernia and had received disability pension from the United States Government, have increased or decreased the risk?

Mr. Stoffer: I object to that because there is nothing showing that the doctor was then suffering from hernia, and there is nothing in their application that asks for any information about hernia.

40

The Court: Objection overruled.



*Lawrence K. Farrell, for Complainant—Direct.*

A. If we had knowledge of the fact that the man was being compensated by the government for what they regarded as disability, we would have regarded him an unfit subject physically and would have rejected him on that ground.

10 Q. Mr. Sussman, on cross-examination, testified that he had filed, previous to November 4, 1926, claims against the companies in which he was indemnified against accident and had received accident indemnity in five or six cases. Would that have affected the risk in this case? A. It might and it might not. It would depend on other facts: The period of time involved. Of course the number of claims presented and the character of those claims.

20 Q. Does the disclosure or failure to disclose information of that kind affect the—

Mr. Stoffer: I object to the form of the question. The witness is a witness for the complainant.

The Court: Do you mean by that that if the company had found out that there was suppression of the fact, would the suppression of the fact influence the company in choosing or refusing to accept the risk from a person who concealed the facts?

30

Mr. Perkins: That is the fact.

The Court: Objection overruled.

A. If we found that material information with respect to previous claims had been deliberately concealed we would regard the risk as a poor one morally and would reject it on that account.

40 Q. If the applicant had received approximately \$500 for a number of different accidents, in a number of different companies and suppressed it,



*Lawrence K. Farrell, for Complainant—Direct.*

would that information or knowledge of suppression affect the granting of the policy?

Mr. Stoffer: I object to the expression "suppression".

The Court: Objection overruled.

A. I should say it would be material; yes. 10

Q. And in that case would the company have issued the policy? A. It would have declined the application.

Q. Does the question of whether or not the income of the applicant exceeds the total weekly indemnity under the policy, affect the issuance of the policy? A. It does. We operate under an arbitrary rule to the effect that in all cases, regardless of income or any other factor, we will not engage on any risk where the combined weekly benefit provided by all policies exceeds \$150. 20

Q. So that if your company had known that he had \$150 indemnity insurance at the time of the application, what would have been the result? A. It would have been rejected.

By the Court:

Q. Do I understand you to say, Mr. Farrell, that the amount of income of the insured has not anything to do with the amount of the indemnity? 30  
A. When you say "income"—

Q. I mean income from earnings. A. As distinguished from income from investments. A man ordinarily is insurable for three-quarters of his earnings derived from his employment.

By Mr. Perkins:

Q. Does that take into consideration alleged losses which he might have had? A. No; it does not. 40



*Lawrence K. Farrell, for Complainant—Direct.*

Q. If your company had information that a policy of accident insurance on the life of Aaron P. Sussman had been cancelled, or rescinded, or renewal thereof refused, up to the fourth day of November, 1926, would it have issued this policy?

10

Mr. Stoffer: I object, because the question assumes something that has not been proved.

The Court: I will have to admit the question because we can only get one set of facts at a time. I will admit it subject to striking it out in case it is not proved.

A. I should say not.

20

Q. Will you say "yes" or "no"? A. I will say "no", to that.

Q. Did the answer "No." to Question No. 17 of the application: "Are you maimed, deformed or crippled in any manner or degree, or affected with any form of bodily or mental disease, disorder, infirmity or impairment?" affect your granting of insurance?

Mr. Stoffer: I object.

The Court: Objection overruled.

30

A. I should say not, if you have reference to the question of hernia.

Q. Yes. A. I am not familiar with this particular policy here. Some of our policies by their terms definitely exclude hernia.

Q. I am speaking of an infirmity the nature of which is sufficient to cause the United States Government to pay a disability pension? A. Yes; it would be material.

40



*Lawrence K. Farrell, for Complainant—Cross.*

*Cross-examination by Mr. Stoffer:*

Q. Mr. Farrell, how long have you been associated with the Metropolitan? A. About nine years.

Q. Did you pass upon this particular application? A. I could not say without seeing it. I do not believe I did. 10

Q. I show you Exhibit C-1, which is a photostat copy of the application. A. The place for approval of this application is not filled in on the photostat copy. I would have to see the original.

Mr. Stoffer: May I ask for the original application relating to this policy?

Mr. Perkins: I take it that we do not have to produce anything on that call. 20

The Court: The witness says he cannot tell without seeing the original application.

Mr. Perkins: He cannot see it from me.

The Court: I direct you to produce it.

Mr. Perkins: Your Honor directs me to produce this paper so the witness can answer the question?

The Court: Yes. The only ground upon which any paper is produced is to refresh the witness' memory. 30

A. The application is approved by one of my assistants, Frederick G. Cloos.

Mr. Stoffer: May I see that application?

The Court: The purpose of production was merely to enable the witness to answer your question.

Mr. Stoffer: I have made a demand for it.

Q. So that you personally had nothing to do with the approval of this application? A. No; I had not. 40



*Lawrence K. Farrell, for Complainant—Cross.*

Q. Mr. Farrell, there are differences of opinion on the approval of applications, are there not?

Mr. Perkins: I object to that as immaterial.

The Court: Objection overruled.

10 A. There are differences of opinion.

Q. There may be differences of opinion among your own group of underwriters?

Mr. Perkins: I object.

The Court: Objection overruled.

20 A. On the issue involved here there can be no difference of opinion because, as I pointed out before, we have a definite rule to the effect that we will not participate in any case where the total amount of weekly benefit under all policies exceeds \$150.

Q. You do not know as a fact that the weekly indemnity in this case exceeded \$150, do you?

Mr. Perkins: I object to that as immaterial.

The Court: The testimony is that there was \$410.

30 Mr. Stoffer: There is a mistaken conception on that point.

The Court: The question of what this witness knows on this point is really immaterial.

40 Q. Do you mean to say that irrespective of the applicant for insurance, his standing, his character, that you will not issue a policy of indemnity insurance if he already has more than \$150 a week? A. I say that exactly and, as I said before, there is a published rule to that effect.



*Lawrence K. Farrell, for Complainant—Cross.*

Q. For how many years has your company been applying that rule? A. Since 1921—when we organized.

Q. The Metropolitan Life Insurance Company was organized when? A. Organized as to health division in 1921.

Q. You have never written a policy where an applicant has had more than \$150 of indemnity? A. As a working rule, it may have been modified; concessions may have been made, but to my knowledge no concession has been made in any case where the combined weekly benefit exceeded \$200, and there have been not more than six of those cases in all of my experience. 10

Q. May I ask you this: Does the \$150 limit include your policy? A. It does.

Q. Does that take into consideration any double indemnity feature? A. It does not. 20

Q. In other words, the double indemnity feature has no effect upon determining whether a policy shall be issued or not? A. No.

Q. Now, you say in some cases the rule will be relaxed to permit combined insurance of \$200? A. That is correct.

Q. Will you tell us the type of cases in which that will be done? A. Well, it is the type of cases where we have an agent or manager canvassing a banker or some outstanding individual in the town in which he lives, and who for business reasons we want to line up as a Metropolitan policy holder. It is a case of that type. 30

By the Court:

Q. Who passes on the exception to the rule; who determines when it may be relaxed? A. I do; that is, they work up from the underwriters to me. 40



*Lawrence K. Farrell, for Complainant—Cross.*

By Mr. Stoffer:

Q. How about these preferred risks known as dentists and doctors? A. I do not know what you mean by "preferred risks". They are classified as No. 3, if that is what you mean.

10 Q. What is No. 1? A. Lawyers, for example.

Q. What is No. 2? A. A physician.

Q. And No. 3 is a dentist? A. Yes.

Q. Will you please look at the application annexed to Exhibit C-1, and tell the Court whether, if there were more life policies mentioned in answer to question No. 11, whether that would affect any materiality of the acceptance of the risk?

20 Mr. Perkins: I object because that is not the evidence. The evidence is that there were four or five or six.

Mr. Stoffer: Your bill says two.

The Court: Objection sustained.

Q. Mr. Farrell, what had life policies to do with the question of accepting accident applications? A. Well, it depends somewhat. They have a lot to do sometimes, and sometimes they have no relation at all.

Q. We want to know.

30 Mr. Perkins: I object because that has nothing to do with this case.

The Court: Objection overruled.

A. The life division is a separate department entirely and the issue of life policies is based on considerations which sometimes have little or no relation to personal accident insurance. To illustrate that, a farmer, for example, is regarded as a first-class life insurance risk, but he is regarded as a hazardous personal accident risk.

40



*Lawrence K. Farrell, for Complainant—Cross.*

So the issuing of a life insurance policy is not necessarily a criterion as to whether the risk is eligible for personal accident insurance.

Q. But the application that was presented to your company was an application for accident insurance? A. Yes.

Q. I want to know what Dr. Sussman's life insurance policies had to do with the granting or withholding of that accident insurance? A. If we understood that he carried a substantial line of life policies, with the disability feature attached to them, it might have affected us in making a decision. 10

Q. Do you ask anything in your application as to whether there is any incidental disability?

Mr. Perkins: Objected to. 20

The Court: Objection overruled.

A. We ask for the kind of policy and the weekly benefit.

Q. Life or accident? A. Yes.

Q. Suppose that the application disclosed that Dr. Sussman had a life policy in the Travellers Insurance Company in the sum of \$5,000 and another in the Prudential Insurance Company on his life in the sum of \$2,000; and suppose that those policies had been recorded in the answer to question No. 11, would that have affected the acceptance of the risk? 30

Mr. Perkins: I object to the question because it is based on a false presumption.

The Court: Objection sustained.

Q. Suppose the application annexed to Exhibit C-1 had indicated \$7,000 more total insurance on the applicant's life, would that have affected the issuance of the policy before you, Exhibit C-1? 40



*Lawrence K. Farrell, for Complainant—Cross.*

Mr. Perkins: I object because the question is based on a false assumption.

10 The Court: I cannot rule on that question because I do not know how much the insurance amounted to that was covered by the four policies mentioned. If your question does not comprehend all the policies of life insurance on Dr. Sussman's life at the time this application was made, then your question is objectionable.

Q. What is the total of the Prudential Insurance policies mentioned in answer to question eleven? A. \$15,000 whole life.

20 Q. I show you Exhibits C-3, C-4, C-5 and C-6 and ask you if they aggregate \$15,000?

Mr. Perkins: I object because the question does not include the policies having indemnity.

The Court: Objection overruled.

A. These policies provide a total of \$13,000.

Q. And the total amount in the application is \$15,000? A. That is correct.

30 Q. So that if Dr. Sussman had a \$2,000 policy which matured, that would make the total correct? A. Yes.

Q. What is the other? A. Manhattan whole life, \$10,000.

Q. I show you Exhibit C-12 and ask you if that is the policy in the Manhattan for \$10,000? A. Yes.

Q. What is the next company mentioned? A. The Metropolitan:

40 Q. What is the total? A. It seems to be one policy for \$12,000 and another one for \$10,000.



*Lawrence K. Farrell, for Complainant—Cross.*

Mr. Stoffer: There are three other Metropolitan policies that I handed over which I cannot place my hands on.

Mr. Perkins: To whom did you hand them?

The Court: You can argue that when court adjourns.

10

(At this point recess is taken until two o'clock in the afternoon. After recess witness resumes the stand and cross-examination continues.)

Q. Mr. Farrell, referring to Exhibit C-1, under question eleven, in order to determine whether the answer in respect to the Metropolitan insurance, stating an aggregate of \$22,000 of Metropolitan Life policies is correct, I show you policy No. 2,330,879-A of the Metropolitan Life Insurance Company and ask you if that is a policy issued by your company? A. Yes; in the amount of \$6,000.

20

Mr. Stoffer: I ask to have it marked for identification.

(Marked D-1 for identification.)

Q. I show you policy No. 916,689-A and ask you if that is a policy of your company? A. Yes; in the amount of \$1,000.

30

Mr. Stoffer: I ask to have that policy marked for identification.

(Marked D-2 for identification.)

Q. I show you policy No. 708,494-A, in the Metropolitan Life Insurance Company, and ask you if that is a policy issued by your company? A. Yes; in the amount of \$5,000.

40



*Lawrence K. Farrell, for Complainant—Cross.*

Mr. Stoffer: I ask that that be marked for identification.

(Marked D-3 for identification.)

10 Q. Referring to Exhibits C-9 and C-10 and D-1 for identification, D-2 for identification and D-3 for identification, will you tell us whether they aggregate \$22,000, as stated in answer to question No. 11? A. They do; \$22,000 in the aggregate.

Q. Mr. Farrell, do you, where an application shows other insurance in your company,—do you or do the underwriters who work under you examine the records of the company with respect to other policies in your company?

20 Mr. Perkins: I object to that upon the ground that it is not proper cross-examination and also upon the ground that it is immaterial, irrelevant and incompetent.

The Court: Objection overruled.

30 A. We do ordinarily unless there is some reason to indicate that life insurance has been issued on what we call a sub-standard applicant. In other words, there is something in the record to indicate that there has been some physical impairment developed on life insurance examination in the past.

Q. How would you determine whether there had been such an impairment? A. We have a system whereby these reports are made of certain physical impairments.

Q. And you have access to those reports? A. Every application is searched through an index record.

40 Q. When this application came in were the reports searched on Dr. Sussman?



*Lawrence K. Farrell, for Complainant—Cross.*

Mr. Perkins: I object as not proper cross-examination.

The Court: Objection overruled.

A. I assume that they were. That is the normal routine. I cannot say without referring to the record.

10

Q. Do you know whether any disabilities were shown by your company's records on Dr. Sussman at the time of this application?

Mr. Perkins: I object to that as incompetent, irrelevant and immaterial. It has nothing to do with the contract of insurance at all.

The Court: Why not? If they had an application for insurance on Dr. Sussman which disclosed, for instance, that Dr. Sussman had hernia, perhaps they had notice.

20

Mr. Perkins: I think it would be a new doctrine if they did.

The Court: I don't think so. The witness says they searched the records to find out if there was any policy issued which showed impairment.

A. I cannot answer that question because I did not personally pass on this application. I might be able to answer it if I had access to the record again—the application itself.

30

Q. Can you say that your subordinate or your assistant who examined this application did not consult the records of the company relating to Dr. Sussman?

Mr. Perkins: I object. He is trying to produce negative testimony.

The Court: Objection overruled.

40



*Lawrence K. Farrell, for Complainant—Cross.*

A. There again I will have to say that I assume he did because it would be very unusual if he did not, but I cannot say from my own personal knowledge, without reference to the records.

10           Mr. Perkins: I object to the assumption of the witness and move that the answer be stricken out.

          The Court: I will let the answer stand.

Q. There are four spaces provided in your application for answering question eleven? A. That is correct.

Q. Will you tell us where any additional policies would be listed?

20           Mr. Perkins: I object.

          The Court: Objection sustained.

Q. I show you Exhibit C-7 and Exhibit C-8, policies of the Travellers Insurance Company, Exhibit C-7 being in the sum of \$2,000 and Exhibit C-8 in the sum of \$5,000, and I ask you whether if those two policies had been recited in answer to question eleven, whether your company would have declined the risk?

30           Mr. Perkins: I object because the witness is entitled to have all of the facts and circumstances concerning the holding of insurance by the applicant and withholding the information.

          Mr. Stoffer: I will develop it. I cannot do it all at one time.

          The Court: Objection sustained to the form of the question.

40           Q. Had the two policies which are in evidence as Exhibit C-7 and Exhibit C-8 been indicated on



*Lawrence K. Farrell, for Complainant—Cross.*

the application showing \$7,000 additional insurance on life, would that have materially affected the risk?

Mr. Perkins: I object. The courts of this state have held that all the questions asked in the application are material.

10

The Court: Objection sustained. I suggest, Mr. Stoffer, you might put it to him in this way: Would that be a factor that you would consider in connection with other factors in determining whether or not to issue the policy?

Q. Had the two Travellers policies aggregating \$7,000 been noted on the application in answer to question eleven, would they supply an additional factor which together with other factors, you would have considered in determining the acceptability of this risk? A. Only in the sense that some question might have arisen as to whether the disability feature was carried in conjunction with both of these contracts.

20

Q. If such a question had arisen, what would you or your subordinates have done? A. If they regarded that as material they would have made inquiry definitely to develop whether these new policies carried that particular feature referring to the permanent disability feature.

30

Q. Will you please examine the policies and tell us whether they contain any incidental disability features? A. Why, this one in the amount of \$5,000, which is No. 836,439, appears to carry that feature.

Q. Tell us the terms of it?

Mr. Perkins: The policy is in evidence or will be in evidence. It carries that particular feature all right.

40



*Lawrence K. Farrell, for Complainant—Cross.*

The Court: I think the policy should speak for itself.

10 Q. I think you testified, Mr. Farrell, that you do not issue indemnity policies providing for more than \$100 per week on indemnity? A. That is correct.

Q. That is the general policy of your company? A. An absolute policy.

Q. Is that policy expressed in any written form? A. Why, it is expressed in our manual of instructions, yes.

Q. To the agents? A. Yes.

Q. Do you happen to have such a manual here? A. I have.

20 Q. May I examine it, please? A. Here it is under the caption of "Limit of risk," on page 25. I will amend that. The question here is answered on page 37 under the caption "Maximum limits of risk."

Q. What classification did you place Dr. Sussman in? A. Extra preferred.

Q. And the limit there is \$75 a week? A. That is right.

30 Mr. Perkins: Now that they have had this paper and it has been used, I think for the benefit of the Court and counsel it ought to be read.

Mr. Stoffer: I will read it:

"No policy of accident or health insurance will be issued for principal sum or weekly indemnity in excess of the following limits as set opposite the class fixed in the manual for the occupation of the applicant.

40 "In case of change of occupation, after issue of policy, to one of greater hazard,



*Lawrence K. Farrell, for Complainant—Cross.*

the pro rata amount of insurance purchasable for the premium paid shall not exceed the limits set opposite the class fixed for the new occupation.

| Class.                | Single Indemnity. |                   | 10 |
|-----------------------|-------------------|-------------------|----|
|                       | Principal Sum.    | Weekly Indemnity. |    |
| Select .....          | \$30,000          | \$100             |    |
| Preferred .....       | 30,000            | 100               |    |
| Extra Preferred ..... | 15,000            | 75"               |    |

Q. Paragraph 17 on page 25 constitutes general instructions on the limits of risk? A. That is correct.

Mr. Stoffer: May I read that?

"The amounts placed opposite the respective classes on page 37 indicate the largest amounts for which policies will be issued in such classes. It should be borne in mind that these limits do not apply to double indemnities but to the basic or single amounts of the policy as payable for ordinary accidents." 20

Q. Now, will you tell us, where in these rules, Mr. Farrell, is the rule that you will not issue any indemnity policy where the aggregate indemnity is more than \$150 per week? A. The rule appears under clause 17, page 25, third paragraph: 30

"These limits are further subject to the rule that in no case will a policy be issued where the total amount of accident insurance carried by the applicant in this or in other companies or associations aggregates a principal sum in excess of \$100,000 or where the total with weekly indemnities payable under all such policies either for accidents or for sicknesses aggregate more than 40



*Lawrence K. Farrell, for Complainant—Cross.*

\$150 per week, or more than three-fourths of the average weekly income of the applicant earned in his regular occupation.”

Q. Is there anything in these policies on incidental disability indemnity? A. I do not—

10 Q. Is there anything in your rules on your incidental disability benefits in connection with life policies being taken into consideration?

Mr. Perkins: I object. There is no question of incidental liability.

Mr. Stoffer: That is what it is called.

The Court: Objection overruled.

20 A. There is no reference made in the regulations to benefits provided under permanent disability features in conjunction with policies of life insurance.

Q. Do I understand there are no written rules on that point of incidental disability in your life policies? A. That is correct. There are no such rules.

Q. Referring to question 13 on the application, can you tell us whether that contemplates the cancellation of an indemnity policy by another company?

30 Mr. Perkins: I object. The question itself is perfectly plain and lucid and I do not think it is proper for him to attempt on cross-examination to get an explanation of something that is perfectly plain.

Mr. Stoffer: I want to know whether this underwriter, testifying for the complainant, can tell us whether that question contemplates the cancellation of a policy by another company.

40 The Court: Objection sustained.



*Lawrence K. Farrell, for Complainant—Cross.*

Q. Had you known that Dr. Sussman was at the time of the application in receipt of an income of \$750 per week, would that have had an effect upon the acceptability of this risk? A. His income would have had no bearing whatsoever on the question involved here because, regardless of income or considerations such as character or professional standing, we would have applied the rule which I have read in the instructions here and declined to assume liability if we understood that the total amount of insurance was in excess of \$150 per week.

10

Q. If you understood? Did you say if you understood? A. Yes.

Q. You do not mean to say that you now know it was? A. I understood you to say if we understood.

20

Q. Now, had you known of his income per week, would that have made any difference to you? A. Absolutely not.

Q. It would not? A. No.

Q. There is no question in that application about hernia, is there? A. There is.

Q. Any specific question of hernia?

Mr. Perkins: I object.

The Court: Objection sustained.

30

Q. Referring to question No. 17: "Are you maimed, deformed or crippled in any manner or degree or afflicted with any form of bodily or mental disease, disorder, infirmity or impairment?" Does that contemplate a then existing infirmity or impairment? A. It does.

Q. Would you as an underwriter say that if a hernia had been contracted in 1898 and there was an operation on it in 1909 and this policy was applied for in 1926, that that was a then existing bodily impairment?

40



*Lawrence K. Farrell, for Complainant—Cross.*

Mr. Perkins: I object upon the ground that the question does not recite all of the facts. If counsel will incorporate in his question the fact that he received a disability pension on account of the hernia, I will not object to it.

10

The Court: Objection sustained.

Q. Is there anything in your application about disability pension from the government?

Mr. Perkins: I object.

The Court: Objection sustained.

20 Q. Does the mere fact that a man has received a pension from the United States Government mean that the risk is an undesirable one? A. It does.

Q. Tell us why? A. Because present accident rates are based on the assumption of average physical risk. By that we mean that a man is normal physically. If a man is in a position where he is being compensated by the government on the theory that he is already in a state of disability, he does not meet the physical requirements of this form of protection.

30 Q. Do you know the United States statutes governing disability payments to veterans?

Mr. Perkins: I object to the question as immaterial.

The Court: Objection sustained.

By the Court:

Q. If it appeared here that Dr. Sussman had a hernia, would you have declined the risk? A. In itself, no.

40



*Lawrence K. Farrell, for Complainant—Cross.*

Q. Was it an element that you would consider in making up your mind whether to accept the risk? A. If we had understood that he had been operated on for hernia many years ago, it might not have been material in our decision.

By Mr. Stoffer:

10

Q. Referring to question No. 14: "Have you ever received or been refused benefit for any accident?" I think you so testified on direct examination that the element to be considered in determining the materiality of answer given to that question are the number of claims, the amounts and their character?

Mr. Perkins: I object. Whether that is material or not is not for the witness to say. It is for the Court to say.

20

The Court: Objection overruled.

A. I think I added to those factors the additional factor of lapse of time that those claims were presented.

By the Court:

Q. Otherwise, that is your testimony? A. Yes.

30

By Mr. Stoffer:

Q. Now, considering that, assuming that five or six claims had been paid by companies between 1911 and 1926, when this application was submitted to your company, and that those claims had aggregated \$500, would that in itself have caused your company to decline this application?

Mr. Perkins: The question is objectionable upon the ground that it is incompe-

40



*Lawrence K. Farrell, for Complainant—Cross.*

tent, irrelevant and immaterial and it is not stating the fact.

The Court: Objection overruled.

10 A. It would have been a subject of inquiry on our part with the companies involved in the payment of those claims to find out their character and whether in their judgment they were reasonable and meritorious.

Q. Has your company access to any source of information in order to obtain data on disability payments that might have been made to an applicant for a policy by various other companies?

Mr. Perkins: I object upon the ground that it is not cross-examination.

20 The Court: Objection overruled.

A. Why, we have a bureau which is designed to develop previous cancellations and rejections, but it does not necessarily report claims.

Q. You say: "does not necessarily report claims." Does it report claims? A. It does not necessarily unless the claim is surrounded with some suspicious element or something that in the judgment of the company reflects on the risk.

30 Q. Will you give us the name of the service to which your company subscribes? A. Our casualty record is furnished by the Hooper-Holmes Bureau, 80 Maiden Lane, New York City. We also have access to the Medical Bureau, which is a system primarily designed for life insurance underwriting and the address of that concern is Library Bureau, Boston, Massachusetts.

40 Q. Is it not a fact that the Library Bureau sends card indexes to subscribing members giving a statement of any claim against any company, indexed under the name of the applicant?



*Lawrence K. Farrell, for Complainant—Cross.*

Mr. Perkins: I object. It seems to me that this is wholly improper. The problem your Honor is dealing with, as I understand it, is whether this man honestly answered certain questions.

(Further argument.)

The Court: I do not know where it is going to lead to. I am going to allow the question. 10

A. The Library Bureau, as I tried to explain before, is an association of life insurance companies, so that they would not be concerned with any disability claim unless it was a permanent disability claim under a life policy, then there would be a report made on it.

Q. Does your company have the services of any indemnity bureau of information? A. The Hooper-Holmes Bureau serves that purpose. 20

Q. What is the character of their service? A. They report adverse action. By that I mean cancellations, rejections, policies marked for non-renewal on account of unfavorable claim experience.

Q. Have you had occasion to consult a card on Dr. Sussman supplied by the Life Bureau—I believe you called it? A. The Hooper-Holmes Bureau. 30

Q. The Library Bureau? A. I have not; no, not personally.

Q. At any time? A. No; never.

Q. Mr. Farrell, the fourteenth question relating to other claims paid is answered: "Aetna, \$200." A. 1917.

Q. In 1917. Assuming that about \$300 additional has been paid by some company between 40



*Lawrence K. Farrell, for Complainant—Re-direct.*

1911 and 1926, would that have been a factor in determining the acceptability of this application?

Mr. Perkins: I object.

The Court: Objection overruled.

10 A. It would have been a subject of inquiry. Beyond that I cannot say. We would have to determine from the companies involved.

Q. To what would your inquiry be directed?

A. It would be directed to the company having made the payment. It would have been as to the nature of the claim, period of disability and whether there had been any difficulty with the assured in effecting an adjustment.

20 Q. \$500 in claims collected over a period of fifteen years is about the average, is it not?

Mr. Perkins: Objected to.

The Court: Objection sustained.

*Re-direct examination by Mr. Perkins:*

30 Q. Are the rates on the extra preferred risk cheaper than the other classes mentioned? A. Starting with the one called "select" classification, that is based on what I would say was a 100 per cent. classification. The preferred classification requires a load of twenty per cent. Extra preferred requires a load of forty per cent. of the select rate, so that a dentist pays forty per cent. more for his insurance than a man in the first classification.

Q. You mean that the extra preferred pays more than the plain preferred? A. Yes; "extra" in the sense that it is out of the preferred classification.



*Lawrence K. Farrell, for Complainant—Re-direct.*

By Mr. Perkins:

Q. If your company had known of the existence of the policies that are offered in evidence with all the life provisions and the indemnity provisions for accident—if that had been disclosed in this application—would you have written this policy? A. Well, I am not clear as to how much he has in the way of permanent disability protection under all these contracts.

10

Q. He says \$410.

Mr. Stoffer: That was after the accident in November, 1926.

The Court: That is what the policies carried by way of a promise that they would pay if he had an accident.

20

A. Well, in that situation, the answer certainly would be material. We would have declined the application if he knew the situation as it was.

By the Court:

Q. I understand you to say that if you had understood that these policies, outside of your policy, carried \$150 a week, you would have declined the application? A. That is true.

30

By Mr. Perkins:

Q. Does the company consider all questions in the application material questions? A. We do.

Mr. Stoffer: I move that that answer be stricken out upon the ground in the first place the question calls for the conclusion of this witness on something that the Court can determine only in the light of the evidence.

40

The Court: Motion denied.



*Lawrence K. Farrell, for Complainant—Re-direct.*

By Mr. Stoffer:

Q. You testified on cross-examination, as I understood you, that there was no rule of the company against incidental disability in connection with life policies? A. That is correct.

10 By Mr. Perkins:

Q. Is the disclosure by an applicant of the existence of policies containing what has been termed incidental insurance a material thing for you to know in writing an accident policy?

20 Mr. Stoffer: I object because he is now asking his witness, in the face of his statement that there is no rule against it, to say whether disclosure is necessary, and there is nothing in the application that calls for it.

The Court: Objection overruled.

A. Well, when I said there was no rule, I meant no published rule. Of course, from an underwriting angle we would give some consideration, knowing that that information was voluntary in an application for this form of insurance.

30 Q. If your company had knowledge of the suppression of facts by the applicant, would that affect the issuance of the policy? A. It certainly would.

Q. Did the suppressed fact that he received a pension from the government on account of disability— A. Highly material.

The Court: That has been answered three times.



*Aaron P. Sussman, for Complainant—Direct.*

Q. Is not the mere suppression of any kind of a fact in an application a material matter on the question of issuing the policy?

Mr. Stoffer: I object to that as calling for a conclusion.

The Court: Objection sustained.

10

Q. If your company had knowledge of the suppression of a fact by an applicant in answer to a question, would it issue a policy?

Mr. Stoffer: I object.

The Court: Objection sustained.

Mr. Perkins: That is all I have with this witness. Mr. Sussman was to have returned for further examination.

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AARON P. SUSSMAN, the defendant, heretofore called as a witness on the part of the complainant, resumes the stand.

*Further direct examination by Mr. Perkins:*

Q. Please tell the Court now what life insurance policies and accident insurance policies you held on the 5th day of January, 1927? A. A Prudential policy issued on March 27, 1909, \$2,000; one on June 23, 1921, \$5,000; one on October 23, 1919, \$5,000; one on November 4, 1911, \$2,000; also November 4, the same year, \$1,000. Total \$15,000 of Prudential. I have \$13,000 of that here and a \$1,000 policy I surrendered to the Prudential. Those numbers you asked for this morning, there are no such policies.

30

Metropolitan policy, February 2, 1920, \$5,000; June 30, 1919, \$6,000; August 8, 1908; \$5,000,

40



*Aaron P. Sussman, for Complainant—Direct.*

which has been surrendered to your company; September 15, 1910, \$5,000; March 29, 1923, \$1,000; another one November 20, 1917, same company, \$5,000. That is all in the Metropolitan.

Now, the Equitable, November 5, 1926, \$5,000. Manhattan Life, June 2, 1921, \$10,000.

10 The Travellers Insurance Company, November 4, 1916, \$2,000; The Travellers, August 21, 1922, \$5,000. Those are all the life policies.

Q. Now, give us the accident indemnity? A. On January 5, 1927— Do you want the date?

Q. Yes. A. The Aetna, that is \$250 weekly; the Metropolitan, that is \$75; the National Casualty is \$100, and then the Commercial, I think, is \$50; that expired the next day. That Aetna policy is not the policy that I had on November 4 that you asked me for. That was a \$75 weekly policy. When I made this application I was insured—

20 Q. I am only asking you what policies you had. I do not want explanations now. Is that all? A. Yes.

Q. Did the Prudential policy of March 27, 1909, contain any accident indemnity feature?

Mr. Stoffer: I object. The policy speaks for itself.

30 Q. Those are the dates of the policies that you have given us? A. The dates of the insurance policies.

Q. They were all alive or in existence on the 5th day of January, 1927, so far as you know? A. Yes.

Q. I want you to please answer, if you know, whether the policy for \$2,000 dated March 26, 1909, contained any indemnity feature or accident  
40 feature?



*Aaron P. Sussman, for Complainant—Direct.*

Mr. Stoffer: I object. The policy speaks for itself.

By the Court:

Q. Is that one of the policies here? A. Yes.

Mr. Perkins: I understand one of these policies was not produced. 10

The Court: If it is here, it speaks for itself.

Mr. Perkins: It is not here; that is the purpose of my inquiry.

The Witness: That was surrendered. There was no disability feature. That was a policy issued in 1909.

The Court: That policy was surrendered he says and had no disability feature. 20

Q. Can you give us the number? A. No, sir; I have not the number.

Q. Can you now produce the Aetna policy that I asked for this morning? A. My attorney has it; I haven't it.

Mr. Perkins: I ask for the production of it.

Mr. Stoffer: I haven't it here. The best I can give you is a photostat copy, certified. 30

The Court: Assuming the witness is telling the truth and I cannot assume anything else, he says he gave that policy to counsel. Counsel says he thought he had it here.

Mr. Perkins: I cannot conclude the examination of this witness until I have it.

The Court: All right. He can come back tomorrow.

Q. Now, have you prepared the list of the companies who paid you indemnity or accident insur- 40



*Aaron P. Sussman, for Complainant—Direct.*

ance before the 4th of November, 1926? A. No; I have not.

Q. I thought you were going to prepare that for this afternoon? A. I tried to get it. It is impossible to do that within a few minutes, to go to the office in Bayonne and get back.

10 Q. Have you the information in Bayonne? A. I believe I can find it.

Q. Have you got it? A. I really don't know. I say I believe I have it. I will do my utmost to bring it tomorrow.

Q. Have you produced a list of the companies in which you had indemnity insurance previous to November 4, 1926, and which was then existing? A. I have given you that on this list.

20 By the Court:

Q. Were they the same companies in which you had indemnity insurance in January, 1927, or were there other policies in November, 1926? A. They were different policies.

Q. Then they are not the same? A. No. I beg your pardon. There was a policy for \$75 per week that was in force. There was a Commercial Travellers policy for \$50—

30 Mr. Perkins: I want the policies if I can get them.

Q. The Commercial is the only one that was canceled? A. That is the one that expired on the 6th of January.

Q. And was not renewed? A. It was not.

Q. We are talking now about indemnity policies in force November, 1926, and Mr. Perkins wants the policies themselves. The Aetna we are going to look for— A. No; that is another policy. That

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*Aaron P. Sussman, for Complainant—Direct.*

one has been surrendered. The Aetna policy, November 4 or 5, the date you mentioned, that policy has been surrendered to the Aetna Company, and this policy of which we have a photostat copy of the one you want took its place, and the Commercial Travellers you have there.

Q. Was there any other indemnity insurance? 10

A. At that time?

Q. In November, 1926, that you have not mentioned. A. No, just these two, the Aetna, \$75, and that policy you have in your hand.

By Mr. Perkins:

Q. How about the National Casualty? A. That policy was in force at that time.

Q. Now, have you refreshed your memory as to the various accidents that have happened to your body on which you have collected indemnity or accident insurance? A. Not any better than I gave you this morning; no, sir. 20

Q. Have you any place where you have a record of that? A. No.

Q. Have you ever kept a record of it? A. No.

Q. Have you prepared a memorandum showing the amounts that you received from the insurance companies on these accidents? A. No, sir. 30

Q. You estimated that amount this morning as something under \$500? A. Yes, sir.

Q. About \$500 or approximately that; is that it? A. Approximately. Less, I presume.

Mr. Perkins: Object to the presumption. I want to know what the fact is.

Q. Have you looked up any memorandum to tell you when the last payment on an accident policy took place to you previous to November 4, 1926? A. No, sir. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Did you go to your office or your home during the noon hour? A. I did.

Q. What did you search for there? A. I looked through some records. I could not find any.

Q. What records? A. Some papers that are there.

10 Q. What papers? A. Papers where I thought I might find such a note—check books, thinking I might find a record of the check.

Q. Did you keep your check books? A. Yes.

Q. How long back? A. There are several books there. I could not find anything back that far.

By the Court:

20 Q. The question is: How long back did you keep your check books? A. I have kept them for—

Q. Now, you went to your office this noon and you looked in your check books? A. Yes.

Q. For payments made prior to 1926? A. Yes.

Q. And Mr. Perkins now asks you how far back you kept your check books? A. For years I have kept them.

Q. And of course you have this one for 1926? A. Yes.

30 Q. Or you could not have looked at it, if you hadn't it? A. I just glanced through it. I didn't have sufficient time to look through it carefully.

By Mr. Perkins:

Q. Have you got your check book for 1925? A. I think so.

Q. For 1924? A. I don't know. I would have to look. I doubt it.

40 Q. What bank deposit did you use in 1926, 1925 and 1924? A. The Hudson National Bank, Bayonne Branch.



*Aaron P. Sussman, for Complainant—Direct.*

Q. How long have you been using that bank for deposits? A. I have used that bank for over ten years.

Q. Have you used any other bank? A. Yes.

Q. What? A. Mechanics National Bank of Bayonne.

Q. During the same period? A. No.

10

Q. During what period? A. For the past year and a half.

By the Court:

Q. The point is that for 1927, 1926, 1925 and 1924 the Hudson County National Bank, Bayonne Branch, was the only bank of deposit you had? A. That is right.

By Mr. Perkins:

20

Q. Any other?

The Court: He says that is the only one.

Q. Have you the records of deposit of that institution which would show the deposit of checks received for indemnity or accident insurance? A. I might have. I would not say definitely that I have those little pass books. It is a year and a half since I have stopped doing business there.

30

Mr. Perkins: I will have to ask the witness to return for further examination.

By Mr. Stoffer:

Q. On the date when you signed the application for the Metropolitan accident policy, what other accident policies were then in force and in what amounts of indemnity?

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*Daniel T. Loeb, for Complainant—Direct.*

Mr. Perkins: I object because the policies themselves are going to be produced and they will be the best evidence.

The Court: The witness has already testified what policies were in force in November, 1926.

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DANIEL T. LOEB, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Perkins:*

20 Q. Were you attorney for Mr. Aaron P. Sussman in the early part of the year 1927, with reference to certain insurance claims? A. I was.

Q. Do you know whether you signed his name to this paper marked Exhibit C-13? A. I did.

Q. With his authority? A. Well, I was his attorney. He told me to send notice to the company and I sent the notice to the company.

By the Court:

Q. You were acting under his direction when you did that? A. Yes.

30 By Mr. Perkins:

Q. I show you a paper with the heading: "Statement of Claim," to which the name "A. P. Sussman" is signed. Do you know whether you sent that to the Metropolitan Company? A. I did.

Mr. Perkins: I offer that paper in evidence.

(Marked Exhibit C-15.)

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*Daniel T. Loeb, for Complainant—Direct.*

Q. I show you a letter on what appears to be your letterhead, dated January 31, 1927, and I ask you if you wrote that letter to the Commercial Travellers Insurance Company? A. That is my letterhead and I wrote that letter.

Q. Was that written with the authority of Dr. Sussman? A. That I don't know. I would like to state what was done and what was not done. 10

Q. You wrote a letter to the Commercial Travellers in which you said you wished to notify them that "Dr. Sussman of 79 West Thirty-Fifth Street, Bayonne, who held policy No. D252546 was injured on the 17th of January, 1927, and is now confined to the Bayonne Hospital. In looking over the various policies that he has I notice the one I have referred to among his papers. Kindly give this your attention." You did write that, didn't you? A. I certainly did. 20

Mr. Perkins: I offer the letter in evidence.

Mr. Stoffer: I object to that upon the ground that it has not been established that that letter was written by the direction of Dr. Sussman. In the second place, it is immaterial.

By the Court: 30

Q. By what authority did you write that letter? A. I don't know. All the policies were turned over to me by Mrs. Sussman and they were in my office and I looked them over and I sent out notices under the policies because Dr. Sussman was in the hospital and could not take care of it himself.

Q. Had you seen or talked to him prior to writing this letter? A. I had seen him several days before that. 40



*Daniel T. Loeb, for Complainant—Direct.*

Q. Prior to the writing of the letter? A. Yes. That is when they were turned over to me.

The Court: Objection overruled.

(Marked Exhibit C-16.)

10 By Mr. Perkins:

Q. What companies did you notify under the authority Dr. Sussman gave you? A. I don't know.

Q. Do you know how many policies there were? A. I don't know that either.

Q. Have you any means of finding out? A. None at all. The policies came to me in a bundle. I sat down and looked them over and sent out the notices to whatever I thought was necessary, and then afterwards I returned the policies.

20 Q. How many? A. There was a whole bundle. There were life insurance policies and accident insurance policies.

Q. Do you know how many there were? A. I do not. I do not want to quibble about it because I do not know.

Q. Did you keep copies of the letters that you wrote to the various companies? A. I may have —yes.

30 Q. Can you produce them tomorrow? A. Yes.

Q. Will you do so? A. Yes; I will look through my papers. I suppose I have got copies.

Q. Did you make a claim to the Prudential Insurance Company of America for indemnity? A. I don't know. I don't know which companies I made claim to. All I know is I got a bundle of policies and made claims under them.

40 Q. Was it a large or small bundle? A. I don't know.



*Daniel T. Loeb, for Complainant—Cross.*

*Cross-examination by Mr. Stoffer:*

Q. Did Dr. Sussman ever specifically authorize you to send the letter marked C-16 to the Commercial Travellers Mutual Accident Insurance Company of Utica? A. That I cannot say, because Mrs. Sussman handed me the policies.

10

Q. Did you discuss with the doctor at any time prior to sending your notices to the companies, the question as to which policies were then in force or which had lapsed or been cancelled?

Mr. Perkins: Objected to.

The Court: Objection overruled.

A. No.

Q. You received the bundle from Mrs. Sussman? A. That is right.

20

Q. And you merely sent out the notices? A. I looked them over and I sent out notices.

By Mr. Perkins:

Q. Did you merely send out notices? Didn't you file proof of claim on some of them? A. Well, I sent out notices and I might have filed proof of claim. I did what was necessary with the policies.

30

Q. Several days after this accident you had a talk with Dr. Sussman? A. I saw him at the hospital.

Q. You had a conversation with him, didn't you? A. Well, I did talk to him.

Q. And he said he had certain accident policies on his body, didn't he? A. Well, he did not say that. He said: "Mrs. Sussman will send down some policies. Take care of them." I said, "All right."

40



*John H. Conover, for Complainant—Direct.*

Q. And the letter which has been offered in evidence was concerning one of the policies which Mrs. Sussman brought to you? A. Naturally. I had the policy and I sent out the notice.

By Mr. Stoffer:

10 Q. Did you receive any reply from the Commercial Travellers to your letter? A. I might have. I don't recollect. I will look through my files and if I have any I will be glad to produce it.

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JOHN H. CONOVER, sworn as a witness on the part of the complainant, testifies as follows:

20 *Direct examination by Mr. Perkins:*

Q. With what company are you connected? A. With the Commercial Casualty of Newark.

Q. What department? A. Accident and health claim department.

Q. Have you produced certain original papers from the file of that company, at the request of counsel? A. Yes, sir; I have.

30 Q. Please state what you have produced? A. These three forms here—two of these forms—the top one is the original application; the second is a copy and the third form is the record of re-insurance on that risk.

Q. Whose life? A. Aaron P. Sussman.

Q. Of what place? A. 791 Thirty-fifth Street, Bayonne, N. J.

40 Q. How much is the insurance shown there? A. The principal sum is \$10,000; the weekly indemnity for accident \$50 and the weekly indemnity for health also \$50.



*John H. Conover, for Complainant—Direct.*

Q. What is the date of the policy? A. July 1, 1919.

Q. Can you tell from your records whether Dr. Sussman ever received any accident indemnity?

Mr. Stoffer: I object to that until it is shown that Mr. Conover was with the company at the time and knows what was done and is otherwise qualified to give that particular testimony.

10

By the Court:

Q. Have you the record here with you which shows whether any payment was made? A. Yes; I have.

The Court: Objection overruled.

20

Mr. Perkins: I offer this in evidence.

Mr. Stoffer: I object upon the ground that it has not been properly proved.

Mr. Perkins: I will call Mr. Sussman on it, if that is what he wants.

By the Court:

Q. What is the third form? A. When a policy is issued we retain a certain amount and if we cannot retain the whole thing, we re-insure with other companies; there may be two or three companies represented on that risk, in other words.

30

Mr. Perkins: I will ask the witness to step down and I will call Dr. Sussman to the stand.

40



*Aaron P. Sussman, for Complainant—Direct.*

AARON P. SUSSMAN, the defendant, heretofore called as a witness on the part of the complainant, recalled and further examined as follows:

*Direct examination by Mr. Perkins:*

10 Q. (Showing witness) Is this your signature at the foot of this first page? A. No.

Q. That is not your signature? A. No.

Q. Did you have a Commercial Casualty Insurance policy dated the first of July, 1919? A. I do not recall that date.

Q. (Showing witness) Is that your handwriting? A. No.

20 Q. Did you ever have a policy in the Commercial Casualty Insurance Company? A. Yes; at one time.

Q. How many policies did you have? A. Please give me the date and the amount.

Q. Commercial Casualty Insurance Company. A. I had a policy with the Commercial Casualty Company.

Q. Did you ever collect anything on it? A. I don't recollect.

Q. Did you ever have a sprained ligament of the thumb? A. It is possible.

30 Q. Did you ever collect \$140 from the Commercial Casualty Company for a sprained ligament of the thumb? A. I don't recollect.

