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NEW JERSEY
Court of Errors and Appeals

NOTICE OF APPEAL

(*Filed* July 3, 1934.)

IN CHANCERY OF NEW JERSEY.
64/740

BETWEEN

EDWARD MAXSON, as Commissioner of Banking and Insurance,
Complainant,

AND

MANUFACTURERS' LIABILITY INSURANCE COMPANY,
Defendant.

10

TAKE NOTICE that Raymond F. Barrett, Administrator of the Estate of Alfred N. La Brecque, deceased, claimant, and Irving G. Hall, Jr., as Trustee, hereby appeals from the order made in the above stated cause on May 24, 1934, wherein the determination and findings of the receivers of the above named defendant respecting the claims of the said Raymond F. Barrett, Administrator as aforesaid, and Irving G. Hall, Jr., Trustee, are sus-

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tained, to the Court of Errors and Appeals in the last resort in all causes.

Yours truly,

HERMAN H. ANEKSTEIN,
EDMUND A. HAYES,
Solicitors of Raymond F. Barrett, Administrator of the Estate of Alfred N. La Brecque, deceased, claimant, and Irving G. Hall, Jr., as Trustee.

10

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

EDMUND A. HAYES,
Of Counsel with Appellants.

PETITION OF APPEAL

20 (*Filed* August 10, 1934.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN EDWARD MAXSON, as Commissioner of Banking and Insurance, *Complainant,* AND MANUFACTURERS' LIABILITY INSURANCE COMPANY, *Defendant.*	On Appeal from the Court of Chancery.

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

The petition of Raymond F. Barrett, Administrator of the Estate of Alfred N. La Brecque, de-

ceased, claimant, and Irving G. Hall, Jr., as Trustee, the appellants in the above entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, bearing date May 24, 1934, in a certain cause in said Court of Chancery, wherein the said Edward Maxson, as Commissioner of Banking and Insurance, was complainant and the said Manufacturer's Liability Insurance Company was defendant, in this respect, to wit, that the said order adjudges that the determination of the Receivers of the above named defendant in allowing part of the claims filed by Alfred N. La Brecque in the sum of $1,749.08 and in disallowing the balance of his claims in the sum of $21,172.71 should be sustained and that the petition of appeal of the petitioners to the Court of Chancery respecting said claims should be denied.

And petitioners appeal from the order of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that—

1. The amount due petitioners on the claims filed by Alfred N. La Brecque is $11,500.76, after allowing set-offs.

2. The Receivers figured the amount due on said claims, being for unearned insurance premiums, on a short-rate basis, whereas they should have figured the same on a pro-rata basis, as:

(a) The authority of the defendant company to do business in Massachusetts was revoked by operation of law, by and with the authority of the Commissioner of Insurance of Massachusetts, under its law and under whose authority the defendant was doing business in said commonwealth.

(b) The defendant, having been adjudicated insolvent and having had receivers appointed for it by the Court of Chancery of New Jersey on June

2, 1927, the policies of insurance issued by defendant and then in force, no longer afforded the holders thereof, the protection against liability required by the laws of Massachusetts, in accordance with which the policies were issued, and the defendant was no longer financially fit and violated the condition of financial fitness imposed upon it by the laws of said commonwealth.

(c) The policies were cancelled by the proper
10 authorities of Massachusetts, acting within their scope of authority, and also by the defendant's duly authorized agent or agents.

(d) None of said policies were cancelled by any holder thereof.

(e) The Receivers should have instituted proceedings in the courts of Massachusetts to determine the legality of the action of the Commissioner of Insurance in revoking defendant's authority to do business in said commonwealth.

20 (f) The policies do not contain any provision to meet the situation existing at the time the Court of Chancery appointed temporary receivers for the defendant, and at the time defendant's authority to do business in Massachusetts was revoked, they should be construed against the Receivers and, therefore, return unearned premiums should be computed on a pro-rata basis.

3. The Receivers have never made known the figures, computations and calculations adopted by
30 them in arriving at their determination (except that the short-rate basis was used).

4. The action of the Massachusetts authorities did not impair the obligation of any contract.

Petitioners therefore pray that the said order of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this court shall seem proper.

Herman H. Anekstein,
Edmund A. Hayes,
Solicitors for and of Counsel with Appellants.

ORDER APPOINTING TEMPORARY RECEIVERS

(*Filed June* 1, 1927)

IN CHANCERY OF NEW JERSEY.

BETWEEN EDWARD MAXSON, as Commissioner of Banking and Insurance, *Complainant,* AND MANUFACTURERS' LIABILITY INSURANCE COMPANY, *Defendant.*	On Bill, &c.

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Upon reading and filing the Bill of Complaint and the Affidavits thereto attached in the above entitled cause, and the court being satisfied of the sufficiency of the application made in this cause and of the truth of the facts and allegations contained in said bill and affidavits.