Q. On February 17, 1921? A. I don't recollect.

By the Court:

Q. You rather surprise me on these various questions when you say you don't recollect? A. I know I collected money.

40 Q. You know whether you had a sprained ligament of the thumb? A. I say I think—



*Aaron P. Sussman, for Complainant—Direct.*

Q. You don't have to think. If you had a sprained ligament of the thumb, you would remember about it, unless you have had so many accidents that you cannot keep track of them. A. 1919?

By Mr. Perkins:

10

Q. In 1921—sprained ligament of the thumb?  
A. It is possible. I do not recall.

Q. On the 14th of November, 1921, did you receive any money from the Commercial Casualty Insurance for a cut right thumb infection? A. I believe I did.

Q. You remember that one, but you cannot remember the other. How much did you collect for the cut thumb infection? A. I do not recall that.

20

Q. Do you remember getting \$140 for the sprained ligament of the right thumb? A. I don't remember.

Q. Do you remember getting \$90 for the cut right thumb? A. I think I recalled that.

Q. (Showing witness.) Please examine that application and see if you find your signature on it anywhere? A. That is my address, 79 West Thirty-fifth street, Bayonne. That is mine.

Q. That is your writing, is it? A. Yes.

30

Q. That is your signature, too, is it not? A. It might be.

Q. "My name in full—Aaron P. Sussman."  
You say that may be your signature? A. Yes.

Q. May be? A. Yes.

Q. But you are sure that the residence, 79 West Thirty-fifth street, is in your handwriting? A. Yes.

Q. How about the word "Bayonne" under it?  
A. That is not my writing.

40



*John H. Conover, for Complainant—Direct.*

Q. You admit that you prepared some of that application, don't you? A. Oh, yes.

Q. That was your application for insurance in the Commercial Casualty, was it not? A. Yes.

Q. Now, did you draw these various sums that I have just mentioned?

10

The Court: He says he remembers only one.

A. I did have a policy.

Q. How many payments did you get from the Commercial Casualty Company on account of accidents? A. I recall \$90. I do not recall the \$140.

Q. How many accidents did you have to your body for which you filed claims with the Commercial Casualty Company? A. I know just one—\$90; I do not recall any other.

20

Q. Did you have a sprained ligament of the right thumb? A. I might have had it.

Mr. Perkins: I offer this application in evidence.

(Marked Exhibit C-17.)

30 JOHN H. CONOVER, a witness heretofore sworn on the part of the complainant, recalled and further examined as follows:

*Direct examination (resumed) by Mr. Perkins:*

Q. Can you tell from the original records in your office how much money Dr. Sussman received from your company for accident indemnity? A. Yes, I can.

40

Q. Please do so.



*John H. Conover, for Complainant—Cross.*

Mr. Stoffer: I would like to cross-examine on the question of the witness's knowledge.

The Court: All right. Go ahead.

*Cross-examination by Mr. Stoffer:*

Q. How long have you been associated with the Commercial Casualty Company? A. One year. 10

Q. You were in what department during the past year? A. The Accident Claim Department.

Q. Did you have anything to do with the preparation of this card which Congressman Perkins has shown you? A. Not with that card; no.

Q. You do not know who prepared it, do you? A. What do you mean by that?

Q. Who prepared this card? A. The company prepared the card. 20

Q. Whose handwriting is it? A. It is typewritten. I cannot tell you who did it.

By the Court.

Q. Do you know who got it up? A. The girl in that section got it up.

By Mr. Stoffer:

Q. You do not know anything about the accuracy of the information on this card, do you? A. Yes, I do. That is a record of the company's. 30

Q. You have been with this company one year? A. That is right.

Q. These entires were made in 1921? A. That is right.

Q. You do not know whether these entries were properly made on that card, do you? A. It is the authentic record of the company. It must be correct. 40



*John H. Conover, for Complainant—Cross.*

By the Court:

Q. They are made up by some young lady who used a typewriter and recorded that information on the card; is that it? A. Yes, sir.

10 Q. She gets that information from some other source, does she? A. She gets that information from the draft the assured receives.

Q. She makes that entry when the draft is sent out? A. She makes the entry when the draft is presented for payment.

Q. After it comes back? A. After it comes back.

Q. It does not come to her, of course? A. The letter of advice.

20 Q. The letter of advice is something quite different from the draft coming back. The letter of advice is the letter from the bank that they have honored the draft, or is it the letter of advice from the company that they are enclosing the draft? A. The letter of advice is made out when the draft is made out.

Q. When does she make up her entries? A. She makes it up when we pay the claim.

30 Q. When do you pay the claim? When do you consider the claim paid—when you send out the draft or when it comes back and the bank notifies you it has been paid? A. The claim is paid when the draft comes back signed by the insured.

Q. It goes through a bank, does it? A. Yes; the bank notifies us right away.

Q. Every time you send out a draft and the bank pays it, the bank gives you notice, does it? A. We have to honor the draft for payment.

40 Q. Is it paid by your treasurer, by your office, or is it payable at the bank? A. It is paid by the bank.



*Daniel T. Loeb, for Complainant—Direct.*

Q. How do you know from the bank that it has been paid? A. They notify us of the fact.

Q. The bank notifies you that it has been paid and then what is done by your company? A. I do not know just how they handle that in the book-keeping department. I know that we pay out in our office.

10

The Court: Objection sustained.

By Mr. Perkins:

Q. Is this a card kept in the ordinary regular business of the company? A. Yes.

Q. And as far as you know it has been in your office, in the regular files, since it was made out? A. Yes. It is just the same now as it ever was.

Q. Who is the gentleman who knows about this, of his own knowledge? A. I could not say.

20

Mr. Perkins: I will withdraw the witness.

(At this point adjournment is taken to Tuesday, July 1, 1930, at ten o'clock in the forenoon.)

Court met pursuant to adjournment this first day of July, 1930, at ten o'clock in the forenoon.

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Appearances as heretofore.

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DANIEL T. LOEB, heretofore sworn as a witness on the part of the complainant, resumes the stand.

*Further direct examination by Mr. Perkins:*

Q. Have you produced copies of notices to insurance companies signed by you on claims for Mr. Sussman, about the 17th of January, 1927?

40



*Daniel T. Loeb, for Complainant—Direct.*

A. I have, all the notices that were in my file, the file being known as No. 1520. I find a notice—

Q. One minute. Is it possible that there were more notices than these? A. This is the only Sussman file that I have and these were the only letters that were in that file—copies of letters.

10 Q. From your recollection are you able to state whether there may have been other letters sent out than those, copies of which you found in your file? A. There may have been; yes.

Q. Produce them one by one, please. A. Here is copy of letter dated January 31, 1927, addressed to the Commercial Travellers Mutual Accident Association, Utica, New York.

20 Q. Did you sign and send this notice, of which this is a copy? A. That is a copy of the original which you had here yesterday.

Q. What is the next you have? A. The next is dated April 25, 1927, addressed to the Travellers Insurance Company, Hartford, Connecticut.

Q. What is the next? A. The next is dated April 25, 1927, to the Equitable Insurance Society of U. S., 393 Seventh avenue, New York City.

30 Q. What is the next? A. The next is dated April 25, 1927, to the Prudential Insurance Company of America, Home Office, Newark, N. J. Another is dated April 25, 1927, addressed to the Metropolitan Life Insurance Company, 1 Madison avenue, New York City.

Mr. Perkins: I offer these in evidence as one exhibit.

Mr. Stoffer: I object on the ground that notices of claims sent after the accident are totally immaterial to the present issue whether this policy was obtained by fraud.

40 The Court: Objection overruled.

(Marked Exhibit C-18.)



*Daniel T. Loeb, for Complainant—Cross.*

Q. Why did so much time elapse between the first one and the others? A. One is an accident policy and the others are life insurance policies and the disability clauses under these take effect three months after, and when the three months period elapsed, notices were sent out.

10

By Mr. Perkins:

Q. How do you account for the fact that the notice to the Travellers, which was an accident policy, was dated April 25? A. That was not under an accident policy as far as I recollect. This letter reads: "This is to notify you that on January 17, 1927, Dr. Aaron P. Sussman of Bayonne, New Jersey, who is insured in your company under policies Nos. 39288 and 836439 was injured and has been totally disabled since that time. Said policy has a total disability clause. Will you kindly give same your attention. Very truly yours."

20

Q. Did you send a notice to the Aetna? A. I do not know. I haven't a copy here.

By the Court:

Q. Did you see Dr. Sussman before you wrote these letters? A. I did.

30

Q. I mean between the time you saw him in the hospital after the accident and the time you wrote these letters? A. I did.

Q. These letters were sent under his direction? A. I believe they were, sir.

*Cross-examination by Mr. Stoffer:*

Q. Did Dr. Sussman give you any specific instructions respecting notifying any of these companies? A. Well, the policies were in my possession and—

40



*Daniel T. Loeb, for Complainant—Cross.*

By the Court:

Q. I think what Mr. Stoffer wants to know is whether Dr. Sussman personally gave you any instructions? A. Regarding the total disability policies I think he did—that is, regarding the life insurance policies, I believe he did.

By Mr. Stoffer:

Q. Now, did you have any discussion with Dr. Sussman on the question of whether any of the policies had lapsed or had been cancelled?

Mr. Perkins: I object upon the ground that that is immaterial.

The Court: Objection sustained.

20

Q. Did you have any specific discussion with Dr. Sussman concerning the sending of a notice to the Commercial Travellers in Utica?

Mr. Perkins: I object to any discussion.

Mr. Stoffer: The conversation.

The Court: The whole conversation is immaterial to this question. The proper question, as I understand it, is whether notices were sent under Dr. Sussman's directions to these companies. The witness has already said that he saw Dr. Sussman in the hospital. Dr. Sussman told him that he had certain policies of insurance which Mrs. Sussman was to hand to him. Mrs. Sussman did hand them to him. Under Dr. Sussman's engagement of Mr. Loeb as his attorney, Mr. Loeb sent notices to these companies, and notices sent in April were sent after another personal conversation with Dr. Sussman, and the other question

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40



*Carl Schwundt, for Complainant—Direct.*

with this witness is as to his authority to send the notices. He said he was instructed to send them. Now, discussion as to conversations about the policies is immaterial.

Q. Were you acting under instructions when you sent a notice to the Commercial Travellers of Utica? 10

Mr. Perkins: The same objection.

The Court: Objection sustained. If you want to know whether he had any further instructions than he has already testified to, all right.

Q. Were all of the policies either in your possession or in Dr. Sussman's possession at the time you had these conversations with Dr. Sussman? 20

A. They were not in my possession when I had the original conversation at the hospital. They later came in my possession.

---

CARL SCHWUNDT, sworn as a witness on the part of the complainant, testifies as follows:

*Direct examination by Mr. Perkins:* 30

Q. Are you in any way connected with the complainant company? A. I am.

Q. What is your position with the complainant company? A. Adjuster; investigator.

Q. Do you know Dr. Sussman? A. I do.

Q. On March 3, 1927, did you make a tender to him of return of premium? A. I did.

Q. What amount of money in legal tender did you tender Dr. Sussman? A. \$81.25. 40



*Carl Schwundt, for Complainant—Cross.*

*Aaron P. Sussman, for Complainant—Direct.*

Q. Where was the tender made? A. At Dr. Sussman's home.

Q. Did you tell him what the money was designed to cover? A. I did.

10 Q. Did he accept it? A. He did not.

*Cross-examination by Mr. Stoffer:*

Q. Did you have cash with you? A. I had legal tender.

Q. I do not know what you mean by legal tender. Did you have cash or a check? A. Cash.

Q. United States currency? A. Yes, sir.

20

AARON P. SUSSMAN, the defendant, already sworn as a witness on the part of the complainant, recalled.

Mr. Perkins: Will counsel now produce the Aetna policies?

Mr. Stoffer: Yes. They were in Judge Brenner's possession until this morning, a few minutes ago.

(Policies produced.)

30

Mr. Perkins: I offer in evidence policy P A 129,970, Aetna Life Insurance Co.

(Marked Exhibit C-19.)

Q. Have you made further investigation of your books to find payments made to you by accident or indemnity companies on account of accidents to you? A. I have.

40 Q. Are you able to give the Court any more information than you did yesterday? A. I am.



*Aaron P. Sussman, for Complainant—Direct.*

Q. Please proceed to give it. A. The record that I was able to find was a payment of December 31, 1921, of the Commercial Casualty, a check deposited for \$90.

Q. That is the one we were talking about yesterday when you had that little yellow slip, is it not, that you could not remember? 10

The Court: That is the one he did remember. You asked him about one of \$140 and one of \$90. He remembered the \$90 but could not remember the \$140.

Q. What next? A. That was the only record I was able to find.

Q. The only one that you were able to find is the one you found yesterday or tried to find yesterday? A. That is the only one. 20

Q. What is the date of the payment to you? A. December 31, 1921, I believe was the date of the deposit.

Q. And for what injury to your body was that paid? A. There is no record of that. I just had the record of the deposit.

Q. Have you the record of the deposit made on or about the 17th of February, 1921, for \$140, for sprained ligament? A. No; I haven't that.

Q. How is that? A. I don't know why I haven't it. 30

Q. You found that one but did not find any more? A. That is all I found.

Q. Now, you remember the acid burn to your eye? A. Yes.

Q. What company did you receive money from for that? A. I think that was the Royal Indemnity.

Q. Do you know how much you received? A. I believe I was allowed for about three weeks. I do not know the amount. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. How much did you collect for each week?

A. I do not recollect.

Q. You were totally disabled for three weeks?

A. Yes.

10 Q. Do you remember the injury to your thumb at the time when you slipped when you were putting in a plate? A. Yes.

Q. How long were you laid up that time? A. I don't recollect.

Q. How much money did you receive then? A. I don't recollect.

Q. Have you any means of ascertaining? A. If I had, I would be only too glad to tell you.

Q. Do you remember the time your nose was struck by a swinging door? A. Yes, I do.

20 Q. You were incapacitated that time, too? A. Yes.

Q. For how many weeks? A. I don't recollect.

Q. Totally incapacitated to do business? A. Yes.

Q. You do not know how many weeks it was?

A. It was not long—possibly two weeks.

Q. You had a broken nose? A. Yes; there was one of the small nasal bones fractured.

30 Q. That is what I mean when I say "broken". You were laid up at least two weeks? A. I believe so.

Q. Total disability? A. Yes.

Q. What company did you collect money from for that? A. I don't recollect.

Q. Can you tell us how much you collected? A. I cannot.

Q. You collected total disability under your policy for two weeks at least, didn't you? A. Surely.

40 Q. Do you remember a time when your face was burned with acid, when your eye was not



*Aaron P. Sussman, for Complainant—Direct.*

burned? A. I recall but one burn. Except that you mentioned it yesterday that there were two, I do not recall it.

Q. Well, it was in the Royal Indemnity that you were insured when you got money for a broken nose, was it not? A. Yes.

Q. Didn't you get \$107.12? A. I remember that amount. 10

Q. Did you receive that for your broken nose? A. I don't know what I received it for, but I particularly remember that amount, \$107.12.

Q. The same accident? A. Yes.

Q. You were in the Commercial Casualty when you had the sprained right thumb? A. I have been reminded of that yesterday.

Q. That was the company, was it not? A. I don't know. 20

Q. Don't you remember receiving \$140 at the time you had the sprained right thumb? A. I do not.

Q. But you did find a record of months later when you had an injury——

The Court: He said he found the record of the \$90 payment.

Q. Now you do remember you had some trouble with your throat when you were insured in the Standard when you got \$23.20? A. I do not know whether it was the Standard Accident or what company it was. I do remember something about that. 30

Q. It was \$23.20 you collected. Do you remember that figure, too? A. It is possible. I do not recollect.

Q. You do remember collecting from some accident company on account of trouble with your throat? A. Yes, I do. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Now, do you remember the occasion when you had burns to the face but not involving the eye? A. I do not.

The Court: He says he does not remember that.

10 Q. Do you remember a case where you had an injury to the finger, not included in the spraining of the ligament of the thumb or the other injury to the thumb? A. I remember that.

Q. You were then insured in the Maryland Casualty Company, were you not? A. I believe so.

Q. And you collected accident insurance from them, too, didn't you? A. Yes, sir.

20 Q. Can you tell us the amount? A. To the best of my recollection, it was somewhere around \$50.

Q. Now, you remember, don't you, when you had a cut hand and you collected from the Standard Accident Company? A. No, I do not recollect that.

Q. You did have a cut hand at one time, didn't you, for which you collected insurance? A. I don't recollect that.

30 Q. Do you remember a second occasion when you had some trouble with the throat and you collected from the Standard Accident Company? A. I do not recall that; no, sir.

Q. Do you remember an occasion when you collected \$105.35 from the Standard Accident Company for burns to the face and eye? A. Yes.

Q. Do you recall the cancellation of the Standard's policy when you were returned \$6.95 premium? A. I have never had any policies cancelled that I ever had.

40 Q. Then, you do not recall receiving from the Standard Accident Company, on the 18th of Sep-



*Aaron P. Sussman, for Complainant—Direct.*

tember, 1916, \$6.95 refunded to you? A. I do not recall any such thing.

Q. Do you recall that in 1916 you did have a Standard Accident policy? A. That is possible. I do not recall it.

Q. Do you recall that in May, 1916, you collected from the Standard Accident Company for a cut hand? A. I do not recall that. 10

Q. Do you recall that in the same month you collected from the Standard Accident Company for trouble with your throat? A. I said that I had collected for a throat condition once. I had a sore throat.

Q. You collected from the Standard Accident for throat trouble, didn't you? A. I don't recall that.

Q. You only recall once collecting from the Standard Accident, do you? A. I don't know whether it was the Standard Accident or any other company, but I do recall having collected once for a condition of the throat where I was in bed. 20

Q. At the present time your memory does not assist you to recall whether in May, 1916, you collected from the Standard Accident for trouble with the throat? A. No, I don't recollect.

Q. You do remember collecting \$105.35 for burns to the eye and face, don't you? A. Yes. 30

Q. From the Standard Accident? A. If that was the company that I was in at that time, it must be so.

Q. Don't you remember in August, 1916— A. (Interrupting.) I don't remember whether it was the Standard Accident, but I had an accident at that time, such as you mention, and I remember collecting for that accident. 40



*Aaron P. Sussman, for Complainant—Direct.*

Q. Don't you remember right after these three occurrences that your Standard Accident policy was cancelled and you received a refund? A. There is no such thing and there never was any such thing as a cancelled policy of mine.

Q. You are positive of that? A. Yes.

10 Q. Whereas you cannot remember a lot of these accidents to your body, you can remember that no policy was ever cancelled? A. That is correct.

Q. How diligent a search did you make to find these items of payment by accident companies to you? A. I usually entered on the stubs of the check book, of check deposited, where the check came from.

20 Q. Is that the only record you made? A. That is all.

Q. You never kept a book account, did you? A. In view of the fact that I have no partners, or anything of that kind, I do not find it necessary.

Q. What book is it that you have with you? A. Just showing the insurance that I have. If you want to look at it, you are welcome.

Q. Is that the only book of account that you kept? A. Oh, no; I have other books of account.

30 Q. Did you search them? A. I did.

Q. You could not find anything? A. No.

Q. Have you any book of account showing money that you collected on account of the accident that you claimed to have had on the 17th of January? A. No; I never kept any, except as I mentioned, that I inserted on the stub of the check book, the check deposited, where from, and the amount.

40 Q. How much did you collect every week from the Aetna Life on account of that accident on your right hand?



*Aaron P. Sussman, for Complainant—Direct.*

The Court: Which accident?

Mr. Perkins: January 17, 1927.

A. About \$15,000.

Q. How much every week? A. \$500 for about thirty weeks.

Q. And the policy which was offered in evidence this morning is the policy under which you collected that? A. That is the policy. 10

Q. What other company did you collect from on account of that accident? A. The Travellers.

Q. How much? A. I don't recollect.

By the Court:

Q. You don't know how much? A. I am trying to think. It was \$50 a month on one policy for a little over a year and that had a disability clause and another policy of about \$20 a month for the same length of time and that was deductible from the value of the policy. 20

Q. How much did you collect from the Prudential? A. \$50 a month on one policy and about \$20—not quite that—from the value of another policy; and then I collected also about \$50 a month from the Equitable Life for the same length of time.

Q. Did you collect anything from the Manhattan? A. No. 30

Q. Did you collect anything from the National Casualty? A. No.

Q. Did you collect anything from the Travelers? A. I did.

Q. About how much? A. About \$50 per month for a little over a year, I think, on one policy, and \$20 a month, deductible from its value as a policy.

Q. In all of these claims which you made upon insurance companies, you claimed a total per- 40



*Aaron P. Sussman, for Complainant—Direct.*

manent disability, didn't you? A. A total disability; correct.

Q. A total permanent disability? A. Yes, sir.

By Mr. Stoffer:

10 Q. Do you recollect, Doctor, when the Maryland Casualty payment that you talked about was made to you? A. I can't recollect.

Q. Can you tell us what you meant by some of these indemnity payments that you received after your accident being deducted from the value of the Travellers policy and the Prudential policy?

Mr. Perkins: I object. The policies speak for themselves, and it is a wrong description of what happened.

20

By the Court:

Q. You made a statement about the value or the face amount of the policy? A. The face amount of the policy?

30 Q. Counsel asks you what you meant by that? A. I meant by that that it did not have an indemnity clause that I was paying extra for. Policies where you do pay an extra amount, it was not deductible. Where those policies do not have that feature, the \$2,000 policy that I mentioned, the policies were worth that much less in money that I received.

Q. On death, do you mean? A. Yes, on maturity.

By Mr. Perkins:

Q. You seem to have a pretty clear conception of what is in the policies, don't you?

40

Mr. Stoffer: Dr. Sussman is the complainant's witness. This is going too far.



*Aaron P. Sussman, for Complainant—Direct.*

The Court: I sustain the objection to the question, if it is a question.

Q. Dr. Sussman, yesterday I think you gave us \$500 as the total aggregate, or approximately the total aggregate of the moneys you received on account of accidents to your body from insurance companies on policies; is that right? A. Yes. 10

Q. All of that was received before the 4th day of November, 1926, was it not? A. Yes, sir.

Q. And the amount that you have mentioned as \$15,000 is money that you received subsequently to the 17th day of January, 1927? A. Yes.

Q. You kept no record at all of that, did you? A. None other than I have mentioned.

Q. Well, you have mentioned none. A. I mentioned the fact that I made a note in my check book, on the stub of my check book, of checks that I deposited. 20

By the Court:

Q. That concerned one check of \$90. That was before 1927. Mr. Perkins asks you about record of payments made after the accident of January, 1927? A. No; I have made no record of them.

COMPLAINANT RESTS. 30

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### Defendant's Case.

Mr. Stoffer: I at this time desire to offer in evidence D-1 for identification, D-2 for identification and D-3 for identification.

Mr. Perkins: I object to their admission. 40



*Colloquy of Counsel.*

The Court: Let them be marked in evidence.

10 (Paper heretofore marked D-1 for identification marked Exhibit D-1. Paper heretofore marked D-2 for identification is marked Exhibit D-2. Paper heretofore marked D-3 for identification is marked Exhibit D-3.)

Mr. Stoffer: Pursuant to notice served on the solicitors of complainant, I call for the production of all original applications in the possession of the complainant relating to any policies held by the defendant in the Metropolitan Life Insurance Company.

20 Mr. Perkins: We have none. It is too general, to give us, a few days before trial, notice to produce all original applications.

The Court: The original applications on the policies in the Metropolitan that are the subject of this suit are very easily available.

Mr. Perkins: If he is talking about this suit, yes, but I understand that Mr. Stoffer is asking for all applications ever made by the defendant to the Metropolitan.

30 Mr. Stoffer: That is true.

Mr. Perkins: I do not see how you can do that.

The Court: You have the policies here in evidence. Mr. Stoffer says that what he wants are the applications that preceded these particular policies. You ought not to have very much trouble in locating them.

Mr. Perkins: I do not admit that they are evidence.

40



*Colloquy of Counsel.*

The Court: That is another question.

Mr. Perkins: My answer to the defendant is that the demand is too general—not only physically, but absolutely impossible to comply with. We cannot produce anything except the application in this particular case. The demand gives no number of the policies. It gives no identification of any kind. There are at the present time over 30,000,000 policies outstanding in this company. 10

The Court: That does not make any impression on me how many policies the Metropolitan has outstanding. We are talking about three or four policies—the applications connected with them. It is very simple to find those policies. 20

Mr. Perkins: If he had given us the numbers, we might have been able to locate them.

The Court: I think the notice is a little too general when you say “all applications on all policies issued” by this insurance company to Sussman. I am going to give you time, Mr. Stoffer, to make a specific demand.

Mr. Perkins: This paper was demanded and I produce it and now hand it to counsel. 30

Mr. Stoffer: Would your Honor now grant us an adjournment so that we may make our demand——

The Court: I am going on with what I have here today.



*Aaron P. Sussman, for Defendant—Direct.*

AARON P. SUSSMAN, the defendant, heretofore sworn as a witness on the part of the complainant, called as a witness in his own behalf.

*Direct examination by Mr. Stoffer:*

10 Q. How long have you been engaged in the practice of dentistry? A. Since 1901.

Q. Were you engaged in the practice of that profession in 1926? A. I was.

Q. Were you practicing in any special branch of that profession? A. No.

Q. General dentistry? A. Yes.

Q. In 1926 were you solicited for insurance by any agent of the Metropolitan Life Insurance Company?

20 Mr. Perkins: I object to that as immaterial.

The Court: What difference does it make whether he was solicited or not? The policy was issued. Objection sustained.

Q. I show you Exhibit C-1, the policy in suit, and ask you who delivered that policy to you?

Mr. Perkins: I object.

30 The Court: Objection overruled.

A. Mr. Miller and another gentleman, Mr. Sabatino, assistant manager of the company—I do not recall his name—an Italian chap. He was here yesterday.

Q. I show you application for accident insurance dated November 4, 1926, and ask you if that bears your signature? A. It does.

Mr. Stoffer: I offer it in evidence.

40 (Marked Exhibit D-4.)



*Aaron P. Sussman, for Defendant—Direct.*

Q. Did you fill out that application?

The Court: Do you mean is it filled out in his handwriting?

Mr. Stoffer: Yes.

A. No.

Q. Will you tell us in whose handwriting that application is filled out? 10

Mr. Perkins: I object.

The Court: Objection overruled.

A. Mr. George P. Fink, the Metropolitan representative.

Q. Did Mr. Fink write any other policies in the Metropolitan Life Insurance Company for you?

Mr. Perkins: I object to that as immaterial. 20

The Court: How is that material?

Mr. Stoffer: The question of Mr. Fink's knowledge on some of the matters set out in the application may——

The Court: Is Mr. Fink a solicitor of the Metropolitan Company?

Mr. Stoffer: Yes.

The Court: Objection sustained. 30

Q. Did Mr. Fink read to you the questions which are printed on Exhibit D-4?

Mr. Perkins: I object.

The Court: Objection overruled. I am going to allow this witness to testify how this application came to be filled out—whether the answers made to the questions on the application are his statements or not. 40



*Aaron P. Sussman, for Defendant—Direct.*

Mr. Perkins: In spite of the fact that he signed the certificate?

A. Yes; he did.

10 Q. Referring to question 11: "What life or accident insurance have you in any other company or association?" Did you at the time of this application on November 4, 1926, have the policies listed under that question?

Mr. Perkins: I object.

The Court: Objection overruled.

A. I did.

Q. And did you have any other life or accident policies on that day? A. I did.

Q. What?

20

Mr. Perkins: I object.

The Court: I do not think it is material what he had. If you want to ask him what he said in answer to that question, I will permit that.

Q. Did you tell Mr. Fink of any other life or accident policies which you held on November 4, 1926?

30

Mr. Perkins: I object upon the ground that any conversation between the witness and Mr. Fink cannot bind this company.

The Court: Objection overruled. You mean did he tell Mr. Fink at the time this application was filled out, not one year before or two years after.

Mr. Stoffer: I mean at that time.

The Court: At the time that the application was filled out—is that your question?

40

Mr. Stoffer: Right now; yes.

A. Yes; I did.



*Aaron P. Sussman, for Defendant—Direct.*

Q. What other policies did you tell Mr. Fink?

A. Commercial Travellers, \$50 payment.

Q. Any others? A. No others. Pardon me, no others excepting what you have here.

By the Court:

Q. The question is: Did you tell Mr. Fink at the time the application was filled out about any other policies than those mentioned in answer to the question? A. That is correct.

Q. Commercial Travellers is the only one? A. That is correct.

By Mr. Stoffer:

Q. I show you Exhibit C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-12 and D-1, D-2 and D-3, and I ask you whether on or about November 4, 1926, those exhibits had been delivered by you into the possession of Mr. Fink?

Mr. Perkins: I object.

The Court: Objection sustained. My reason for sustaining the objection is as to the tone of your question, "on or about". If you are talking about the date the application was made or immediately prior to that date, all right. Reframe your question.

Q. Referring to the exhibit which you hold in your hands, will you tell us whether prior to November 4, 1926, you delivered those policies into the possession of Mr. Fink?

Mr. Perkins: I object.

The Court: Objection overruled.

A. Yes.



*Aaron P. Sussman, for Defendant—Direct.*

By the Court:

Q. How long prior? A. A few weeks.

By Mr. Stoffer:

10 Q. Will you tell us under what circumstances those policies were delivered to Mr. Fink? A. Mr. Fink solicited me for——

Mr. Perkins: Objected to.

The Court: Objection overruled.

Q. Proceed. A. Mr. Fink solicited me for more insurance.

By the Court:

20 Q. You handed these policies to him? A. I handed them to him to look them over, and he says he could get me more insurance for the same premium, and he took with him and kept in his possession for a number of weeks all of the Metropolitan policies—all except Exhibit C-11.

Q. Exhibit C-11? A. Except Exhibit C-11.

By the Court:

30 Q. Doctor, you recall that in Mr. Stoffer's question Exhibit C-11 was excluded? A. I exclude that. I had it lying here.

Q. But you did not exclude it in your answer. I understand you to mean that all of the policies Mr. Stoffer showed you, with the exception of Exhibit C-11, were the policies that were handed to Mr. Fink? A. Yes.

By Mr. Stoffer:

40 Q. Is Exhibit C-9, policy in the sum of \$5,000 in the Metropolitan Life Insurance Company, a policy which Mr. Fink obtained for you?



*Aaron P. Sussman, for Defendant—Direct.*

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Referring to the application annexed to Exhibit C-9, will you tell us whether that contains your signature?

Mr. Perkins: I object. It does not purport to contain his signature. It is a photostat copy.

10

The Court: Objection sustained.

Q. Did you have any discussion with Mr. Fink at the signing of the application on November 4, 1926, concerning Exhibit C-2, policy issued in the Commercial Travellers Mutual Accident Insurance Company?

20

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did you say anything to Mr. Fink concerning Exhibit C-2, policy of the Commercial Travelers, on November 4, 1926, or immediately prior thereto? A. I did.

Q. What did you say to Mr. Fink?

Mr. Perkins: I object.

The Court: Objection sustained.

30

Q. Is Exhibit C-2 one of the policies which you delivered to Mr. Fink?

The Court: Why ask that question over again? You handed him Exhibit C-2 and he told you it was one of the policies which he delivered to Mr. Fink.

Q. Did Mr. Fink tell you why Exhibit C-2, policy in the Commercial Travellers, was not listed in this answer in the application?

40



*Aaron P. Sussman, for Defendant—Direct.*

Mr. Perkins: I object.

The Court: Objection sustained.

10 Q. Did you have any knowledge, as a result of anything said to you by Mr. Fink, concerned the reasons for the exclusion of Exhibit C-2 from the answer to question eleven?

Mr. Perkins: I object.

The Court: I think I will allow you to ask this question: Did Mr. Fink tell you why he excluded the Commercial policy?

20 Q. Did Mr. Fink tell you why he excluded Exhibit C-2, policy of the Commercial Travellers Insurance Company, from the answer to question eleven, at the time when this application was made?

Mr. Perkins: I object.

The Court: Objection overruled.

A. He did.

Q. What did he say?

Mr. Perkins: Objected to.

The Court: Objection overruled.

30 A. He said there is no necessity of including this policy, he having discussed it with——

Mr. Perkins: I object.

The Court: Objection overruled.

40 Q. Go on. A. (Continuing.) —he having discussed it with Mr. Sooper, the district manager of the Metropolitan Life Insurance Company, who said there was no ethics in accident insurance policies, and in view of the fact that this was expiring on the 6th of January, not to insert it.



*Aaron P. Sussman, for Defendant—Direct.*

By the Court:

Q. The statement that you have just testified to, is that a statement that Mr. Fink made to you? A. Yes, sir.

Mr. Perkins: I object, and ask that it be stricken out.

10

The Court: Motion denied.

By Mr. Stoffer:

Q. By the way, when did the Commercial Travellers policy, Exhibit C-2, actually expire?

Mr. Perkins: I object. It speaks for itself.

The Court: Objection sustained.

20

By the Court:

Q. Did you cancel this policy that you are talking about?

Mr. Perkins: I would like to object to that question. He did not cancel it. It lapsed by reason of non-payment of premiums. It is one of the policies he made a claim on.

Mr. Brenner: We object to that statement going on the record.

30

By Mr. Stoffer:

Q. I show you, doctor, a letter from the Commercial Travellers Mutual Accident Association, Utica, N. Y., dated November 22, 1926, and ask you if you received that in the ordinary course of mail? A. I did.

Mr. Stoffer: I offer this letter in evidence.

40



*Aaron P. Sussman, for Defendant—Direct.*

Mr. Perkins: I object to it.

The Court: On what grounds?

Mr. Perkins: Here is merely a letter from an insurance company that indicates that no action was taken towards cancellation.

10

The Court: Objection sustained.

Q. Do you have any records which will show when the Commercial Travellers insurance policy, Exhibit C-2, was cancelled or expired?

Mr. Perkins: I object. It expired on the 6th of January, 1927, when he paid no more premiums.

Mr. Stoffer: That is all I want.

20

The Court: Will counsel agree on that?

Mr. Stoffer: Yes.

The Court: That this policy expired on the 6th of January, 1927?

Mr. Stoffer: Yes.

30

Q. Doctor, referring to application question twelve: "Has any application ever made by you for life or accident insurance been declined, postponed or withdrawn, or have you failed to receive notice of action thereon?" Now, doctor, had any application by you for life or accident insurance been declined, postponed or withdrawn by you prior to November 4, 1926? A. No.

Q. Did you, on November 4, 1926, have any application for accident or life insurance pending in any company, notice of action on which you had not received prior to November 4, 1926?

40

Mr. Perkins: I object. He is trying to prove something which has nothing to do with our case.



*Aaron P. Sussman, for Defendant—Direct.*

The Court: Is there any question raised about the truth of this?

Mr. Stoffer: Certainly. This is one of the questions in the case.

The Court: Objection overruled.

Mr. Perkins: I object upon the ground that it is just a conclusion of this witness. 10

The Court: I think he can state that as a fact.

A. No.

Q. Referring to question thirteen of the application: "Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused?" Do you know of any policy of accident insurance which has been cancelled, rescinded or a renewal thereof refused by any company prior to November 4, 1926? A. No. 20

Q. Referring to question fourteen, which you have before you, did you have any conversation with Mr. Fink concerning the subject matter of that question at the time of the signing of this application?

Mr. Perkins: I object to that.

The Court: Objection overruled.

A. I did.

Q. What did you say to him? A. I told him that I had a number of minor accidents which I could not recall instantly. He says that does not— 30

Mr. Perkins: I object to what he said.

The Court: Objection overruled.

Q. What did Mr. Fink say to you?

Mr. Perkins: I object to that.

The Court: Objection overruled. 40



*Aaron P. Sussman, for Defendant—Direct.*

A. He said these small things didn't make any difference.

Q. Did you give Mr. Fink the information: "Aetna, \$200, 1917?" A. Yes.

Q. And it is entered in his handwriting? A. Yes.

10 Q. And it is entered in his handwriting? A. Yes.

Q. Question seventeen is before you,—were you on November 4, 1926, maimed, deformed or crippled in any manner or degree? A. I was not.

Q. Were you on November 4, 1926, afflicted with any form of bodily or mental disease, disorder, infirmity or impairment?

20 Mr. Perkins: I object. That is for the Court to decide. It is not for this man to say.

The Court: I will allow the question.

A. No.

30 Q. Referring to question nineteen, did your weekly income from the profession of dentistry exceed the aggregate amount of a single weekly benefit provided under Metropolitan policy, \$75 a week, and all other policies of accident insurance carried by you at that time, November 4, 1926?

Mr. Perkins: I object. This man, without any record, is going to testify what his annual or weekly income was covering a period of time. It seems to me we are going very far, especially in view of the fact that he has no record of any kind.

The Court: Objection overruled.

40 A. Yes, sir.

Q. Have you any records showing your average weekly income during 1926? A. I have.



*Aaron P. Sussman, for Defendant—Direct.*

Q. Have you them here? A. I have.

Q. Produce them?

Mr. Perkins: I submit it is immaterial, in view of your Honor's ruling.

The Court: Why is it necessary for you to go into that?

Mr. Stoffer: It is not at this time. I will withdraw that. 10

Q. Did Mr. Fink read to you question twenty in the application?

The Court: He says that Mr. Fink read all the questions.

Mr. Stoffer: I feel that the question should be gone into.

The Court: Go into it, but do not ask him if he read that question which he has already said had been read to him. 20

Q. Did you fill in the answer to question twenty?  
A. No.

Q. Was the subject matter of question twenty discussed between you and Mr. Fink?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did you have any conversation with Mr. Fink concerning the subject matter of question twenty? 30

Mr. Perkins: I object.

The Court: Objection sustained.

Q. On November 4, 1926, prior to the signing of this application, did you have any conversation with Mr. Fink concerning the subject matter of question twenty? 40



*Aaron P. Sussman, for Defendant—Direct.*

The Court: I am ruling out your questions because I think they are too broad. Get down to the specific thing. Ask him whether he said in answer to that question, when Mr. Fink read it, "No."?

10 Q. Did you say to Mr. Fink "No", in answer to question twenty on November 4, 1926?

Mr. Perkins: Objected to.

The Court: Objection overruled.

A. That question was not read; neither did I see it until this suit. I never thought of it.

Q. What did you mean earlier in your testimony—

20 Mr. Perkins: I object to that.

The Court: Objection overruled.

Q. What did you mean earlier in your testimony when you said that Mr. Fink had read all of the questions to you? A. I just glanced at this casually and I—

By the Court:

Q. Now, today, do you mean? A. Yes. I have read it a number of times.

30 Q. When the question was asked you? A. I just casually looked at it.

By Mr. Stoffer:

Q. Are you able to say to the Court definitely now that question twenty was not read to you by Mr. Fink?

Mr. Perkins: I object to that.

40 The Court: Was or was not read to him.

A. It was not read to me.



*Aaron P. Sussman, for Defendant—Direct.*

Q. Were you in an accident on January 17, 1927? A. I was.

Q. Will you tell the Court the nature of the accident?

Mr. Perkins: I object. It is immaterial.

The Court: There has not yet been any testimony as to what the accident was. Objection overruled.

10

Mr. Perkins: That may bring us into the trial of an entirely different case. It is not in rebuttal of any part of our case.

The Court: He is putting in his case. Objection overruled.

A. This index finger on the right hand was maimed in a taxicab door.

20

By the Court:

Q. It had to be amputated? A. Yes; a week later.

By Mr. Stoffer:

Q. How long were you confined in the hospital?

Mr. Perkins: I object to that as immaterial.

Mr. Stoffer: The reason is to explain the reason Mr. Loeb sent the notices.

30

The Court: Objection overruled.

A. Three weeks.

Q. Was any other portion of the hand injured besides the index finger? A. The middle finger. That is ankylosed. It is improving.

Q. Ankylosed? A. Stiffened. That is the best I can do with it.

40



*Aaron P. Sussman, for Defendant—Direct.*

Q. Any other injury to the hand from that accident? A. No.

Q. How long after January 17, 1927, were you totally disabled from continuing your profession?

Mr. Perkins: I object.

10 The Court: As I understand it, Mr. Stoffer, this action is brought to cancel certain policies on which you have brought suit and to restrain you from continuing your action at law. The question involved here is not the question of the accident but whether the policies were obtained by fraud and whether the company was induced to write them by misrepresentation or concealment of facts. That has nothing to do with the accident or the injury.

20 Mr. Stoffer: The only reason I am asking that question is because the period of disability is now at an end. Therefore the damages are now liquidated. We have been enjoined from continuing with our action at law. There is a principle that once a case comes into the jurisdiction of this Court, if there is no question which need necessarily go to a jury, as for example where the damages are liquidated, the Court will do justice as between the parties.

30 The Court: All I am going to do is to say whether the suit at law should be restrained or not.

Q. I show you a letter dated January 31, 1927, annexed to Exhibit C-18, addressed to the Commercial Travellers Mutual Accident Association, and ask you whether you gave Mr. Loeb any specific authority to make a claim on this company? A. I did not.

40



*Aaron P. Sussman, for Defendant—Cross.*

Q. Did you have any conversation with Mr. Loeb concerning specific policies of yours? A. I did.

Q. Which? A. This Commercial Travellers Mutual Accident Association of Utica.

Q. What did you tell him?

Mr. Perkins: I object.

The Court: Objection overruled.

10

A. I told him that that policy had expired on January 6th. He says: "Well, I have written them any way."

*Cross-examination by Mr. Perkins:*

Q. That was the second conversation with Mr. Loeb, was it not? A. I believe so.

20

Q. You can remember that, can you not? A. I believe that is so.

Q. I say you can remember that, can you? A. I do; yes.

Q. You had a previous conversation with him; didn't you? A. He called on me at the hospital and we had a conversation.

Q. You can remember that conversation, can you not? A. Yes.

Q. You have no difficulty about remembering that, have you? A. No.

30

Q. You have had wide experience in accident and life policies, have you not? A. I don't know what you mean.

Q. Do you mean to tell this Court that you do not know what I mean when I say you have had wide experience in accident and life insurance policies? A. I mean just what I have said.

Q. Well, you had a long experience in accident and life policies, did you not? A. Over a period from 1911 or 1906.

40



*Aaron P. Sussman, for Defendant—Cross.*

Q. You had many policies for life, accident policies and life policies in that time, had you not? A. Yes, sir.

Q. And at the time of this accident you said you had eighteen policies, life and accident policies, didn't you? A. At the time of this accident I believe you are right.

Q. And you described to the Court, on examination by your counsel, with a great deal of accuracy, the method by which life policies are diminished in face value when you draw down payments on accidents, didn't you? A. Yes, sir.

Q. So that you have had great familiarity with accident and life policies, have you not? A. No, sir.

Q. You have had considerable familiarity, have you not? A. Since my—

Q. Please answer my question. A. Repeat it.

Q. You have had considerable familiarity with accident and life policies over a period of nineteen years, involving at one time eighteen different policies? A. I am not a judge of my experience with policies of insurance. Judging from my own work, I know very little of my own work and I am practicing over twenty-five years. Judging from my own work I do not begin to know anything.

Q. You are making over \$30,000 a year and have very little knowledge of your own profession? A. There is so much to know—

Q. You are making over \$30,000 a year and yet you tell the Court that you do not know— A. There is so much more that I do not begin to know. I know something of it but I do not begin to know all there is to be known.

Q. Do you do any advertising? A. No.

Q. You signed the application to this policy? A. Yes.



*Aaron P. Sussman, for Defendant—Cross.*

Q. And you can read and write, can you not?  
A. Yes.

Q. You were educated at what institution? A. College of Oral & Dental Surgery, Columbia.

Q. Previous to that what was your education?  
A. High school and grammar school,—ordinary schooling.

10

Q. You had the ordinary schooling, having graduated from high school and then you had a college education in dentistry? A. Yes, sir.

Q. And you have been how many years engaged in the practice of dentistry? A. Since 1901.

Q. And you have built up a large practice, so that your income, you say, is over \$30,000 a year and has been for years? A. It was.

Q. Up to when? A. 1926.

Q. For how many years had it exceeded \$30,000? A. In 1919 it exceeded \$30,000.

20

Q. And you have drawn from it \$30,000 a year from 1919 right down to the present; is that right?

A. Some years it may have been more and some years less.

Q. Previous to the writing of the application in this case you had your fingers in a bandage, didn't you—the finger that is now amputated, was in a bandage, was it not? A. How long previous?

Q. Just a few weeks previous? A. No, sir.

30

Q. Didn't you get it caught in an electric fan?  
A. Yes.

Q. That is what you said to somebody? A. Yes.

Q. How long previous? A. That was early in October of the previous year or the latter part of September, 1926.

Q. Not the previous year but the same year.  
A. I beg your pardon. The same year.

Q. Was this written in 1920? A. I beg your pardon. What is the question?

40



*Aaron P. Sussman, for Defendant—Cross.*

Q. My question was directed to the time of the writing of this application? A. The same year.

Q. Your answer came back that it was the previous year. A. I misunderstood it. I beg your pardon.

10 Q. It was September, 1926? A. That is correct.

Q. What doctor treated you then? A. No doctor.

Q. How long were your fingers in this bandage? A. Several hours.

Q. Is that all? A. Yes.

Q. What fingers were bandaged? A. The index, middle and third finger or fourth finger, three or four of them—for a few minutes.

20 Q. For a few minutes? A. Yes; I wrapped a towel around them. I thought I was badly injured—

Q. Never mind that. Didn't you present your fingers in a surgical bandage to anyone in the middle of September, 1926? A. No.

Q. You never did? A. No.

Q. How many policies of insurance have you had, both accident and life, since 1911? A. I cannot tell you that.

30 Q. You signed many applications, have you not? A. That is relative, when you say "many".

Q. That is relative. So, Mr. Einstein, we are going to be rather technical about this. A. I beg your pardon. I am not to be subject to caustic comments. You have been anything but courteous. I ask the protection of the Court. I am Dr. Sussman to every one else. I have been addressed as "Mr." Sussman by you and I resent it. I want you to treat me as a human being. I won't stand for it. I do not like this. I want you to leave

40 Mr. Einstein out of this.



*Aaron P. Sussman, for Defendant—Cross.*

Q. I meant no disrespect. Now, Dr. Sussman, can you tell the Court how many policies of insurance you have had on your life and health or accident policies in the last nineteen years? A. No, sir.

Q. Did you ever get a policy when you did not sign an application for it? A. I did.

10

Q. What policies were those? A. The Aetna's.

Q. Did you ever actually receive a policy that you never applied for? A. I do not believe so.

Q. So that in all the number, many or few, eighteen at one time, you have signed an application for every one of them, have you not? A. Yes.

Q. And you knew, when you put your name on an application, that you were making representations to the company to induce it to enter into a contract, didn't you? A. That is so, surely.

20

Q. And you have been doing that for nineteen years at various times? A. Yes.

Q. Can you not approximate the number of policies you have had, both accident and life, in that time? A. No.

Q. Forty or so? A. It would be less than forty, surely.

Q. It would be about thirty-five, doctor, would it not? A. I don't think so.

30

Q. Then, they reached their maximum in January, 1927, didn't they? A. It is possible.

Q. You never had more on your body, either life or accident, than you did on the 17th of January, 1927, did you? A. I did, or I have, rather.

Q. You had eighteen at that time? A. I have more at the present time.

Q. You understand my question? A. I have more insurance policies at the present time.

40



*Aaron P. Sussman, for Defendant—Cross.*

Q. Up to the 17th of January, 1927, had you ever had more than you did on that day? A. No; I don't think so.

The Court: More at one time?

Mr. Perkins: Yes.

10 By Mr. Stoffer:

Q. Will you tell us how long you had known Mr. Fink prior to 1926? A. A few years.

Q. Was he a patient of yours? A. Yes.

Q. Can you tell us when you received the Aetna \$250 per week policy?

Mr. Perkins: I object.

20 The Court: Do you mean the date when he received it or the date of issue? What is the point?

Mr. Stoffer: To show that that policy was not in force. Congressman Perkins is assuming that the \$250 should be added in with the Commercial Travellers of Utica.

The Court: Then, for your purpose, is not the date of the policy sufficient?

30 Q. Can you tell us when you signed the application for the Aetna Insurance policy, which is marked Exhibit C-19?

Mr. Perkins: I object. Here is the application, the 27th of October—

The Court: Will you admit that the date of the application for the Aetna policy was October 27, 1926?

Mr. Perkins: I absolutely do insist upon it.

The Court: Is not that all you want?

40 Mr. Stoffer: That is not the fact. I am trying to show the true situation on that



*Colloquy of Counsel.*

day so that your Honor can determine whether question eleven was answered truthfully or not.

The Court: On the face of the record so far, it appears that as to the Aetna policy the answer was true. The date of the application was October, 1926.

10

Mr. Stoffer: There were two policies. I want the doctor to tell us whether he then had signed any application for the larger amount, the \$250 a week policy, and if not, when he actually did sign it.

Mr. Perkins: There is introduced in evidence the policy of the Aetna on which this man drew \$500 a week until he got \$15,000. The policy is dated the 27th of October, 1926, and the application is dated the same day. Now he seeks by oral testimony to show that this was not in existence at the time he made our application.

20

The Court: Mr. Stoffer is asking if there was an application for another policy after the date of this.

Mr. Perkins: This is the one he is talking about.

The Court: Are you trying to prove that there was some other policy?

30

Mr. Stoffer: No; that this policy was actually not delivered until a later date in November and no application signed for it prior to November 4—no application pending for it on November 4, when the Metropolitan application was signed.

The Court: You have the photostat copy.

Mr. Stoffer: It is typed in. I want to show that there was no application pending.

40

The Court: Objection sustained.



*Aaron P. Sussman, for Defendant—Cross.*

Q. Can you tell us who the agent of the Aetna Insurance Company is who obtained the Aetna policy marked Exhibit C-19 and delivered it to you?

Mr. Perkins: Objected to.

10

The Court: Objection sustained.

Q. Was the Aetna policy, Exhibit C-19, in existence on November 4, 1926, or immediately prior to November 4, 1926, when you signed the application for the Metropolitan policy?

Mr. Perkins: I object.

The Court: Objection sustained.

20 Q. Did you have any insurance in the Aetna Life Insurance Company on November 4, 1926?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Had you applied for any policy in the Aetna Life Insurance Company providing a weekly indemnity of \$250, prior to November 4, 1926?

Mr. Perkins: I object.

The Court: Objection overruled.

30

A. I have not.

Q. When did you apply for such a policy?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did the Aetna Insurance Company issue a \$250 per week indemnity policy to you prior to November 4, 1926?

40

Mr. Perkins: I object.

The Court: Objection sustained.



*Aaron P. Sussman, for Defendant—Cross.*

Q. When did you sign any application for an Aetna Insurance policy providing an indemnity of \$250 per week?

Mr. Perkins: Objected to.

The Court: Objection sustained.

Q. Referring to Exhibit C-19, will you tell us when you signed the application which is written on that policy?

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Mr. Perkins: I object. It does not appear he signed it.

The Court: That question has already been asked and objection made to it. Objection sustained.

Q. Did you tell Mr. Fink about any Aetna insurance policy at the time when you signed an application on November 4?

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Mr. Perkins: I object to that as not proper re-direct examination and furthermore he has been over this conversation with Mr. Fink quite fully.

The Court: Objection sustained.

Q. Referring to Exhibit D-4, the application for the Metropolitan policy, will you tell us whether there was any other application for insurance in the Aetna Life Insurance Company pending on that day, other than the Aetna policy which is noted on the application?

30

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did you tell Mr. Fink all of the Aetna policies which you had on November 4?

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Mr. Perkins: I object.



*Augusta L. Gahamann, for Defendant—Direct.*

The Court: Why continue to repeat this question after I have ruled against you? I cannot make my ruling any more specific than I have made it. I have already ruled on your questions in several forms.

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AUGUSTA L. GAHAMANN, sworn as a witness on the part of the defendant, testifies as follows:

*Direct examination by Mr. Stoffer:*

Q. What is your business? A. I am Dr. Sussman's secretary and nurse.

Q. How long have you occupied that position?

20

A. With the doctor?

Q. Yes. A. Nearly twelve years.

Q. Do you know Mr. Fink? A. I do.

Q. I show you Exhibits C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10 and Exhibit C-12, and Exhibits D-1, D-2 and D-3, inclusive, and I ask you whether you know whether those policies were delivered to Mr. Fink? A. They were.

Q. Can you tell us about when they were delivered to him? A. I could not say just when. I should judge—

30

Q. Can you tell us the year? A. 1926.

Q. Do you remember when the policy, Exhibit C-1, in the Metropolitan Life Insurance Company was delivered to Dr. Sussman? A. I happened to be there the morning it was delivered.

Q. Can you tell us how long prior to the time of the delivery of Exhibit C-1 the other policies to which I have referred were delivered to Mr. Fink? A. About five or six weeks.

40

Q. How long did Mr. Fink retain these policies in his possession? A. Nearly a month.



*Augusta L. Gahamann, for Defendant—Cross.*  
*Herbert F. Ten Broeck, for Defendant—Direct.*

*Cross-examination by Mr. Perkins:*

Q. How many years ago was that? A. 1926.

Q. How many years ago was it? A. Four years.

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HERBERT F. TEN BROECK, sworn as a witness on the part of the defendant, testifies as follows:

*Direct examination by Mr. Stoffer:*

Q. What is your business? A. I am an insurance agent.

Q. For what company were you agent in 1926?  
 A. I was special agent for the Aetna Life Insurance Company and the Aetna Casualty & Surety.

20

Q. I hand you Exhibit C-19, policy in the Aetna Life Insurance Company, and ask you if you obtained that policy for Dr. Sussman?

Mr. Perkins: I object.

The Court: Objection overruled.

A. I obtained this policy for Dr. Sussman from the company.

30

Q. When?

Mr. Perkins: I object upon the ground that it is immaterial. It is the same line of questions that your Honor has ruled out. Here is the policy, dated October 27, 1926—application made on the same day—on which this man drew \$500 a week. Now, they are trying to vary the terms of this paper by oral testimony.

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*Herbert F. Ten Broeck, for Defendant—Direct.*

The Court: What they are trying to show is that on November 4 Dr. Sussman did not have that policy, that the policy was not in force until it was delivered to him, and it was not delivered to him until after November 4.

10 Mr. Perkins: They are trying to show more than that. They are trying to show that he did not make the application.

The Court: I am going to admit this question, subject to striking it out on further consideration.

Q. When did you deliver this policy to Dr. Sussman?

20 Mr. Perkins: I object to that as immaterial.

The Court: I will admit the question subject to striking it out later.

A. I delivered this policy either the 8th, 9th or 10th of November.

Q. What year? A. 1926.

Q. Had Dr. Sussman signed any application for this policy prior to the time it was delivered, so far as you know?

30 Mr. Perkins: I object.

The Court: Objection overruled.

A. He had not.

Q. When did he sign an application for this policy?

Mr. Perkins: I object.

The Court: I will allow that question, too, subject to the same reservation.

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*Herbert F. Ten Broeck, for Defendant—Cross.*

A. He signed the application at the time the policy was delivered.

Q. Had he submitted to you or to the company any other application for this policy prior to the time when he signed this application which you speak of? A. No; he had not.

10

*Cross-examination by Mr. Perkins:*

Q. Did I understand you to testify that you delivered this Exhibit C-19, the Aetna policy to Sussman on the 8th— A. 8th, 9th or 10th of November, 1926.

Q. You are sure of that? A. I made the statement and I am sure that I would not have made it if I was not sure of it.

Q. You are going to stand on that? A. I believe I am under oath.

20

Q. You are also going to stand on the statement that up to the time of the delivery of the policy he had never signed an application for it? A. Absolutely.

Q. There isn't any question about that, is there? A. Absolutely no question in the world about it.

Q. Not the slightest? A. Not the slightest.

Q. Where are applications in your company dealt with? A. Applications of this kind are sent to the home office, or the application is sent to the branch office and then sent to the home office.

30

Q. Where is the home office? A. Hartford, Connecticut.

Q. Do you know whether or not any application existed in the office at Hartford, Connecticut, previous to the 8th of November, 1926? A. It could very easily have, yes—not signed.

Q. I am speaking about the application signed by Dr. Sussman? A. It could not have been. No signed application could have been there before

40



*Herbert F. Ten Broeck, for Defendant—Cross.*

that time. That is definite, because I am the only one——

Q. That is physically impossible? A. Absolutely.

Q. How do you know you wrote this policy?  
A. Well, I remember I wrote it.

10 Q. How do you know that you wrote the application? A. I did not write the application.

Q. Who prepared the application? A. The branch office.

Q. How do you know when it was signed by Dr. Sussman? A. I saw him sign it. Yes; I saw him sign it.

Q. Where is the branch office? A. Newark, New Jersey; 31 Clinton Street.

20 Q. Had the application been in the home office before it was signed? A. Yes; it had.

Q. It went to the home office first? A. Absolutely.

Q. And was acted on without signature? A. Absolutely.

Q. How do you know that? A. In order to issue a policy of that sort, the home office has to consider it. The home office has to consider all applications of that sort; so necessarily they had to have some information before they would issue the policy or grant the branch office the right to do so.

30 Q. You have been Dr. Sussman's agent for some time, have you not? A. I have done business with Dr. Sussman.

Q. You have written quite a number of policies? A. Yes; several policies.

Q. And you have done what you could to see that he collected on the Aetna policy? A. I have done what any agent should do.

40 Q. To see that he collected on that policy? A. Absolutely.



*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. On an application is there any mark made by anybody at the home office at any time? A. I don't know.

Q. How do you fix the date when you delivered the policy? A. I do not understand the question.

By the Court:

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Q. You said it was the 8th, 9th or 10th of November, 1926, when you delivered the policy. Mr. Perkins wants to know how you fix that date? A. Because I looked up the record in the branch office. I looked up my own record at that time. I have gone over that very carefully. That is several years ago when that happened, and I say that every record showed that——

By Mr. Perkins:

20

Q. Then, you do not testify from your own memory, do you? A. No.

Q. You testify from some record that is in the office? A. At that time.

Q. What you are doing now is— A. I am recollecting.

Q. This is not a true act of memory on your part. What you are testifying to is what you remember, having seen the records of the company? A. Absolutely.

30

Mr. Perkins: Then I move that it be stricken out.

Mr. Stoffer: I object to striking it out.

The Court: I will allow it to stand.

Q. Where did you look at the record of the home office? A. I went up to Hartford.

Q. That is how much interested in the case you were? A. Absolutely.

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*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. How did you send the application? A. I delivered it.

Q. You delivered it personally. How many policies have you written for Dr. Sussman altogether? A. Altogether, I wrote the policy in the Royal Indemnity, accident and health policy—

10

By the Court:

Q. How many? A. I should say four. I am not positive; either three or four.

By Mr. Perkins:

Q. You have a clear recollection, of course, when you delivered this policy? A. Very clear.

Q. I suppose at the time he was a very busy man? A. Yes.

Q. And probably operating on a patient, was he? A. Dr. Sussman is usually very busy.

Q. What was he doing when you called on him that day? A. He was operating.

Q. What time of day was it? A. It was around early afternoon, I should say. I am not absolutely positive on that.

Q. You think it was the 8th of November? A. The 8th, 9th or 10th.

Q. Where is your office? A. 719 Broadway, Bayonne.

Q. How frequently do you go to the Newark Branch Office? A. At that time I went every day.

Q. What time of the day would you report over there? A. I go there the first thing in the morning.

Q. That is the time you went there? A. I believe so.

Q. That was your habit, to go to the office in Newark and then come over and do your work

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*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. And interested in the payment of this claim?

A. Absolutely.

Q. Did you see the original application? A. I saw the original application.

Q. Where was it? A. It was handed to me by one of the claim adjusters, the chief claim adjuster of the Aetna, in the accident and health department. 10

Q. Did it have any marking on it? A. It had the regular stamp.

Q. What stamp? A. The regular stamp that they use. In other words, when an application is received it is stamped the day of its receipt.

Q. When did you send the application to the office? A. The application was sent about the 10th, immediately after I got it. 20

By the Court:

Q. It was sent when? A. Around the 10th. I believe it was the 10th of November.

Q. You mean that the company issued a policy of insurance before any application was before it?

A. That is quite customary.

By Mr. Perkins:

Q. You are just as sure that the application that you are talking about was sent on the 10th? 30

A. About that time.

Q. When they received the application was it signed by Dr. Sussman? A. Absolutely.

Q. So, when they first received the application it was signed by Dr. Sussman? A. I do not mean that. I mean that Dr. Sussman's signed application was the first signed application that they received, but they received an application on which they issued the policy at the time the policy was 40



*Herbert F. Ten Broeck, for Defendant—Cross.*

originally issued, but the signed application was not received until the 9th or 10th of November, 1926.

Q. We are only speaking of the application that Dr. Sussman signed? A. I don't understand that.

Q. Dr. Sussman did sign an application, didn't he? A. He did.

Q. And his signature was written on a piece of paper? A. Absolutely.

Q. And that piece of paper eventually went to the office? A. Yes.

Q. And it was on that paper they issued the policy, was it not? A. No; the policy had been issued before the application was signed.

Q. Now, you say the application was signed on or about the 8th of November, at the time you delivered the policy? A. 8th, 9th or 10th of November. I do not remember the exact date.

Q. And it was not in the home office before he signed it, was it? A. No; the signed application was not in the home office before he signed it.

Q. So that if we could procure this application we might find stamps on it? A. Absolutely.

Q. And if we did find a stamp on it that would indicate that the paper was stamped at the office, would it not? A. Absolutely.

Q. How many offices stamp applications? A. I should say the branch office stamped it.

Q. What kind of a stamp had the branch office? A. An ordinary stamp showing the date of receipt.

Q. Is it square or oblong? A. I have forgotten. I really could not say.

Q. What department? A. Newark Branch Office, 31 Clinton street, Newark.

Q. What particular department? A. Accident and health underwriting department.



*Herbert F. Ten Broeck, for Defendant—Cross.*

here? A. In Bayonne. I worked other towns as well as Bayonne.

Q. Where do you live? A. I live in Montclair.

Q. So that you worked in Bayonne and had your home in Montclair? A. Yes.

Q. Then, on your trip to Bayonne, you stopped at the Newark office? A. Yes. 10

Q. That was your usual custom? A. Three days a week.

Q. What time does your Newark office close? A. Five o'clock.

Q. What time of day did you deliver this paper to Dr. Sussman? A. I should say early afternoon. I may be mistaken.

Q. How long were you there? A. I was with him five or ten minutes. 20

Q. Do you know his signature? A. I would remember his signature.

Q. (Showing witness.) Is that Dr. Sussman's signature? A. I should say it was.

Q. Now, would you say that was the original application? A. I don't know.

Q. You don't know how many applications he might have signed? A. I don't know.

Q. That is an application? A. That is an application to the Aetna. 30

Q. Could it be that that application is a forgery in any way? A. If you will let me look at it, I can tell you.

Q. Look it over. Why do you have to look at it to identify it? A. Because there were other applications.

Q. Is there a number on here that follows through? A. I don't know; I didn't look.

Q. Ordinarily would there be? A. Yes. I should think so. 40



*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. How much is the face of that policy? A. \$30,000.

Q. What is the rate? A. \$250.

Q. What is the classification? A. Extra preferred.

10 Q. What is the date? A. Date of the policy, October 27, 1926.

Q. And the term? A. One year—twelve months.

Q. And the premium? A. \$287.

Q. And the kind? A. Paramount accident.

Q. And the policy number? A. 129970.

20 Q. If you find on this application, without looking at anything else, all of these identifying marks that have been in my questions and your answers, and you know that you are looking at his signature, would you not say that that was the application for Exhibit C-19? A. No; I could not say that I would.

Q. You would not? A. I don't know that that is the one.

Q. You mean to say that he signed a number? A. He could make out several applications.

Q. I am asking you about the one that Dr. Sussman signed? A. Well, I cannot swear to it. I want to speak the truth. I cannot swear to it.

30 Q. There may have been another application for this policy? A. There was one original application signed. I do not know if that is the one. If you will give me time to examine it, I think I can tell.

Q. If you have the name as an identification— A. There are two applications.

40 Q. If you have these facts: \$30,000; weekly indemnity, \$250; class, extra preferred; date 10/27/26; term, one year; premium, \$287; kind of insurance, accident; form of policy, Paramount; policy number, 129970—if you found those facts appear—



*Herbert F. Ten Broeck, for Defendant—Cross.*

ing there, would you not say that that was the application? A. I would reasonably say it was.

Q. What is the control department in your company? A. I don't know.

Q. It is at the home office, is it not? A. Yes; they decide on the policy.

Q. That is up at Hartford? A. At Hartford. 10

Q. This application would be delivered by you to the Newark office and forwarded from the Newark office to the Hartford office? A. That is my understanding of it.

Q. What is this, "Cas-Ho"? A. I don't know; it may be the home office.

Q. That is in Hartford? A. Yes.

Q. Please look at this application and see if you can positively identify it as the application on which the policy Exhibit C-19 was based? A. It was based on this (indicating). This is the application which was signed. 20

Q. This paper. This is the application— A. (Interrupting.) No; this is the application (indicating). This (indicating) is the application made out when the policy was issued. He has not signed that. Here is the one he signed, right here, and that is the one that the company made out. That is written by one of the men in the office evidently. 30

Q. Did you make it out? A. No; I didn't make that out.

Q. Who made out this one? A. The home office or branch office made it out.

Q. On November 5, this paper which was acted upon and was the basis of Exhibit C-19, was stamped "Control Department, November 5, 1926?" A. Absolutely.

Q. So, it was in the home office? A. And that was the application. 40



*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. Is it not an application? A. That is what he signed.

Q. It has the same questions, the same answers and the same identifying marks, has it not? A. Oh, yes, surely.

10 Q. It has the same answers to the same questions all the way through? A. Absolutely.

Q. The same printed matter? A. It should be, because it is copied from that.

Q. It is a copy? A. This is copied from this, by the man who made it out.

Q. So that on the 5th of November in Hartford, there was this application bearing all of these stamps for the policy which was eventually issued on it? A. Absolutely.

20 Q. So that this paper was delivered to the office before the 11th of November? A. It was never delivered to the office. That was copied from one that was re-written, probably that was cancelled and re-written. Dr. Sussman never saw it. I never made it out. That application was copied from an old application. The Aetna had all the facts.

Q. You did not make this out? A. No.

Q. You did not solicit it? A. I solicited it, sure.

30 Q. Do you not think that this was copied from that? A. No; that was the time that I originally applied to the company for this additional insurance.

Q. As early as October 26, 1927, you had solicited this policy from Dr. Sussman? A. Long before that.

Q. Did you see him on October 26, 1927? A. I don't know.

40 Q. And on October 26, 1927, you signed up the application which you say was not signed, didn't you? A. I didn't sign it.



*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. You prepared it? A. No, sir; I had nothing to do with the preparation of it.

By the Court:

Q. You can say whether you instructed them to prepare it? A. Yes; they were.

Q. They didn't know anything about your soliciting this insurance unless you told them about it? A. No.

Q. They got the information from you? A. Surely. It is customary to solicit insurance without an application. There are certain agents who do it entirely. In other words, I could apply for insurance on Dr. Sussman's life, or for accident or health insurance, without his knowing about it. I do not say that was so in this case, but it could be done.

By Mr. Perkins:

Q. On the 27th of October, 1926, you had instructed the local office to prepare an application? A. That is right.

Q. And that application eventually resulted in a policy, Exhibit C-19, didn't it? A. Yes, sir.

Q. And all the questions and answers in that application were the bases on which Exhibit C-19 was actually issued? A. Yes.

Q. How do you know that the material in this application was prepared in the local office? A. Because that is the only place it could be prepared. There is no other way it could be prepared.

Q. You had talked to Dr. Sussman about more insurance—about this policy? A. Yes, I had.

Q. He knew that you had sent forward the necessary papers that eventually might result in



*Herbert F. Ten Broeck, for Defendant—Cross.*

that policy of insurance, didn't he? A. Well, it might; yes.

Q. He did know? A. A policy of that size, you never know whether they are going to issue it or not.

10 Q. He knew, when you were talking to him, that you were endeavoring to get a policy of that size for him? A. Yes, I believe he did.

Q. He knew that you had sent to the local office and they had sent to the home office? A. I imagine they did.

Q. You had conversed with him on that subject? A. I talked to him, and presumably told him that I would make an attempt to get a policy of that kind.

20 By the Court:

Q. After you had sent this application forward to the local office? A. I told him I would attempt to get a policy of that kind.

By Mr. Perkins:

30 Q. You told him that you had sent the application, but you did not know whether the company would be willing to issue the policy? A. Sure.

Q. Because it was a big policy? A. Sure.

Q. You did that before October 27, 1926? A. Yes, I must have.

Q. As a result of your conversation with the doctor, there was sent in an application for a policy, and on that application Exhibit C-19 was issued, was it not? A. Right.



*Herbert F. Ten Broeck, for Defendant—Cross.*

By the Court:

Q. I notice that this paper that Congressman Perkins has been examining you about has two sheets, with printed matter on each side of the two sheets. Does it go in two sheets from the local office to the home office, or is the second sheet pasted on? A. The original signed application, as I understand, goes to the home office, which they keep; the branch office keeps the duplicate.

10

Q. This application that is not signed, which is on the first sheet of this paper that Congressman Perkins has examined you about, is the one that was filled out in the local office? A. Yes.

Q. Well, was the other sheet fastened to it when it was sent to the home office? I cannot make out from looking at it whether they have been pasted together or whether they were originally fastened together. A. They were not originally fastened together; they are separate applications. I do not know in this particular case what they did. I cannot say.

20

Q. Well, at any rate, the first sheet and the second sheet, as I understand it, came back to you with the policy of insurance? A. Just the second sheet.

30

Q. Then it was in two sheets? A. Yes, it was. That is a separate application; one is a duplicate of the other.

Q. And it was only this second part, which may be called the third or fourth sheet, that came back to you with the policy of insurance, and which Dr. Sussman signed? A. Yes.

Q. He signed it in your presence? A. Yes.

40



*Herbert F. Ten Broeck, for Defendant—Cross.*

By Mr. Perkins:

Q. Did you read the questions on here to Dr. Sussman before he signed it? A. No.

Q. You did not read them? A. I did not.

10 By the Court:

Q. Do you know whether he read the paper before he signed it? A. He did not read it.

Q. You just brought the paper in and said: "Sign here on the dotted line?" A. Yes.

Q. And he signed it without reading it? A. Yes.

Q. And without any questions by you? A. I have done business with him for several years.

20 Q. You did not make any statement to him as to the contents of the application? A. I said: "Here is the application."

Q. You did not tell him what was in it? A. No.

Q. You did not tell him what the questions were? A. No, sir; I did not.

Q. Nor what the answers were? A. No, sir.

Q. He signed without reading? A. Yes.

By Mr. Perkins:

30 Q. He knew it was the application on which the policy which you delivered to him was based? A. I am a little confused.

Q. I say he knew that this was the application on which Exhibit C-19 was based? A. Yes.

Q. And he knew that it was the policy that you were delivering and that you had been talking to him about for a number of months? A. He suspected it.

40 Q. Well, he knew? A. Well, I believe he did.



*Herbert F. Ten Broeck, for Defendant—Cross.*

By the Court:

Q. Didn't you, as a matter of fact, say to him: "Here, doctor, I have got the policy we have been talking about?" A. He took it. I said: "Here is the policy I thought I could get for you," and I delivered it.

Q. And you said: "Here is the application?"  
A. Yes; "Here is the application."

10

By Mr. Perkins:

Q. And he signed it? A. Yes.

Q. Without taking the trouble to read it? A. Absolutely.

Q. He was busy at the time? A. Yes; he was.

Q. You were accustomed to come and see him about that time? A. I was not accustomed to call.

20

Q. You called? A. Surely.

Q. Expecting to deliver the policy to him? A. Yes.

Q. The only question in your mind was whether the company would issue a policy as large as that? A. And whether he would take it or not. I was not sure he was going to take the policy when I got it.

Q. You had been talking to him about insurance? A. I had been trying to sell him insurance.

30

By the Court:

Q. Did he send you a check for the premium?

A. He sent me a check in December, the last of the month. I asked him at that particular time.

Mr. Perkins: I offer this application in evidence.

(Marked Exhibit C-20.)

40



*Herbert F. Ten Broeck, for Defendant—Cross.*

By Mr. Stoffer:

Q. On October 27, 1926, had Dr. Sussman consented to take any policy providing indemnity of \$250 a week?

Mr. Perkins: I object.

10

The Court: Objection sustained.

Q. Did Dr. Sussman at any time prior to the delivery of the policy on November 8th or 9th or 10th, 1926, sign any application for this policy?

The Court: We have gone over that several times and this witness has answered that he did not.

20

Q. Had he instructed you to obtain such a policy for him, prior to November 8th, 9th or 10th, 1926?

Mr. Perkins: I object to that.

The Court: The witness has already testified what was done. He said he told Dr. Sussman that he would try to get a policy and that he gave him this information prior to October 27, 1926; that he found he could get it and he did get it and handed it to Dr. Sussman and Dr. Sussman took it.

30

Q. Had Dr. Sussman definitely consented, prior to November 8th, 9th or 10th, to accept an indemnity policy with \$250 a week?

Mr. Perkins: I object.

The Court: Objection sustained.

40

Q. Was the application for the Aetna policy Exhibit C-19, signed contemporaneously with the delivery of the policy, Exhibit C-19? A. No; about three hours later.



*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. Did Dr. Sussman have anything to do with the dates on the policy or application?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did he write in any portion of the application with the exception of his signature? 10

Mr. Perkins: Objected to.

The Court: Objection sustained. The witness has told you that he brought the application in all filled out and he told the doctor to sign here and the doctor signed it.

Mr. Stoffer: Counsel for complainant stipulate the pendency of the action at law, so that I need not call Judge Brenner as a witness on that point. 20

The Court: The bill of complaint says the action was pending.

Mr. Stoffer: Yes; and what they did. Here is the complaint in an action in the Hudson Circuit Court, summons tested June 24, 1927, between Aaron P. Sussman, plaintiff, and Metropolitan Life Insurance Company, defendant. Here is the answer filed by the defendant, Perkins & Drewen as attorneys for the Metropolitan Life Insurance Company. Here is a reply filed by Brenner & Kresch, as attorneys for Dr. Sussman. Here is a notice of trial served on Perkins & Drewen. 30

Mr. Perkins: I will not object to the fact that these papers were filed, but I object to their competency and relevancy in this case.

The Court: What are these papers?

Mr. Stoffer: The complaint, reply and notice of trial. 40



*Herbert F. Ten Broeck, for Defendant—Cross.*

The Court: What has the notice of trial to do with it?

Mr. Stoffer: To show that they acknowledged service of notice of trial and the cause was listed prior to the institution of this proceeding.

10 The Court: Mr. Perkins, will you consent that these papers be used with the same effect as if the originals were produced?

Mr. Perkins: I will consent.

The Court: To the same effect as if the originals were produced?

Mr. Perkins: Yes, but I object to their admission as being immaterial and irrelevant.

20 The Court: Objection overruled.

(Marked Exhibit D-5.)

Mr Stoffer: I offer in evidence state of demand in action brought by Aaron P. Sussman against the Metropolitan Life Insurance Company, in the Bayonne District Court, together with specification of defenses filed by Perkins & Drewen as attorneys for the Metropolitan Life Insurance Company.

30 Mr. Perkins: Same admission and objection as before.

The Court: Same ruling.

(Marked Exhibit D-6.)

Mr. Stoffer: I offer in evidence summons and complaint in the Hudson County Circuit Court, between Aaron P. Sussman, plaintiff, and Metropolitan Life Insurance Company, defendant, tested August 4, 1927.

40 (Marked Exhibit D-7.)



*Aaron P. Sussman, for Defendant—Direct.*

Mr. Stoffer: Will you stipulate, Mr. Perkins, that no answer was filed to that action, but that a letter was written to Brenner & Kresch, attorneys for Dr. Sussman, suggesting that this suit be consolidated with the other pending suit in the Hudson County Circuit Court?

10

Mr. Perkins: I do not know anything about that at all.

The Court: It is stipulated that the photostatic copies of the applications annexed to the policies that have been offered in evidence may be used with the same effect as if the original application had been produced?

Mr. Perkins: That is correct.

20

Mr. Stoffer: I wish to recall Dr. Sussman.

---

AARON P. SUSSMAN, the defendant, heretofore sworn, recalled and further examined as follows:

*Direct examination by Mr. Stoffer:*

Q. Referring to Exhibit C-9, policy of Metropolitan Life Insurance Company, dated February 2, 1923, can you tell us who the agent of the Metropolitan was in the delivery of that policy?

30

Mr. Perkins: I object.

The Court: How is that material?

Mr. Stoffer: I want to show that the same Mr. Fink who filled in the application for the policy in suit also solicited and obtained this particular policy, in connection with which he did certain things and

40



*Aaron P. Sussman, for Defendant—Direct.*

learned certain things, and we claim that that knowledge having been communicated to him, we are in a situation which a Court of Equity frequently faces.

The Court: Objection sustained.

- 10 Q. Referring to the application annexed to Exhibit C-9, will you tell us whether it is in your handwriting? A. No.

By the Court:

Q. Do you mean it is or is not in your handwriting? A. It is not in my handwriting.

By Mr. Stoffer:

- 20 Q. Whose handwriting is it in?

Mr. Perkins: Objected to.

The Court: Objection sustained.

Q. Who witnessed your signature to that application?

Mr. Perkins: Objected to.

The Court: Objection sustained.

- 30 Q. Did Mr. Fink have anything to do with the obtaining of the data inserted in that application?

Mr. Perkins: Objected to.

The Court: Objection sustained.

Q. Did you have any conversations with Mr. Fink concerning any indemnity or disability provisions in relation to policies of life insurance which you held?

- 40 Mr. Perkins: I object.



*Aaron P. Sussman, for Defendant—Direct.*

The Court: Are you talking generally, or are you talking about this policy, Exhibit C-9?

Mr. Stoffer: I am now talking about policy Exhibit C-9.

The Court: Objection sustained.

10

Q. Did you at any time prior to November 4, 1926, when you signed the application for the policy in suit, have any conversation with Mr. Fink concerning the disability provisions of your life policy?

The Court: We went into that as far as we could go.

Mr. Stoffer: This is the first time I have asked that question.

20

Mr. Perkins: I object to it.

The Court: I will sustain the objection.

Q. Did you, on or shortly before November 4, 1926, have any conversation with Mr. Fink concerning disability provisions under the life insurance policies held by you?

Mr. Perkins: Objected to.

The Court: Objection sustained.

Mr. Stoffer: Will it be necessary to have the applications marked as separate exhibits, or are we to consider them and refer to them as exhibits connected with the numbers they now bear? For example, Exhibit C-9 is the policy with the application attached.

30

The Court: How do you feel about it? The policy makes the application part of the policy and the policy has been offered in evidence and received in evidence. I

40



*George Fink, for Complainant—Direct.*

think the photostat copies go with the policies and stand as if the originals were produced.

DEFENDANT RESTS.

10

REBUTTAL.

GEORGE FINK, sworn as a witness on the part of the complainant, in rebuttal, testifies as follows:

*Direct examination by Mr. Perkins:*

Q. You are the soliciting agent who presented this application to Dr. Sussman, Exhibit C-1? A. That is right.

20 Q. Your name is Fink, is it not? A. Yes, sir.

Q. You are the agent who approached Dr. Sussman in reference to this insurance? A. Yes.

Q. And this is Sussman's signature on the original application? A. I believe it is.

Q. Now, in whose handwriting is the rest of the paper? A. Mine.

Q. Where was the application written out, so far as filling in the answers is concerned? A. In Dr. Sussman's office.

30 Q. How long were you and Dr. Sussman there together on that occasion? A. Possibly half an hour.

Q. Did you read these questions that are shown in this application to Dr. Sussman? A. Yes.

Q. Did you read them all? A. Yes.

Q. Did he answer them? A. Yes, sir.

Q. Did you correctly transcribe each answer? A. As far as I know I did.

40 Q. Did you or didn't you? A. Yes, sir.



*George Fink, for Complainant—Direct.*

Q. Now, did you ask Dr. Sussman: "Have you ever received or been refused benefit for any accident?" A. Yes.

Q. What answer did he give you? A. "No."

Q. Mr. Fink, question fourteen is: "Have you ever received or been refused benefit for any accident?" and the answer in writing is: "Aetna, \$200, 1917." Now, what answer, other than the one written, if any, did Dr. Sussman give you in reply to that question? A. "No." 10

Mr. Stoffer: I object upon the ground that he is tending to vary the witness's answer.

The Court: The witness may use the application. 20

By the Court:

Q. "No." Any other answer on that? A. Yes, sir. The answer was no other money was paid. I meant that.

Q. Say as near as you can what Dr. Sussman said to you. He could not have said this language that you wrote down: "Aetna, \$200." A. The original answer was: "No", but it seems to me that \$200 has been put in there.

Q. Who put it in? A. I don't know. It might have been put in by the man— 30

Q. Was it put in by you? A. No, sir.

Q. The original answer was: "No," and somebody else filled in "Aetna, \$200". Is that right? A. Yes.

By Mr. Perkins:

Q. Now, when you wrote that application and asked that question, did you have any talk with Dr. Sussman as to whether he had ever received any benefits or accident insurance? A. Yes. 40



*George Fink, for Complainant—Direct.*

Q. What did you say and what did he say?

A. I asked him if he ever had any accidents. He told me he had a couple of minor accidents.

Q. Did he say that he received any insurance indemnity from any insurance company? A. No.

Q. Did he say that he had not? A. No.

10 Q. No what? A. He got no indemnity.

Q. You say he said he had received no indemnity of any kind? A. Right.

Q. Then you wrote the word "No"? A. That is right.

Q. You do not know who put in there "Aetna, \$200, 1917"? A. No.

Q. Did you ask Dr. Sussman what life and accident insurance he had, as shown in question eleven? A. Yes.

20 Q. What did he tell you about his life policies and his accident policies? A. He brought out the policies out of the safe that he had there at the time and said: "Here they are," and I copied the policies that he happened to have in the safe at the time.

Q. Are those all that you got? A. Yes.

Q. As shown in this answer? A. Yes, sir.

Q. Was that done at the same time that the other answers were filled in? A. Yes, sir.

30 Q. Just previous to his signing the application? A. Yes, sir.

Q. Did you ask Dr. Sussman whether he had any physical deformity or infirmity? A. Yes.

Q. What did he say? A. No.

Q. Did he tell you that he was receiving a pension from the United States Government for an infirmity? A. No, sir.

Mr. Stoffer: I object.

The Court: Objection overruled.



*George Fink, for Complainant—Cross.*

By the Court:

Q. Did he tell you that he had a hernia or any operation for hernia? A. No, sir.

By Mr. Perkins:

Q. Did you read all these questions down to and including twenty-one? A. Yes. 10

Q. Including: "Do you certify that no statements have been made nor information furnished to any agent of this company or other person relative to this insurance other than herein written and agree that no statements made nor information furnished shall be binding on the company unless written herein?" A. Yes, sir.

Q. What answer did he give you? A. The answer that I have there. "Yes." 20

By the Court:

Q. Did he say anything else, in response to that question, when you read it to him, than "Yes"? A. No, sir.

By Mr. Perkins:

Q. How long a time elapsed between the time he answered "Yes" until he signed his name on the application? A. Almost immediately after. 30

*Cross-examination by Mr. Stoffer:*

Q. Mr. Fink, you had written insurance for Dr. Sussman before that policy, had you not?

Mr. Perkins: I object to that as not cross-examination.

The Court: Objection overruled.

A. Yes.

40



*George Fink, for Complainant—Cross.*

Q. I show you Exhibit C-9, policy in the Metropolitan Life Insurance Company, dated February 2, 1926, and ask you whether you solicited Dr. Sussman for that policy?

Mr. Perkins: I object.

10

The Court: Objection sustained.

Q. On November 4, 1926, when this application was signed by Dr. Sussman, did you know whether Dr. Sussman held any other life or accident policies?

Mr. Perkins: I object.

The Court: Do you mean any others than those mentioned in the answer?

Mr. Stoffer: Yes.

20

The Court: Objection overruled.

A. Yes.

Q. What policies did you know about? A. I knew about the Travellers of Utica, the policy he said he was going to give up.

Q. Referring to Exhibit C-2? A. I do not know what the policy is. He merely mentioned the policy to me.

Q. And he told you he was going to give that up? A. Yes, sir.

30

Q. Will you tell us why you did not list that policy? A. Because Dr. Sussman said he was giving it up immediately.

Q. Did you at any time see Exhibit C-2? A. No, sir.

Q. You knew that that policy was then still in existence, did you?

The Court: He said Dr. Sussman told him about the policy and said he was going to give it up.

40



*George Fink, for Complainant—Cross.*

Q. Did you know of any other policies? A. No, except what I saw there at the time.

By the Court:

Q. And all that you saw is on this list in reply to this question? A. Yes.

10

By Mr. Stoffer:

Q. I show you Exhibit C-7 and Exhibit C-8, policies in the Travellers Insurance Company, one in the sum of \$2,000 and the other in the sum of \$5,000, and ask you whether or not shortly before November 4, 1926, you saw those policies? A. I don't remember seeing them.

Q. Would you say that you did not see them at any time shortly before November 4, 1926? A. If these policies—

20

By the Court:

Q. When the policies produced by Dr. Sussman were shown to you, were these policies just mentioned also shown to you? A. If these policies are not listed here, I did not see them.

Q. They are not listed. A. Then I did not see them.

30

By Mr. Stoffer:

Q. Didn't you have all of the other Sussman policies in your possession for a period of time?

Mr. Perkins: I object to that.

The Court: Objection sustained.

Q. I show you Exhibits C-2 to C-10, Exhibit C-12 and Exhibits D-1, D-2 and D-3, and I ask you whether you saw those policies before this application was signed?

40



*George Fink, for Complainant—Cross.*

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Referring to Question 14, you testified that Dr. Sussman told you he had had some minor accidents over a period of years? A. Yes, sir—  
10 not over a period of years.

Q. Tell us what he said? A. He said he met with a couple of minor accidents; some acid falling off a shelf, also he cut his hand, got caught in a fan or something, but they did not bother him at all, he told me, just minor accidents, and he collected nothing for them.

Q. Are you sure of the last portion of your answer, that he collected nothing for them? A. Yes; I am; that is what he said to me.

20 Q. You say you read all of the questions to Dr. Sussman before he signed the application? A. Yes, sir; it is always customary to read them.

Q. I want to know whether you read these questions to Dr. Sussman? A. Yes.

Q. You remember that specifically? A. We always do; yes, sir.

Q. How do you remember that you read question twenty to Dr. Sussman? A. We always read all the questions before we get the signature on it.

30 Q. Is it because you always do that that you say you did so in this case?

Mr. Perkins: I object to that.

The Court: Objection overruled.

A. It is customary to do it.

Mr. Stoffer: I move to strike out the answer that it is customary to do it.



*George Fink, for Complainant—Cross.*

By the Court:

Q. If it is your custom to do it in every case, can you say whether you did it in this case? A. Yes.

Q. Do you say you did it or did not do it? A. Yes; I did.

10

By Mr. Stoffer:

Q. Who was present when you were with Dr. Sussman asking these questions and filling out the application? A. I do not think there was anybody present.

Q. Can you tell us what time of day this conversation occurred between you and Dr. Sussman?

A. I believe about four o'clock in the afternoon.

Q. Was Dr. Sussman busy at the time? A. Not very.

20

Q. Did you see Dr. Sussman at the hospital after the accident which occurred January 17, 1927? A. Yes, sir.

Q. Did you say anything to Dr. Sussman concerning some data from the Metropolitan Life Insurance Company in connection with this claim? A. No, sir.

Q. Are you sure that you did not say to him that because of the manner in which this application had been filled in, that he better not disclose to the Metropolitan Life Insurance Company certain facts? A. No, sir.

30

Q. Have you been working for the Metropolitan Life Insurance Company ever since January 17, 1927? A. No, sir.

Q. During what period of time have you not been working for the Metropolitan Life Insurance Company since January 17, 1927?

Mr. Perkins: I object.

40



*Aaron P. Sussman, for Defendant—Direct.*

The Court: I suppose it is to attack the credibility of the witness. I will allow the question.

A. Between 1928 and 1929 I was not with the Metropolitan.

10

By the Court:

Q. Are you working for them now? A. Yes, sir.

By Mr. Stoffer:

Q. Did you have any trouble with the Metropolitan Life Insurance Company? A. None at all.

20

Q. You voluntarily withdrew from their employment? A. Yes, sir.

(At this point recess is taken until two o'clock in the afternoon.)

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AARON P. SUSSMAN, the defendant, already sworn in his own behalf, recalled in rebuttal:

*Direct examination by Mr. Stoffer:*

30

Q. Doctor, referring to Exhibit D-4, the application, will you tell us whether the policies in the Travellers Insurance Company were amongst the policies delivered by you to Mr. Fink?

Mr. Perkins: I object.

The Court: Objection sustained. Dr. Sussman has already testified that he delivered all the policies, Exhibit C-1 to Exhibit C-12, with the exception of Exhibit C-11, and Exhibit D-1 to Exhibit D-3 to Mr. Fink.

40



*Aaron P. Sussman, for Defendant—Direct.*

Q. Referring to Question 14, did you say to Mr. Fink that you had some minor accidents, but that you had not received any indemnity?

Mr. Perkins: Objected to.

The Court: Objection sustained. He has already testified to what he told Mr. Fink.

10

Q. Did you have any conversation with Mr. Fink at the hospital after your accident?

Mr. Perkins: I object upon the ground that it is not proper rebuttal.

The Court: I am inclined to think that Mr. Fink testified that he saw Dr. Sussman at the hospital, but I do not think Mr. Fink said anything about what conversation took place. I will sustain the objection.

20

Q. Did you have any conversation with Mr. Fink at the hospital concerning the claim to be filed with the Metropolitan Life Insurance Company?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did you have any conversation with Mr. Fink since the commencement of this litigation concerning the questions and answers in the application which you signed?

30

Mr. Perkins: I object.

The Court: Objection overruled.

A. I have.

Q. Will you tell the Court what Dr. Sussman said to you?

Mr. Perkins: I object.

40



*Aaron P. Sussman, for Defendant—Direct.*

The Court: This may lead to something immaterial. If it does, I will strike it out. I imagine that this witness will testify to something which Mr. Fink said which is entirely contrary to his testimony on the stand, which will affect his credibility.

10

Mr. Perkins: I ask that the time be fixed.

By the Court:

Q. When was it? A. A little over a year ago.

Q. Go ahead. A. We had a discussion—

Q. Tell us what you said and what he said to you? A. I said to him, "It is too bad that you did not put in the Commercial Travellers policies, being you knew that I had taken this one to please you, to give you something that you were soliciting for, to take the place of the Commercial Travellers——"

20

Q. Tell us what you said to him and what he said to you? A. And I also mentioned to him the fact that there was some discrepancy that I knew now that he knew existed——

Q. Tell us what you said to him. You did not say to him that there was some discrepancy which you know now existed? A. I did. I know it existed, because we were served with papers and my attorney asked me about it.

30

Q. You said to him, "It is too bad"? A. It is too bad that he did not insert the Commercial Travellers policies, in view of the fact that he knew of them and he knew I was taking this policy to take the place of the other, and I said, "It was a good thing that I did not take your advice when you brought the claim paper up to the hospital, not to put in all of the policies I had." He said to me, "Well, there are certain things that are not necessary to do." It would jeopardize his position.

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*Albert Childs, for Complainant—Direct.*

Q. Anything else? A. I don't recall anything else.

Q. Nothing else? A. No.

Mr. Perkins: I move to strike it out upon the ground that it is immaterial.

The Court: I think I will let it stand.

No cross-examination.

10

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ALBERT CHILDS, sworn as a witness on the part of the complainant in rebuttal, testifies as follows:

*Direct examination by Mr. Perkins:*

Q. Are you connected with the Aetna Life Insurance Company? A. Yes, sir. 20

Q. In what capacity? A. I am claims attorney for the Newark branch office.

Q. Are you familiar with the routine through the company of an application for a policy and the issuance of a policy?

Mr. Stoffer: I object to the routine.

The Court: Objection overruled.

A. I am.

30

Q. Mr. Childs, I show you Exhibit C-20, which is an application for insurance in the Aetna, signed by Dr. Aaron P. Sussman, the defendant, and I call your attention to the fact that there is stamped on the face of it, "Control Department, November 5, 1926." Can you tell us when it was that stamp was placed on there?

Mr. Stoffer: I object upon the ground that it is entirely immaterial when and

40



*Albert Childs, for Complainant—Direct.*

where the stamp was placed and not binding on this defendant.

The Court: Objection overruled.

A. It was placed on there November 5, 1926, at Hartford, Connecticut.

10

By the Court:

Q. That is the main office? A. Yes, sir.

By Mr. Perkins:

Q. Now, I show you a stamp on the left hand side towards the top which is "November 6, 1926". What does that stamp indicate? A. That shows that it was stamped by the Accounts Department on November 6, at Hartford.

20

Q. What had the Accounts Department to do with the application?

Mr. Stoffer: I object upon the ground that it is immaterial.

The Court: Objection overruled.

A. The Accounts Department would set up the account and set up the premium charge on their records.

30

Q. And what does the Control Department do? A. The Control Department sets up an assured index record.

Q. Now, annexed to and forming sheets three and four as described by the Court, is a paper in the form of an application signed by Dr. Sussman. Can you tell whether or not this Control Department would take action on this application unless a signed application had been there?

A. No; it would not.

40



*Albert Childs, for Complainant—Direct.*

Q. And would the Accounts Department take action unless there had been a signed application there?

Mr. Stoffer: I object upon the ground that it is immaterial.

The Court: Objection overruled.

10

A. No, sir.

By the Court:

Q. This exhibit seems to be in two sheets together. Were they originally separate sheets and pasted together? A. Yes, sir. I can explain how that came about.

By Mr. Perkins:

20

Q. Can you tell when the policy, Exhibit C-19, was written up?

Mr. Stoffer: I object.

By the Court:

Q. I understand that you are located in Newark? A. Yes.

Q. Connected with the Newark branch? A. Yes.

Q. And that you were acting in that same capacity in November and October, 1926? A. Yes.

30

Q. This policy, Exhibit C-19, was written at Hartford, was it not? A. We wrote the policy in Newark.

Q. What? A. We wrote the policy in Newark.

Q. It was written in Newark? A. Yes.

Q. This application had to come back from Hartford to Newark before the policy was written? A. No; the policy was written up on November 2nd.

40



*Albert Childs, for Complainant—Direct.*

Q. At Newark? A. At Newark.

Q. And sent to Hartford? A. No, sir.

Q. Did it go out of your possession until it was delivered to the agent? A. It did not; no, sir.

Q. When was it delivered to the agent, do you know? A. November 3, 1926.

10 Q. Who was the agent? A. H. F. Ten Broeck of Bayonne.

Q. Can you explain how the policy was delivered to the agent on November 3, which was two days before the application reached the home office? A. Yes, I can.

20 Q. Go ahead. A. The policy was delivered to the agent on November 3. I assume that we received the application on that day or the day following. We sent it to Hartford not later than November 4. The application itself indicates that it reached there and was passed by the Control Department November 5.

By Mr. Perkins:

Q. In other words, the application went first to the Newark office? A. Yes, sir.

30 Q. And then, while it was there, was it in the form it now is, signed up by Aaron P. Sussman? A. It was before the policy was issued.

By the Court:

Q. Before the policy was issued? A. Yes.

Q. That is, before it was written up or delivered—which do you call “issued”? A. I call the issuance of the policy October 27, the date of it.

Q. The policy was written up, you say, on November 2, at your office? A. Presumably.

40 Q. Then you say it was delivered to Mr. Ten Broeck on November 3? A. The records indicate that, yes.



*Albert Childs, for Complainant—Cross.*

Q. Well, that was before this application reached the home office? A. It was before the application reached the home office.

Q. Do I understand that when an application is made for a policy of insurance of this kind, in this district, the application is passed on by the branch in Newark and the policy issued there? A. Up to a certain limit. 10

Q. Up to the limit of this policy? A. No, sir; this was all done by telephone communication with Hartford.

By Mr. Perkins:

Q. Now, this policy, Exhibit C-19, was prepared in the Newark office? A. Prepared in the Newark office. 20

Q. After the receipt of the signed application by Dr. Sussman; is that right? A. Apparently, from the record, yes.

Q. And on the 3rd of November it was delivered to Mr. Ten Broeck? A. Yes, sir.

Q. And about the same time the application was forwarded by mail to Hartford? A. Apparently on the 4th of November.

Q. But the permission for the Newark office to issue the policy was over the telephone? A. Yes, sir. 30

*Cross-examination by Mr. Stoffer:*

Q. I understand you are Claims Attorney? A. That is right.

Q. Did you have anything to do with the writing of policies? A. No, sir.

Q. What have you been testifying from?

Mr. Perkins: I object to that question.

The Court: He told you he was familiar with the routine in the Newark office. 40



*Albert Childs, for Complainant—Cross.*

Q. Do you know on what day Dr. Sussman signed that application?

Mr. Perkins: I object, as not proper cross-examination.

The Court: Objection overruled.

10

A. I did not see him sign it; no, sir.

Q. You do not know on what day he signed it, do you? A. Except from the application itself. I did not attempt to tell you what day he signed it. According to the routine of the office, the way they do business, it must have been signed before the policy was written, November 2.

20

Q. How do you know that a signed application was in your branch office on November 3, 1926, signed by Dr. Sussman? A. The only way I know that is from the usual and accepted practice that is followed in those cases.

Q. Do you know whether there is a practice of going after a prospect for a policy?

Mr. Perkins: I object to that question. That has nothing to do with the routine.

The Court: I will allow it. Objection overruled.

30

A. Most prospects are gone after, I assume.

Q. Do you know whether it happens that an agent sometimes asks for a policy to be prepared before he ever actually receives an application from the prospect? A. He might ask for it; yes, sir.

Q. Do you know of your own knowledge whether or not Mr. Ten Broeck did that in this case? A. Not of my own knowledge I don't know it.

40

Q. I understood you to say that a policy of this character must be approved by the underwriters at the home office? A. That is right.



*Albert Childs, for Complainant—Cross.*

Q. When was their approval obtained, according to your records? A. Some time before the policy was delivered to the agent.

Q. The delivery to the agent was November 3? A. November 3; yes, sir.

Q. The stamps to which Congressman Perkins referred are November 5 and 6? A. Right.

10

Q. So that this policy had been delivered to Mr. Ten Broeck before the approval of the underwriters had been received? A. Oh, no.

Q. Why "No"? A. Because the application was the thing that reached the home office on the 5th of November after the policy had been delivered.

Q. So that the application had not been approved prior to the delivery of the policy? A. Yes, by telephone communication.

20

Q. I beg your pardon? A. Yes.

Q. Did you have any telephone communication on this particular application? A. I did not hear any conversations.

Q. Do you know whether there was? A. Yes, I know there were.

Q. What? A. Yes, I know there was.

Q. Were you present? A. No, I was not present.

Q. You mean you know because somebody else told you? A. Yes.

30

Q. That there had been? A. That is right.

Q. Does it happen that if a man has one policy in your company and he desires a different type of policy or a larger policy, that the application which was annexed to the early policy is used to prepare a new policy? A. If that application has been very recently made.

Q. Do you know whether Dr. Sussman, before November, 1926, had another policy in the Aetna?

40



*Albert Childs, for Complainant—Cross.*

A. I believe he did in October. It was cancelled in October.

Q. What was that? A. I believe he did in October.

Q. You mean it was not in force? A. It was not in force in November.

10 Q. It was or was not? A. It was not.

Q. It was not in force in November? A. It was not.

Q. How do you know that? A. From the records.

Q. What records? A. Cancellation records.

Q. Have you those records here? A. No; I do not have them here.

20 Q. Does it happen that an agent of your company will deliver a policy and have an application signed contemporaneously with the delivery of the policy? A. I cannot say that. I have never known it as being done.

Q. You do not know whether that was done in this case or not?

Mr. Perkins: I object.

The Court: He says he never knew it to be done.

Q. Did you say you never knew it to be done?

30 A. No; I never did.

Q. You would not say that that has not been done by your company?

The Court: He says he never knew it to be done. That is as far as he can go. He can only testify to what information he gets himself.

40 Q. Mr. Childs, don't you know that the cancellation of the earlier Aetna policy held by Dr. Suss-



*Albert Childs, for Complainant—Cross.*

man, the \$75 a week policy, was cancelled back by your company to the October date in order to match the issuance of the new \$250 a week policy?  
A. Probably that is true. I think it is.

By Mr. Perkins:

Q. So that on October 27, 1926, a policy in your company on the life of Aaron P. Sussman had been cancelled?

10

The Court: It may be from the testimony that the policy remained in force until this one was delivered.

Q. What was the date of the cancellation of the policy that you have mentioned?

20

Mr. Stoffer: I object upon the ground that the witness has not shown himself qualified to answer that question.

The Court: Objection overruled.

A. My recollection is that it was October 27, the date of the effectiveness of this policy.

Q. What was the effective date of the policy that is marked Exhibit C-19? A. October 27, 1926.

30

By the Court:

Q. Is this the situation: This policy, Exhibit C-19, was not an effective policy until it was delivered to the assured; is that so?

Mr. Perkins: May I object to your Honor's question? It depends on the date of the application.

40



*Albert Childs, for Complainant—Cross.*

Q. Was this policy, Exhibit C-19, which is dated October 27, 1926, an effective policy until it was delivered? A. It became effective, yes.

Q. On what date? A. On the 27th of October.

10 Q. If it was delivered November 3, it would not have been effective, would it?

Mr. Perkins: I object. The physical act of delivery of the policy is not the thing that determines our liability under that policy. Assuming that an application had been received and approved, if an accident happens the following day, the claim would fall to us for attention, even though the policy had not actually been delivered.

20 The Court: It might come to you for attention, but if the risk had not been accepted and no policy delivered, do you consider you would be liable?

Mr. Perkins: If the risk had not been accepted, no.

By Mr. Stoffer:

Q. If the risk had been accepted before the policy issued? A. Yes, sir.

30 Q. Pending the telephone messages between Newark and Hartford and the acceptance of the risk which took place either the 2nd or 3rd of November, was that policy effective?

Mr. Perkins: I object. That is calling for a legal conclusion.

By the Court:

40 Q. As of October 27, 1926, I understand a policy had been cancelled and there was not any other



*Herbert F. Ten Broeck, for Defendant—Direct.*

Aetna policy in force after October 27, 1926, unless it be this one that is marked Exhibit C-19?

A. Yes, sir.

Q. That is a correct statement, is it? A. Yes, sir.

By Mr. Stoffer:

10

Q. And that you testify to, from your knowledge of the usual course of business; is that it?

A. I testify to that from having inspected the records.

Q. You are interested in the claims of Dr. Sussman against the Aetna Insurance Company?

A. Not personally.

Q. Did you have any conversation with your agent, Mr. Ten Broeck, about the cancellation of the \$75 policy and the effective date and delivery of the \$250 policy?

20

Mr. Perkins: I object to that as not proper cross-examination.

The Court: Objection sustained.

---

HERBERT F. TEN BROECK, heretofore sworn as a witness on the part of the defendant, recalled in rebuttal and further examined as follows:

30

*Direct examination by Mr. Stoffer:*

Q. You heard Mr. Childs' testimony? A. Yes.

Q. Will you tell us whether the \$75 policy was cancelled October 25, 1926?

Mr. Perkins: I object. At this rate, your Honor will not get away from here this summer.

40



*Herbert F. Ten Broeck, for Defendant—Direct.*

The Court: At the same time, that should not deprive counsel of the right to call a witness. Objection overruled.

Mr. Perkins: I ask the right to cross-examine before he answers.

10 The Court: You may cross-examine after he has answered.

A. I do not really know.

Q. Did you receive from the Aetna Insurance Company the policy marked Exhibit C-19 on November 3, 1926?

Mr. Perkins: I object.

The Court: Objection sustained.

20 Q. When did you receive it?

Mr. Perkins: I object.

The Court: Objection sustained. He has already testified that he got it and delivered it November 8th, 9th or 10th.

Q. Did Dr. Sussman at any time between October 26, 1926, and November 8, 9 or 10 sign any application for this policy?

Mr. Perkins: I object.

30 The Court: Objection sustained.

Q. Is it a practice of the Aetna Insurance Company, to your knowledge, for an agent to obtain a policy on his own initiative, without having an application first signed by the assured?

Mr. Perkins: I object.

The Court: Objection sustained.

40 Q. Referring to the stamp on the application for the Aetna Company, did you have any discus-



*Herbert F. Ten Broeck, for Defendant—Cross.*

sion with any agents or officers of the Aetna as to the effective date of this policy?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. You heard Mr. Childs' testimony as to the usual practice of the Aetna. Was that usual practice followed by you in this case? 10

Mr. Perkins: Objected to.

The Court: Objection sustained. He told us what he did.

*Cross-examination by Mr. Perkins:*

Q. You have already determined in your mind the right of this case that is now before this Court? 20

Mr. Stoffer: I object.

Mr. Perkins: I wish to show the bias of this witness.

The Court: Objection sustained.

Mr. Perkins: May I call him as my own witness?

The Court: Yes, sir.

Mr. Perkins: On that particular thing?

The Court: Yes. 30

Q. During the recess, didn't you state in this court room that you would not take a minute to decide this case?

Mr. Stoffer: I object.

The Court: Objection overruled.

A. I said in my opinion.

Q. Didn't you say that it would not take you one minute to decide this case? A. In my opinion. 40



*Herbert F. Ten Broeck, for Defendant—Cross.*

Q. Isn't that what you said? A. I said I naturally formed an opinion on this thing, the same as anyone else would, and that was my opinion from the information that I had.

10 Q. Didn't you say that you would decide this case against the Metropolitan Life Insurance Company in a minute, if you had it in your power? A. Owing to the facts as I know them, I think I would.

Q. And you have been working for a number of months to assist Dr. Sussman in the collection of his claim against the Aetna, have you not? A. I put it up to the Claim Department of the Aetna just recently. In fact, I have talked to the Aetna lawyers.

20 Q. And you have been doing what you could to get the Aetna to pay Dr. Sussman's claim? A. Surely. I have done everything in my power to get the claims of my clients paid.

Q. And Dr. Sussman's claim? A. My client, who is Dr. Sussman.

CASE CLOSED.

30

40



**Exhibit C-1.****Policy of Insurance.****POLICY**

METROPOLITAN LIFE INSURANCE COMPANY

Incorporated by the State of New York  
A Mutual Life Insurance Company

10

IN CONSIDERATION of the statements in the application, copy of which is attached hereto, and of the payment of the premium of Seventy-nine Dollars and eighty cents

Hereby insures Aaron P. Sussman by occupation dentist, classified extra preferred, for the term of twelve months from November 13th, 1926, noon, standard time at the place where the insured resides, and subject to the provisions and limitations herein contained, in the

20

Principal sum of Fifteen thousand Dollars

Weekly indemnity of Seventy-five Dollars

Against the results of bodily injuries sustained while this policy is in force and caused directly and independently of all other causes by violent and accidental means, to wit:—

*Loss of Life, Limb, Sight*—Clause 1. If such injuries, directly and independently of all other causes, shall, from the date of the accident, wholly and continuously disable and prevent the insured from performing any and every kind of duty pertaining to his occupation and if, during the period of such total and continuous disability and within 200 weeks from the date of the accident, such injuries shall, directly and independently of all other causes, result in any one of the losses named in the following schedule, the Company will pay the amount set opposite such loss and, in addition

30

40



*Exhibit C-1.*

thereto, the weekly indemnity above specified from the date of the accident to the date of such loss.

- Or, if such injuries shall not so disable the insured, but shall, directly and independently of all other causes and within 90 days from the date of the accident, result in any one of the losses named in the following schedule, the Company will pay the amount set opposite such loss.

*Schedule Referred to in Clause 1*

For Loss of Life—The Full Principal Sum Above Specified.

For Total and Irrecoverable Loss of Sight of Both Eyes—The Full Principal Sum Above Specified.

- 20 For Loss of Both Hands by severance at or above the wrist joints—The Full Principal Sum Above Specified.

For Loss of Both Feet by severance at or above the ankle joints—The Full Principal Sum Above Specified.

For Loss of One Hand and One Foot by severance at or above wrist and ankle joints—The Full Principal Sum Above Specified.

- 30 For Loss of One Hand by severance at or above the wrist joint and the Total and Irrecoverable Loss of Sight of One Eye—The Full Principal Sum Above Specified.

For Loss of One Foot by severance at or above the ankle joint and the Total and Irrecoverable Loss of Sight of One Eye—The Full Principal Sum Above Specified.

For Loss of One Hand by severance at or above the wrist joint—One Half of the said Principal Sum.



*Exhibit C-1.*

For loss of One Foot by severance at or above the ankle joint—One Half of said Principal Sum.

For Total and Irrecoverable Loss of Sight of One Eye—One Third of the said Principal Sum.

Provided always that, if more than one of the losses enumerated in the above schedule shall be sustained, payment shall be made only for the one for which the largest amount is specified. 10

*Total Disability*—Clause 2. If such injuries shall not result as specified in Clause 1, but, directly and independently of all other causes, shall, within two weeks from the date of the accident, continuously and wholly disable and prevent the insured from performing any and every kind of duty pertaining to his occupation, the Company will pay the insured the weekly indemnity above specified for the entire period of such total disability. 20

*Partial Disability*—Clause 3. If such injuries shall not result as specified in Clause 1, but, directly and independently of all other causes, shall, within two weeks from the date of the accident or immediately following total disability, continuously disable and prevent the insured from performing some one or more important daily duty or duties pertaining to his occupation, the Company will pay the insured one-half of the weekly indemnity above specified for the period of such partial disability, not exceeding 26 weeks. 30

*Double Indemnities*—Clause 4. If such injuries be received (a)—while the insured is riding as a passenger in or on any public conveyance (except aerial conveyances) of a common carrier regularly provided for passenger service (including 40



*Exhibit C-1.*

the platform, steps or running board of such conveyance but not while or in consequence of attempting to enter or leave such conveyance); or (b)—while riding as a passenger in a regular passenger elevator car; or (c)—in consequence of the burning of any building in which the insured shall be at the commencement of the fire; the amounts payable for any of the losses enumerated in the preceding clauses shall be doubled.

*Medical Attendance*—Clause 5. If any injury covered by this policy and sustained by the insured does not cause a result for which an indemnity is provided by this policy, but requires and receives treatment by a legally authorized physician, the Company will reimburse the insured for the cost of such treatment, not exceeding one week's indemnity as provided in Clause 2.

*Identification*—Clause 6. If the insured shall, wholly by reason of injury covered by this policy, be rendered physically unable to communicate with friends, the Company will, upon receipt of a telegram or other message giving this policy number, immediately transmit to the relatives or friends of the insured any information respecting him and defray all expenses necessary to place the insured in communication with and in the care of friends, not exceeding a sum equal to four weeks' indemnity at the rate per week provided in Clause 2.

*Participation in Divisible Surplus*—Clause 7. This policy is a participating contract and, commencing not later than the end of the third policy year, the Company will annually, if and while this policy is in force, ascertain and apportion any



*Exhibit C-1.*

divisible surplus accruing hereon, after setting aside such an amount for a contingency reserve as the directors of the Company shall deem necessary.

*Surgical Operations*—Clause 8. If any injury covered by this policy shall, within ninety days from the date of the accident, directly and independently of all other causes, necessitate any surgical operation named in the Schedule of Surgical Operations endorsed hereon, the Company will pay the insured the sum set opposite the said operation in the said schedule, provided always that, if more than one such operation shall be necessitated as the result of any one accident, payment shall be made only for the operation first occurring. 10 20

*Risks Excluded*—Clause 9. This insurance shall not cover suicide or any attempt thereat, while sane or insane; nor shall it cover injuries, fatal or non-fatal, sustained while participating in aviation or aeronautics except as fare paying passenger; nor shall it cover accident, injury, disability, death or other loss caused wholly or partly by disease or bodily or mental infirmity or medical or surgical treatment therefor, or by hernia, or by ptomaines or any kind of infection whether suffered accidentally or otherwise (excepting only septic infection of and through a visible wound accidentally sustained). All insurance under this policy shall be suspended if the insured shall engage in military or naval service in time of war or if the insured shall become blind or insane, in which event the portion of the premium unearned during the period of such suspense shall be refunded. 30 40



*Exhibit C-1.*

*Special Provisions*—Clause 10. The copy of the application attached hereto is hereby made a part of this contract. No provision of the charter, constitution, or by-laws of the Company not included herein shall avoid the policy or be used in evidence in any legal proceedings hereunder.

10 This policy is issued by the Company and accepted by the insured subject to the following provisions prescribed by law and shall be void if any of the statements in the application are false and such false statements are made with intent to deceive or if such false statements materially affect either the acceptance of the risk or the hazard assumed by the Company. Failure of the insured or beneficiary to comply with any of the provisions or requirements of this policy shall invalidate all

20 claims.

*Renewal Grace*—Clause 11. This policy may, with the consent of the Company, and subject to all of the terms, conditions and provisions of this policy, be periodically renewed upon each successive expiration, for a further period of equal number of months, upon the payment of the premium herein stated, as the premium for each such successive renewal. This provision for renewal shall cease to be in force upon the expiration of the period next preceding the sixty-fifth birthday of the insured. Upon each such renewal a grace of thirty-one days, without interest charge, shall be granted for the payment of the premium, during which period the insurance shall continue in force.

30

*Standard Provisions*

*Change of Occupation to Greater Hazard*—

40 1. This policy includes the endorsements and



*Exhibit C-1.*

attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation. 10

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable. 20 30

*Alterations*—2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon. 40



*Exhibit C-1.*

10      *Past Due Premiums*—3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

*Notices and Claims*—4. Written notice of injury on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury.

20      5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the Company at New York, or to any authorized agent of the Company, with particulars sufficient to identify the insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that that notice was given as soon as was reasonably possible.

30      6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

40      7. Affirmative proof of loss must be furnished to the Company at its said office in case of claim



*Exhibit C-1.*

for loss of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

*Examination*—8. The Company shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law. 10

*Payment of Indemnity*—9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof. 20

10. Upon request of the insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each four weeks during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured. 30

*Change of Occupation to Lesser Hazard*—12. If the insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the insured and 40



*Exhibit C-1.*

surrender of the policy, will cancel the same and will return to the insured the unearned premium.

10      *Rights of Beneficiary*—13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

20      *Legal Proceedings*—14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

20      *Statutory Compliance*—15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

30      *Cancellation*—16. The Company may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

40      *Age Limits*—20. The insurance under this policy shall not cover any person under the age of eighteen years nor over the age of sixty-five years.



*Exhibit C-1.*

Any premium paid to the Company for any period not covered by this policy will be returned upon request.

IN WITNESS WHEREOF the Metropolitan Life Insurance Company has caused this policy to be signed by its President and Secretary in the City of New York, but the same shall not be binding until it has been delivered to the insured and the full premium stated in the policy has been paid to an authorized representative of the Company.

10

HALEY FISKE,  
President.

JAS. S. ROBERT,  
Secretary.

Examined: R.

20

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**Application for Policy Exhibit C-1.**

APPLICATION

Form of Policy, A1; Principal Sum, \$15,000; Weekly Benefit, \$75.00; Class, Ex. Pref.; Premium, \$79.80. Approved, R. Date, 11/12.

30

APPLICATION TO THE  
METROPOLITAN LIFE INSURANCE COMPANY

Incorporated by the State of New York

Use black ink for answers. Write plainly.  
Print names.

1. What is your full name? (Please print.)  
Aaron P. Sussman.

2. Place of birth? Austria. Date of birth?  
May 5, 1880. Nearest birthday? Age, 46 yrs.

40



*Exhibit C-1.*

3. Height? 5 ft. 6 in. Weight? 165 lbs. Race? White. Sex? Male.

4. Residence address? (Please print name of street.) No. 79 West 35th Street. Town, Bayonne. State, N. J.

10 5. Place of business? (Please print name of street.) No. 497 Broadway. Town, Bayonne. State, N. J.

6. To which address shall notices be sent? Place of business.

7. Employment—Member or employee? Member. Firm of Dr. A. P. Sussman. Nature of whose Business is: Dentist.

20 8. What is your occupation? (If more than one, state them all.) Surgeon Dentist.

9. State in full the duties of your occupation. Dentistry.

10. Beneficiary in event of accidental death? (Please print.) Name in full, Ida E. Sussman. Relationship to you, wife. Address, 79 West 35th Street.

30 11. What *life* or *accident* insurance have you in any other Company or Association?

| <i>Company or<br/>Association</i> | <i>Kind of Policy</i> | <i>Principal Sum</i> | <i>Wky.<br/>Benefit</i> |
|-----------------------------------|-----------------------|----------------------|-------------------------|
| Aetna Life ....                   | A. H.                 | 15,000               | 75.00                   |
| Prudential ....                   | W. L.                 | 15,000               | .....                   |
| Manhattan ....                    | W. L.                 | 10,000               | .....                   |
| Metropolitan                      | 20 Pt. W. L.          | 12,000, 10,000       | .....                   |

40 12. Has any application ever made by you for *life* or *accident* insurance been declined, postponed or withdrawn or have you failed to receive notice of action thereon? No.



*Exhibit C-1.*

13. Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused? No.

14. Have you ever received or been refused benefit for any accident? Aetna, \$200.00, 1917.

15. Have you in contemplation any special journey, hazardous undertaking or any change of occupation? No. 10

16. Is your sight or hearing impaired? If so, state nature and degree of impairment. No.

17. Are you maimed, deformed or crippled in any manner or degree or affected with any form of bodily or mental disease, disorder, infirmity or impairment? No.

18. Have you ever had epilepsy, fits, vertigo, dizziness, rheumatism, diabetes, syphilis, varicose veins, mental disorder, cancer, tumor or any disease of lungs, heart or kidneys? No. 20

19. Does your average weekly income *from the above occupation* exceed the aggregate amount of single weekly benefit provided under this and all other policies of accident insurance carried by you? Yes.

20. Do you certify that no statements have been made nor information furnished to any Agent of this Company or other person, relating to this insurance, other than as written herein, and agree that no statements made nor information furnished shall be binding upon the Company unless written herein and that no insurance will be in force on this application unless and until this application is approved at the Home Office of the Company and a policy is delivered and the premium stipulated in such policy is received by the Company? Yes. 30  
40



*Exhibit C-1.*

21. Is the policy to be issued and the premium to be paid for an annual or for a semi-annual period? Annual.

Dated at Bayonne this 4th day of Nov., 1926.

Signature of Applicant: Aaron P. Sussman.

- 10 (Please read carefully before signing.)  
Witness: George Fink.

Note. Every question must be answered. Write "yes" or "no" or "none" and state facts, if any, necessary to complete the answer.

No person other than applicant may sign this application.

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**Exhibit C-2.**

- 20 **Double Benefit Certificate No. D252546, Issued by  
The Commercial Travelers Mutual Accident  
Association of America to Aaron P. Sussman,  
Bayonne, New Jersey, Dentist, Dated July 6th,  
1922.**

Insures against loss of life, limb and sight as follows:

|    |                                     |          |
|----|-------------------------------------|----------|
|    | For Loss of Life.....               | \$10,000 |
|    | For Loss of Both Arms.....          | 10,000   |
| 30 | For Loss of Both Legs.....          | 10,000   |
|    | For Loss of One Arm and One Leg.... | 10,000   |
|    | For Loss of Sight of Both Eyes..... | 10,000   |
|    | For Loss of Sight of One Eye.....   | 2,500    |
|    | For Loss of One Arm.....            | 5,000    |
|    | For Loss of One Leg.....            | 5,000    |

Insures against loss of time as follows:

- 40 If total disability, the sum of \$50.00 per week during the period of total disability, not exceeding 104 weeks.

If partial disability, the sum of \$25.00 per week during the period of partial disability not exceeding 26 weeks.



**Exhibit C-3.**

**Policy of Insurance No. 3056862, Issued by The Prudential Insurance Company of America to Aaron P. Sussman, Dated October 23rd, 1919.**

Insures the life of Aaron P. Sussman in the sum of \$5,000.

10

Insures against permanent and total disability occurring before the age of 60 by the amount insured (\$5,000), paid in 120 monthly installments during 10 years.

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**Exhibit C-4.**

**Policy of Insurance No. 3675335 Issued by Prudential Insurance Company to Aaron P. Sussman, Dated June 23rd, 1921.**

20

Insures the life of Aaron P. Sussman in the sum of \$5,000.

Insures against accidental death in the sum of \$5,000, in addition to the face amount of insurance.

Insures against total and permanent disability in the sum of \$10 per month for each \$1,000 of the face amount of insurance, payable to the insured in the event of such disability before the age of 60.

30

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**Exhibit C-5.**

**Policy of Insurance No. 1404110, Issued by the Prudential Insurance Company of America to Aaron P. Sussman, Dated November 4th, 1911.**

Insures the life of Aaron P. Sussman in the sum of \$1,000.

40



**Exhibit C-6.**

Policy of Insurance No. 1404109, Issued by the Prudential Insurance Company of America to Aaron P. Sussman, Dated November 4, 1911.

10      Insures the life of Aaron P. Sussman in the sum of \$2,000.

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**Exhibit C-7.**

Policy of Insurance No. 389288, Issued by The Travelers Insurance Company to Aaron P. Sussman, Dated January 17th, 1917.

20      Insures the life of Aaron P. Sussman in the sum of \$2,000.

Insures against total and permanent disability occurring before the age of 60, by the payment of twenty monthly installments, the amount of each installment being 6.8% of the amount of insurance (\$2,000).

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**Exhibit C-8.**

30      Policy of Insurance No. 836439, Issued by The Travelers Insurance Company to Aaron P. Sussman, Dated August 21st, 1922.

Insures the life of Aaron P. Sussman in the sum of \$5,000.

Insures against total and permanent disability occurring before the age of 60 by payments of \$50.00 per month, during the continuance of such disability.

40



**Exhibit C-9.**

**Policy of Insurance No. 4477858, Issued by Metropolitan Life Insurance Company to Aaron P. Sussman, Dated February 2, 1926.**

Insures the life of Aaron P. Sussman in the sum of \$5,000.

10

**Exhibit C-10.**

**Policy of Insurance No. 1967733, Issued by Metropolitan Life Insurance Company to Aaron P. Sussman, Dated November 20th, 1917.**

Insures the life of Aaron P. Sussman in the sum of \$5,000.

20

**Exhibit C-11.**

**Policy of Insurance No. 4201375, Issued to Aaron P. Sussman by the Equitable Life Assurance Society of the United States, dated November 5th, 1926.**

30

Insures the life of Aaron P. Sussman in the sum of \$5,000.

Insures against accidental death in the sum of \$5,000, in addition to the face amount of the policy (\$5,000).

Insures against total and permanent disability occurring before the age of 60 by payments of \$50.00 per month during disability.

40



**Exhibit C-12.**

**Policy of Insurance No. 199030, Issued by The Manhattan Life Insurance Company of New York to Aaron P. Sussman, dated June 2nd, 1921.**

- 10      Insures the life of Aaron P. Sussman in the sum of \$10,000.

**Exhibit C-13.****NOTICE OF ACCIDENT**

to the

- 20      **Metropolitan Life Insurance Company  
Accident and Health Division**

Policy Number 181480 AH

Name in full—Aaron P. Sussman.

Business Address—497 Broadway, Bayonne.

Residence—79 W. 35 St., Bayonne.

Present Occupation—Dentist. Name of Employer.

- 30      Give date and hour when the accident happened  
—Jan. 17, 1927 at 8:10 o'clock P. M.

State what bodily injury you sustained—Injury to right hand.

Describe the accident which caused the injury—Door of Taxi Cab.

Name and address of attending physician—Dr. Lipschutz.

On what date did you become disabled? Jan. 17, 1927.

- 40      Was that disability total or partial? Total.



*Exhibit C-13.*

How long do you expect disability will continue?  
(This is an estimate only.) Total to No Idea.

Where may you be found by the Company's  
medical examiner during disability? In Bayonne  
Hospital.

If you have any other accident insurance, state  
names of companies and amount payable weekly  
by each. 10

Aetna Ins. Co..... \$250.  
National Casualty ..... 100.

Signed AARON P. SUSSMAN  
D. D. LOEB, his Atty.

**Exhibit C-14.**

20

**Claimant's Preliminary Notice of Injury  
Commercial Casualty Insurance Company**

Dated 12/22/21

Full name—Aaron P. Sussman.  
Policy letter and No.—L. I. 17490.  
Dates of last two payments—7/1921.  
To whom paid—agt. 30

What is your occupation? If more than one,  
state all—Dentist.

Describe fully the duties of your occupation—  
Usual to a dentist.

When were you injured? About Nov. 14, 1921.  
hour 4 P. M.

State day and hour on which you ceased work—  
Nov. 22-1.

Describe fully how and where accident oc-  
curred? forcing a crown on upper left jaw of a 40



*Exhibit C-14.*

patient, in some way cut R. thumb under nail infected.

What and where is the injury? Cut R. thumb—infected.

On what date were you first attended by a physician? 11/14/21.

10 At home or his office? Office.

Physician's name—Dr. Lupin. Address—19 W. 22nd St.

Have you resumed all business duties—Yes. If so give date

Have you resumed any of your business duties—Yes. If so give date

When do you expect to resume your full duties?

Are you insured for disability in any other company or society? No.

20 If so name them . What are the weekly benefits?

What are your average monthly earnings? More than wkly indemnity.

Employer's name (Company)—self. Address—

Names and address of witnesses to accident.

Signature—A. P. Sussman.

Address—497 Broadway. City—Bayonne. State—N. J.

30

40



**Exhibit C-15.****STATEMENT OF CLAIM (Accident)**

to the

**Metropolitan Life Insurance Company  
Accident and Health Division**

10

What is your full name and number of your policy? Aaron P. Sussman. Policy Number 181480 AH.

What is your present age, weight and height? Age 46 years. Weight 165 pounds. Height 5 feet 5 inches.

Where do you reside? (Give street, number and town). 79 West 35th St., Bayonne, N. J.

What was your occupation at time of this accident? Dentist.

20

Give name of your employer at time of this accident. Self.

Give amount of your weekly salary or wages. If not employed on that basis give average weekly earnings. Average earnings Per Week Approx. \$750.00.

Give date and hour when the accident occurred for which this claim is made? January 17 1927 at 8 o'clock P. M.

Are you entitled to any other benefits or compensation, from any source whatsoever, on account of this accident? If so, name the companies or associations, or other sources, and give amount of weekly benefit payable by each. Yes.

30

Aetna Insurance Co..... \$250.

National Casualty Co..... \$100.

Date Feb. 17 1927

Signed A. P. SUSSMAN.

40



**Exhibit C-16.**

**Letter of Daniel D. Loeb, Counsellor at Law, to  
Commercial Travelers Mutual Accident Associ-  
ation.**

January 31st, 1927.

10

Commercial Travelers Mutual  
Accident Association,  
Utica, N. Y.

Gentlemen:

20

I wish to notify you that Dr. Aaron P. Suss-  
man of 79 West 35th Street, Bayonne, N. J., who  
held membership Number D-252546, was injured  
on the 17th day of January 1927. He is now con-  
fined to the Bayonne Hospital. In looking over  
the various policies that he has, I notice the one  
I have referred to among his papers.

Kindly give same your attention.

Very truly yours,

DDL/M

D. D. LOEB

30

40



**Exhibit C-17.****Application.**

I hereby apply to the Commercial Casualty Insurance Company for a Policy to be based upon the following representation of facts: I understand and agree that the right to recovery under any policy which may be issued upon the basis of this application shall be barred in the event that any one of the following statements, material either to the acceptance of the risk or to the hazard assumed by the Company, is false, or in the event that any one of the following statements is false and made with intent to deceive. I agree that this application shall not be binding upon the Company until accepted either by the Secretary at the Home Office or by an agent duly authorized to issue policies.

My full name is Aaron P. Sussman.

My residence is No. 79 West 35 Street, City of Bayonne, State of New Jersey.

I am (member of firm employed by) Self whose business is that of Dentist.

My occupation is—Dentist no mechanical work.

The duties of my occupation are fully described as follows: My average weekly earnings from the occupation stated above exceeds the total amount of singly weekly indemnity under this and all other policies carried by me, except as follows: No ex.

Policy to be payable in case of death by accident under its provisions to (Beneficiary's Name in full)—Ida E. Residence—79 West 35 Relationship—Wife.

I was born on the 5 day of May 1880 at Austria my age is 39 years. My height is 5 feet 5 inches. I weigh 165 pounds. I am a white male.



*Exhibit C-17.*

10 I have no accident or health insurance in this or any other company or association; have made no application for accident or health insurance upon which I have not been notified of the action thereon; nor have I ever received indemnity for any accidental injury or illness, except as herein stated: No ex.

No application ever made by me for life, health or accident insurance has been declined; no life, health or accident policy ever issued to me has been cancelled; nor has any renewal thereof been refused by this or any other company or association except as herein stated: No ex.

20 My habits of life are correct and temperate; I am in sound condition mentally and physically; my hearing or vision is not impaired; I have never had nor am I now suffering from or subject to fits, disorders of the brain, or any bodily or mental infirmity or deformity (including hernia and rupture) except as herein stated: No ex.

I have not in contemplation any special journey or any hazardous undertaking—except as herein stated: No ex.

I have not been disabled nor have I received medical or surgical attention within the past five years—Except as herein stated: No ex.

30 I have never undergone surgical operation—except as herein stated: No ex.

I have not been exposed during the last ten days to any contagious or infectious disease—except as herein stated: No ex.

Policy applied for this 27 day of June, 1919.

Signature of applicant

AARON P. SUSSMAN.



**Exhibit C-18.****Copies of Letters Written by Daniel D. Loeb,  
Attorney, to Insurance Companies Relative to  
Injuries Sustained by Aaron P. Sussman.**

April 25th, 1927.

Metropolitan Life Insurance Co.,  
1 Madison Avenue,  
New York City, N. Y.

10

Gentlemen:

This is to notify you that on January 17th,  
1927, Dr. Aaron P. Sussman of Bayonne, New  
Jersey, who is insured in your company under  
Policies #2330879 and #916689, was injured and  
has been totally disabled since that time.

Said policy has a total disability clause.

20

Will you kindly give same your attention?

Very truly yours,

DDL:MVW

April 25th, 1927.

Prudential Insurance Co. of America,  
Home Office,  
Newark, N. J.

30

Gentlemen:

This is to notify you that on January 17th,  
1927, Dr. Aaron P. Sussman of Bayonne, New  
Jersey, who is insured in your company under  
Policies #3675335 and #3056862 was injured and  
has been totally disabled since that time.

Said policy has a total disability clause.

Will you kindly give same your attention?

Very truly yours,

40

DDL:MVW



*Exhibit C-18.*

April 25th, 1927.

Equitable Assurance Society of U. S.,  
393 Seventh Avenue,  
New York City, N. Y.

10 Gentlemen:

This is to notify you that on January 17th, 1927, Dr. Aaron P. Sussman of Bayonne, New Jersey, who is insured in your company under Policy #4201375, was injured and has been totally disabled since that time.

Said policy has a total disability clause.

Will you kindly give same your attention?

Very truly yours,

20 DDL:MVW

---

April 25th, 1927.

Travelers Insurance Co.,  
Hartford, Conn.

Gentlemen:

30 This is to notify you that on January 17th, 1927, Dr. Aaron P. Sussman of Bayonne, New Jersey, who is insured in your company under Policies #389288 and #836439 was injured and has been totally disabled since that time.

Said policy has a total disability clause.

Will you kindly give same your attention?

Very truly yours,

DDL:MVW



*Exhibit C-18.*

January 31st, 1927.

Commercial Travelers Mutual,  
Accident Association,  
Utica, N. Y.

Gentlemen:

I wish to notify you that Dr. Aaron P. Sussman of 79 West 35th Street, Bayonne, N. J., who held membership Number D-252546, was injured on the 17th day of January, 1927. He is now confined to the Bayonne Hospital. In looking over the various policies that he has, I notice the one I have referred to among his papers.

Kindly give same your attention.

Very truly yours,

DDL/M.

10

20

**Exhibit C-19.**

**Policy of Insurance No. PA129970, Issued by  
Aetna Life Insurance Company of Hartford,  
Conn., to Aaron P. Sussman, Dated October  
27th, 1926.**

Insures the life of Aaron P. Sussman in the principal sum of \$30,000.

Insures against loss of limb and sight as follows:

30

|                                   |                             |
|-----------------------------------|-----------------------------|
| Both Hands or Both Feet or        |                             |
| Sight of Both Eyes.....           | The Principal Sum           |
| One Hand and One Foot.....        | The Principal Sum           |
| One Hand and Sight of One Eye.... | The Principal Sum           |
| One Foot and Sight of One Eye.... | The Principal Sum           |
| One Hand or One Foot.....         | One-half the Principal Sum  |
| Sight of One Eye.....             | One-Third the Principal Sum |

Insures against total disability by payment of weekly indemnity of \$250.00 during such disability.

Insures against partial disability by payment of weekly indemnity of \$125.00 during such partial disability, not exceeding 26 consecutive weeks.

40



**Exhibit C-20.**

**Application of Aaron P. Sussman to Aetna Life  
Insurance Company for Policy, Exhibit C-19.**

*(Opposite)* 



NOV 8 1926

TRANS. TO

Thos M. Searles 1926

KIND OF INSURANCE.

Acc

PREMIUM

ACCIDENT, \$287.00

NEWARK BRANCH OFFICE, 230

Essex Building  
NEWARK, N. J.

FORM OF POLICY.

PARAMOUNT

HEALTH, \$

Policy No. PA 129900

(Prefix letters and figures)

N. M. Ten Broeck

Special Agent, if any  
Broker, Solicitor, or Agent.

| PRINCIPAL SUM<br>(Single Indemnity.) | WEEKLY INDEMNITY<br>Accident. | Health. | CLASS        | DATE       | TERM    |
|--------------------------------------|-------------------------------|---------|--------------|------------|---------|
| \$30,000                             | \$250.                        | \$      | 3<br>Ex Prof | 10-27 1926 | 12 mos. |

Endorsements, Riders, Supplements or Permits.

*Pyogenic rider*

INSPECTOR 1926

COPY

For Home Office use only.

RE-INS.

COMMISSION

RECORD

MEDICAL DEPT.

HONOR ROLL 1926

CARD WRITTEN

OCCUPATION NO. 141

CONTROL NOV 5 1926 DEPARTMENT

## Application to the Aetna Life Insurance Company.

1. What is your full name? Aaron P. Sussman
2. What was your age last birthday? 46 Date of birth? 5-5-1880 Place? Austria  
(State or Country)
3. Height? 5 ft. 5 in. Weight? 165 lbs. Sex? male Color? white
4. Where do you reside? 79 W. 35th St., BAYONNE  
(Street and No.) (City or Town)  
County of Hudson State of New Jersey
5. Are you member of firm or employee? Myself Dentist  
(State name of firm and business engaged in)
- Located at 497 B'way Street, Town of BAYONNE State of N.J.
6. What is your occupation? Dentist usual duties  
State fully duties performed, position and nature of business
- \*7. To whom shall Policy be payable in case of death? Name IDA E. SUSSMAN  
Address SAME  
What is relationship of the beneficiary to you? Wife
8. Do your average weekly earnings exceed the aggregate single weekly indemnity payable under this Policy and all other similar policies carried by you? Yes
9. What life, accident or health insurance have you in this Company? Replaces policy FD-1222
10. What accident or health insurance have you in other companies or associations? 50. weekly Commercial Travelers
11. Have you ever received indemnity for any injury or illness? 1917-100. Burned Face - 1921-90. Sprained thumb
12. Have you ever been declined or postponed for life, accident or health insurance? No



13. Have you ever made application for life, accident or health insurance upon which you have not been notified of the action thereon?..... *No*
14. Has any life, accident or health policy issued to you been cancelled or has any renewal thereof been refused, by this or any other company or association?..... *No*
15. Have you in contemplation any special journey or hazardous undertaking?..... *No*
16. Do you ever engage in motorcycling or aeronautics?..... *No*
17. Do you own or operate an automobile?..... *Yes*
18. Have any of your relatives ever been insane or had tuberculosis?..... *No*
19. Are your habits temperate?..... *Yes* 20. Are you maimed or deformed?..... *No*
21. Is your sight or hearing impaired?..... *No*
22. Have you ever had a hernia or worn a truss?..... *No*
23. Have you ever had any of the following: Epilepsy?..... *No* Syphilis?..... *No*  
 Vertigo or dizziness?..... *No* Diabetes?..... *No* Tuberculosis?..... *No*  
 Mental Disorder?..... *No* Disease of Brain or Nervous System?..... *No*  
 Disease of Heart?..... *No* Disease of Tonsils, Nose or Throat?..... *No*
24. Have you within the past five years had medical or surgical advice or treatment?..... *No*  
 If so, state when and what, duration, and name of attending physician.....  
 (Month—Year) (Nature of Ailment) (Duration of Ailment) (Name of Attending Physician)  
 .....  
 .....  
 .....
25. Have you ever had, or ever been advised to have, a surgical operation?..... *No*
26. Have you been exposed during the last ten days to any contagious or infectious disease?..... *No*
27. Do you agree that the falsity of any answer in this application for a Policy shall bar the right to recover thereunder if such answer is made with intent to deceive or materially affects either the acceptance of the risks or the hazard assumed by the Company?..... *Yes*

Policy applied for this *27th* day of *October*, 192*6*

Signature of applicant.....

\*If no benefit in policy for loss of life, write in Section 7 "No death benefit."

**FULL PARTICULARS MUST BE GIVEN WITH ANSWER  
TO EACH QUESTION.**

Form 3000-A  
(Replaces Form 3000)



116822



KIND OF INSURANCE.

Accident

PREMIUM.

ACCIDENT, \$ 287.00

NEWARK BRANCH OFFICE-230

Essex Building  
NEWARK, N. J.

FOR A OF POLICY.

HEALTH, \$

Paramount

Policy No. PA-129970

(Prefix letters and figures)

H. M. TEN BROECK

Special Agent, if any

Broker, Solicitor, or Agent.

| PRINCIPAL SUM<br>(Single Indemnity.) | WEEKLY INDEMNITY<br>Accident. | Health. | CLASS     | DATE        | TERM    |
|--------------------------------------|-------------------------------|---------|-----------|-------------|---------|
| \$30000.                             | \$ 250.                       | \$      | Ex. Pref. | 10/27/26 19 | 12 mos. |

Endorsements, Riders, Supplements or Permits.

For Home Office use only.

| APP. RECD. | RE-INS.      | COMMISSION     | RECORD | MEDICAL DEPT. |
|------------|--------------|----------------|--------|---------------|
| HONOR ROLL | CARD WRITTEN | OCCUPATION NO. |        |               |

## Application to the Aetna Life Insurance Company.

- What is your full name? **AARON P. SUSSMAN**
- What was your age last birthday? **46** Date of birth? **5/5/1880** Place? **Austria**  
(State or Country)
- Height? **5** ft. **5** in. Weight? **165** lbs. Sex? **Male** Color? **white**
- Where do you reside? **79 West 35th Street** **Bayonne**  
(Street and No.) (City or Town)  
County of **Hudson**, State of **New Jersey**
- Are you member of firm or employee? **myself--Dentist**  
(State name of firm and business engaged in)
- Located at **497 Broadway** Street, Town of **Bayonne** State of **New Jersey**
- What is your occupation? **Dentist usual duties**  
State fully duties performed, position and nature of business
- To whom shall Policy be payable in case of death? { Name **IDA E. SUSSMAN**  
Address **same**  
What is relationship of the beneficiary to you? **wife**
- Do your average weekly earnings exceed the aggregate single weekly indemnity payable under this Policy and all other similar policies carried by you? **yes**
- What life, accident or health insurance have you in this Company? **replaces policy**  
**FD-1222**
- What accident or health insurance have you in other companies or associations? **\$50. weekly Commercial Travelers**
- Have you ever received indemnity for any injury or illness? **1917--burned face \$100. 1921--\$90. Sprained Thumb**
- Have you ever been declined or postponed for life, accident or health insurance? **no**



13. Have you ever made application for life, accident or health insurance upon which you have not been notified of the action thereon? **no**
14. Has any life, accident or health policy issued to you been cancelled or has any renewal thereof been refused, by this or any other company or association? **No**
15. Have you in contemplation any special journey or hazardous undertaking? **No**
16. Do you ever engage in motorcycling or aeronautics? **No**
17. Do you own or operate an automobile? **Yes**
18. Have any of your relatives ever been insane or had tuberculosis? **No**
19. Are your habits temperate? **Yes** 20. Are you maimed or deformed? **No**
21. Is your sight or hearing impaired? **No**
22. Have you ever had a hernia or worn a truss? **No**
23. Have you ever had any of the following: Epilepsy? **No** Syphilis? **No**  
 Vertigo or dizziness? **No** Diabetes? **No** Tuberculosis? **No**  
 Mental Disorder? **No** Disease of Brain or Nervous System? **No**  
 Disease of Heart? **No** Disease of Tonsils, Nose or Throat? **No**
24. Have you within the past five years had medical or surgical advice or treatment? **No**  
 If so, state when and what, duration, and name of attending physician
- | (Month—Year) | (Nature of Ailment) | (Duration of Ailment) | (Name of Attending Physician) |
|--------------|---------------------|-----------------------|-------------------------------|
|              |                     |                       |                               |
|              |                     |                       |                               |
|              |                     |                       |                               |
25. Have you ever had, or ever been advised to have, a surgical operation? **No**
26. Have you been exposed during the last ten days to any contagious or infectious disease? **No**
27. Do you agree that the falsity of any answer in this application for a Policy shall bar the right to recover thereunder if such answer is made with intent to deceive or materially affects either the acceptance of the risks or the hazard assumed by the Company? **Yes**

Policy applied for this **27th** day of **October**, 1926

Signature of applicant **Arson P. Sussman**

If no benefit in policy for loss of life write in Section 7 "No death benefit."

**FULL PARTICULARS MUST BE GIVEN WITH ANSWER  
TO EACH QUESTION.**







**Exhibit D-1.**

**Policy of Insurance No. 2330879-A, Issued by Metropolitan Life Insurance Company to Aaron P. Sussman, Dated June 30th, 1919.**

10      Insures the life of Aaron P. Sussman in the sum of \$6,000.

Insures against total and permanent disability occurring before the age of 60 and resulting from injury or disease, by the payments of a monthly annuity of \$10.00 for each \$1,000 of original insurance during the continuance of such disability.

---

**Exhibit D-2.**

20      **Policy of Insurance No. 916689-A, Issued by Metropolitan Life Insurance Company to Aaron P. Sussman, Dated March 29th, 1913.**

Insures the life of Aaron P. Sussman in the sum of \$1,000.

---

**Exhibit D-3.**

30      **Policy of Insurance No. 708494-A, Issued by Metropolitan Life Insurance Company to Aaron P. Sussman, Dated September 15th, 1910.**

Insures the life of Aaron P. Sussman in the sum of \$5,000.



**Exhibit D-4.****Application of Aaron P. Sussman to Metropolitan Life Insurance Company for Policy of Accident and Health Insurance (Exhibit C-1).**

What is your full name? Aaron P. Sussman.  
 Place of Birth? Austria. 10  
 Date of Birth? May 5th, 1880.  
 Nearest Birthday? Age 46 yrs.  
 Height? 5 ft. 6 in. Weight? 165 lbs. Race?  
 White. Sex? Male.  
 Residence address? No. 79 West 35th Street.  
 Town? Bayonne. State? N. J.  
 Place of business. No. 497 Broadway. Town,  
 Bayonne. State, N. J.  
 To which address shall notices be sent? Resi-  
 dence. 20  
 Employment—Member or employee? Member.  
 Firm of Dr. A. P. Sussman.  
 Nature of whose Business is? Dentist.  
 What is your occupation? Surgeon Dentist.  
 State in full the duties of your occupation?  
 Dentistry.  
 Beneficiary in event of accidental death?  
 Name in full—Ida E. Sussman.  
 Relationship to you—wife.  
 Address—79 West 35th St. 30  
 What life or accident insurance have you in  
 any other Company or Association?

| <i>Company or Association</i> | <i>Kind of Policy</i> | <i>Principal Sum</i> | <i>Wky. Benefit</i> |
|-------------------------------|-----------------------|----------------------|---------------------|
| Aetna Life                    | A. H.                 | 15,000               | 75.00               |
| Prudential                    | W. L.                 | 15,000               |                     |
| Manhattan                     | W. L.                 | 10,000               |                     |
| Metropolitan                  | 20 P. L. 20 L.        | 12,000               | 10,000              |

Has any application ever made by you for life or accident insurance been declined, postponed or withdrawn or have you failed to receive notice of action thereon? No. 40



*Exhibit D-4.*

Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused? No.

Have you ever received or been refused benefit for any accident? Aetna \$200.00 1917.

10 Have you in contemplation any special journey, hazardous undertaking or any change of occupation? No.

Is your sight or hearing impaired? If so, state nature and degree of impairment. No.

Are you maimed, deformed, or crippled in any manner or degree or affected with any form of bodily or mental disease, disorder, infirmity or impairment? No.

20 Have you ever had epilepsy, fits, vertigo, dizziness, rheumatism, diabetes, syphilis, varicose veins, mental disorder, cancer, tumor or any disease of lungs, heart or kidneys? No.

Does your average weekly income from the above occupation exceed the aggregate amount of single weekly benefit provided under this and all other policies of accident insurance carried by you? Yes.

30 Do you certify that no statements have been made nor information furnished to any Agent of this Company or other person, relating to this insurance, other than as written herein, and agree that no statements made nor information furnished shall be binding upon the Company unless written herein and that no insurance will be in force on this application unless and until this application is approved at the Home Office of the Company and a policy is delivered and the premium stipulated in such policy is received by the Company? Yes.



*Exhibit D-4.*

Is the policy to be issued and the premium to be paid for an annual or a semi-annual period? Annual.

Dated at Bayonne this 4th day of Nov. 1926.

Signature of Applicant

AARON P. SUSSMAN.

10

Witness:

GEORGE FINK.

**Exhibit D-5.**

**Copy of Summons and Complaint, Answer, Reply and Notice of Trial in Action of Aaron P. Sussman Against Metropolitan Life Insurance Company in Hudson County Circuit Court. Summons Tested June 24th, 1927.**

20

Action brought for payments alleged to be due under policy of accident and health insurance, issued by defendant to plaintiff, on or about November 13th, 1926.

Complaint alleges injury to plaintiff occurring on January 17th, 1927, while plaintiff was passenger in public conveyance, and resulting in amputation of index finger of right hand and operation upon middle finger of right hand, causing alleged total and permanent disability.

30

Complaint alleges that payments of \$150.00 per week are due under terms of policy.

Complaint alleges default in such payments and claims damages in the sum of \$4,000.

Answer alleges procurement of policy on the part of plaintiff by fraud and misrepresentation.

Reply is a denial of the allegations of the answer.

40

Notice of trial served by plaintiff on attorneys of defendant and service acknowledged August 5th, 1927.



**Exhibit D-6.**

**Copy of Summons, State of Demand, and Specification of Defenses in the Action Brought in Bayonne District Court by Aaron P. Sussman vs. Metropolitan Life Insurance Company. Summons Tested August 23rd, 1927.**

10

Action brought for payments alleged to be due under policy of accident and health insurance, issued to the plaintiff by the defendant on or about November 13th, 1926.

20

State of demand alleges injury to plaintiff occurring on January 17th, 1927, while plaintiff was passenger in public conveyance, and resulting in amputation of index finger of right hand and operation upon middle finger of right hand, and alleges total and permanent disability. State of demand alleges also that payments of \$150.00 per week are due under the terms of the policy and that default has been made in such payments for the period from the 1st day of August, 1927, to the 22nd of August, 1927, amounting to the sum of \$450.00, which sum is claimed as damages.

30

The specification of defenses sets up the defense that policy was procured by and through fraud of the plaintiff by means of divers false representations in the application for the insurance, which representations are in the said specification set forth.

40



**Exhibit D-7.**

**Copy of Summons and Complaint in the Action  
by Aaron P. Sussman Against the Metropolitan  
Life Insurance Company in the Hudson County  
Circuit Court. Summons Tested August 4th,  
1927.**

10

Action brought for payments alleged to be due on policy of accident and health insurance, issued by defendant to the plaintiff on or about November 13th, 1926.

Complaint alleges injury to plaintiff occurring on January 17th, 1927, while plaintiff was passenger in public conveyance, and that injury resulted in amputation of index finger of the right hand and operation upon middle finger of the right hand, and that result was total and permanent disability.

20

Complaint alleges also that payments of \$150.00 per week are due under terms of the policy.

Complaint alleges default in payments for the period beginning on the 20th day of June, 1927, and ending August 1st, 1927 and claims damages in the sum of \$900.00.

30

40



the first of these is the fact that the  
the second is the fact that the  
the third is the fact that the

the fourth is the fact that the  
the fifth is the fact that the  
the sixth is the fact that the

the seventh is the fact that the  
the eighth is the fact that the  
the ninth is the fact that the  
the tenth is the fact that the

the eleventh is the fact that the  
the twelfth is the fact that the  
the thirteenth is the fact that the  
the fourteenth is the fact that the



42 OCT. T. 1931

Filed after the Oral Argument  
by leave of Court.

**New Jersey Court of Errors and Appeals**

OCTOBER TERM, A. D. 1931.

METROPOLITAN LIFE INSURANCE  
COMPANY, a Corporation,  
Complainant-Appellant,

and

AARON P. SUSSMAN,  
Defendant-Appellee.

On Appeal  
from  
Chancery.

**REPLY BRIEF OF  
COMPLAINANT-APPELLANT.**

In the discussion under Point I, Defendant tries to show that the terms of Clause 10 of the policy in suit, relative to the effect of falsity in the statements made in the application, are at variance with the provisions of Section 94, Paragraph 4, of Insurance Act relative to representations and warranties. Without admitting any difference between the two, we urge that the statute deals with policies of life insurance, strictly as such, and not with accident and health insurance. The terms of Clause 10 of the policy in suit are not at variance with any statutory provision in this State or any decided case that we can find.

The quotation from the case of *Union Insurance Company vs. Wilkinson*, in 80 U. S. Supreme Court Reports, appearing on page 21 of Defendant's brief, also calls for a word of comment. This case was decided in 1871. The import of the dictum selected by Defendant for use in his brief has been rendered long since obsolete, not only by



insurance legislation throughout the country, but by later decisions of the Court itself. This is emphasized by a comparison of the *Wilkinson* case with the very recent *Stipcich* case, cited under Point VI of Complainant's main brief.

At the end of page 32 of his brief Defendant deals with the falsity of his answer in the matter of prior indemnities collected; and in his efforts to show that this falsity had no material effect in the making of the contract of insurance, makes the statement that the Complainant's underwriter "testified that the fact that Defendant had collected additional indemnity of approximately \$300.00 *would not have resulted in a refusal of the risk*". It is the purpose of our present comment to assert that that is precisely what Complainant's underwriter did *not* testify to. A reading of the testimony of this witness shows throughout that Complainant, had the information for which it asked been revealed and not suppressed, would have made that use of it "in estimating the degree and character of the risk" which it was its right and privilege to make. Defendant's statement of Farrell's testimony is contradicted even by so much of it as he quotes (page 33 of Defendant's brief).

Under Point VI of his brief Defendant deals with his acquisition of the larger Aetna policy pending his application for the policy in suit. The allegation of Complainant's Bill on this subject and the peculiar nature of the defense to it are broad enough to include everything that Complainant now urges under this point. The Aetna policy in question and the application therefor, as filed by Defendant, are of such tenor on their face as to date, etc., as to substantiate, without any other proof, the truth of Complainant's charge. But the defense is to the effect that, while the date



of the application for the Aetna policy filed by Defendant, and the date of the policy issued to him, would justify Complainant's charge, nevertheless these are not true dates, etc.; and Defendant contends that the larger Aetna policy was obtained not as it would appear from the documents themselves, but under other circumstances. Now we submit that, if these other circumstances are of such a character as to impose a definite obligation on the Defendant in his manner of dealing with Complainant, the Court will not exculpate him because the allegation did not contemplate those particular details of the transaction that remained concealed by the record of it, and which were peculiarly within Defendant's knowledge alone. Furthermore, sufficiency of pleadings has to do with questions relating to the scope of factual issues, as to whether or not a fact is within or without the issues raised by the pleadings. But there is no such question here. The facts here—assumed for the present argument—are in evidence; they were put in evidence by the Defendant as part of his defense. Now all we say under this head is that, from these facts, there follows a related obligation. The question is one of law. Would or would not the facts involved in the Defendant's version of what occurred when he procured the large Aetna policy require him to make the procurement of that policy known to Complainant? That is the question. Sufficiency of Complainant's bill is not at all in point.

Defendant also urges that Complainant's Point VI "is now raised for the first time and should not be considered". There is nothing in the record to warrant that statement. As a matter of fact, the question is not only not "raised for the first time" on this appeal but was made the subject of a special application to the Court below for reargument, in which application the decision



of the U. S. Supreme Court in the *Stipcich* case was cited and which the Vice-Chancellor stated had been considered by him in formulating his opinion. This application for reargument was made on notice to and in the presence of one of the solicitors for Defendant.

The case of *Levy vs. Gollin*, 5 Misc. 786, is not at all in point. That case had to do with the sufficiency of grounds stated in motions to the Trial Court for non-suit and direction of verdict.

*Smith* against *Prudential Insurance Company*, 83 N. J. L. 719, cited on page 45 of Defendant's brief, is not at all in opposition to Complainant's argument under Point VI. Complainant's contention under this point is based upon well established principles of insurance law, whereas the decision in the *Smith* case is based upon particular terms of a written contract. What this Court had to determine in the *Smith* case was the effect to be given to the language of the application; the effect of applicant's statement that all answers given by him were complete and true "*to the best of his knowledge and belief*". There is nothing like that in the present case. Neither the application nor the policy here impairs the obligation of Sussman to make his answers in the application full, fair and true. Also, in the *Smith* case, the language of the contract, as this Court held, was equivalent to a provision that the conditions that were to remain unchanged until the policy was delivered were limited to "*while my health is in the same condition as described in this application*". In the present case, there is nothing that calls for this or any other interpretation. The contract here contains no provision as to what shall or shall not remain unchanged pending the ~~policy~~<sup>application</sup> any more than it contains a provision as to the applicant's belief or understand-



ing of the truth of the answers given. General principles of insurance law are noway modified in the present case. That is the distinction between it and the *Smith* case.

Under the general principles of insurance law to which we have referred, representations in an application are continuing until the policy is delivered. For this, as we have already shown, there is abundant authority of the highest order. And since these representations are continuing, the Defendant's application for and his procurement of the larger Aetna policy pending his application to Complainant, directly falsified that application, so that when it took effect in the issuance of Complainant's policy, the effect that it was designed and intended to have by Defendant when he made it, it was no longer true. By nothing in the *Smith* case did this Court so much as intimate a modification of the principle of continuing representations in the law of insurance.

In the *Smith* case, the insurer, by the terms of its contract, elected to have the validity of the contract determined by a contractual test of its own making, and this Court very properly held the insurer to that contractual test, the Court simply refusing to extend the terms of the insurer's express contract by implication.

It must be perfectly clear that Complainant is under no necessity to quarrel with the law as pronounced by this Court in the *Smith* case. The soundness of the decision is apparent from the fact that the Court followed the contract that was before it; and it is likewise apparent that Complainant's position in the present case is equally sound in that it has not—unlike the insurer in the *Smith* case—contracted away any of its right to have the truth of the statements in Defendant's application tested by the true fundamental principles of insurance law, viz.: that answers to



questions must be true apart from considerations of the applicant's understanding and belief, and that the representations evidenced by the answers are continuing representations until the policy is delivered. We have already shown by the clearest authority, including the *Dimick* case, that representations as to other insurance carried are material to the moral hazard. When this is considered together with the principle of insurance law, not questioned on this argument, that representations are continuing until action upon them has been completed, there would seem to be no escape from the conclusion that Defendant procured the policy in suit by material misrepresentation, not to say by actual fraud.

The *Smith* case is also to be distinguished by the facts involved. There the application for the other policy was made subsequent to the application in suit and was afterward declined. In the present case, negotiations were going on for the larger Aetna policy *in Defendant's behalf and to his knowledge at the very time he applied for Complainant's policy*; his application for the larger policy, pursuant to such negotiations, was actually signed by him pending his application to Complainant, and the Aetna policy was actually issued and in his possession when Complainant's policy was delivered to him.

The *Smith* case is not against the Complainant. It all the more clearly discloses the strength of Complainant's position under this head.

Respectfully submitted,

PERKINS & DREWEN,  
Counsel for Appellant.



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**New Jersey Court of Errors and Appeals**

OCTOBER TERM, A. D. 1931.

METROPOLITAN LIFE INSURANCE  
COMPANY, a corporation,  
Complainant-Appellant,

*and*

AARON P. SUSSMAN,  
Defendant-Appellee.

On Appeal from  
Chancery.

**BRIEF OF COMPLAINANT-APPELLANT.**

The complainant filed its bill for the rescission of a policy of accident insurance (including indemnity for accidental death) issued by it to the defendant. The application for the policy was made and dated November 4, 1926. It was approved on November 12th, 1926. The policy was issued on November 13th, 1926.

The policy, by its terms, was issued in consideration of the statements contained in the application, a copy of which is attached to the policy and made a part of the contract of insurance.

It was in the sum of \$15,000.00, with weekly indemnity of \$75.00, and provided for double indemnity in the event of injury sustained while the insured was a passenger in a public conveyance.

On January 17th, two months after the issuance of the policy, defendant sustained an injury to one of the fingers of the right hand. This injury, he claimed, occurred while he was a passenger in a taxicab, and that he was entitled to double indemnity, that is to say, \$150.00 a week.

Incident to the defendant's claim under the policy in suit, as well as under other policies later revealed to have been carried by him, there was shown a condition that caused the bringing of the present suit for cancellation and rescission.



The bill of complaint alleges fraud and material misrepresentation on the part of the defendant in the answers given by him in his application for the policy.

Complainant charges that defendant answered falsely question No. 11 of the application, which reads:

“What life or accident insurance have you in any other company or association?”

To this question the defendant answered:

| <i>Company or Association</i> | <i>Kind of Policy</i> | <i>Principal Sum</i> | <i>Weekly Benefit</i> |
|-------------------------------|-----------------------|----------------------|-----------------------|
| Aetna Life.....               | A. H.                 | \$15,000             | \$75                  |
| Prudential .....              | W. L.                 | 15,000               | ....                  |
| Manhattan .....               | W. L.                 | 10,000               | ....                  |
| Metropolitan .....            | 20 Pt. W. L.          | 12,000, 10,000       | ....                  |

The complainant proved, and the Trial Court found as a fact, that in addition to insurance stated by defendant in his answer to this question, he had actually in force, at the time he made the application, insurance as follows:

| <i>Company</i>            | <i>Date</i>      | <i>Principal Sum</i> | <i>Disability Benefit</i> |
|---------------------------|------------------|----------------------|---------------------------|
| Commercial Travelers..... | July 16, 1922    | .....                | \$50 weekly               |
| Travelers Ins. Co.....    | November 4, 1916 | \$2,000              | .....                     |
| Travelers Ins. Co.....    | August 21, 1922  | 5,000                | \$50 monthly              |
| Prudential Ins. Co.....   | October 23, 1919 | .....                | \$48.70 monthly           |
|                           |                  |                      | for 120 months            |
| Prudential Ins. Co.....   | January 23, 1921 | .....                | \$50 monthly              |

In addition to the undisclosed disability insurance above listed, the complainant proved that defendant carried a policy of accident insurance in the Aetna Life Insurance Co., dated October 27th, 1926,—eight days prior to the application for the policy in suit,—and which insured the defendant against total disability by payments of a weekly indemnity of \$250.00 during such disability. (The amount of the indemnity carried by



him under another Aetna policy which the defendant included in his answer to question No. 11 was \$75 a week.)

In other words, on the basis of this evidence, complainant proved that as of November 4th, 1926, when he applied for policy in suit, the defendant carried indemnity insurance of approximately \$415.00 a week single indemnity, exclusive of the policy he was then to obtain from complainant, whereas, in his answer to question 11, he set down \$75 per week as the total of his indemnity insurance.

Complainant's bill also charged to be false the defendant's answer to question No. 14 of the application. This question reads:

"Have you ever received or been refused benefit for any accident?"

The answer stated in the application was:

"Aetna      \$200      1917."

Complainant proved, and the Trial Court found, notwithstanding the answer given by defendant to question 14, that he had as a matter of fact suffered four or five accidents not disclosed,—defendant admitted there might have been six (p. 73),—for which he had, prior to his application to complainant, made claims under policies of indemnity insurance and upon which claims he had received some \$500.00.

Complainant's bill next alleged that defendant's answer to question 17 of the application was also false. This question reads:

"Are you maimed, deformed or crippled in any manner or degree, or affected with any form of bodily or mental disease, disorder, infirmity, or impairment?"

The answer given by defendant to this question was:

"No."



The complainant proved, and the Trial Court found as a fact, that notwithstanding the answer to question 17, the defendant had been, since 1905, drawing a pension for disability from the United States Government; that in 1905 he suffered a hernia for which he underwent an operation in 1909. But here the Court decided that the operation for hernia, and a pension for disability resulting from the hernia, were no proof of physical defect or impairment, since the pension "might have been illegally collected," etc.

So that, and leaving question No. 17 aside for the moment, we have shown that at least as to questions 11 and 14, the answers of the defendant contained in the application were not only proved by the complainant to be false, but were found so by the Trial Court. It becomes, therefore, pertinent to inquire how it was that, notwithstanding this proof and finding, the complainant's bill was dismissed. The answer is, we submit, that the learned Trial Court erred, in dealing with the facts proved by the complainant, in such a way as to nullify the proof of complainant's case and exculpate the defendant from the clearest breach of his insurance contract.

For example, contracts of insurance are universally regarded as contracts *uberrimae fidei*. But the Trial Court applied to the transaction between insurer and insured in the present instance principles appropriate only to dealings between contracting parties standing "at arm's length."

Furthermore, our Courts have repeatedly held that there is nothing mysterious about a policy of insurance, and that the "most unsophisticated person" must know the purpose and effect of answers to questions asked in an application for insurance. The Trial Court, however, decided this case in the opinion that the business of writing insurance "is highly specialized and is con-



ducted by corporations who employ men who are experts," while the persons from whom business is solicited "are usually of limited insurance experience and with little knowledge of the effect of their answers."

And again: Fraud as understood and relieved against by courts of equity is essentially different from fraud as defined at law. Though the complainant here was clearly entitled to the application of equitable principles concerning fraud, the Trial Court dealt with complainant's proof of fraud throughout as if the issue were one presented to a court of law, and in doing so went not only contrary to the decisions, but to the terms of the contract in suit.

And again: The authority of the agent representing the complainant was limited—as the complainant had a right to limit it—so that any information given to the agent by the defendant and not written in the defendant's answers as stated in the application, could not be made binding upon the complainant. Defendant knew of this limitation, and expressly agreed to it in writing as part of his contract of insurance with the complainant. The Trial Court, however, entirely disregarded this element of the contract before it, and permitted the defendant completely to evade his express undertaking by giving evidence in effect that though the written answers as signed by him are untrue, nevertheless he stated the truth orally to the agent.

And again: Complainant proved that it had a rule, which it published and uniformly enforced, under which it would not insure any person against accident or disease who carried insurance for single indemnity greater than \$150 per week, including any policy issued or to be issued to such person by complainant. It was under this rule that complainant limited the insurance in suit to



\$75 per week, defendant having stated in his application that he was then already carrying \$75 per week in the Aetna Insurance Co. Regardless of the clearest proof of this rule, as well as proof that the rule would have been strictly enforced in this case had complainant been permitted to know the truth concerning defendant's insurance, the Trial Court says in its opinion (this on the basis of the Court's finding, as explained below, that the Aetna \$250 policy of October 27th was not applied for and did not become effective until November 10th):

"Aetna policy carried a weekly benefit of \$75, the Commercial Travelers policy \$50, the two Prudential policies and the Travelers together about \$40, and it does not appear that had the insured's answers specifically informed the complainant that his policies carried a total weekly benefit of \$165 instead of \$75, and that the Commercial Travelers policy was shortly to lapse, it would have declined to write this policy here in controversy" (p. 55, l. 25).

Moreover, as to the above-mentioned Aetna policy for \$250.00 a week, dated October 27th, 1926, complainant charged—and we respectfully submit also proved—that this policy was issued as of its actual date, and was in force, to defendant's knowledge, on November 4th, when he made his application to complainant. But the Court was persuaded that as to this policy, while it had been previously obtained from the company by the agent soliciting the business from defendant, the application was not signed or the policy delivered to defendant until November 10th, 1926, when it replaced the \$75 policy claimed by defendant to have been thereupon surrendered by him. Even so, defendant thus received this Aetna policy for \$250 weekly indemnity after he had applied



for the policy in suit, and before delivery of that policy or even the approval of his application. Here was a clear case of a material and radical change in the facts attending the insurability of the defendant—a change which he had himself created—which, by the highest authority in the land, he was required to make known to his insurer. The defendant suppressed the matter completely. He applied for the insurance in suit on November 4th, representing that he then carried not more than \$75 weekly indemnity. On this application a policy was issued under date of November 13th; and the policy was, by its own express terms and those of the application, not to become effective unless and until the application was approved at the home office and the policy delivered. In other words, until the completion of these events, *no contract of insurance could ensue; and before the happening of either of them* the defendant—as found by the Trial Court—had secretly replaced the \$75 Aetna policy with the new \$250 Aetna policy, the change never being disclosed by him, *and the result of which was to bring his insurance to an amount more than four times the insurance which he stated in his application to complainant he had; and this change of policies, taken together with the policy he obtained on his application to complainant, and other indemnity insurance carried by him, bringing his single weekly indemnity up to \$415, nearly three times the amount of the weekly indemnity insurance which complainant would permit under any circumstances.* Here was an unconscionable situation, the creation of which required that the defendant be dishonest on every hand. He negatively lied to complainant by not revealing the new policy acquired by him on November 10th—to take the Court's version of the affair—and he affirmatively lied to the Aetna In-



surance Co. by denying in his application to it, signed on November 10th, that he then had an application pending for insurance in complainant company. But in all of this the Court below saw no reason for holding the defendant to his duty to reveal the change which he had thus created, nor any evidence of vitiating bad faith on his part (see Aetna App., p. 273).

And again: With reference to the materiality of the falsehoods contained in the defendant's application for the policy in suit, a reading of the opinion below will at once show that in the judgment of the Trial Court no falsehood was material that was not conclusively shown to have been the inducement, the *sine qua non*, to the issuance of the policy. This view was in violation not only of the law, but of the contract in suit. The parties agreed in their contract that the policy shall be void if any of the statements in the application are false, with intent to deceive, or if such false statements materially affect either the acceptance of the risk *or the hazard assumed by the company*. Falsehoods as to other insurance carried, or previous indemnities collected, as will be shown, go directly to the moral hazard of the insurance. Furthermore, it is the law that the insurer is entitled not only to all of the truth that might induce it to reject the policy, but also to all of the truth that would "*reasonably influence its judgment in estimating the degree or character of the risk.*"

The effect of the test of materiality, as applied by the Court, was completely to deny to complainant the rights given to it by the meaning and intent of its contract with defendant in this particular.

The dismissal of the bill, we respectfully submit, can be explained only by errors committed in the respects above set forth.



But who is the defendant? Was he a person, to use the language of the Court, of "limited insurance experience and with little knowledge of the legal effect of his answers to the questions contained in the application for insurance"? Did the defendant, as the "less informed insured," require any protection as against the "expert insurer"? The story told by the record in this case denies—almost to a mocking of the very idea—that this defendant was an innocent, relying on the advice and guidance of any agent in the matter of acquiring insurance. Indeed, in the finesse with which he consummated his deal with the Aetna of November 10th and acquired the \$250 weekly indemnity, neither the Aetna nor the complainant company seem to have been a match for him. It was defendant's purpose not only to get indemnity insurance, but to get it in amounts grossly in excess of the limits fixed by the protective rules of his insurers; and this, of course, he must and did do without their knowing it.

From the proofs in this case it is clear that beginning approximately with the time of his application to complainant, this defendant had set out to "load" himself with indemnity insurance. In his application to complainant on November 4th, he stated that he then had indemnity insurance of \$75 per week. In truth, as shown above, he then had insurance of \$165 per week, *and he knew at that time, as the Court says in its opinion, that negotiations were then going on with the Aetna Insurance Company for another policy* which, replacing his \$75 Aetna policy, would raise his single indemnity to \$340 per week. These negotiations succeeded, and before complainant's policy became effective upon delivery to him, defendant's single indemnity, without complainant's policy, had actually reached \$340 per week, making, with complainant's policy, a total single in-



demnity of \$415 per week, or double indemnity of \$830 per week. All of this within the space of practically a few days! But his indemnity was still to mount. Shortly after the delivery of complainant's policy, defendant as of November 5th, 1926, acquired a policy in the Equitable Life Assurance Society, carrying a monthly indemnity of \$50; and as the result of an application made by him on December 24th, 1926, he acquired still another policy, one in the National Casualty Company for single indemnity of \$100 per week, with provision for double indemnity of \$200 per week. From the total of this insurance is to be deducted as of January 6, 1927, \$50 per week represented by the Commercial Casualty policy, which was lapsed for non-payment of premium on the latter date (though he gave this policy to his attorney for the purpose of making claim for the injury of January 17th—p. 79); so that on January 17th, the date of injury, just two months and twelve days after his application to complainant, the defendant's indemnity was \$528 per week, minus \$50 per week, or a net total of \$478 per week. And this on the basis of single indemnity only.

In acquiring this insurance, was the defendant exhibiting his "limited insurance experience", and his want of information as against the "expert insurer"? Indeed, he seems to have been pretty expert himself. All our reference to his transaction of November 10th with the Aetna Company concedes for the argument—without admitting the fact—the version of it as taken by the Trial Court. But even on that basis it was about as nicely contrived and perfectly timed a maneuver as one might imagine. Two minds in this case undertook to defend that transaction—that of the Trial Court, and that of defendant's solicitor. But it would be difficult more effectively to expose the skillful guile that entered into the de-



fendant's part in it than by the manner in which the Court and defendant's solicitor unwittingly expose it in their utterances intended for its defense. The Court says in its opinion (p. 56):

"The insured had been solicited for the new Aetna policy *prior to November 4th, 1926 and he knew that the soliciting agent was having a policy written for the purpose of tendering it to him*, but there is no evidence that the insured was in a receptive mood and intended to accept a policy if one was written and offered to him, nor is there any evidence that the fact that an agent of the Aetna was negotiating with the insured for the purpose of selling him another policy was concealed from the complainant for the purpose of deceiving it."

Well, the best evidence in the world that he was "in a receptive mood" and intended to accept the policy "if one was written and offered to him", is that he did accept it as soon as it was "written and offered to him". It continues to be true that the only way to tell men's moods and motives is by what they do. And if he were free of dishonest purpose when he accepted this policy on November 10th, and negotiations for which, as the Court says, had been going on to his knowledge for some time before he made his application to complainant on November 4th, why did he not only conceal the new policy from complainant, but why did he falsely deny to the Aetna Company, in the application to it, signed by him on November 10th, that he then had an application for a policy pending with the complainant? The plain reason for this multiple deception is that the defendant's purpose required it. In his devotion to his object he will be found consistent throughout (Aetna App., p. 273).

So much for the *Court's* defense of the transaction. What defendant's solicitor says about it is this (p. 193):



"The Court: Are you trying to prove that there was some other policy?

Mr. Stoffer: No; that this policy was *actually not delivered* until a later date in November, and no application signed for it prior to November 4th—no *application pending* for it on November 4th, when the Metropolitan application was signed."

Precisely! While defendant knew on November 4th of the negotiations for the large Aetna policy, and while he immediately accepted the policy when it was presented on November 10th, he still managed things so as to be in a position to say, through the lips of his counsel, there was "no application pending for it on November 4th, when the Metropolitan application was signed." While he flouted its spirit, it served the defendant to guard well the letter of his dealing.

Upon a moment's reflection it will be seen that this statement of the solicitor, and the statement of the Court, referring to defendant's knowledge of prior negotiations and "receptive mood", together include every act, fact and pretense necessary on the part of the defendant to deceive both of the companies with whom he was dealing into issuing to him the policy asked of each, the one not knowing of the policy asked of and issued by the other. (And on the large policy he secretly obtained from the Aetna, this "less informed insured." had actually received from that company \$15,000 before the company awoke to the manner in which its policy had been procured, and caused the payments to stop, Case, p. 99, l. 30—p. 100, l. 15.)

Before leaving the subject of defendant it is in point also to say in passing just a word about the character of his testimony. This is important, for the testimony of the defendant was taken by the Trial Court as countervailing not only the contradicting testimony of other witnesses, but



documentary evidence as well. The testimony to which we would call attention now is that given by him relative to his many injuries and indemnity claims. The failure of this man to recollect not only the details of injuries suffered by him, but in some instances the injuries themselves, is simply astonishing. So much so, that it finally provoked this passage between the defendant and the Court (Case, p. 150):

“By the Court:

Q. You rather surprise me on these various questions when you show you don't recollect. A. I know I collected money.

Q. You know whether or not you had a sprained ligament of the thumb? A. I say I think——

Q. You don't have to think. If you had a sprained ligament of the thumb you would remember about it, unless you have had so many accidents that you cannot keep track of them.”

Here was an indication to the defendant that his failure to recollect was not making a good impression on the mind with which his story must prevail if it was to be successful. And it is interesting to observe how memory brightens in the defendant's testimony on this subject, given after the exchange with the Court just quoted. But no description will serve for a reading of the testimony itself.



## POINT I.

The making of a contract of insurance calls for the highest degree of good faith. The applicant is required to answer the insurer's questions fully, freely, and without cavil or reserve. The defendant did not do this, and the truth which he withheld was of matter material to the risk he asked the complainant to assume.

Under this point we deal with the character of the false answers made in the application and with the Court's treatment of them.

First, as to question 11, which asked the applicant what insurance he carried in other companies or associations.

The policies which the Court found not to have been included in the answer given to this question are:

|                          |                                              |                                   |
|--------------------------|----------------------------------------------|-----------------------------------|
| Commercial Travelers.... | Accident Policy                              | \$50 weekly                       |
| Travelers Ins. Co.....   | Accident Policy                              | \$50 monthly                      |
| Travelers Ins. Co.....   | Life Policy                                  | \$2,000 principal<br>sum          |
| Aetna Life Ins. Co.....  | Accident Policy                              | \$250 weekly                      |
| Prudential Ins. Co.....  | Life policy with<br>indemnity provi-<br>sion | \$50 monthly                      |
| Prudential Ins. Co.....  | Life policy with<br>indemnity provi-<br>sion | \$48.70 monthly<br>for 120 months |

The testimony is that when question 11 was asked, the defendant's method of answering it was to hand to the company's agent a number of policies, saying in effect as he did so, "Here they (the policies asked for by the question) are." With the exception of the Aetna policy for \$250 weekly, which he claims now he did not receive until six days later, the defendant contends that



all the policies not included in the written answer were among those handed to the agent. The agent denies this, and says that the two policies in the Travelers Insurance Co. were never shown to him, and that their existence was in no way disclosed (p. 225, ll. 20-30; p. 224, l. 35), and that the policy in the Commercial Travelers was never shown to him.

At any rate, in one way or another, the Court excuses the absence of the Commercial Travelers policy, the two Travelers Insurance Co. policies, and the large Aetna policy listed above, from the policies included in the defendant's answer.

We consider these four policies in their order as listed above.

First, as to the Commercial Travelers policy. Fink, the agent, says that this policy was not included in the answer, because the applicant said he was giving it up "immediately" (p. 224, l. 35); that he was never shown the policy itself (p. 225, l. 1). Of course, if this statement of the defendant were honest—that he was then giving up the policy immediately—there was no requirement that it be listed; it could be no factor in determining the risk. And the agent had every right to rely on the truth of what the defendant at the time was telling him. But it is demonstrated by subsequent events that he was not telling the truth. He had no intention then of giving the policy up, either "immediately" or otherwise. He retained the policy in force for the full period it had yet to run—that is, from November 4th, the date of the application to the date of expiration, January 6th, 1927. Furthermore, this policy was never "given up"; it expired for failure to pay premiums, and was one of those given by the defendant to his attorney for the purpose of making claim for indemnity after the injury (p. 157, ll. 29-35; Ex. C-18, p. 271). That this policy was



never given up, and that it expired, by its terms, on the 6th of January, 1927, upon failure to pay further premiums, was admitted by defendant's solicitor (p. 180, l. 20).

Next, the two policies in the Travelers Insurance Co. These policies, the agent Fink testified, were never handed or shown to him by the defendant; that he was not told about them.

It is significant that the Trial Court does not find these policies were shown to the agent, nor that the agent knew anything about them. We read from the Court's opinion (p. 51, l. 35):

“\* \* \* the Travelers policies may not have been produced to him (although the insured says they were) and he may have forgotten that they were listed in the application on which complainant issued its policy nine months previously.”

The policy last referred to in this quotation is Exhibit C-9, a life policy issued by complainant to defendant on February 2nd, 1926 (p. 261). It has attached to it a photostatic copy of the application upon which it was issued. In this application there is an item contained in the answer to the question asking for a statement of other insurance carried. This item reads as follows:

“Travelers 7,000.”

Now, the Court ruled that the presence of this item in an application attached to a policy which had nothing whatever to do with the two policies now in question put the complainant on inquiry as to the significance on November 4th, 1926, of this entry in an application for another policy in February, 1926; and that if the complainant failed or neglected to prosecute such inquiry, or if through some human inadvertence it was either not prosecuted at all, or prosecuted unsuccessful-



fully, the failure of defendant to answer the question truthfully is of no effect. It is to be observed that the Court goes to this length, notwithstanding its assumption that the Travelers policies were not mentioned by the defendant to Fink; the fact that the words "Travelers 7,000" appeared in a photostatic copy of an application attached to one of the other policies that were handed to Fink is enough. The Court says, in effect, that the defendant is required to do no more than give the agent a sporting chance to find what the defendant was careful not to point out, though that defendant could at once have done so must be admitted. He could see, from a glance at the application which he signed, that the Travelers policies were not mentioned. But from the Court's ruling we must conclude that the defendant even then must be permitted to continue his silence while pondering the fortunate turn of events that kept these two policies from the insurer's notice.

The point of question number 11 is what *policies* the applicant carried in any other company or association. To this very definite request for information the defendant responds by handing some policies to the agent, saying in effect, "Here they are."

Let us suppose, as the Court does, that the two Travelers policies were not among them. When the defendant said "Here they are," it was perfectly appropriate and right for the agent to take the defendant's word for it that the policies about which he was being asked were all included in those handed over by him. Surely, the agent was not, in the making of a contract *uberrima fides*, required to act upon motives of suspicion and mistrust, and, in order to check up possible falsehoods of the applicant, search not only the policies which he was handed, but also applications attached to them. The insurer, through its agent,



had the right to act upon every reasonable assumption of the greatest good faith in the applicant. But the ruling of the Trial Court denies that right, and holds the complainant to account under some unheard of maxim which, were it to be formulated, might be expressed in the words: "Let the insurer beware."

But in order to appreciate fully just how far the Trial Court did go, it is best to read the Court's pronouncement of its own ruling (Case, pp. 51-2, ll. 35 *et seq.*):

"When Fink filled out the application for the policy here in question, the Travelers policies may not have been produced to him (although the insured says they were) and he may have forgotten that they were listed in the application on which complainant issued its policy nine months previously, *but he had undertaken the duty of filling in correct answers to the questions contained in the application for the policy here in question*, from information furnished him by the insured and part of that information was to be found in the policies which the insured had handed him for examination. Complainant's policy of February 2nd, 1926, was one of those policies and had he made a careful examination of it, he would have noted the Travelers policies listed in the application therewith *and would have been put on inquiry with respect thereto*. I take it that the purpose of question 11 is not only to inform the complainant as to the amount of insurance carried by the applicant but also to give it the names of other insurers from whom it may make inquiries concerning the applicant, as an aid in enabling it to reach a determination whether or not to accept him as a risk. The answer to question 11 gave direct notice to the complainant that it had issued other policies on his life and with this knowledge it was its duty to turn to its records of the insured's other policies *to assure itself whether the applicant's*



*representations were accurate.* If it examined its records and thus learned of the Travelers policies and yet issued the policy in question it cannot say that the insured's failure to list those policies induced it to assume the risk. If it did not examine its records, it neglected to seek information from a source which its question was designated to point out and to which the insured's answer directed it." (Italics ours.)

In all this there is absolutely nothing that explains in any way why it is that the defendant must be relieved from the simple duty, when asked for the policies carried by him, of stating truly what those policies were. The agent undertook no duty to fill in correct answers in the absence of correct and frank responses from the applicant. The task which the Court sets for the complainant's agent is not the writing down of responses correctly and fully, but what amounts to the cross-examination of an unwilling witness. He is required to make a "careful examination" of the policies given by the defendant, in order to detect the existence of those that the defendant conceals. And following this reasoning where it leads, if the careful examination is not sufficiently careful to detect lapses in the defendant's answers, the fault is not that of the disingenuous applicant, who had only the simple duty of giving frank answers, but is rather that of the insurer, who must at its peril run down evasions and find the complement of half-truths.

Let us assume, as the Court does, that the defendant, when asked question 11, withheld the two Travelers policies. We are told that even in that event it became the complainant's duty to turn to its records of the insured's other policies "to assure itself whether applicant's representations were accurate." It means simply this: that the Trial Court's treatment of this matter so com-



pletely confined to the insurer the duty of discovering the truth, and so far lifted from the insured the duty of honestly revealing it, that in this case the Court left nothing of the fundamental principle that contracts of insurance are *uberrima fides*.

We next consider the Aetna policy for \$250 weekly indemnity. This policy appears as Exhibit C-19, p. 271. A photostatic copy of the application for it is Exhibit C-20, opposite page 272. The application signed by the defendant is dated October 27th, 1926. The office stamps of the Aetna Life Insurance Co. on the application are clearly shown on the photostatic copy. The stamps are referred to and explained in the testimony of the witness Childs (p. 231). One of them is the Control Department stamp placed on the application at Hartford on November 5th, 1926; the other is the stamp of the "Accounts Department," placed on the application at Hartford on November 6th, 1926 (pp. 231-2). The witness Childs testified, concerning the Aetna policy now in question, being corroborated, by the stamps mentioned:

"The policy was delivered to the agent on November 3rd. I assume that we received the application on that day or the day following. We sent it to Hartford not later than November 4th. The application itself indicates that it reached there and was passed by the Control Department November 5th" (p. 234, l. 15).

So it is that this application is shown to have been signed by the defendant not later than November 4th, the date on which he signed the application for the policy in suit; that the application was then sent to the home office, reaching it on November 5th, on which date it was given the "Control Department" stamp; that thereupon



it was transferred to the Accounts Department, where it was made a charge upon the company's books against the policy holder, and the "Accounts Department" stamp was placed upon it on November 6th.

But we have already explained in the introductory statement of this brief complainant's contention and proof that this policy was issued and in effect to defendant's knowledge on the 4th day of November, 1926. We respectfully submit that the testimony of the witness Childs, corroborated as it is by the documentary evidence embraced within the application itself, demonstrates that to be the fact. However, as we have also explained, the Court found that the application was signed and the policy delivered on November 10th, and that it thereupon replaced the other Aetna policy of \$75 weekly. But though the Court did so find, that finding can in no way repair the character of the policy as the product of utter deception worked upon the complainant at the hands of the defendant with great care and much skill. This aspect of the policy is dealt with at length under Point 5 below.

We consider now the Court's treatment of the false answer given to question No. 14 of the application. The question is:

"Have you ever received or been refused benefits for any accident?"

The answer is:

"Aetna \$200 1917."

The agent, Fink, testified that to this question the defendant answered that he had a few minor accidents, but had "collected nothing for them". He testified that in accordance with this response, he wrote the answer, "No"; that he could not tell who wrote over this answer the words, "Aetna \$200 1917."



The defendant's testimony as to this answer is as follows (p. 181):

"A. I told him I had a number of minor accidents which I could not recall instantly. He says that does not——

(Objection.)

"Q. What did Mr. Fink say to you? A. He said the small things did not make any difference.

"Q. Did you give Mr. Fink the information 'Aetna \$200 1917'? A. Yes."

Let us take the defendant's version of this answer and see just what it reveals as to the truth of benefits received by him for accidents. His manner, as described in his own testimony, of dealing with the agent in the matter of this answer is, in its artfulness, of a piece with the answer to question 11. For one thing, it takes great care to make no disclosure as to *benefits received*, covering up the point with a stressing of the *triviality* of his accidents. It was to *benefits*, not to the gravity of accidents, that the question was directed. The defendant told the agent that he had a number of "minor accidents", but avoided any response as to benefits received for his accidents, whether they were minor or not. Fink thereupon said, "These small things do not make any difference." But there follows not a word from defendant as to what it was that the form of his answer had caused the agent to think of as "these small things". He left the agent just where he had him, and continued to avoid the subject of *benefits received*. But the defendant does claim that he told about \$200 received from Aetna Insurance Company in 1917. Well, if he did so, it becomes all the more significant to note that in the application for the large Aetna policy which the Court found was signed six days after his applica-



tion to complainant, he mentions still another indemnity received in 1917 of \$100 for burned face, and \$90 in 1921 for sprained thumb, none of which, he admits, was stated to Fink. These accidents which he selected for mention to Aetna did not appear too minor for disclosure on November 10th, nor does he appear to have then had any difficulty in recalling at least these two (See Exhibit C-20).

Now just what are the accidents for which the defendant received benefits which he admits were not mentioned to the complainant's agent? Through a maze of forgetting, relieved somewhat as we have said by the Court's astonishment at it, the testimony reveals the following:

Prior to November 4, 1926, he received accident benefits from four or five different companies. There may have been six (p. 73, ll. 10-20).

Prior to November 4th, 1926, he had an accident to his eye, and he had another accident to his nose (p. 73, ll. 30-40).

Prior to November 4th, he had an accident to his thumb, he recalled, twice (p. 74, l. 1), and it is possible that in addition to these two accidents to the thumb, he also suffered from an infected thumb (p. 74, ll. 1-10).

He also suffered the injury to a finger other than the injury to his thumb (p. 74, l. 1; p. 75, l. 10). The latter injury might have been sustained to several fingers of the right hand, he does not just recollect (p. 75, l. 12).

He received accident indemnity for acid falling on and burning his face prior to November 1st, 1926 (p. 93, l. 35).

The burn on the face also infected a finger. A hand was burned; he does not know whether it was another accident, it might be (p. 94, l. 8).

In 1923 he collected accident insurance from the Royal Indemnity Co. for the injury to nose (p. 97, l. 30).



He does not recollect collecting from Commercial Casualty Co. for two injuries to the thumb ten months apart, but he might have, it is possible (p. 98, ll. 1-20).

For the burns to the face he thinks it was from the Maryland Casualty Co. he collected (p. 98, l. 25).

He does not recollect that he again collected from the Maryland Casualty Co. for an injury to finger on the right hand, but he might have, it is possible (p. 98, l. 40).

He believes it is correct that in 1916 he recovered from the Standard Accident Insurance Co. for burns to the face and eye (p. 99, l. 20).

He believes that on the 14th of November, 1921, he received money from the Commercial Casualty Co. for a cut right thumb (p. 151, l. 12).

He recalls having received \$90 from the Commercial Casualty Co. on account of accident (p. 152, l. 15).

Thinks it was the Royal Indemnity Co. that paid for the acid burn to face; he does not remember the amount (p. 161, l. 36).

Was also insured in the Royal Indemnity Co. when he got money for broken nose, and remembers the amount to have been \$107.12 (p. 163, l. 10).

Remembers something about trouble with his throat, but does not recall whether the benefit was paid by Standard Accident Co., but knows it was paid by some company (p. 163, ll. 30-40).

Remembers a case where he had an injury to the fingers not included in the sprain of the thumb or the other injuries to the thumb. Believes he was then insured in the Maryland Casualty Company, and, to the best of his recollection, the amount received was \$50 (p. 164, ll. 10-20).

He remembers the occasion when he collected \$105.30 from the Standard Accident Co. for the burns to the face and eye (p. 164, l. 35).



He says that approximately the total aggregate of moneys received for benefits from various causes and prior to November 4th, 1926, is \$500 (p. 169, ll. 1-10).

Now, concerning the answer given by the defendant in his application, to the question here in point, considered in the light of the admissions by the defendant himself, what does the trial court say? We quote from the opinion, at page 57:

“It is to be noted that the question does not require the insured to state how many accidents he had and the amount received or refused for each. A ‘yes’ or ‘no’ answer would have been sufficient and had he said ‘yes’, such an answer would not have informed the complainant whether he had received or had been refused benefits and had it deemed the answer material it would have had to make further inquiry or investigation. The answer to the question as it appears in the application does not state whether he had received or been refused benefits by the Aetna, nor does it state that \$200 was the only accident benefit he had received. It at least informed the complainant that the insured might have had one accident for which \$200 had been paid him, *and if that information was material, it put the complainant on further inquiry to ascertain the nature of the accident and whether it was the only one which the insured had suffered.*” (Italics ours.)

So we have it that if the applicant were artful enough to indicate by an apparently complete answer that in such answer he had undertaken to tell fully the accident indemnities previously received by him, notwithstanding there were other indemnities which the answer concealed, in such event artfulness would be permitted to prevail at the expense of truth. Surely that is not dealing *uberrima fides*, but something even less than at arm’s length. It is parrying and ducking.



A man is asked this question: "Have you ever received any accident benefits?" and he answers by saying, "Yes," adding, "I received accident benefits from the Aetna Insurance Company in 1917 in the sum of \$200." If as a matter of fact that man had actually received, not only the benefits he mentioned in his answer, but also benefits from various companies in five or six other instances, then his answer is a lie. If it is not, we simply do not understand it.

We have thus examined under this point the principle applied by the Court to the falsehoods contained in the answers as to other insurance and as to benefits collected. These principles are clearly violative of the precepts on the subject which the leading authorities lay down.

Though it refers to an answer given concerning other insurance, the following applies strictly to the Trial Court's treatment of defendant's answer as to accident benefits previously received by him. Professor Cooley (*Cooley's Briefs on Insurance*, Edition 1927) says at page 3250, Vol 4:

"In *Penn Mutual Life Ins. Co. v. Mechanics' Sav. Bank & Trust Co.*, 72 F. 413, 19 C. C. A. 286, 38 L. R. A. 33, 70, the court holds that it is not a true answer to the question as to the existence of other insurance merely to name some of the regular insurance companies in which the applicant has such other insurance, omitting to name others. Such an answer necessarily implies that there is no other insurance than that disclosed. The failure to disclose cannot, therefore, be excused on the principle asserted in *Phoenix Mut. Life Ins. Co. v. Raddin*, 120 U. S. 183, 7 S. Ct. 500, 30 L. Ed. 644, where it was said that, if the answer were obviously incomplete, the company, by failing to inquire further, waived the right to complain of such incompleteness, as the court in that case also clearly indicated its view that if such answer was ap-



parently complete, but in fact was otherwise, it was a false answer, which would avoid the policy."

The questions falsely answered by the defendant relate to matters material to the risk.

"Analogous to the question whether there is other existing insurance is the question whether the insured had previously received indemnity. This information is requested on the ground that it affects the moral hazard (*Becker v. Kansas Casualty & Surety Co.*, 105 Kan. 99, 181 p. 549). In *Bonewell v. North American Accident Ins. Co.*, 125 N. W. 59, 160 Mich. 137, it was held that an insurance company may make the truthfulness of representations as to whether the applicant has previously received indemnity, warranties, whether they are material or not.

"In *Great Eastern Casualty Co. v. Collins*, 73 Ind. App. 207, 126 N. E. 86, it was held that a statement in an application for an accident policy, to the effect that applicant had received no indemnity from any other indemnity company, when at the time he had made such representation he had received indemnity at least six times from other companies, was such a false and fraudulent representation as to avoid the policy."

Cooley, *Ibid*, 3255.

"Statements as to the existence of other insurance on the life proposed are material, and if false, avoid the policy. The basis of the rule, as stated in the well-known case of *Jeffries vs. Life Ins. Co.*, 22 Wall. 49, 22 L. Ed. 833, is that even though the true statement would have been advantageous to the insured, as showing an indorsement of the risk by another company, it did not affect the question, as the company should not be deceived, whether it was advantageous to the insured or not. This reasoning was approved in *Hoffman v. Supreme Council of American*



Legion of Honor (C. C.), 3 F. 252, though the question was not involved. A better reason would seem to be that the fact as to the existence of other insurance affects the moral hazard. (*Becker v. Kansas Casualty & Surety Co.*, 105 Kan. 99, 181 P. 549.)” (Numerous cases cited.)

Cooley, *Ibid*, 3249.

“Answers to questions in an application for life insurance as to insurance in other companies are material.”

*March v. Metropolitan Life Ins. Co.*, 40 Atl. (Pa.) 1100.

In the latter case the Supreme Court of Pennsylvania (1898) held that a statute declaring that when an application for life insurance contains a clause of warranty of the truth of answers, no misrepresentation or untrue statement made in good faith by the applicant shall effect a forfeiture unless relating to some matter material to the risk, does not change the law, or require the question to be left to the jury, where the matter stated was palpably and manifestly material to the risk, or where it was absolutely and visibly false.

See also

*Bankers Life Insurance Co. v. Miller*,  
100 Md. 1.

In *Duff v. Prudential*, 90 N. J. L. 646, this court said that the fact that the company asks the question shows it is material.

Contracts of insurance are *uberrimae fidei*, and it is the duty of the applicant to make full and frank disclosures.

In the case of *Brunjes v. Metropolitan Life Insurance Co.*, 91 N. J. L. 296, this Court says at page 298:



“There is nothing mysterious about a policy of life insurance. It is a contract. The contract is based upon facts regarding age, health and disease. When facts are called for which are required to be given by the insured, and signed answers to questions are returned as a basis for making the contract, fair dealings require that the answers so made shall be true. Material false representation in the answers, purposely made, is a reason for the avoidance of the policy on the ground of fraud.”

If we supplement the facts referred to by this Court in the Brunjes case as regarding age, health and disease, with those other facts equally important and pertinent, in an application for accident insurance, the Court's comment applies completely to the present controversy.

“A life policy is a contract *uberrima fides*, and is to be governed by the general principles of law, so as to be avoided not only by fraud, but also by concealment or misrepresentation of material facts inducing the contract, except to the extent modified or excluded by provisions of the contract or by statute.”

*Steigler v. Eureka Life Ins. Co.*, 146 Md. 629.

The last word on the high degree of good faith involved in, and the peculiarly ethical character of insurance contracts, would appear to have been spoken by the United States Supreme Court in a case decided within the past year—*Stipcich v. Metropolitan Life Ins. Co.*, 277 U. S. R. 311. Mr. Justice Stone, speaking for the Court, says at page 316:

“Insurance policies are traditionally contracts *uberrima fides*, and the failure by the insurer to disclose conditions affecting the risk, of which he is aware, makes the contract voidable at the insurer's option.” (Cases cited.)



With regard to the ethical requirements and assumptions peculiar to an insurance contract, the Court says further (p. 318):

"The defendant, in insisting that Stipcich was under an obligation to disclose his discovery to it is not attempting to add another term to the contract. The obligation was not one stipulated for by the parties, but is one imposed by law as a result of the relationship assumed by them, and because of the peculiar character of the insurance contract. The necessity for complying with it is not dispensed with by the failure of the insurer to stipulate in the policy for such disclosure."

The following is taken from Cooley's Briefs on Insurance, Vol 4, page 3134:

"It is the duty of the applicant for life insurance to disclose facts material to the risk, and the intentional suppression of facts which, in good faith, ought to be communicated to the insurer, is a concealment. This principle has been qualified in some particulars, as will appear later in this discussion; but in its general aspects it must be regarded as established by abundant authority. (Cases cited.)

"In view of the general rule that it is the duty of the insured to make a full disclosure of all facts material to the risk, it is, of course, a fundamental principle that a failure to make full disclosure avoids the policy." (Cases cited.)

"In insurer's suit to cancel life insurance policy, that insured made no false or untrue answers in any questions contained in application is immaterial, where he failed to disclose the whole truth. *National Life & Accident Ins. Co. v. Fisher*, 211 Ky. 12, 276 S. W. 981."

The high standard of good faith imposed by the authorities on parties to insurance contracts is



not in keeping with the Trial Court's view of mere opportunity afforded to complainant to check up and investigate falsehoods in defendant's answers. Professor Cooley says at page 4034:

"But the mere opportunity on the part of the insurer to make an examination or ascertain certain facts will not charge the insurer with knowledge of what an examination would have disclosed or what could have been ascertained." (Numerous cases cited.)

And again at page 4131:

"The rule that the insured is not responsible for false answers in the application, where they have been inserted by the agent through mistake, negligence, or fraud, is not absolute. The decisions supporting the doctrine are usually based on the theory that the insured has acted in good faith throughout, and that the false answers were inserted without his knowledge or consent."

And again at page 4136:

"Insured is not relieved of responsibility for false statements written in policy by insurer's agent when he did not act in good faith, and good faith is negatived by his failure to call attention to the falsities when they appeared in the policy itself." *Hayes v. Automobile Ins. Exch.*, 126 Wash. 487, 218 P. 252.

"It was held in *Geib v. International Ins. Co.*, 10 Fed. Cas. 157, that the presumption is that insured understands the nature of a paper that he signs. Consequently, his signature to the application being proved, the burden is on him to show ignorance of the false answers." *Hartford Life & Annuity Ins. Co. v. Gray*, 91 Ill. 159.

In *Rhode v. Metropolitan Life Ins. Co.*, 129 Mich. 112, 88 N. W. 400, the Supreme Court of



Michigan, following *Brown v. Metropolitan Life Ins. Co.*, 65 Mich. 306, 32 N. W. 610, 8 American State Reports, 894, held that "it is not incumbent on an insurer to take notice of any prior application and the contents thereof."

"It may be stated as a general rule that where a fact is specifically inquired about, or the question is so framed as to elicit the fact desired, there must be a full disclosure." (Numerous cases cited.)

*Cooley, Ibid.*, p. 3137.

There is a recent English decision in the Court of Kings Bench which holds the insured to the exercise of the highest good faith in making material disclosures to the insurer. *Looker v. Law Union & Rock Ins. Co.*, 1928, 1 K. B. 554, Acton, J.

This Court has held consistently that answers in an application for life insurance, with reference to prior illness or prior treatment by physicians, are material, and that false answers touching upon such matters will avoid the policy. Their materiality of course arises from the fact that they bear upon the physical hazard assumed by the insurer. But there is in every insurance undertaking also a moral hazard that is of at least as great moment as the physical hazard. And the same reasoning, at once recognized by common sense, that makes matter of the kind above mentioned material to the physical hazard in a life insurance contract, will likewise, in a policy like that in suit, make representations relative to other insurance and prior indemnities material to the moral hazard.

Justice Pitney, speaking for this Court in *Dimock v. Metropolitan Life Insurance Co.*, 69 N. J. L. 384, particularly considers the materiality of representations as to other insurance car-



ried; and the reasons that he states for holding such representations to be material will certainly suffice for complainant's argument here.

Dishonesty in matters concerning insurance in one carrying policies of accident indemnity may be looked for chiefly in the filing of captious, false, or exaggerated claims for indemnity. The several claims made by the defendant and not disclosed by him may have led to the uncovering of much that it was vital for the complainant to know. As to whether or not that is so, the Trial Court's ruling permits the secret to remain with the defendant, and the materiality of the data suppressed is thus demonstrated. If the defendant could state in the trial of this cause that he had five or six accidents for which he collected approximately \$500 from several companies, four or five of which he names, why could he not at least have made the same statement to the complainant's agent, when he was asking the complainant to assume the risk of insuring him?

## POINT II.

**The Trial Court erred in declining to consider complainant's proof of fraud in the light of those principles according to which fraud is recognized and defined in equity.**

To show how far beyond the requirements of equity the Trial Court went in its exaction of proof of fraud, it is necessary only to point out that, notwithstanding the Court's finding relative to defendant's knowledge of the coming to him of the large Aetna policy and his concealment from complainant of its actual delivery, this is all accounted nothing because there was no "evidence that the policy was concealed *for the purpose of deceiving complainant*" (p. 56, l. 28).



The attitude of mind expressed by the Court in this particular pervades its entire treatment of complainant's proof, and discloses the application of principles in this case that directly violate the decisions of this Court.

A comprehensive discussion of fraud as dealt with in equity is contained in the opinion of Backes, V. C., in the case of *Commercial Casualty Insurance Co. v. Southern Surety Co., etc.*, 100 N. J. E. 92. The decision was affirmed in this Court for the reasons stated in the opinion of the Vice Chancellor, 101 N. J. E. 738. In that case a question like the one now discussed was squarely before the Court. The Court was required to decide whether or not the Commercial Casualty Insurance Co. could restrain the Southern Surety Company of Des Moines in the further prosecution of an action at law and require it to make answer to the complainant's bill in equity. In the Vice Chancellor's opinion, p. 96, we read:

"Equity remains inactive only in that class of frauds that are recognized and remediable at law. A misrepresentation without intent to deceive will not sustain an action at law for deceit, while in equity an untruthful representation of a material fact, though there be no moral delinquency, is deemed to be fraudulent. *Eibel v. Von Fell*, 55 N. J. E. 670; *Straud v. Norris*, 77 N. J. E. 33; *Cowley v. Smyth*, 46 N. J. L. 380. The law courts not having as yet taken upon themselves to relieve against wrongs resulting from misrepresentations fraudulent in conscience only, courts of equity continue to perform that function.

"The charge that the false representations complained of, save the one as to Bell's financial wealth, were knowingly false and deceitfully made, is a defense cognizable in the law courts. *Cowley v. Smyth*, 46 N. J. L. 380. And, so the concealment of the fact that the bond of the Southern company was a renewal



and not an original bond, if it constitutes a meritorious defense, is as available at law as in equity. *Insurance Co. v. Woodruff*, 26 N. J. L. 541; *Joyc. In. Sec. 1844 et seq.*; *Carter v. Boehn*, 13 Eng. Rul. Cas. 501. The claim to equitable relief is founded by the bill upon the misrepresentation by the agent of the Southern company that 'John A. Bell, who was a man of large financial worth, worth at least \$1,400,000, and known by him to be worth far in excess of that amount and a sum not less than ten or eleven million dollars'. As to this it is alleged 'that the complainants do not claim that the said representations were untrue to the knowledge of the said Swiggi (the agent). The misrepresentations in this respect, it will be noted, are twofold. So much as represents that Bell was a man worth at least \$1,400,000 was an affirmation of a fact, not of opinion, and if untrue, though ingenuously made, would be condemned in equity only; the added representation that Bell was known by him (the agent) to be worth far in excess of that amount and not less than ten or eleven million dollars, was an affirmation of a fact; that is, that the fact was known to him, and if untrue was a deceit, and redressible at law. If, at law, the complainants should establish the first and not the second, their defense would fail, whereas in equity, if they proved the first and not the second, they would prevail. In this respect the jurisdiction of the law courts is obviously not equal to the occasion, not on a par with equity's remedy.'

It may be said in the present argument that the allegations of the complainant's bill are that representations of Sussman were not false and fraudulent in the equitable sense merely, but that they were wilfully, designedly, and deceitfully made. The Vice Chancellor in the *Commercial Casualty Co.* case, *supra*, was presented with the like contention, and his answer to it is an emphasis of the



argument we make under this point. At page 97 we read:

“And even though it be, as contended, that the bill discloses that all the misrepresentations were deceitfully made, it may be that the complainants would not be able to prove that the misrepresentations were material and untrue—a defense in equity only. The complainants are not to be put to the hazard at law when the requirements in equity are less exacting. In *Schoenfield v. Winter*, 76 N. J. E. 511, on demurrer to a bill to rescind a contract on the ground of deceitful misrepresentation and to restrain an action at law in assumpsit arising out of the contract (78 N. J. L. 92), Vice Chancellor Howell overruled the demurrer, holding that ‘while the bill sets out a common law action for deceit, this does not interfere with the jurisdiction of equity.’ In order to set aside a contract founded in fraud, it is only necessary in equity to prove that the representation upon which the action is founded is false, that it is material, and that damage has ensued; while at the common law the proof must go to the extent of satisfying the jury that the defendant knew that the statement relied upon was false.”

The authority of the *Commercial Casualty* case, *supra*, has since been followed in our Court of Chancery.

In *Travelers Insurance Co. v. Evslin*, 101 Eq. 527, the Court says, at page 531:

“The fact that a misrepresentation was made innocently will not prevent rescission (citing *Ibel v. Von Fell*, 55 N. J. E. 670), and equity will relieve from false representations whether they were intentional or made through mistake.” (Citing *Straus v. Norris*, 7 N. J. E. 33; *Cowley v. Smyth*, 46 N. J. L. 380.)



And the concluding part of the Court's opinion is significant (p. 532):

"The memorandum filed by the solicitor of the defendant is almost exclusively to the argument that there is no proof that Evslin knew that these statements were untrue. In view of the foregoing citations, this avails him nothing."

It has further been held:

"If the misrepresentation is as to a material particular, it is of no consequence what the purpose or intent behind the misrepresentation was."

*Dewees v. Manhattan Ins. Co.* (N. J. Supreme Court), 34 N. J. L. 244.

The Trial Court simply could not require proof of specific intent to deceive and be in accord with the decisions of this Court. If the cases cited are to be given the effect of their obvious import, then we submit that the Trial Court's treatment of complainant's evidence cannot be approved.



## POINT III.

The Court below erred in ruling that no misrepresentation by defendant would be regarded as material or would avoid the policy unless the misrepresentation had the effect of inducing the complainant to assume a risk which it otherwise would not have assumed. This was a denial to complainant of its right to have the defendant disclose by his answers not only such truth as might induce it to reject the risk, but also such truth as would aid it in estimating the degree or character of the risk assumed. The Court's ruling was in violation not only of the decisions, but also of the plain terms of the policy in suit.

It will at once be seen from a reading of the opinion below, how the Court set for itself the task of examining the application with the view of determining whether the answers were false *and induced the complainant to assume a risk which it otherwise would not have assumed*. True to this, after each answer is considered in the opinion, the Court applies this special test of inducement. After considering the answer relative to the insurance in other companies, the Court says (p. 53):

"As to whether the failure to list the Travelers policies materially affected the complainant's decision to issue its policy, this complainant's same representative testified that had those policies been listed, a question might have arisen as to whether they carried disability insurance and if they had, then the complainant would have had to decide whether or not such feature was material or not. *So that there is no certainty that had the insured's answer given the complainant*



*direct notice of the existence of the two Travelers policies, it would have refused the insured's application for further insurance."*

And again at page 55:

*"\* \* \* and it does not appear that had the insured's answer specifically informed the complainant that his policies carried a total weekly benefit of \$165 instead of \$75 and that the Commercial Travelers policy was shortly to lapse, it would have declined to write the policy here in controversy."*

And after considering the answer relative to the prior indemnities received, the Court says in the opinion at page 59:

*"Now, as to the materiality of the answer. When questioned on this point, the complainant's chief underwriter testified that knowledge that the insured had received indemnity for other accidents might or might not have affected his company in accepting the risk and that it would depend upon the period when the accidents occurred, their number and character. I do not consider such evidence as sufficient to show that had the complainant been aware of the other accidents for which the insured collected a total of less than \$300, it would have refused to accept the insurance risk on the facts."*

The complainant had a right under the law and by the terms of its contract to do the very thing which the company's chief underwriter, mentioned by the Court, testified would have been done with the information concerning defendant's accident benefits if he had revealed it. According to this witness, the complainant would have used the truth concerning defendant's prior accidents and indemnities in estimating the "degree or character of the risk". But as the Court plainly states it held the view that "that evidence was not suffi-



cient to show the materiality of the falsehoods in point”.

The Court again and again indicates in its opinion that nothing could be regarded as material which was not the positive and final inducement to the issuance of the policy. In other words, that the representation was the thing without which no policy would have been issued by the company.

The effect of this conception of materiality was clearly to deprive the insurer of the right to judge and estimate the hazard to be undertaken by the issuance of its policy, not upon the basis of those facts which the applicant saw fit to give, but upon the basis of every fact fully and freely stated in response to the questions asked.

This Court decided in *Kerpchak v. John Hancock Mutual Life Ins. Co.*, 97 N. J. L. 196, at page 198:

“Every fact which is untruly stated or wrongfully suppressed must be regarded as material, if the knowledge or ignorance of it would naturally and *reasonably influence the judgment of the underwriter* in making the contract at all, *or in estimating the degree or character of the risk*, or in fixing the rate of premium.”

A vast difference between materiality in this sense and in the sense as understood and applied by the Trial Court.

Moreover, the Trial Court's requirements in this respect were not only illogical, but impossible; because they exacted proof that the truthful answer would have resulted definitely and positively in a refusal to issue the policy, at the same time excusing the failure of defendant to give the truthful answer.

In other words, the Court saves the defendant from the consequences of withholding facts called for by the complainant's questions for the very



reason that the complainant does not prove a result which could only have been determined upon after an estimate following an investigation or weighing of the facts that were withheld. It is tantamount to the Court's saying to the complainant, "Your question called for this information from the defendant. He did not give it. You were entitled to the information in order to estimate the degree and character of the risk that he asked you to assume. Because he did not give you the information, you could not make the estimate of the risk as affected by the information he withheld. But unless you conclusively show now, without having had the opportunity to investigate the information and make the estimate, what estimate you would have made, the defendant will not be held to account for withholding the information, though you will be held to the risk which the defendant induced you to assume."

In the case of *Locker v. Metropolitan Life Insurance Co.*, 151 Atl. 627, this Court, within the past year, again pronounced its decision to the same effect as that in the *Kerpchak* case, *supra*.

The complainant's representative referred to by the Court in its opinion had testified relative to the indemnity policies not disclosed in the application, as the Trial Court states (Case, p. 52, l. 35, *et seq.*):

"When an application for insurance shows that the applicant carries other insurance in its company, the record of such other policies is examined and considered in accepting or rejecting the pending application."

But the two Travelers' policies were not in the complainant company, and they were not disclosed in the answers in the application; and when the company's representative testified that these policies, had they been revealed, would have



been "considered in accepting or rejecting the pending application," he described that course of conduct which our decisions entitle the company to pursue in estimating the risk to be undertaken in the issuance of a policy. And to the same effect was the testimony of this witness relative to the answers concerning prior claims for and indemnities received (see Test. of Farrell, *passim*).

But in addition to the decisions, there are also the terms of the policy to be considered. Clause 10 of the contract reads as follows:

"The copy of the application attached hereto is made a part of this contract. No provision of the charter, constitution, or by-laws of the Company not included herein shall avoid the policy or be used in evidence in any legal proceedings hereunder. This policy is issued by the Company and accepted by the insured subject to the following provisions prescribed by law and shall be void if any of the statements in the application are false and such false statements are made with intent to deceive or if such false statements materially affect either the acceptance of the risk or the hazard assumed by the Company. Failure of the insured or beneficiary to comply with any of the provisions or requirements of this policy shall invalidate all claims" (Case, p. 250, ll. 1-20).

While the Court held that only those false answers shall avoid the policy which induced the complainant to issue it, this clause plainly provides that it shall also be voided if any false answers shall affect the hazard assumed by the company. There can be no doubt that this language contemplates the invalidating effect of false answers where it is discovered, after a policy has been issued, that the company has assumed a hazard greater in degree than that which the answers as given presented to its judgment.



Those whose business it is to assume the hazards of insurer have a right to adjudge their undertakings by those indicia which in the science of insurance and the experience of underwriters provide the measure by which degrees of risk can best be gauged. Prominent among these indicia are those reflected by the amount of insurance carried, with its related moral strain. Also, in accident insurance, there are the indicia found in the experience of other companies with the applicant as one who, for one cause or another, is commonly subject to injuries, or as one prone to the making of unfair or captious claims. When such matters, as they were in the present case, are made the subject of false answers by the applicant, certainly such false answers "materially affect the hazard assumed by the company."

Clause 10 embodies an alternative proposition. By its terms, false answers shall avoid when they "materially affect the acceptance of the risk," as, for example, when they induce the insurer to issue the policy, or when they have a bearing upon its issuance.

But it is further provided that false answers shall avoid when they affect, not the issuance of the policy, but the hazard that is actually assumed by the company, as, for example, when, as in the present case, the matter falsified has presented to the judgment of the insurer hazard of a character different from that which would have been revealed by the truth.

The whole financial structure of an insurance company presupposes the selection of risks by especially trained and especially qualified underwriters, based upon data especially asked of the applicant for the purpose, and upon the truth of which they must rely. It is only by the selection of risks with great regard for the particular de-



gree or character of the hazard assumed that the premium rate struck by insurers will prove to be adequate to meet claims, all of which insurers must work out with accuracy.

Under the decisions in the *Kerpchak* and *Locker* cases, *supra*, complainant was entitled to have its judgment influenced by nothing but the truth, either in making the contract at all, or in estimating the degree or character of the risk.

All of the rights of complainant under its contract and under the decisions of this Court, were denied to it by the Court below.

#### POINT IV.

**Defendant agreed as part of his contract with the complainant that he had made no disclosures to any agent of the complainant, except as written in his application, and that no statement not contained in the application would be binding upon the company. The defendant was therefore estopped from asserting that he had made disclosures to the company's agent which were not contained in his written application; and it was error for the Court to permit defendant to supplement and amend that part of the contract embraced within the written application by giving testimony of statements he claimed to have made orally to the agent.**

This part of the contract is contained in the twentieth question of the application and the defendant's answer thereto. It is as follows (p. 257):

“Do you certify that no statements have been made nor information furnished to any Agent of this Company or other person, relating to this insurance, other than as written



therein, and agree that no statements made nor information furnished shall be binding upon the Company unless written herein and that no insurance will be in force on this application unless and until this application is approved at the Home Office of the Company and a policy is delivered and the premium stipulated in such policy is received by the Company? Yes."

A copy of the application was attached to the policy and made a part of the contract (p. 250, l. 1, *et seq.*).

The contract was made in consideration of the statements in the application (p. 245, l. 12).

A case on all fours with the present one, and in every way controlling, is that of *Dimick v. Metropolitan Life Ins. Co.*, 69 N. J. L. 384. In the *Dimick* case there was appended to and made part of the application a statement by the applicant, which, among others, contains all of the provisions and commitments contained in question 20 above. And in the *Dimick* case, as here, the effort was to show that while the statements given in the application in answer to the questions thereon printed were not in accord with the truth, nevertheless, full information of the truth was given to the company's solicitor by whom the answers to the questions were written. In that case, as here, the application was attached to and made part of the policy, and the policy was by its own terms stated to have been issued in consideration of the statements contained in the application.

In the *Dimick* case a question arose as to whether or not the solicitor by whom the application was written was the agent of the company or of the insured. That is, however, of no moment on this argument, because this Court decided the *Dimick* case upon the assumption that the answers were inserted by one who is deemed by



the Court, for the purposes of the decision, to have been not the agent of the insured, but the agent of the insurer. After stating this assumption, Mr. Justice Pitney, speaking for this Court, says at page 394:

“Even so, the company was certainly at liberty to limit the powers and authority of its own agents, and third parties dealing with the agents, with express notice of the limitations thus imposed, cannot bind the principal by any act done by its agent in excess of the bounds of their authority. (Cases cited.) Such limitation and such express notice are set forth plainly upon the face of this application. The applicant was thereby plainly given to understand that if he desired to use that instrument as the basis of a contract of insurance with this company, he must himself assume sole responsibility for the truth and correctness of the replies made to the questions therein contained.”

And again this Court says, at page 395:

“If persons seeking insurance and insurance companies are to be left free to enter into such contracts as they please, with reference to life insurance, it is difficult to find any ground on which we can ignore the force of such stipulations. If a similar question were raised concerning a contract relating to any other subject-matter, not the slightest doubt would be entertained with respect to the answer that should be given. But by reason of the extreme hardship that seems to result in certain instances from avoiding contracts of insurance for reasons such as are here presented, courts have sometimes sought to escape from the force and effect of the plain letter of the instrument by an appeal to a supposed public policy.

“We are not aware of any public policy that prohibits such stipulations. Insurance companies have the right to say that they



will not insure lives until they are made aware of the past history and present financial standing of the applicant by a written declaration signed by himself and made upon his own responsibility. If it is essential to inquire as to the amount of insurance outstanding upon his life, they have a right to insist upon a correct reply to such an inquiry as a condition precedent to the issuance of a policy. One who is largely insured may for that reason be more strongly tempted to end his own life, in case of being overcome by disasters in business. One largely insured may be more liable to assassination at the hands of those who are to receive the benefit upon his demise."

It is of interest to note, in the present case, that the Trial Court in its opinion neither considers nor refers to the agreement of the applicant as expressed in his answer to question 20, though directly called to its notice in the trial (p. 173, l. 30, 174, l. 5).

The applicant in the present case is an educated man, one who for years has been engaged in the pursuit of a professional career. Is his agreement embraced in his application for accident and life insurance, to the effect that the company is to be bound by no other information concerning his application except that which is embraced within the application as he signs it, of entirely no consequence? That is the result thus far of the Trial Court's ruling.

It is fair to say that the defendant did not even *try* to offer an adequate excuse for his not being bound by the undertaking of question 20. His testimony in this particular is as follows:

"Did you say to Mr. Fink "No" in answer to question twenty on November 4, 1926?

Mr. Perkins: Objected to.

The Court: Objection overruled.



A. That question was not read; neither did I see it until this suit. I never thought of it.

Q. What did you mean earlier in your testimony—

Mr. Perkins: I object to that.

The Court: Objection overruled.

Q. What did you mean earlier in your testimony when you said that Mr. Fink had read all of the questions to you? A. I just glanced at this casually and I—

By the Court:

Q. Now, today, do you mean? A. Yes, I have read it a number of times.

Q. When the question was asked you? A. I just casually looked at it.

By Mr. Stoffer:

Q. Are you able to say to the Court definitely now that question twenty was not read to you by Mr. Fink?

Mr. Perkins: I object to that.

The Court: Was or was not read to him.

A. It was not read to me."

Now all that the defendant in this testimony says is that the question *was not read to him*.

But his answer is written to the question, *and he signed the application immediately before the words "Please read carefully before signing."* The witness, however, does not say that he did not read the question himself. At any rate, he "casually" looked at it.

To relieve one for no better reason than this from the plainest obligation of his written undertaking is to subvert the value and effect of written instruments.

In *Silcox v. Grand Fraternity*, 79 N. J. L. 502, there was an agreement in the application for insurance similar to the agreement in the Dimick case and in the present case. The language em-



ployed in the agreement in the Silcox case was that:

“No act of omission or commission on the part of the examining physician, or any subordinate officer, deputy or member, or any knowledge on the part of either, of any fact or act at variance with any of said statements or answers shall constitute or be held as constituting a waiver of the said warranty.”

This Court held in the Silcox case that where the application for insurance contains a clear limitation upon the authority of the insurer's agent to waive or vary any answers required by the application, untrue answers written down by such agent, and signed by the applicant, constitute a breach of warranty that will defeat recovery upon the contract, if such be the effect given to such untruths by the express terms of the application and contract, and the Court adds:

“In regard to the soundness of these rules, nothing can be added to the comprehensive opinion delivered by Mr. Justice Pitney in the case of *Dimick v. Metropolitan Life Insurance Co.*”

In the present case the policy and the application are the entire contract. By the terms of this contract it is agreed to have been made in consideration of the application, and the application is agreed to contain all of the information concerning the application for and issuance of the policy with which the insurer shall be bound. In spite of such contract, the insured undertakes to show that, regardless of the contents of the application, the company must be charged with other information which he gave to its agent.

In the somewhat similar case of *Bennett v. St. Paul Fire and Marine Ins. Co.*, 55 N. J. L.



377, the policy declared in explicit terms that it should be void if the assured had at the time any other policy on the premises. The plaintiff endeavored to show that, notwithstanding this provision, the insurer knew when it issued its policy of the existence of an antecedent insurance. The opinion of the Court was written by Chief Justice Beasley, who stated that this was a plain effort to alter the terms of an agreement by parol, and the case was dismissed by him accordingly.

Professor Cooley, after an exhaustive review of the cases in the various jurisdictions touching upon the doctrine of estoppel against insurer, where the answers in the application are written by its agent, says (*Ibid.* at page 4124):

“The most important jurisdictions rejecting the rule of estoppel based on the mistake or negligence of the agent are Massachusetts and New Jersey. In Massachusetts it has been consistently held that no estoppel can be based on the fact that the false answers were inserted by the agent, for the reason that to admit evidence that true answers were made by the insured and were falsely written by the agent would violate the rule that parol evidence is inadmissible to vary a written contract, the application being regarded in that state as a part of the contract of insurance.” (Numerous cases cited.)

The text cites New Jersey cases of *Franklin Fire Ins. Co. v. Martin*, 40 N. J. L. 568; *Martin v. Insurance Co. of No. America*, 57 N. J. L. 623; *Fish v. Metropolitan Life Ins. Co.*, 75 N. J. L. 822; *Silcox v. Grand Fraternity*, 79 N. J. L. 502.

To these cases might be added that of *Dimick v. Metropolitan Life Ins. Co.*, *supra*.

After citing those authorities that are not in accord with the decision in the Dimick case, Professor Cooley says, at page 4124:



“The doctrine of the foregoing cases is not approved in Massachusetts (*Wood v. Firemen’s Fire Ins. Co.*, 126 Mass. 316), or in New Jersey (*Dimick v. Metropolitan Life Ins. Co.*, 69 N. J. L. 384, 55 Atl. 291, 62 L. R. A. 774).”

Involved in the present point is of course the question of the agent’s authority. Was his authority such that statements made to him outside of the written application are binding upon his principal?

Professor Cooley surveys numerous cases that deal with this problem, and by way of résumé says (Vol. 1, p. 464):

“The real question is not what power the agent has, but what the company has held him out as having.”

In the present case not only was there no uncertainty as to the powers which the agent was held out by the company to possess, *but the clear and explicit limitation of these powers is expressly agreed to in writing by the defendant over his own signature* (Case, p. 257, ll. 30-40; p. 258, ll. 8-10).

The decisions of the United States Supreme Court on this subject are in complete accord with the reasoning and result in the Dimick case, *supra*. In *Northern Assurance Co. v. Grand View Building Assn.*, 183 U. S. 308, that Court digests the important decisions throughout the country upon this question and cites with approval *Franklin Fire Insurance Co. v. Martin*, 41 N. J. L. 568, and *Deweese v. Manhattan Insurance Co.*, 35 N. J. L. 366.

In *Northern Assurance Co. v. Grand View Building Assn.*, *supra*, the Court had before it a set of facts altogether like the present one. The effort there was to alter the terms of the written application by evidence of communications made



orally to the agent. The Court held that this could not be done, and reversed the Circuit Court of Appeals. It found that it was the duty of the applicant to read the application which he had signed, and upon which he knew the policy would be issued, if issued at all, and that he is therefore bound by its statements. The Court says significantly, at page 364, *supra*:

"This case is an illustration of the confusion and uncertainty which would be occasioned by permitting the introduction of parol evidence to modify written contracts and by approving the conduct of agents and persons applying for insurance in disregarding the express limitations put upon the agents by the principals to be affected."

Also in complete accord with the Dimick case is the House of Lords decision (1922) in *Dawson's, Ltd. v. Bonnin*, 2 A. C. 413, House of Lords; also 11 B. R. C. 441.

This case is in point in that there, as in the present instance, the application was the consideration upon which the policy was issued. Lord Chancellor Haldane says (at p. 425):

"Both on principle and in the light of authorities such as those I have already cited, it appears to me that when answers, including that in question, are declared to be the basis of the contract, this can only mean that their truth is made a condition the exact fulfillment of which is rendered by stipulation foundational to its enforceability."



## POINT V.

In addition to defendant's agreement in question 20, and the authority of decisions like the Dimick case, there is another reason why the defendant should be held to the statements contained in his written application. That reason is that the application is here made a part of the contract of insurance; it is attached to the policy; it is delivered to the assured with and as part of his policy. It is in consideration of the statements in the application that the policy is issued to him. And the application is so integrated into the insurance contract that the parties to the contract are bound by it as are parties to any other written contract.

In the case of *Crosby v. Vermont Accident Insurance Co.*, 80 Atl. 817, the Supreme Court of Vermont held:

"In the absence of fraud, an insured by signing an application, accepting a policy, and bringing suit thereon, will be held to have had notice of, to have understood, and to have agreed to the terms, limitations and conditions, contained in the application and in the policy."

But an eminent and important authority in point is a case decided within the past year by the highest Court of New York State, wherein a full bench affirmed the Appellate Division. It is *Minisker v. John Hancock Mutual Life Ins. Co.*, 254 N. Y. 333, decided December 30th, 1930.

This case is of especial interest because its opinion outlines the history of judicial decision under this head, and expounds the reason for the rulings holding the applicant to the statements as written in the application, subsequent to the pass-



age of the insurance statutes that require, among other things, that the application be attached to the policy and made a part of the contract. The Court says at page 338 (citing many cases here omitted)

"The policy must now contain the entire contract. All applications, statements and agreements, if they are to have effect as a part of the policy, must be physically endorsed thereon or attached thereto, so that the insured, when he receives a policy, may know all of its terms by reading it or having it read.

"Prior to 1907, life insurance companies were not required to attach to their policies a copy of the application, but might embody it in the contract by reference merely. The insured, by reading his policy could not ascertain that the medical examiner had incorrectly recorded his answers. Since 1907, the insurer is under a duty to endorse or attach the application if the statements therein contained are to have contractual effect, or even the effect of a collateral representation.

"When an insured receives a policy, it is his duty to read it or have it read, and if an application incorporated therein does not contain correct answers to the questions asked by the medical examiner, it is his duty to have it corrected. In such circumstances a recovery will no longer be permitted because the medical examiner incorrectly recorded the applicant's answers, or because the insured was unable to read or neglected to read the policy.

"The answers to questions 14 and 15, as written and annexed to the policy, establish as a matter of law that they are material to the risk. The plaintiff is bound by the answers as written, since the application was physically annexed to the policy of insurance, which she received from the insurer. Being a part of the policy, the statements in the application had at least the effect of erroneous and material representations under the rule at common law."



There can be little doubt, in the light of this opinion, that the highest Court of New York state is now in complete accord with the same principle as expounded by this Court twenty-eight years ago, in *Dimick v. Metropolitan Life Ins. Co.*, 69 N. J. L. 384.

In the present instance the application is made a part of the contract by express agreement of the parties set forth in the application and in the policy as well. We conceive that the reasoning in the Minsker case is in no way affected by the circumstance that the application here is made part of the contract by express agreement of the parties rather than by statute. Why the application is attached and made part of the contract is of no consequence; *both parties expressly agree that it shall be so.*

## POINT VI.

**When the defendant acquired the larger Aetna policy after he had made his application to complainant for the policy in suit and before it was issued, he created a drastic change in the circumstances attending his insurability so that the statements contained in his application were no longer true. The failure of defendant to disclose that change to his insurer voids the policy.**

The application for the policy in suit was made on November 4th (p. 258, l. 7). It was not approved at the home office of complainant until November 12th (p. 255, l. 29). The policy was issued and the period of insurance began on November 13th (p. 245, l. 18). The policy was not delivered to defendant until a time subsequent to November 13th; and the policy, by its terms, shall



*not be binding until it has been delivered to the insured* (p. 255, l. 10). Between November 4th and November 13th, the defendant acquired the Aetna policy for \$30,000 with weekly indemnity of \$250 (Ex. C-19, p. 271). The application to the Aetna Company for the policy in question the defendant and his witness Ten Broeck claimed was signed by defendant on November 8th, 9th, or 10th, and that, at the time of the signing, the Aetna policy was delivered. And the Court so found. This puts it beyond question upon the very basis of defendant's contention, that the larger Aetna policy was applied for and received by the defendant *after he had signed his application for the policy in suit, and before its delivery to him*. Just how drastic a change this was in the condition of defendant's insurability is shown by the absolute limit fixed by complainant for all accident insurance on any one person, including the policy or policies issued by complainant itself. This limit was \$150 per person. The manner in which the defendant acquired this policy we have already described; and how this policy for \$30,000, with weekly indemnity of \$250, completely changed the basis of other insurance as represented to complainant, has been shown in the introductory statement of this brief.

The nature of a contract of insurance is such as to require the defendant to make a change like that which he created here known to his insurer. This has long been established as the law.

In accident insurance, such a change as has been shown, radically affects the moral hazard. It is on a par with those cases in life insurance where subsequent change in health affects the physical hazard, and the authorities dealing with such life insurance cases strongly apply in the present instance.



In 1916 the Supreme Court of Vermont, in the case of *Fitzgerald v. Metropolitan Life Ins. Co.*, *supra*, held, with regard to changes in the status or condition of the applicant subsequent to the making of the application and prior to the delivery of the policy, that:

“The duty of the applicant for life insurance to disclose a material change for the worse in his health after the making of the application and medical examination, and before the issuance of the policy, implies knowledge on the applicant’s part of such change.”

The important thing here is to observe that the Vermont Court assumed the existence of the duty to which it refers, but simply qualified that duty by pronouncing that it implied as a condition to its existence the knowledge on the part of the applicant of the change in his condition which, if he were aware of it, he would be required to reveal.

Professor Cooley, *ibid.*, says at page 3136, after a study of many cases on the subject:

“So, in *Thompson v. Travelers Ins. Co.* (N. D.), 101 N. W. 900, it was held that any change which might influence the judgment of the insurer as to the risk must be disclosed. It seems, therefore, to be the settled rule that, if any change takes place in the physical condition of the applicant between the time the application was made and the delivery of the policy, it should be disclosed.” (Cases cited.)

But in two recent cases this rule has been pronounced by the highest authority. One case is in the Court of Kings Bench, and the other is in the Supreme Court of the United States.

The case in the United States Supreme Court is *Stipcich v. Metropolitan Life Insurance Co.*, 277 U. S. Rep. 311. The Court holds:



“An applicant for life insurance who, after signing the application and before delivery of the policy, discovers a change in his physical condition seriously affecting his health and rendering statements in his application—which are material to the risk—no longer true, is under a duty to inform the insurer fully, and his failure to do so will constitute a defense to an action on the policy. This duty does not rest upon the stipulations of the parties, but is one imposed by law as the result of their relationship and because of the peculiar character of the insurance contract as a contract *uberrima fides*.”

Mr. Justice Stone, speaking for the Court, says at page 315:

“An insurer may of course assume the risk of such changes in the insured’s health as may occur between the date of the application and the date of the issuance of the policy. Where the parties contract exclusively on the basis of conditions as they exist at the date of the application, the failure of the insured to divulge any later known changes in health may well not affect the policy (cases cited); but there is no contention here that the parties contracted exclusively on the basis of conditions at the time of the application. *Here, both by the terms of the application and familiar rules covering the formation of contracts, no contract came into existence until the delivery of the policy*, and at that time the insured had learned of conditions gravely affecting his health, unknown at the time of making his application.” (Italics ours.)

And again at page 316:

“Concededly, the modern practice of requiring the applicant for life insurance to answer questions prepared by the insurer has relaxed this rule to some extent, since information not asked for is presumably deemed immaterial (cases cited), but the reason for the rule still obtains, and with added force



as to changes materially affecting the risk which come to the knowledge of the insured after the application and before delivery of the policy. For even the most unsophisticated person must know that in answering the query and in submitting it to the insurer he is furnishing the data on the basis of which the company will decide whether, by issuing a policy, it wishes to insure him. *If while the company deliberates he discovers facts which make portions of his application no longer true, the most elementary spirit of fair dealing would seem to require him to make full disclosure.*" (Cases cited.) (Italics ours.)

And see the annotations to the Stipcich case, *supra*, at foot of page 317, with special reference to the theory that:

"A statement in an application is a continuing representation,"

and

"is made as of the time of the delivery of the policy."

The policy in the present case, as has been shown, was by its own terms not effective until delivery to the insured. How materially the change brought about by the conduct of the defendant affected acceptance of the risk as well as the hazard assumed by the complainant is shown by the testimony of the witness Farrell. This witness was an underwriter of the company, and he showed conclusively that had the complainant known of any insurance indemnifying the defendant in excess of \$150 per week, including any policy issued or to be issued by complainant, the risk would not have been assumed. (See testimony of Farrell, *passim*.)

One of the answers given by this witness is (p. 113, l. 18):



“We operate under an arbitrary rule to the effect that in all cases, regardless of income or any other factor, we will not engage on any risk where the combined weekly benefit provided by all policies exceed \$150.”

And again (p. 116, l. 17):

“On the issue involved here there can be no difference of opinion, because as I pointed out before, we have a definite rule to the effect that we will not participate in any case where the total amount of weekly benefit under all policies exceeds \$150.”

There is more testimony of this character, but there is no purpose in multiplying quotations. This witness in no way qualified or impaired the import of his testimony as indicated by the quotations herein set forth. But to show the restricted latitude which complainant allows itself, we quote once more from the testimony of this witness (p. 117, l. 10):

“Q. You have never written a policy where an applicant has had more than \$150. of indemnity? A. As a working rule, it may have been modified; concessions may have been made, but to my knowledge no concession has been made in any case where the combined weekly benefit exceeded \$200, and there have been not more than six of those cases in all of my experience.”

This new policy secretly obtained by the defendant alone indemnified him to the extent of \$250 per week, without the other policies which he had not disclosed.

In the English case of *Canning v. Farquhar*, 54 L. T. 350, Lord Esher very clearly states the rule to be as follows (p. 352):

“Now, it is material to the contract of insurance that the person intending to insure



shall not make any misstatements. The representations made in the proposal in this case were true at the time that they were made; but, if there is no binding contract of insurance until the premium is tendered, that is not the material time. They were not true when they would have come into effect, which is the time when they must be true. That is what is meant when it is said that these are continuing representations. If there had been an alteration in the facts before that time, the representations should then be altered so as to show the existing state of facts. If this is not done, there is a concealment which would vitiate the policy."

The Canning case, *supra*, is one of the authorities cited and relied upon by the United States Supreme Court in *Stipcich v. Metropolitan*.

See also the English case of *Looker v. Law Union and Rock Insurance Co., Ltd.* (1928), 1 K. B. 554, opinion by Acton, J.

## POINT VII.

**Complainant's proof went to the extent of showing actual deceit on the part of the defendant.**

We repeat an excerpt from the Court's opinion (p. 56):

"The insured had been solicited for the new Aetna policy prior to November 4, 1926, and he knew that the soliciting agent was having a policy written for the purpose of tendering it to him, but there is no evidence that the insured was in a receptive mood and intended to accept a policy if one was written and offered to him, nor is there any evidence that the fact that an agent of the Aetna was negotiating with the insured for the purpose of selling him another policy was concealed



from the complainant for the purpose of deceiving it."

If complainant did not prove that defendant's intent in this instance was to deceive complainant, then it is impossible to prove intent from conduct. The only thing lacking in complainant's evidence in this instance was the defendant's confession of guilty intent.

This Court said in *Duff v. Prudential Insurance Co.*, 90 N. J. L. 648:

"It is said the most essential element of fraud is deceit. What could be the purpose of the insured making a statement that was a willful untruth about his health, if it was not to deceive?"

By the same token, what can be the purpose of defendant's conduct in acquiring the larger Aetna policy and concealing it from both of his insurers, if it was not to deceive them?

**The decree of the Chancellor should be reversed.**

Respectfully submitted,

PERKINS & DREWEN,  
Counsel for Appellant.



**Application for Insurance**

**Part A** TO BE USED WHEN AMOUNT APPLIED FOR IS OVER \$5,000 - CASH VALUE 02 IN.

1. FULL NAME of person whose life is to be insured. (Print)  
**Aaron P. Sussman**

2. Residence. If in country, state R. T. D. Route  
No. **79<sup>th</sup>** Street (Print) **Apt 35 St.**  
City or town (Print) **Bayonne**  
County **Hudson** State **N. J.**  
How long have you resided at this address? **1 yr**  
If less than one year give previous address.  
To what address will premium notices be sent?  
Place of birth. **Hudson** Town or City. **Hudson** State. **N. J.**  
Date of birth. **May 5<sup>th</sup> 1881** Age nearest birthday? **45** Years.  
(Be sure age accurate as of date of birth are in accord)  
3. Single, Married, Widower or Widow? Divorced or Separated?  
**Married**  
4. Occupation. If more than one, state all. Nature of Employer's business.  
**Dentist**  
5. Exact duties of Occupation.  
**Dentistry**  
6. Any change in Occupation contemplated? If yes, give particulars.  
**no**  
7. Place of Business. (City, Street and No.) By whom employed?  
**497 Bway Bayonne, N. J.**  
8. Former Occupations. (Within the last ten years).  
**Same**  
9. Do you, within the next twelve months, contemplate journeying outside the United States or Canada or making an ocean trip? If yes, state when, where to, for what purpose and for how long?  
**no**  
10. Have you any intention of making aerial flights within the next two years? If yes, give particulars.  
**no**  
11. Have you any other application or negotiation for life, accident, or health insurance now pending or contemplated? If yes, give particulars.  
**no**  
12. Have you ever applied to any Company or Association without receiving insurance in the amount or on the plan applied for, or at your actual age, or at the normal premium therefor? If yes, give particulars.  
Company or Association Year If not issued as applied for, in what respect different? Deferred or postponed. If not advised, so state.  
**no**  
13. To be completed in the case of a woman applicant, if ever married.  
24. What are (in full) the sources of your income?  
25. Number of children living, age and occupation of each.  
26. Husband's name. (Print)  
Age Business  
27. In what Companies and for what amount is he insured in your favor? If in Metropolitan, give policy numbers. If not insured in your favor, state why not.  
Is application on his life being submitted?  
It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.  
2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company: (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.  
3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application.  
4. That the Company shall incur no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant, in which case such policy shall be deemed to have taken effect as of the date of issue as noted on the first page thereof.  
5. In case of apparent errors or omissions discovered by the Company in Part A of this application, the Company is hereby authorized to amend this application by noting the change in the space entitled "Corrections and Amendments," and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, classification, plan of insurance or benefits, unless agreed to in writing by me.  
Signed by Applicant and dated at **Bayonne** this **21<sup>st</sup>** day of **January** 192**6**  
Witness to Signature **George Pink** Signature of Applicant **Aaron P. Sussman**

**Part B** USE BLACK INK FOR ANSWERS AND SIGNATURES

**CONTINUATION OF THE APPLICATION. APPLICANT'S STATEMENTS TO THE MEDICAL EXAMINER.**

The space below are for the Applicant's answers only. Nothing but his answers should be inserted. Statements of or comments by Medical Examiner must be recorded in Part C.

1. What is your occupation? (Exact duties.)  
**Dentist**

2. Have you ever undergone a medical examination for insurance and failed to receive the exact amount or kind of policy applied for? If yes, give particulars and name of Company.  
**no**

3. Have you during the past year resided or been intimately associated with any person suffering from tuberculosis? If so, give particulars and precautions taken.  
**no**

4. Has any one of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsy, insanity or any hereditary disease? If yes, give particulars.  
**no**

5. Have you ever been an inmate of, or have you ever received treatment at an asylum, hospital, sanatorium or cure? If yes, give date, duration, name of ailment and name of institution.  
**Beth City - 1894 - Syphilis Fever  
MS Home - 1901 - Syphilis Fever  
MS Home - 1908 - Syphilis Fever**

6. Have you ever changed residence or traveled for your health? If yes, why and when?  
**no**

7. Have you ever received or applied for a pension or disability or compensation benefits from any government or from any municipal or private corporation or have you ever received or applied for any benefit under a policy of accident or health, workmen's compensation or fraternal insurance? If yes, state reason in full.  
**no**

8. Have you ever taken Insulin treatment? If yes, state dates and for how long.  
**no**

9. Have you ever used opium, chloral, cocaine, or other narcotics?  
**no**

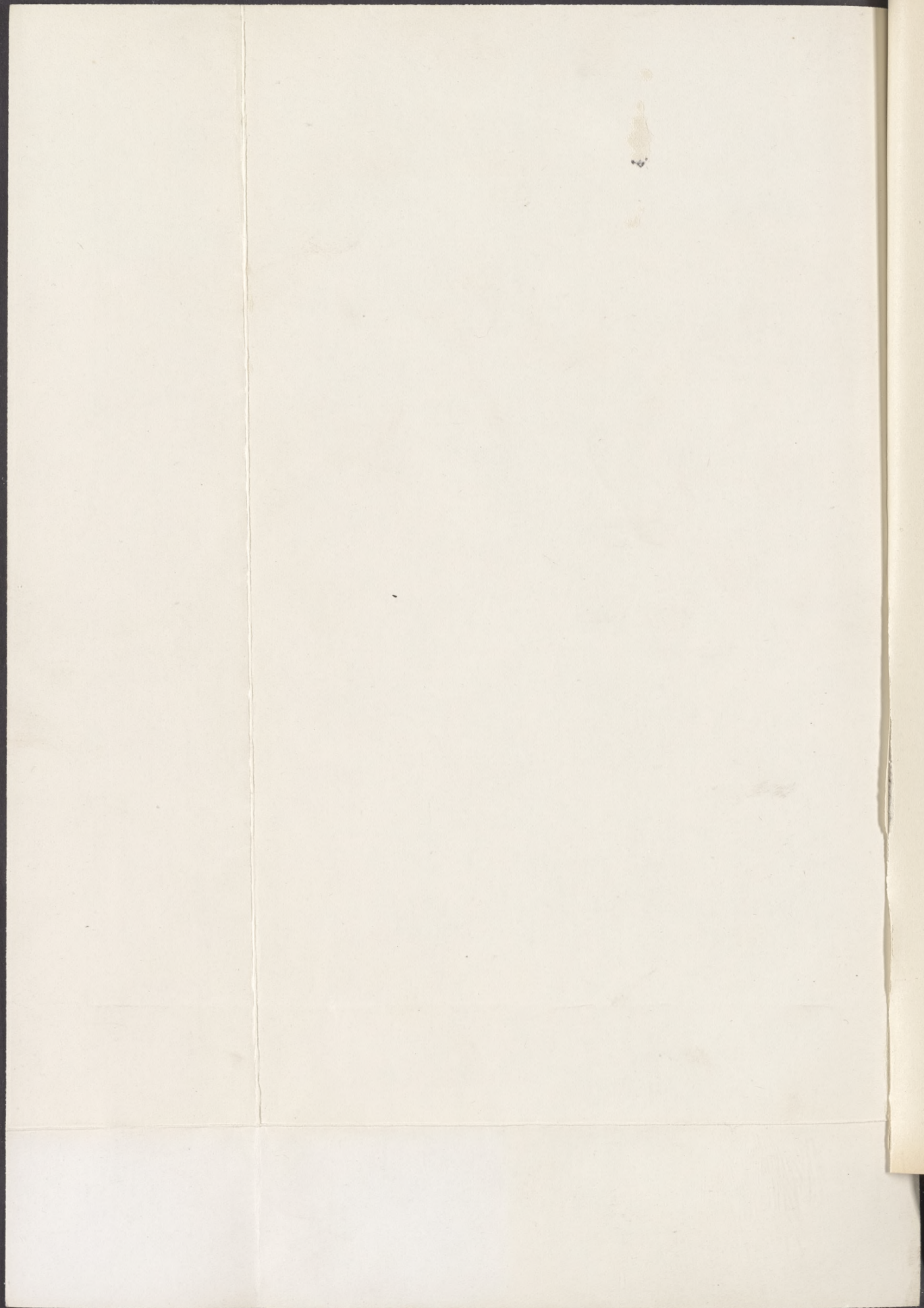
10. (a) To what extent do you use beer, wine, or other alcoholic beverages?  
**no**  
(b) Have you ever used any of them to excess? If so, when and for how long?  
**no**

11. Have you ever suffered from any ailment or disease of:  
(a) The Brain or Nervous system? **no**  
(b) The Heart or Lungs? **no**  
(c) The Stomach or Intestines, Liver, Kidneys or Genito-Urinary Organs? **yes** **Syphilis Fever** **1894** **1901** **1908** **Very Much** **Hospital**  
(d) The Skin, Bones, Glands, Ears or Eyes? **no**  
12. (a) Have you ever had Rheumatism, Gout or Syphilis? **no**  
(b) Have you ever had Paralysis or Insanity? **no**  
(c) Have you ever had Diabetes, Pleurisy or Pneumonia? **no**  
(d) Have you ever raised or spat blood? If so, give full details. **no**  
(e) Have you ever had any Accident, Injury or Occupational Disease? **no**  
(f) Have you ever had any Surgical Operation? **yes** **Syphilis** **1904** **3 months** **Med.** **MS Home**  
(g) Have you consulted a physician for any ailment or disease not included in your above answers? **yes** **MS Home** **1916** **4 months** **Med.** **MS Home**  
13. What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? If none, so state.  
**MS Home**  
14. (Living) (Dead)  
Age Condition of Health of Each, (If not good, give details.)  
**74** **Good**  
**47** **Good**  
Family Record  
FATHER  
MOTHER  
BROTHERS  
No. living **8**  
No. dead **3**  
SISTERS  
No. living **1**  
No. dead **1**  
(Dead)  
Age Cause of Death  
**69** **Paralysis**  
**20** **Infant**  
**16** **Syphilis Fever**  
**24** **Syphilis Fever**  
How Long Sick Year of Death  
Age Attained by Grandparent (Living or Dead)  
Father's Father  
Mother's Father  
Mother's Mother

I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at **Bayonne, N. J.** this **27** day of **January** 192**6**  
Witness to Signature **George Pink** M. D. Signature of Applicant **Aaron P. Sussman**







## New Jersey Court of Errors and Appeals

OCTOBER TERM, A. D. 1931.

METROPOLITAN LIFE INSURANCE  
COMPANY, a Corporation,  
Complainant-Appellant,

*and*

AARON P. SUSSMAN,  
Defendant-Appellee.

On Appeal  
from  
Chancery.

### REPLY BRIEF OF COMPLAINANT-APPELLANT.

In the discussion under Point I, Defendant tries to show that the terms of Clause 10 of the policy in suit, relative to the effect of falsity in the statements made in the application, are at variance with the provisions of Section 94, Paragraph 4, of Insurance Act relative to representations and warranties. Without admitting any difference between the two, we urge that the statute deals with policies of life insurance, strictly as such, and not with accident and health insurance. The terms of Clause 10 of the policy in suit are not at variance with any statutory provision in this State or any decided case that we can find.

The quotation from the case of *Union Insurance Company vs. Wilkinson*, in 80 U. S. Supreme Court Reports, appearing on page 21 of Defendant's brief, also calls for a word of comment. This case was decided in 1871. The import of the dictum selected by Defendant for use in his brief has been rendered long since obsolete, not only by



insurance legislation throughout the country, but by later decisions of the Court itself. This is emphasized by a comparison of the *Wilkinson* case with the very recent *Stipcich* case, cited under Point VI of Complainant's main brief.

At the end of page 32 of his brief Defendant deals with the falsity of his answer in the matter of prior indemnities collected; and in his efforts to show that this falsity had no material effect in the making of the contract of insurance, makes the statement that the Complainant's underwriter "testified that the fact that Defendant had collected additional indemnity of approximately \$300.00 *would not have resulted in a refusal of the risk*". It is the purpose of our present comment to assert that that is precisely what Complainant's underwriter did *not* testify to. A reading of the testimony of this witness shows throughout that Complainant, had the information for which it asked been revealed and not suppressed, would have made that use of it "in estimating the degree and character of the risk" which it was its right and privilege to make. Defendant's statement of Farrell's testimony is contradicted even by so much of it as he quotes (page 33 of Defendant's brief).

Under Point VI of his brief Defendant deals with his acquisition of the larger Aetna policy pending his application for the policy in suit. The allegation of Complainant's Bill on this subject and the peculiar nature of the defense to it are broad enough to include everything that Complainant now urges under this point. The Aetna policy in question and the application therefor, as filed by Defendant, are of such tenor on their face as to date, etc., as to substantiate, without any other proof, the truth of Complainant's charge. But the defense is to the effect that, while the date



of the application for the Aetna policy filed by Defendant, and the date of the policy issued to him, would justify Complainant's charge, nevertheless these are not true dates, etc.; and Defendant contends that the larger Aetna policy was obtained not as it would appear from the documents themselves, but under other circumstances. Now we submit that, if these other circumstances are of such a character as to impose a definite obligation on the Defendant in his manner of dealing with Complainant, the Court will not exculpate him because the allegation did not contemplate those particular details of the transaction that remained concealed by the record of it, and which were peculiarly within Defendant's knowledge alone. Furthermore, sufficiency of pleadings has to do with questions relating to the scope of factual issues, as to whether or not a fact is within or without the issues raised by the pleadings. But there is no such question here. The facts here—assumed for the present argument—are in evidence; they were put in evidence by the Defendant as part of his defense. Now all we say under this head is that, from these facts, there follows a related obligation. The question is one of law. Would or would not the facts involved in the Defendant's version of what occurred when he procured the large Aetna policy require him to make the procurement of that policy known to Complainant? That is the question. Sufficiency of Complainant's bill is not at all in point.

Defendant also urges that Complainant's Point VI "is now raised for the first time and should not be considered". There is nothing in the record to warrant that statement. As a matter of fact, the question is not only not "raised for the first time" on this appeal but was made the subject of a special application to the Court below for reargument, in which application the decision



of the U. S. Supreme Court in the *Stipcich* case was cited and which the Vice-Chancellor stated had been considered by him in formulating his opinion. This application for reargument was made on notice to and in the presence of one of the solicitors for Defendant.

The case of *Levy vs. Gollin*, 5 Misc. 786, is not at all in point. That case had to do with the sufficiency of grounds stated in motions to the Trial Court for non-suit and direction of verdict.

*Smith* against *Prudential Insurance Company*, 83 N. J. L. 719, cited on page 45 of Defendant's brief, is not at all in opposition to Complainant's argument under Point VI. Complainant's contention under this point is based upon well established principles of insurance law, whereas the decision in the *Smith* case is based upon particular terms of a written contract. What this Court had to determine in the *Smith* case was the effect to be given to the language of the application; the effect of applicant's statement that all answers given by him were complete and true "*to the best of his knowledge and belief*". There is nothing like that in the present case. Neither the application nor the policy here impairs the obligation of Sussman to make his answers in the application full, fair and true. Also, in the *Smith* case, the language of the contract, as this Court held, was equivalent to a provision that the conditions that were to remain unchanged until the policy was delivered were limited to "*while my health is in the same condition as described in this application*". In the present case, there is nothing that calls for this or any other interpretation. The contract here contains no provision as to what shall or shall not remain unchanged pending the <sup>APPLICATION</sup> ~~policy~~ any more than it contains a provision as to the applicant's belief or understand-



ing of the truth of the answers given. General principles of insurance law are noway modified in the present case. That is the distinction between it and the *Smith* case.

Under the general principles of insurance law to which we have referred, representations in an application are continuing until the policy is delivered. For this, as we have already shown, there is abundant authority of the highest order. And since these representations are continuing, the Defendant's application for and his procurement of the larger Aetna policy pending his application to Complainant, directly falsified that application, so that when it took effect in the issuance of Complainant's policy, the effect that it was designed and intended to have by Defendant when he made it, it was no longer true. By nothing in the *Smith* case did this Court so much as intimate a modification of the principle of continuing representations in the law of insurance.

In the *Smith* case, the insurer, by the terms of its contract, elected to have the validity of the contract determined by a contractual test of its own making, and this Court very properly held the insurer to that contractual test, the Court simply refusing to extend the terms of the insurer's express contract by implication.

It must be perfectly clear that Complainant is under no necessity to quarrel with the law as pronounced by this Court in the *Smith* case. The soundness of the decision is apparent from the fact that the Court followed the contract that was before it; and it is likewise apparent that Complainant's position in the present case is equally sound in that it has not—unlike the insurer in the *Smith* case—contracted away any of its right to have the truth of the statements in Defendant's application tested by the true fundamental principles of insurance law, viz.: that answers to



questions must be true apart from considerations of the applicant's understanding and belief, and that the representations evidenced by the answers are continuing representations until the policy is delivered. We have already shown by the clearest authority, including the *Dimick* case, that representations as to other insurance carried are material to the moral hazard. When this is considered together with the principle of insurance law, not questioned on this argument, that representations are continuing until action upon them has been completed, there would seem to be no escape from the conclusion that Defendant procured the policy in suit by material misrepresentation, not to say by actual fraud.

The *Smith* case is also to be distinguished by the facts involved. There the application for the other policy was made subsequent to the application in suit and was afterward declined. In the present case, negotiations were going on for the larger Aetna policy *in Defendant's behalf and to his knowledge at the very time he applied for Complainant's policy*; his application for the larger policy, pursuant to such negotiations, was actually signed by him pending his application to Complainant, and the Aetna policy was actually issued and in his possession when Complainant's policy was delivered to him.

The *Smith* case is not against the Complainant. It all the more clearly discloses the strength of Complainant's position under this head.

Respectfully submitted,

PERKINS & DREWEN,  
Counsel for Appellant.



## New Jersey Court of Errors and Appeals

Between  
METROPOLITAN LIFE INSURANCE  
COMPANY, a corporation,  
Complainant-Appellant,

*and*

AARON P. SUSSMAN,  
Defendant-Respondent.

On Appeal  
From  
Chancery.

### BRIEF OF DEFENDANT-RESPONDENT.

#### Preliminary Statement.

The decree of the Court of Chancery involved in this appeal dismissed a bill filed by complainant for cancellation of a policy insuring defendant against "loss of life, limb, sight or time through injury by accidental means" (Ex. C-1, S. C., p. 245).

Defendant had been practicing dentistry for about 25 years prior to the issuance of this accident policy (S. C., p. 172, ll. 10-14). During this period complainant had insured defendant's life under the following policies, each with an application attached:

|                     |                          |
|---------------------|--------------------------|
| Sept. 15, 1910..... | \$5,000—Ex. D- 3, p. 274 |
| March 29, 1913..... | 1,000—Ex. D- 2, p. 274   |
| June 30, 1919.....  | 6,000—Ex. D- 1, p. 274   |
| Nov. 20, 1917.....  | 5,000—Ex. C-10, p. 261   |
| Feb. 2, 1926.....   | 5,000—Ex. C- 9, p. 261   |



The last mentioned policy was issued by complainant through its agent Fink, on an application filled out by him, and the same agent nine months later filled out the application annexed to the policy in suit. Complainant alleged in its bill that this application contained fraudulent and material misrepresentations which induced the issuance of the policy.

Prior to the filing of this bill, defendant lost the index finger of his right hand in a taxicab accident. This finger was so maimed when the door of the cab was closed upon it that it had to be amputated a week after the accident, which occurred January 17, 1927. The middle finger became ankylosed (S. C., p. 185).

A notice of the accident was forwarded to complainant advising that defendant would be totally disabled for an indefinite time from practicing dentistry (Ex. C-13, pp. 262-63). This was followed by a statement of claim on complainant's form, in which defendant set forth that he held accident policies in the Aetna Insurance Company and National Casualty Company, providing weekly indemnities of \$250 and \$100, respectively, and that his average weekly earnings were approximately \$750 (Ex. C-15, p. 265).

In this connection it is to be observed that in paragraphs 14 and 15 of the bill of complainant, defendant was charged with fraudulent misrepresentation in stating in answer to question 19 in the application that his weekly income from surgical and general dentistry exceeded the aggregate amount of single weekly benefit provided under this and all other policies carried by him (S. C., pp. 8-9). This issue has apparently been abandoned, since no mention of it is made in complainant's brief, and will not be argued by defendant.



For the same reasons, defendant will not argue the charges of misrepresentation in the negative answers to the following questions (Pars. 10 and 11 of Complaint, S. C., p. 7):

"12. Has any application ever made by you for accident insurance been declined, postponed or withdrawn, or have you failed to receive notice of action thereon? No.

"13. Has any policy of accident insurance ever issued to you been cancelled, rescinded or renewal thereof refused? No."

### REPLY TO POINT I.

**The lower court properly held that complainant had failed to sustain the burden of proving fraud in material matters warranting cancellation of the policy.**

Section 94, paragraph 4 of the Insurance Act, (2 Compiled Statutes 2869) provides that every policy thereafter issued on the life of a person

"shall contain a provision that all statements purporting to be made by the insured shall, in the absence of fraud, be deemed representations and not warranties. Any waiver of this provision shall be void."

The present policy contains the following provision in clause 10 (S. C., p. 250, ll. 10-17):

"This policy is issued by the Company and accepted by the insured subject to the following provisions prescribed by law, and shall be void if any of the statements in the application are false, and such false statements are made with intent to deceive, or if such false statements materially affect either the acceptance of the risk or the hazard assumed by the company."



This provision is not in strict accordance with the aforementioned section of the insurance laws and accordingly the statute must govern. In *Prahm v. Prudential Insurance Co.*, 97 N. J. L. 206, this Court construed the statute in the following language (p. 209):

“Where, as here, the policy provides, as required by our Insurance law, that ‘all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties’, in order to avoid the policy for misrepresentation in the application, made a part thereof, the misrepresentation must be material and fraudulent; that is to say, it must be the statement of something as a fact which is untrue, and which the insured states, knowing it to be untrue, with an intent to deceive, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk (Citing Cases).”

Accordingly, the burden is on the complainant in this case to prove that defendant, with intent to deceive complainant, made misrepresentations materially affecting the acceptance of the risk or hazard assumed by complainant.

Section 103 of the Insurance Act (2 C. S. 2872), provides:

“Any person who shall solicit an application for insurance upon the life of another shall, in any controversy relating thereto between the insured or his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not as the agent of the insured.”

#### A.

It is contended by complainant that defendant in the answer to question 11 intentionally concealed the existence of other life and accident policies. On page 14 of complainant's brief the



omitted policies are listed with a statement that the lower Court found them not to have been included in the answer to question 11. A reference to the Court's opinion discloses that the table of policies set forth therein includes those which *appeared* on their face to be in force on November 4, 1926, but which were either not actually in force then or were omitted by complainant's agent in writing out the application under such circumstances that defendant could not be charged with material fraud.

1. With respect to the two omitted Travelers policies it is to be noted that they were both *life* policies, aggregating \$7,000 (Ex. C-7 and C-8, p. 260). Complainants' brief erroneously lists Ex. C-8 as an accident policy. An examination of the evidence establishes not only that the complainant and its agent did know of the existence of these policies, but that their omission had no bearing upon the acceptance of the risk.

Complainant's agent Fink admitted that defendant prior to the signing of the application "brought out the policies out of the safe that he had there at the time, and said, 'Here they are,' and I copied the policies that he happened to have in the safe at the time" (S. C., p. 222, ll. 20-25). Defendant testified that he delivered all of the policies, including the two Travelers policies, to Fink (S. C., p. 175, l. 19, to p. 176, l. 27). No possible motive has been established for concealing the existence of these two policies. The strictly life policies recorded in the answer to question eleven aggregate \$47,000. What possible reason could defendant have had to withhold from complainant the fact that he had a total of \$54,000 of such insurance? Certainly no intent to deceive complainant on this point has been proved.

Moreover, Mrs. Gahrman, defendant's nurse and secretary, testified that about five or six



weeks prior to the delivery to defendant of the policy in suit, Fink took away with him all of Dr. Sussman's policies, including the two Travelers policies, and retained them for about a month (S. C., p. 196, ll. 23-40). This was on the occasion when Mr. Fink suggested to Dr. Sussman that he be permitted to examine the policies so that he might advise the doctor how he could obtain more insurance for the same premiums (S. C., p. 176, ll. 20-26).

But, irrespective of which of these two stories is believed, complainant's knowledge of the existence of the two Travelers policies is definitely established by Exhibit C-9, which is policy No. 4477858, issued to defendant February 2, 1926, on an application dated January 27, 1926 (about nine months before the policy in suit was issued), and witnessed by Fink. Question 18 of that application is: "Are you now insured in this or any other company?" The answer sets forth, among other policies, the following: "Travelers \$7,000."

Complainant contends it is not bound by any information contained in its files concerning an applicant for insurance. This amounts to saying that the left hand knows not what the right hand is doing. In the eyes of the law, the complainant is a single legal entity. It can act only through its officers and agents, and under elementary rules of law their knowledge is imputable to the corporation.

The answer to Question 11 listed \$22,000 of insurance as then held by defendant in complainant company. This prompted Vice-Chancellor Fielder to say in his opinion (S. C., p. 52, ll. 15-35):

"I take it that the purpose of question 11 is not only to inform the complainant as to the amount of insurance carried by the applicant, but also to give it the names of other insurers from whom it may make inquiries con-



cerning the applicant, as an aid in enabling it to reach a determination whether or not to accept him as a risk. The answer to question 11 gave direct notice to the complainant that it had issued other policies on his life and with this knowledge it was its duty to turn to its records of the insured's other policies to assure itself whether the applicant's representations were accurate. If it examined its records and thus learned of the Travelers policies and yet issued the policy in question it cannot say that the insured's failure to list those policies induced it to assume the risk. If it did not examine its records, it neglected to seek information from a source which its question was designated to point out and to which the insured's answer directed it."

The precise question has been adjudicated in many cases, holding that a company issuing a policy is affected with notice of former applications by the same assured in its possession.

In *O'Rourke v. John Hancock Mut. L. Ins. Co.*, 23 R. I. 457; 50 Atl. 834; 57 L. R. A. 496, the Court said:

"The purpose of warranties in a policy is not to set a trap for applicants, but to inform the company about important facts upon which the contract is based. When therefore a company is in actual possession of knowledge of a fact, and by turning to its own record can assure itself better than by the imperfect memory of an applicant, it is a perversion of the purpose of a warranty to allow it to avoid a contract. It is evident injustice for one party to allow another to enter into a contract which the former knows, or is bound to know, is invalid."

To the same effect are:

*Lanigan v. Prudential Ins. Co.*, 63 Hun 408; 18 N. Y. Supp. 287;



*Kelly v. Metrop. L. Ins. Co.*, 15 App. Div.  
220; 44 N. Y. Supp. 179;  
*Supreme Tribe v. Owens* (Okla.), 151  
Pac. 198;  
*Cundiff v. Royal Neighbors*, 162 Mo. App.  
117; 144 S. W. 128;  
*United Life Ins. Co. v. Nichols* (Texas),  
24 S. W. 910; aff'd. 26 S. W. 998.

In *Union National Bank v. Manhattan Life Ins. Co.*, 52 La. Ann. 36, 26 So. 800, the Court went even further. Two life insurance companies were, through their medical boards, members of, or subscribers to, a common agency or bureau, the purpose of which was to make, keep and preserve a record of the names of those who had applied for insurance in any of the companies subscribing to the agency and had been declined. One of the companies declined an application, and reported the applicant's name to the agency, and it went on the list of rejected applicants. The Court held the other company would be deemed to have knowledge of such application and rejection, so as to warrant a holding of a waiver on its part of a breach of warranty in an application made to it by the same applicant, that he had never applied to any other company for insurance on his life without receiving the policy of the exact kind and amount applied for, and that he had never been declined or postponed by any company, though there was lack of proof that the latter company had availed itself of the means thus within its reach.

But we do not have to depend upon this principle, since complainant's chief underwriter, Farrell, stated that when an application for insurance comes in, it is the usual practice to search the records of the company with respect to other



policies on the same applicant. He testified (S. C., p. 122, l. 9, to p. 124, l. 7):

“Q. Referring to Exhibits C-9 and C-10 and D-1 for identification, D-2 for identification and D-3 for identification, will you tell us whether they aggregate \$22,000, as stated in answer to question No. 11? A. They do; \$22,000 in the aggregate.

Q. Mr. Farrell, do you, where an application shows other insurance in your company—do you or do the underwriters who work under you examine the records of the company with respect to other policies in your company? A. We do ordinarily unless there is some reason to indicate that life insurance has been issued on what we call a sub-standard applicant. In other words, there is something in the record to indicate that there has been some physical impairment developed on life insurance examination in the past.

Q. How would you determine whether there had been such an impairment? A. We have a system whereby these reports are made of certain physical impairments.

Q. And you have access to those reports? A. Every application is searched through an index record.

Q. When this application came in were the reports searched on Dr. Sussman? A. I assume that they were. That is the normal routine. I cannot say without referring to the record.

Q. Do you know whether any disabilities were shown by your company's records on Dr. Sussman at the time of this application?

A. I cannot answer that question because I did not personally pass on this application. I might be able to answer it if I had access to the record again—the application itself.

Q. Can you say that your subordinate or your assistant who examined this application did not consult the records of the company relating to Dr. Sussman? A. There again I will have to say that I assume he did because it would be very unusual if he did not, but I



cannot say from my own personal knowledge, without reference to the records."

Accordingly, both Fink as its agent and complainant itself had knowledge of the two Travelers policies.

Furthermore, in what way was complainant prejudiced by the omission of the \$7,000 Travelers policies, assuming it had no actual or imputed knowledge of these policies? Farrell, complainant's chief underwriter, did not state that complainant would have refused to issue the policy in suit had it known of the existence of the Travelers policies. On the contrary, he testified (S. C., p. 125, ll. 18-32):

"Q. Had the two Travelers policies aggregating \$7,000 been noted on the application in answer to question eleven, would they supply an additional factor, which, together with other factors, you would have considered in determining the acceptability of this risk? A. Only in the sense that some question might have arisen as to whether the disability feature was carried in conjunction with both of these contracts.

Q. If such a question had arisen, what would you or your subordinates have done? A. If they regarded that as material they would have made inquiry definitely to develop whether these new policies carried that particular feature referring to permanent disability feature."

So that even if the Travelers policies had been listed there is no certainty that any question concerning their disability features would have arisen, nor that Farrell's subordinates would have regarded that as material. It is important that complainant's own agent's construction of question eleven was that it was unnecessary to note in the answer incidental disability benefits in con-



nection with life policies. On his own admission, he examined the policies set forth in the answer. Of the Prudential policies, Exhibits C-3, C-4 and C-6 contain disability provisions, payments under which are deductible from the face amount of the policies (S. C., pp. 259-60). The other Prudential policy, Exhibit C-5, provides for permanent disability of \$10 per month per \$1000 of insurance, or \$50.00 per month in all, without deduction. Nevertheless, complainant's agent did not deem it necessary to note these facts, although the disability features are indicated on the outside of these policies, as well as on the inside.

Moreover, complainant's own policy, issued in June, 1919 (Ex. D-1), contains a provision for disability payments without deduction in consideration of an annual disability premium of \$11.16 (S. C., p. 274). Complainant's agent did not regard this fact as required to be stated in the answer to question eleven.

In *Germania Fire Insurance Company v. Hick*, 125 Ill. 351, 8 Am. St. Rep. 384, the Court approves the language of an earlier decision as follows:

"When the agent of the company undertook to make the survey, the applications and representations of the interest which the assured had in the property, and dispensed with any acts of the assured, and acted upon his own knowledge of the facts, the company ratified his acts as their agent, and if he was mistaken in his representations to them of the ownership they have no right to insist upon it as a defense to a recovery."

Travelers policy #389288 (Ex. C-7, p. 260), does not provide for any true disability payments, but that in the event the assured is permanently disabled,

"the company will pay to him during such disability and in full settlement of this con-



tract, twenty annual installments—the first installment to be paid six months after receipt of due proof of total disability. The amount of each such installment shall be six and eight-tenths per cent. of the amount of insurance stated on the first page hereof after deducting therefrom any indebtedness under this contract. Any installments remaining unpaid at the death of the assured shall be payable as they become due to the beneficiary or beneficiaries of this insured who shall have the right to commute such remaining payments into one sum, on the basis of interest at the rate of three and one-half per cent. per annum.”

The second Travelers policy, Exhibit C-8, provides for disability benefits of \$50.00 per month. Would this fact, if brought to complainant's attention, have been sufficient to induce it to refuse this risk? Even if Fink had listed the Travelers policies he would not, judging by his failure to do so with the other policies which he examined, have set up the disability provisions. Perhaps he was guided by the fact that the form of the application required only weekly benefits to be set up, and the life policies with incidental disability features provided only small monthly payments. He may have been influenced also by the fact that these small monthly payments would be made only in the event of total permanent disability, whereas the policy in suit covered partial as well as permanent disability.

The complainant is responsible for this ambiguity in the form of the question, and, as this Court held in *Prahm v. Prudential Insurance Co.*, 97 N. J. L. 206, at 210:

“The rule is that if in the questions and answers there is an ambiguity for which the company is responsible, it is to be resolved against the company in determining whether the answers are false. *Mackinnon v. Fidelity*



Co., 72 N. J. L. 29. Here the question put by the company asked the names of *attending physicians* only. A physician called in consultation by the attending physician is not necessarily to be regarded as an *attending* physician, and neither is a chiropractor. And where, as here, there is a lack of conclusive and unquestioned proof of the wilful falsity of a representation, the question is one for the jury. There must exist no rational theory upon which the jury might find the truth or good faith of the answer of the insured before the court can direct a verdict for the company." (Citing cases.)

In spite of its chief underwriter's testimony, complainant argues that the disability features of the two Travelers policies were material to the acceptance of the risk. If any further answer be necessary, it is that complainant had knowledge of the facts.

In Exhibit C-9, the policy issued by complainant to defendant in February, 1926, a part of question 18 of the application annexed thereto, reads and is answered by defendant as follows:

"What amount of the above insurance carries:

|                                                           |            |
|-----------------------------------------------------------|------------|
| (A) Disability provision? .....                           | \$40,000   |
| (B) Accidental death benefit?<br>(double indemnity) ..... | \$34,000." |

This complainant knew not only of the existence of \$7,000 of Travelers policies as indicated in the answer to the earlier portion of this question, but was also told that of the \$54,000 of life insurance listed \$40,000 carried a disability provision and \$34,000 carried an accidental death benefit. This application is also in the handwriting of Fink and signed by him as a witness. This information, therefore, was not only in the possession of complainant's agent, but, according to Farrell's



testimony, must have come to the attention of his subordinates in the Underwriting Department in passing upon the application involved in this suit.

Accordingly, as to the two Travelers policies, it is clear that not only was there no intentional and material misrepresentation on the part of defendant, but that complainant knew of the matters now complained of, so that it could not have been deceived.

2. Complainant's brief, on page 14, also lists two Prudential policies as having been found by the Vice Chancellor to have been omitted from the answer to question eleven. This is inaccurate. The answer listed \$15,000 life insurance in the Prudential (Ex. C-1, S. C., p. 256, l. 33). The Vice Chancellor states in his opinion that Prudential policies aggregating \$13,000 were in evidence (S. C., p. 50 ll. 5-8), and that (S. C., p. 54, ll. 24-30):

"As to the Prudential policy for \$2,000 which appears in the answer to question 11 as being in effect on the date of the application, but which was not produced at the hearing of this cause, it need only be stated that such a policy was in effect at the time the application was signed and was subsequently allowed to lapse."

If the two Prudential policies were included in the list on page 14 of complainant's brief because of the failure to note their incidental monthly permanent disability benefits in the answer to question 11, we refer to, without repeating, the argument *supra*, with respect to similar benefits under the Travelers policies. Question 11 required only weekly benefits to be stated, and did not distinguish between partial and permanent disability. The agent, Fink, examined the Prudential policies, and filled in the answer, giving a practical construction to the question. Had it been necessary in this application for an accident



and health policy to set forth the detail of the various provisions of the life policies relating to incidental benefits in the event of total permanent disability, the space provided for the answer was sadly inadequate.

Farrell testified that his company had no rules relating to the consideration of benefits provided under permanent disability features of life insurance policies (p. 128, ll. 9-21). Somewhat later, on re-direct examination by complainant's counsel, he made a statement which effectively disposes of any argument that disability provisions incidental to life policies are to be considered accident insurance which must be set up in an answer to Question 11. He testified (p. 136, ll. 10-28):

“Well, when I said there was no rule, I meant no published rule. Of course, from an underwriting angle, we would give some consideration, *knowing that that information was voluntary in an application for this form of insurance.*”

If the furnishing of such information is voluntary, the incidental disability provisions in the life policies, concerning which so much is said in complainant's brief, can avail it nothing. Moreover, as we have heretofore pointed out, complainant knew from the information in its files relating to Exhibit C-9, that defendant in 1926 had life insurance of \$40,000, containing such incidental disability clauses. And a reference to these clauses shows that the prescribed monthly indemnities were not payable until the lapse of a stated period after a total permanent disability. For example, under complainant's policy (Ex. D-1), the monthly payments are due “commencing six months from the receipt of such proof” of permanent disability. Similarly, the Prudential policy (Ex. C-4) provides that “The first monthly



payment shall be made six months after the company shall have received such proof". So that if defendant had been totally disabled for less than six months he would not have been paid a cent of indemnity under these policies.

3. The existence of the policy of the Commercial Travelers Mutual Accident Association of Utica (Ex. C-2) was known to complainant's agent, Fink. He admitted defendant told him about this policy and "said he was going to give it up" (S. C., p. 224, ll. 11-30). Defendant testified that Fink gave as the reason for excluding this policy from the answer to Question 11 that he had discussed it with Mr. Sooper, complainant's District Manager, who said there was no ethics in accident insurance policies, and in view of the fact that this policy was expiring on the 6th of January, not to insert it (S. C., p. 178, ll. 16-40). It is admitted that this policy was in fact permitted by defendant to lapse on January 6, 1927.

It is our contention that on these facts concerning the Commercial Travelers policy, complainant certainly cannot show any intent to deceive on the part of the defendant nor can it claim that a material misrepresentation was made. The least that can be said under the circumstances is that both complainant's agent and defendant acted under a mistake. The more exact view is that complainant's agent, with knowledge of the facts, lulled defendant into a sense of security. The Vice-Chancellor's finding on this policy in his opinion is as follows (S. C., p. 51, ll. 18-26):

"Commercial Travelers policy. This was one of those handed to Fink by the insured who called Fink's attention to the fact that it was soon to expire, whereupon Fink said it was not necessary to list it and Fink omitted it from the answer. This policy



lapsed January 6, 1927. There was no attempt at deception about this policy and Fink's knowledge of its existence must be imputed to the complainant."

In suits for reformation, our Courts have held that an application for a policy of insurance, or the policy itself, may upon proof of mutual mistake on one part and fraud on the other, be reformed so as to state the true situation. Our cases also hold that where an agent of a company makes a misstatement in the application or in the issuance of the policy, either bona fide or fraudulently, so as to induce his principal to issue the policy, the company is bound by his acts.

In *Hill v. Millville Ins. Co.*, 39 N. J. Eq. 66, Chancellor Runyon said:

"In 2 Am. Lead. Cas. (5th Ed.) 919, note, it is said that whatever the rule may be, under ordinary circumstances, it would seem clear that when the duty of preparing the policy is, as generally happens, assumed by the assurers, they cannot take advantage of the failure of the instrument to express any fact or circumstance that has been duly communicated by the insured and omitted, through negligence or design, by their officers or agents, and that the principle is the same where the error or misdescription occurs in an application or survey, which, though nominally proceeding from the insured, is in fact prepared or dictated by an agent of the company". (Citing various cases in substantiation.)

It follows that if the knowledge of an agent is imputable to a company for purposes of granting reformation of a policy issued by it, the same knowledge will estop the company from obtaining in a court of equity affirmative relief by way of cancellation.



Farrell testified that the complainant had a rule, relaxed occasionally, against the issuance of policies where the total amount of accident insurance provided a weekly indemnity aggregating more than \$150 per week (p. 110, l. 38 to 111, l. 5; p. 117, ll. 10-20). There is no pretense that this rule was communicated to defendant. It does, however, explain why the District Manager through Fink, advised defendant that the Commercial Travellers policy could be excluded because it was soon expiring. They did not wish to prejudice their chances of obtaining this business. But surely the consequences of their fraud should not be visited upon the defendant.

Accordingly, the Commercial Travelers policy (Ex. C-2) cannot help complainant establish its case. Without this policy, defendant held only an accident policy in the Aetna providing weekly indemnity of \$75 and the Metropolitan policy in suit, being also for \$75 per week, the complainant's rule, not communicated to defendant, against issuance of policies where the aggregate weekly indemnity exceeded \$150, was not violated.

Moreover, it seems from Farrell's testimony that the present policy might have been issued even if complainant's agent had listed the Commercial Travelers \$50 policy. He testified (p. 117, ll. 10-20):

"Q. You have never written a policy where an applicant has had more than \$150 of indemnity? A. As a working rule, it may have been modified; concessions may have been made, but to my knowledge no concession has been made in any case where the combined weekly benefit exceeded \$200, and there have been not more than six of those cases in all my experience."

Under the Commercial Travelers policy, the Aetna \$75 policy, and the policy issued by com-



plainant, the combined weekly benefits would have been exactly \$200, so that if complainant's agent had included the Commercial Travelers policy in the application, complainant might nevertheless have issued the policy in suit. Farrell definitely stated that complainant would not have written the policy if it had known that accident insurance of over \$400 a week was held by defendant (p. 111, ll. 5-30). We shall establish that this statement was based upon a false assumption of fact.

It should be pointed out also that Farrell testified that the double indemnity feature is not considered in determining how much accident insurance an applicant holds (p. 117, ll. 20-25).

The failure of the agent to list the Travelers life policies, the small incidental disability benefits under life policies held by defendant and the Commercial Travelers policy which was soon to expire, renders applicable the language in the frequently cited case of *North American Fire Insurance Company v. Throop*, 22 Mich. 146, 7 Am. Rep. 368, in which the Court said:

"In all these cases, where the particular fact called for by an interrogatory is unimportant or nearly so, under the circumstances of the particular case, it is very easy for the assured to be led to suppose that such interrogatory, which he knows was prepared generally and for the purpose of meeting the cases in which it would be of practical importance, was not to be relied upon in his own case; and if the insurer himself, or his agent, drafts an answer to such interrogatory, in which he treats it as immaterial and does not observe strict accuracy in his statement of facts, the assured might well suppose he would be thought captious and hypercritical if he should insist upon answers exactly correct, which the party seeking the information, and who, alone, was interested in it, was satisfied with statements less accurate, and



which, with full knowledge of the facts, he had written out to suit himself.

We cannot, in construing a contract of fire insurance, overlook the customary manner in which such contracts are obtained. The form which the negotiation apparently assumes is this: The one party applies to the other for insurance, and agrees in his written application that the facts material to the risk are as therein set forth. The other party issues the policy, assuming the risk on condition that the facts are as represented. The appearance, therefore, is of two parties meeting on equal terms, who might be supposed to frame their respective propositions and undertakings with a view to the protection of their own interests. But, in fact, both application and acceptance are usually drawn by the insurer himself, or his agent, into whose hands, as a person understanding the business thoroughly, and, therefore, knowing what should not be inserted in the writings, the assured places himself and his interests. We do not undertake to say that this is always the case, but this course is sufficiently general to warrant our taking notice of it as usual and customary. The insurer occupies the position of an expert who assumes to understand what the papers should contain. Being an expert, he undertakes to draw a contract between himself and another person who will generally be ignorant of the exact requirements; and, under such circumstances, the insurer is under a strong moral obligation to so draft the papers as to make them assure to the opposite party the protection for which he pays his money. If there has been no fraud and no concealment, but a full and frank statement of all the facts, and the insurer has framed the papers to suit himself, in view of all the circumstances, the law would justly be subject to the reproach of favoring deception and fraud, if the insurer was allowed to retain the premium, and, at the same time, repudiate the contract, for his own failure to



make its recitals correspond exactly with the facts."

In a leading case on this subject, *Union Insurance Company v. Wilkinson*, 80 U. S. Sup. Ct. Rep., page 617; 20 Law. Ed. 617, the United States Supreme Court made a significant comment on a similar situation as follows:

"Insurance companies organized under the laws of one state having in that state the principal office send these agents all over the land with directions to solicit and procure applications for policies furnishing them with printed arguments in favor of the value and necessity of life insurance and of the special advantages of the corporation which the agent represents. They pay these agents large commissions on the premiums thus obtained and the policies are delivered at their hands to the assured. The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy rarely sees or knows anything about the company or its officers by whom it is issued, *but looks to and relies upon* the agent, who has persuaded him to effect the insurance, as the full and complete representative of the company by all that is said or done in making the contract. Has he not the right to so regard him? It is quite true that the reports of judicial decisions are filled with the efforts of these companies, by their counsel, to establish the doctrine that they can do all this and yet limit their responsibility for the acts of these agents to the simple receipt of the premium and delivery of the policy, the argument being that, as to all other acts of the agent, he is the agent of the assured. This proposition is not without support in some of the earlier decisions on the subject; and, at a time when insurance companies waited for parties to come to them to seek assurance or to forward applications on their own motion, the doctrine



had a reasonable foundation to rest upon. But to apply such a doctrine, in its full force, to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims. The tendency of the modern decisions in this country is steadily in the opposite direction \* \* \*."

Other decisions of the Supreme Court are to the same effect. *New Jersey, etc. Ins. Co. v. Baker*, 94 U. S. 614, 24 L. Ed. 270; *Eames v. Home Insurance Company*, 94 U. S. 630, 24 L. Ed. 301; *Continental Insurance Company v. Chamberlain*, 132 U. S. 309, 33 L. Ed. 343, 10 Sup. Ct. 88, and others.

In the case last cited, the agent in soliciting a policy of life insurance, wrote the answers to the questions set forth in the application after discussing the matter with the insured. Among the questions was one relating to other insurance, which was answered in the negative. The insured, however, had \$12,000 worth of insurance in co-operative companies which he mentioned to the company's agent and upon which both came to the conclusion that it was not the type of policy being asked for in the application. The Court held:

"The answer of 'No other' having been written by its own agent, invested with authority to solicit and procure applications, to deliver policies, and under certain limitations, to receive premiums, should be held as properly interpreting both the question and the answer as to other insurance."

The rule is well settled in other jurisdictions also that in the absence of fraud or collusion on the part of an applicant, the fraud, negligence or



mistakes of the soliciting agent cannot be set up in avoidance of the policy.

*Weisguth v. Supreme*, E. H. 272 Ill. 541, 112 N. E. 350;

*Providence Saving Life Assurance Society v. Cannon*, 201 Ill. 216, 66 N. E. 388;

*Graton v. Metropolitan Life Insurance Company*, 92 N. Y. 724, 44 Am. Rep. 372;

*Plumb v. Catteraugus County Mutual Insurance Company*, 18 N. Y. 392, 72 Am. D. 526;

*Walker v. Ill. Bankers Life Association*, 140 Ark. 192, 215 S. W. 598;

*Wilkinson v. Conn. Mutual Life Insurance Company*, 30 Iowa 119, 6 Am. Rep. 657;

*Northern Assurance Company of Michigan v. Kelly, et als.*, 217 Mich. 1, 185 N. W. 782;

*Whitney v. National Masonic Acc. Association*, 57 Minn. 472, 59 N. W. 943.

In *Rogers v. Atlantic Insurance Company*, 135 S. C. 89, 45 A. L. R. 1172, 133 S. E. 213, it appeared that the insured had had a tumorous growth removed from his face some time prior to making an application for life insurance. In the application the surgical operation was not mentioned. It appeared that the agent, who solicited the insurance, had been informed that a tumor had been removed from the assured's face. The lower court charged that this knowledge was imputable to the insurance company and waived any defense they might have arising out of neglect to mention the operation. The upper court sustained this charge holding the company responsible for the acts and



knowledge of its soliciting agent in procuring the policy of insurance.

4. The \$250 Aetna policy is improperly included by complainant in the list of policies in force November 4, 1926. Defendant testified that he had not, prior to November 4, 1926, applied for any policy in the Aetna Life Insurance Company providing weekly indemnity of \$250 (S. C., p. 194, ll. 24-30).

Herbert F. Ten Broeck, the Aetna agent who solicited defendant for the policy in question, testified that he delivered this policy to defendant either the 8th, 9th or 10th of November, 1926; that defendant signed the application for said policy at the time it was delivered; and that defendant had not submitted to him or to the Aetna any other application for this policy prior to the date of delivery (S. C., p. 198, l. 17, to p. 199, l. 10). On cross-examination Ten Broeck testified that there was not the slightest question but that defendant had never signed an application for the Aetna \$250 policy prior to the date of its delivery (S. C., p. 199, l. 13, to p. 200, l. 7). He stated further that the application had been acted on by the company without signature (S. C., p. 200, ll. 19-24), and that what he was testifying to was borne out by his own records and by the records of the company which he had examined (S. C., p. 201, ll. 11-19).

In answer to the Court's question, "You mean that the company issued a policy of insurance before any application was before it?", he answered, "That is quite customary" (S. C., p. 203, ll. 25-27).

And when asked again whether it was on the basis of defendant's signed application that the policy was issued, he answered, "No; the policy had been issued before the application was signed" (S. C., p. 204, ll. 15-17).



Ten Broeck was then confronted by complainant's counsel with two papers which were attached and which subsequently were admitted in evidence as Exhibit C-20 (S. C., p. 272). The one bearing the stamps referred to by counsel for complainant was an unsigned application in long hand and annexed to it was a typewritten application signed by defendant. Except for the signature, one was a copy of the other. Ten Broeck testified (S. C., p. 207, ll. 18-30):

"Q. Please look at this application and see if you can positively identify it as the application on which the policy Exhibit C-19 was based? A. It was based on this (indicating). This is the application which was signed.

Q. This paper. This is the application— A. (Interrupting.) No; this is the application (indicating). This (indicating) is the application made out when the policy was issued. He has not signed that. Here is the one he signed, right here, and that is the one that the company made out. That is written by one of the men in the office evidently."

And again (p. 208, ll. 19-28):

"Q. So that on the 5th of November in Hartford, there was this application bearing all of these stamps for the policy which was eventually issued on it? A. Absolutely.

Q. So that this paper was delivered to the office before the 11th of November? A. It was never delivered to the office. That was copied from one that was rewritten, probably that was cancelled and rewritten. That application was copied from an old application. The Aetna had all the facts.

Q. Did you not make this out? A. No.

Q. You did not solicit it? A. I solicited it, sure."

Under the Court's questioning concerning the two sheets which comprise Exhibit C-20, Ten Broeck testified (S. C., p. 211, ll. 27-40):



"Q. Well, at any rate, the first sheet and the second sheet, as I understand it, came back to you with the policy of insurance? A. Just the second sheet.

Q. Then, it was in two sheets? A. Yes; it was. That is a separate application. One is a duplicate of the other.

Q. And it was only this second part, which may be called the third or fourth sheet, that came back to you with the policy of insurance, and which Dr. Sussman signed? A. Yes.

Q. He signed it in your presence? A. Yes."

Ten Broeck also testified that he did not read to defendant the questions and answers on the application which was filled in by the company from an earlier application, and that defendant signed the application without reading it (S. C., p. 212, ll. 4-27); and that the application was not signed contemporaneously with the delivery of the Aetna policy (Ex. C-19), but about three hours later (S. C., p. 214, ll. 37-40).

Ten Broeck stated there was nothing unusual in this method of going after a prospect for a large policy (S. C., p. 209, ll. 10-20). Defendant on November 4, 1926, held a smaller Aetna policy providing a weekly indemnity of \$75. Ten Broeck asked the company to prepare the larger policy in the hope that he could sell it to defendant (S. C., p. 213, ll. 24-30):

"Q. The only question in your mind was whether the company would issue a policy as large as that? A. And whether he would take it or not. I was not sure he was going to take the policy when I got it.

Q. You had been talking to him about insurance? A. I had been trying to sell him insurance."



The best proof of the truthfulness of Ten Broeck's testimony is the Aetna policy itself (Ex. C-19). The copy of the application which appears on the third page of this policy shows that the space at the bottom where the signature of the applicant ordinarily appears is blank. If this policy had been issued on the basis of a signed application, this space would have contained defendant's name. The applications annexed to all of the policies in evidence contain the applicant's name in the space designated on the applications for his signature, since these would not otherwise be complete or true copies. And so we have corroborative proof that defendant had not submitted any application for the policy in question on November 4, 1926; that he signed no application until after the delivery of the policy in question; and that until the delivery he was under no obligation of any character to accept this policy.

Against this clear and unequivocal testimony of defendant and Ten Broeck, complainant produced as a witness Albert Childs, Claims Attorney for the Newark branch of the Aetna. Over objection, he was permitted to testify on the basis of the ordinary routine of the Aetna in the handling of an application for insurance, and he specifically disclaimed any personal knowledge of the essential facts with respect to the issuance of the Aetna policy. When asked by complainant's counsel whether the policy (Ex. C-19) was prepared in the Newark office after the receipt of a signed application by Dr. Sussman, he said, "*Apparently*, from the record, yes," and "*apparently*" the application was forwarded to Hartford November 4 (S. C., p. 235, ll. 18-27). On cross-examination he admitted that there is a practice of going after a prospect for a policy; and that an agent might ask that a policy be prepared before he actually receives an application from the prospect



(S. C., p. 236, ll. 23-38). He admitted also that an application annexed to an earlier policy of the Aetna might be used to prepare a new policy (S. C., p. 237, ll. 33-37).

Childs assumed to testify that the \$75 Aetna policy was cancelled on October 27, 1926 (S. C., p. 238, ll. 4-15). Later he testified as follows (S. C., p. 238, l. 38, to p. 239, l. 6):

“Q. Mr. Childs, don't you know that the cancellation of the earlier Aetna policy held by Dr. Sussman, the \$75 a week policy, was cancelled back by your company to the October date in order to match the issuance of the new \$250 a week policy? A. Probably that is true. I think it is.”

It is readily understandable why the earlier policy was cancelled back and the later policy dated back to October 27, 1926. This preserved a continuity in the insurance carried by the Aetna on defendant and rendered available as a credit on the new policy the premium paid on the earlier policy. What is important in this case is that on November 4, 1926, the only Aetna policy which defendant held was the \$75 policy listed in the answer to Question 11.

It is respectfully submitted, therefore, that complainant was not entitled to the relief prayed for on account of the answer to Question 11.

## B.

We now turn to complainant's argument on the answer to Question 14: “Have you ever received or been refused benefit for any accident?” It is to be noted from the form of this question that it requires a “Yes” or “No” answer. Whereever the company desired more specific answers the form of the question indicated this. For example, Question 16 reads: “Is your sight or hearing impaired? If so, state nature of impairment.” Moreover, the space allotted on the application



for the answer to Question 14 is no more than the space for the answers to the questions requiring merely a "Yes" or "No". As we have heretofore argued on the basis of *Prahm v. Prudential Insurance Companies*, 97 N. J. L. 206, and decisions in other jurisdictions, where the form of a question creates an ambiguity, the company cannot take advantage of it. The answer to Question 14, "Aetna \$200—1917", is tantamount to an affirmative answer.

Complainant's counsel, both in his direct examination of defendant as his own witness and on cross-examination, went into the accidents for which defendant had collected indemnity in great detail. The impression which complainant's brief (pp. 23-24) creates by repetition in a list two pages long is that separate injuries are referred to each time. This is negated by the evidence, which established that between 1911 and 1926 defendant suffered some five or six minor accidents.

There was an accident to the face and eye as the result of acid burns (p. 93, ll. 35-37); he had suffered a broken nose, for which he received two weeks' indemnity (p. 93, ll. 28-34).

He had two accidents to his thumb and fingers, one in fitting a plate (p. 93, ll. 38-40; p. 94, ll. 30-40); and he may have received indemnity once for throat trouble (p. 163, l. 30).

Defendant is severely criticized for being unable to remember the exact amounts of indemnity and by what companies they were paid on account of the foregoing accidents, stretching over a period of fifteen years. We wonder how many persons who have carried accident and health insurance in various companies over such a period of time would have been able to give more specific answers. When counsel for complainant named the companies, defendant was in some instances able to state that he had carried insurance in those companies. Under the form of Question 14, it is



respectfully submitted that defendant was under no duty to perform the phenomenal feat of recalling whether, for example, he had carried accident insurance in the Maryland Casualty Company in 1911 and had collected \$50. Defendant had no record of claims paid to him over this time, and had no occasion to look up these claims.

The questions addressed by complainant's counsel to Farrell on this point were based upon the assumption that the company, on receipt of the application, obtained information that some claims had been intentionally concealed or suppressed. The underwriter said (p. 112, ll. 34-37):

"If we found that material information with respect to previous claims had been deliberately concealed, we would regard the risk as a poor one morally and would refuse it on that account" (p. 64).

Under the evidence, can it be said that there was any intentional concealment? Defendant testified he told Mr. Fink "that I had a number of minor accidents which I could not recall instantly \* \* \*. He said these small things didn't make any difference" (p. 181, l. 30, to p. 182, l. 10). Accordingly, he gave him the information: "Aetna, \$200, 1917".

Fink admitted that defendant told him he had a couple of minor accidents, but denied that defendant gave him the answer which appears on the application (p. 222, ll. 10-17). This is startling. From the moment he signed it on November 4, 1926, this application was out of defendant's control. If Fink's testimony is believed, how did the alteration come about and why? Did the complainant's underwriters, in running through their records and the records of claims furnished by the Hooper-Holmes Bureau in connection with this application, obtain this informa-



tion and did they nevertheless pass the application without communicating further with defendant? As the Vice-Chancellor states in his opinion (p. 58, l. 6, to p. 59, l. 6):

“The insured had been carrying accident insurance since 1911, so that the question put to him in 1926 was, according to the complainant’s contention, in effect: ‘State all accidents which have occurred to you in the past fifteen years and the amount of benefit you received for each.’ He had suffered accidents and recalled receiving \$200 from the Aetna in 1917, probably because that was his most serious accident. The other three or four he had suffered were minor, and it would not be surprising if he had been unable to recall the amounts he had received for them at the time the agent questioned him. He testified that he had received less than \$300 more than appeared in his answer, which excess, divided among his other accidents, could not have paid him much benefit from any one accident. Did he tell Fink, the agent, that he had suffered other accidents? He says he did. Fink denied writing in the words ‘Aetna. \$200 1917’, but the application was taken by Fink and sent to the complainant, so someone other than the insured must have written in these words after the application left Fink’s hands. If they were not written by Fink, they must have been inserted by someone in the plaintiff’s underwriting department who obtained the information from some source other than the insured, and if the information was obtained in that fashion, then some agent of the complainant knew that the answer ‘No’ was untrue, yet the complainant issued its policy. However, the words which appear as the insured’s answer, when compared with the answer written by Fink, appear to be in Fink’s handwriting, and if they are, they tend to support the insured’s testimony that Fink said the small accident benefits were unimportant and the inference is that he listed the largest one only.”



In *Northern Assurance Co. v. Kelly*, 217 Mich. 1; 185 N. W. 782, a bill was brought for the cancellation of a policy on the ground that misstatements had been made in the application as to injuries. It appeared that the assured had a serious operation in 1902 as the result of which he had stomach trouble in 1912, from which he seemingly recovered. The application was made in 1919. The assured stated the facts of his former illness and the agent discounted them as being of no consequence. The Court held that although the answers in the application were not correct, since the facts were communicated to the agent, the company was estopped from setting up such misstatements.

Similarly, in *Whitney v. National Masonic Acc. Assn.*, 57 Minn. 472, 59 N. W. 943, a policy was issued on an application which stated that the applicant had never had any bodily or mental infirmity. Plaintiff some years before had so frozen one of his feet that two of his toes had been removed. The result was a numbness in that member which was responsible for an accident. It appeared that when the agent solicited the insurance the plaintiff stated the facts to him and the agent said they were of no consequence and inserted the negative answer in the application. The Court held that this knowledge of the agent was binding upon the company, since "the plaintiff was misled by representations of the agent as to the character or effect of his answers to the questions concerning the bodily infirmity".

Not only has complainant failed to prove an intentional deception by defendant, but its own chief underwriter testified that the fact that defendant had collected additional indemnity of approximately \$300 would not have resulted in a refusal to accept the risk. On direct examination he said (p. 112, ll. 9-18):



"Q. Mr. Sussman, on cross-examination, testified that he had filed, previous to November 4, 1926, claims against the companies in which he was indemnified against accident and had received accident indemnity in five or six cases. Would that have affected the risk in this case? A. It might and it might not. It would depend on other facts: The period of time involved. Of course the number of claims presented and the character of those claims \* \* \*."

On cross-examination he said (p. 131, l. 12, to p. 132, l. 12):

"Q. Referring to question No. 14: 'Have you ever received or been refused benefit for any accident', I think you so testified on direct examination that the element to be considered in determining the materiality of answer given to that question are the number of claims, the amounts and their character?

\* \* \* \* \*

A. I think I added to those factors the additional factor of lapse of time that those claims were presented.

By the Court:

Q. Otherwise, that is your testimony? A. Yes.

By Mr. Stoffer:

Q. Now, considering that, assuming that five or six claims had been paid by companies between 1911 and 1926, when this application was submitted to your company, and that those claims had aggregated \$500, would that in itself have caused your company to decline this application?

\* \* \* \* \*

A. It would have been a subject of inquiry on our part with the companies involved in the payment of those claims to find out their character and whether in their judgment they were reasonable and meritorious."



Also at page 133, line 20, to page 134, line 18:

“Q. Does your company have the services of any indemnity bureau of information? A. The Hooper-Holmes Bureau serves that purpose.

Q. What is the character of their service? A. They report adverse action. By that I mean cancellations, rejections, policies marked for non-renewal on account of unfavorable claim experience.

\* \* \* \* \*

Q. Mr. Farrell, the fourteenth question relating to other claims paid is answered: ‘Aetna, \$200.’ A. 1917.

Q. In 1917. Assuming that about \$300 additional has been paid by some company between 1911 and 1926, would that have been a factor in determining the acceptability of this application?

\* \* \* \* \*

A. It would have been a subject of inquiry. Beyond that I cannot say. We would have to determine from the companies involved.

Q. To what would your inquiry be directed? A. It would be directed to the companies having made the payment. It would have been as to the nature of the claim, period of disability and whether there had been any difficulty with the assured in effecting an adjustment.”

It is significant that counsel did not produce at this hearing any witnesses nor any depositions by officers of any of the companies from whom defendant received a total of \$500 over a period of fifteen years that their claim experience with defendant had been unsatisfactory. Moreover, since the complainant, as a subscriber, had access to the Hooper-Holmes Bureau reports, and nevertheless issued the policy, the inference is that no unfavorable claim experience with defendant had been reported.



Moreover, while the question of materiality in a similar situation has not to our knowledge been adjudicated in this State, it has been passed upon in other jurisdictions.

In *Southern Surety Co. v. Barham*, 133 Ark. 220, 202 S. E. 231, an application failed to state the indemnity the assured had previously received from other companies. It was held that such a representation need only be substantially true, and also that it was not shown to have been material to the risk.

In *Aetna Life Ins. Co. v. McCullough*, 185 Ky. 64, 215 S. W. 821, an application stated that indemnities previously received amount to \$50. The proof showed that \$133.88 had been received by the applicant. The finding of the jury that this representation was not material to the acceptance of the hazard by the company was sustained, despite the fact that the company's agent had testified that if they knew the figure of \$50 was false the policy would not have been issued.

It is respectfully submitted, therefore, that complainant has failed to establish the two essential elements of intent to deceive and materiality to the acceptance of the hazard, in relation to the answer to question 14.

### C.

Complainant, on the basis of Question 17, attempts to establish that defendant was afflicted with some form of bodily or mental disease, disorder, infirmity or impairment. Stress is laid upon the fact that defendant was at the time of the signing of the application receiving a pension from the United States Government, and the inference is that he should have disclosed this fact in his answer to Question 17. Suffice it to say that if complainant was interested in knowing whether the applicant was receiving a pension, it should have made a specific inquiry.



It did in fact make such inquiry in the application on which its policy No. 708494-A (Ex. D-3), was issued to defendant. Question 9 of the application annexed to that policy reads: "Have you ever applied for a pension (if so, state facts in exact language of pension papers)". The answer given is: "Yes, from Government for neuralgia in war and for rupture". The preceding question of the same application is "Are you ruptured?", and the answer is: "No, operated in 1909". Question 15 of the same application asks particulars of illnesses, and among those specified is:

| <i>Affection</i>         | <i>Number of Attacks</i> | <i>Date</i> | <i>Duration</i> |
|--------------------------|--------------------------|-------------|-----------------|
| Operation for Hernia.... | 1                        | 1909        | 17 days         |

| <i>Severity</i> | <i>Complications</i> | <i>Results</i> | <i>Medical Attendant</i> |
|-----------------|----------------------|----------------|--------------------------|
| Moderate.....   | None                 | Good           | Mt. Sinai Hosp.          |

Again, in complainant's policy No. 916689-A (Ex. D-2), issued to defendant in 1913, we find that the application annexed thereto gives the identical information with respect to the operation for hernia, under Question 15. And under Question 2, which inquires concerning a pension in the same language as the application annexed to Exhibit D-3, the answer is "Yes, from United States for debility following fever and hernia".

Accordingly, complainant knew of the operation for hernia in 1909 and also that in 1910 and 1913, defendant was receiving a pension from the Government. It cannot, therefore, now claim that despite its failure to ask concerning pensions in the application of November 4, 1926, it may take advantage of the receipt of a pension as proof that defendant answered Question 17 untruthfully. There is no evidence in the case concerning the laws and regulations of the United States relating to the payment of pensions to veterans



and it cannot, therefore, be argued that defendant in this case was receiving a pension without right. But even if this were true, it would not constitute a fraud upon the complainant and would have no bearing whatever upon the issues of this case.

Moreover, Farrell's testimony concerning the hernia and the operation therefor completely disposes of the question under consideration. When asked on direct examination by complainant's counsel whether the negative answer to Question 17 affected the granting of a policy, he said "I should say not, if you have reference to the question of hernia" (p. 114, ll. 21-31). He went on to say "I am not familiar with this particular policy here. Some of our policies by their terms definitely exclude hernia" (p. 114, ll. 21-25). A reference to Clause 9 of the policy in suit shows that it falls within this class as it provides: "nor shall it (referring to the words 'this insurance', at the beginning of the clause) cover accident, injury, disability, death or other loss caused wholly or partly by disease or bodily or mental infirmity or medical or surgical treatment therefor *or by hernia* \* \* \* " (p. 249, ll. 27-30).

Under the Court's questioning, Farrell further testified (p. 130, l. 37 to p. 131, l. 8):

"Q. If it appeared here that Dr. Sussman had a hernia, would you have declined the risk? A. In itself, no.

Q. Was it an element that you would consider in making up your mind whether to accept the risk? A. If we had understood that he had been operated on for hernia many years ago, it might not have been material to our decision."

Accordingly, there is not the slightest proof that the answer to Question 17 was intentionally false or that it in any material sense affected the acceptance of the risk.



### **Reply to Point II.**

There can be little dispute concerning the equity principles governing cancellation for fraud, as stated in the cases cited under Point II of complainant's brief. The question is whether the Trial Court followed these principles. A reading of the Opinion discloses that with respect to each of the alleged misrepresentations the Vice Chancellor applied the recognized alternative tests:

1. Was defendant guilty of intentional misrepresentation? A negative finding resulted in each instance.

2. Did the alleged untrue answers materially affect the acceptance of the risk by complainant? A negative finding resulted in each instance.

In concluding his opinion the Vice Chancellor stated (p. 61, ll. 16-23):

"The burden of proof is on the complainant to show that the defendant made misrepresentations in his application intending to deceive the complainant, or that his answers which are alleged to be untrue, concealed from the complainant information of which it, by its agent or its records, was unaware and which materially affected its acceptance of the risk."

It is inaccurate, therefore, to say as complainant does on page 37 of its brief that the Trial Court throughout required proof of specific intent to deceive.

### **Reply to Point III.**

Here again there is little room for dispute as to the governing legal principles. The question is whether the Trial Court was justified in finding



that the alleged false statements did not materially affect the acceptance of the risk or the hazard assumed by the Company. The evidence is reviewed in our reply to Point I, where the testimony of complainant's chief underwriter is quoted, which establishes beyond the possibility of a doubt that the answers to Questions 11, 14 and 17 did not mislead complainant in any material sense.

This finding was in itself sufficient to dispose of the case, but in addition the Trial Court held that complainant knew of the inaccuracies of these answers, either because the agent, knowing the facts, wrote the answers according to his own construction of the requirements of the ambiguous questions, or because complainant was by the application referred to earlier policies issued by it to defendant, which disclosed the matters alleged to have been suppressed. This actual or imputed knowledge destroys the very basis of complainant's argument that the answers under consideration materially affected the acceptance of the risk or the hazard assumed by the company.

#### **Reply to Point IV.**

Question 20 purports to be a certificate that no statements have been made nor information furnished to any agent of the company relating to the insurance other than as written in the application. In the first place, complainant has not established by clear evidence that this question was asked, nor that the answer written in by Fink was made by defendant. Fink testified that he read all of the questions to the defendant because "it is always customary to read them" (p. 226, ll. 20-40). Defendant testified that this question had not been read to him (p. 184, ll 35-40).



But irrespective of the state of the evidence on this point, a company cannot by any such provision avail itself of the fraudulent or negligent acts of its own agents. The standard fire insurance policy in use in this state is one having the sanction of legislative authority (Comp. State. 2862, para. 77; Pamph. Laws 1902, pp. 407, 436, 437). A series of decisions in this state have accordingly held that the standard fire policy is a legislative contract and must not be construed strictly against the companies and in favor of the insured. *Mick v. Corporation of Royal Exchange*, N. J. L. 607 at page 611; *Del Guidici v. Importers and Exporters Ins. Co.*, 98 N. J. L. 435, at page 436.

Nevertheless, a clause in the standard fire policy similar in effect to Question 20 of the application has not been construed to enable the insurance companies to take advantage of the fraud, negligence or mistakes of their agents. This clause, which must appear in every fire policy under the legislation hereinbefore referred to reads as follows:

“and no officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except as by the terms of this policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent, or representative shall have power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written and attached.”

In none of the large number of cases which have reached the Court of Chancery for reformation,



rescission or cancellation of fire policies, has this clause been construed to bar proof of an agent's knowledge of the true facts, although no endorsements containing such facts were annexed to the policies. In the most recent reformation suit taken before this Court, *Berkowitz v. Westchester Fire Ins. Co.*, 106 N. J. Eq. 238, the point was raised that the clause quoted above barred oral testimony to show that the agent had knowledge of certain facts and that in any event the company was not bound by such knowledge. As is apparent from the decision this Court did not accept this argument and proceeded to determine the case on its merits.

Moreover, since the Trial Court had before it a bill charging both intentional fraud and material misstatements, evidence concerning the answers actually given by defendant to complainant's agent was admissible to meet the charge of positive fraud.

Assuming for the moment that the Vice Chancellor should have excluded this evidence from his mind when dealing with the alternative charge of equitable fraud arising out of material misrepresentations, would the decision have been different? The only statement made to the agent which complainant did not have in record form in its files on other policies issued to defendant related, under question 14, to the minor accidents suffered by defendant over a period of 15 years, for which he received small indemnities that he could not recall when the application was signed, excepting the \$200.00 payment by the Aetna in 1917. At the trial, his recollection refreshed by complainant's counsel, defendant admitted having received additional payments during this 15 year period of about \$300.00. Keeping out of consideration defendant's statement to the agent about the other minor accidents, did the answer



to question 14 contain misstatements which materially affected the acceptance of the risk or the hazard assumed by the company?

We have dealt with the evidence on this issue in our reply to Point I. The Trial Court found the question to be ambiguous (it seems this should permit evidence of an agent's practical construction) so that a "yes" or "no" answer would have been sufficient, and pointed out other possible answers to this question which could reasonably have been made. The complainant being responsible for the form of the question "cannot complain if there is no theory from which the truth or good faith of the answer can be drawn" (p. 58, ll. 5-7). Moreover, complainant's underwriter admitted that the other accidents for which defendant received a total of \$300.00 might or might not have affected the acceptance of the risk, depending upon the period when the accidents occurred, their number and character. This is as far as he went. Nowhere does it appear that if his company had known all about the four or five accidents during the previous 15 years, it would have declined the risk. Complainant failed to produce any evidence that the companies which paid the other small claims had any unsatisfactory loss experience with defendant. So that, assuming everything else argued under this point against defendant, there is nothing in the record on which the Trial Court could have found a material misrepresentation in the answer to question 14, which is the only one involving the agent's as distinguished from the company's knowledge.

#### **Reply to Point V.**

The argument under this point amounts to this: that irrespective of complainant's knowledge that



the answers complained of were not entirely complete it may now say that since the application is part of the contract, the Court should look no further and rule as a matter of law that defendant was guilty of material misrepresentations. And this contention is advanced by a complainant seeking the high remedy of cancellation from an equity court.

Under our reply to Point I we have referred to the equity decisions allowing the fraud or mistake of a company or its agent to be shown in suits for cancellation, reformation or rescission. One who seeks the aid of our Chancery Court can hardly complain if it looks beyond the four corners of an instrument to determine whether the circumstances attending its execution in good conscience warrant cancellation.

### **Reply to Point VI.**

Complainant's contention under this point is that defendant was under a duty to disclose to complainant insurance acquired by him after the application to complainant was signed.

It is to be noted that this argument is raised for the first time on this appeal. An examination of the Bill of Complaint discloses that in paragraph eight as amended, complainant charged that at the time of the signing of the application defendant failed to disclose other policies of insurance, among them "a policy in the Aetna Life Insurance Company, being designated as Policy P. A.—129970, with weekly indemnities of \$250.00 per week" (S. C., p. 33, l. 35, to p. 34, l. 12). There is no allegation in the Bill that defendant was under a duty, and failed, to disclose to complainant the Aetna policy which he subsequently acquired.



Under the terms of its policy complainant was powerless to prevent defendant from obtaining additional accident insurance. The contention here is based upon defendant's receipt of the Aetna policy two or three days prior to delivery of complainant's policy. Had the Aetna policy been received by defendant an hour after complainant's policy was delivered, no such issue could be raised. This indicates the importance of an exact finding as to the time of delivery of the Aetna policy. Under the issues as tried and argued below, it was sufficient to establish that the Aetna policy was not in existence November 4th. Accordingly no further inquiry was made when the Aetna agent, Ten Broeck, testified that this policy was delivered about the 8th, 9th or 10th of November. Exhibit C-20 (p. 272) indicates office stamps on the back of the unsigned application under date of November 10th and November 13th, 1926. The signed application is stamped on the back, Nov. 30, 1926. We have no finding by the Vice-Chancellor on the precise issue now raised for the first time, and it should not be considered.

*Levy v. Gollin*, 5 Misc. Rep. 786 (1927).

We shall, however, discuss the merits, in the event that Court decides to consider Point VI.

It is to be noted that question 11 reads "What life or accident insurance *have* you in any other company or association?"

There is no indication in the application that complainant as a condition of considering the application intended to restrict defendant from submitting any applications for insurance to other companies or from obtaining any other policies. If complainant intended to impose such restrictions it could have done so by a simple provision



against the submission of applications without its consent to other companies prior to the delivery of its policy. The standard form of fire insurance policy contains such a provision against other insurance without the consent of the first insurer.

No reasonable person in defendant's position would have been put on notice by the form of complainant's application that all subsequent applications filed or policies obtained must be disclosed to it.

There is no pretense in this case that defendant was aware at the time of the signing of the application of complainant's rule against the issuance of accident and health policies where the aggregate indemnities under all policies exceeded \$150.00 per week, a rule which complainant's chief underwriter admitted was sometimes relaxed, and intended for the guidance of the company agents.

Under the facts as proved, however, the law in this state is the exact contrary of that urged by complainant. The argument that defendant was obliged to disclose the Aetna policy, on the analogy of the cases requiring an applicant for life insurance to disclose a change in physical condition prior to the delivery of the policy, has been considered by this Court and the analogy held inapplicable.

In *Smith v. Prudential Ins. Co.*, 83 N. J. L. 719, this Court in an opinion delivered by Justice Bergen, said at page 722:

"The next point pressed on the argument rests upon the refusal of the Court to direct a verdict for the defendant because the insured represented to the defendant that no application for insurance on his life was pending in any other company at the time he applied for insurance in the defendant company, while the testimony was conclusive that between the application to the defendant



company and the issuing of the policy, deceased had made an application to another company for life insurance, which was yet pending when the defendant's policy was delivered, although afterwards refused.

There is nothing in the contract which required that at the time when the policy was delivered the condition that no application to another company was pending, should continue until the policy was issued, as in the case of the health of the insured, and such a covenant will not be implied to work a forfeiture of a life insurance policy. The only situation which the application in this case required to remain unchanged was the condition of the health of the applicant."

An obvious difference exists between cases involving changes in physical condition, such as are cited by complainant and the present case. As the courts have stated, a change in the physical condition of an applicant for life insurance is a change in the subject-matter, which goes to the very basis of the contract for which he has applied. Moreover, such a change is known best to the applicant himself, since his own health and life is involved. Accordingly he is deemed to know that up to the delivery of the policy the insurance company is especially interested that his state of health be the same as at the time of the application.

But as this Court held in the *Smith* case, *supra*, unless a company advises an applicant for insurance that it desires to be informed, not only concerning his pending insurance, but also concerning any applications he may make in the meantime, the applicant is under no duty to communicate to the company the filing of other applications or the issuance of other policies to him.



### Reply to Point VII.

The evidence amply supports the Trial Court's conclusion that complainant has not sustained its burden of proof. From the earliest times the rule in this state has been that on a bill for cancellation, the complainant must establish its case by clear and convincing evidence. The rule of *Freeman v. Staats*, 9 N. J. Eq. 816 (E. & A. 1853) has been consistently followed. Referring to the allegations of a bill for cancellation, Chief Justice Green, speaking for the Court, said, at page 817:

"The proof of them rests upon the complainant. The rule of law and the dictates of justice require that they should be clearly proved and not left to presumption or conjecture."

### Conclusion.

It is respectfully urged, therefore, that the decree of the Court of Chancery should be affirmed with costs.

Respectfully submitted,

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DAVID STOFFER,  
Of Counsel.