And it appearing to the court that the corporation defendant has become insolvent and that its condition is such as to render the continuance of its operations hazardous to the public or to its policy holders.

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It is thereupon on this 1st day of June, 1927, on motion of Mark Townsend, Jr., of counsel with complainant, ordered that the Manufacturers' Liability Insurance Co. be and it is hereby declared insolvent, and that Dr. Daniel T. Winter, Jr., of Jersey City; Myron J. Brown, of New York, N. Y., and Edward I. Edwards, of Jersey City, N. J., are hereby appointed temporary Receivers of the said

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corporation to take, hold and conserve the assets of said corporation, and that the said Manufacturers' Liability Insurance Co., its officers, servants and agents absolutely desist and refrain and they are hereby enjoined and restrained from exercising any of its privileges and franchises, except through said receivers and from collecting or receiving any debts or paying out, selling or transferring any of its estate, money, funds, lands, tenements or effects, 10 except by and to the Receivers appointed by this court.

And it is further ordered that the said Receivers, before they shall enter upon their duties as said Receivers, shall take the oath prescribed by law and each give a bond to the Chancellor of the State of New Jersey in the sum of $50,000, conditioned for the faithful performance of their duties to be approved as to form and security thereof by one of the special Masters of this court.

20 And it is further ordered that the said Manufacturers' Liability Insurance Company shall show cause before the Chancellor, at the Chancery Chambers, Jersey City, N. J., on the 27th day of June, 1927, at ten o'clock, in the forenoon of said day or as soon thereafter as counsel can be heard why the Receivers named herein should not be made permanent.

And it is further ordered that copies of the Bill of Complaint and of this order, certified by the so- 30 licitor of the complainant as true copies be served upon the defendant within ten days from the date hereof.

E. R. Walker, *C.*

Respectfully advised,
Vivian M. Lewis, *V. C.*

ORDER APPOINTING PERMANENT RECEIVERS

(*Filed August* 22, 1927)

IN CHANCERY OF NEW JERSEY.

BETWEEN EDWARD MAXSON, as Commissioner of Banking and Insurance, *Complainant,* AND MANUFACTURERS' LIABILITY INSURANCE COMPANY, *Defendant.*	On Bill, &c.

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It appearing that an order was made in the above stated cause on June 1, 1927, appointing Myron J. Brown, Edward I. Edwards and Daniel T. Winter, Jr., temporary receivers of the above named defendant company, and an order to show cause having been made at the same time, why the said therein appointed Myron J. Brown, Edward I. Edwards and Daniel T. Winter, Jr., the receivers therein appointed, should not be made permanent and why an injunction should not issue according to the prayer of said bill and the law and practice of this court, and the statute in said case made and provided, said order being returnable before this Court on June 27, 1927, and proof of service of a copy of said order, together with copy of the bill of complaint certified by the solicitors of the complainant, true copies having been made. And the summary inquiry prescribed by the statute having been duly made in the presence of Mark Town-

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send, Jr., of counsel for the defendant, and Edward Maxson, Commissioner of Banking and Insurance of the State of New Jersey, and De Witt Van Buskirk, a stockholder, appearing pro se, and Frederick Hopkins, counsel for Walter Cole, Walter Pollock, Fred Atwater, George G. Raymond and Arthur E. Williamson, directors and stockholders of said defendant, and Walter Cole, executor of the Estate of Samuel More, deceased; Victor Garrett and other stockholders of said defendant, and the Tietjen & Long Drydock Co., a corporation, a policyholder of said defendant, and no one appearing for the defendant other than the said Frederick Hopkins, and the said Frederick Hopkins consenting that a receiver be appointed and it appearing that the said Edward Maxson, Commissioner of Banking and Insurance has ascertained as a result of an examination authorized by the statute in such case made and provided that its condition and methods of business are such as to render continuance of its operations hazardous to its policyholders and its stockholders, and that its assets after charging it with an amount requisite for the re-insurance of all outstanding risks, and with its other liabilities, including capital stock up to the minimum amount required by the statute in such case made and provided amount to less than such minimum amount of such capital stock.

It is, therefore, on this 22nd day of August, 1927,

Ordered, adjudged and decreed that the said order to show cause be made absolute, that an injunction be issued pursuant to the prayer of said bill, according to law and the practice of this Court and the staute in such case made and provided, restraining the defendant corporation and its officers and agents from exercising any of its privileges and franchises and from collecting and receiving any debts or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except by or to the receivers

appointed by this Court, until this Court shall otherwise order, and the said defendant is hereby ordered to refrain and desist from doing or attempting to do any of the acts above mentioned, to restrain which the said writ of injunction is hereby ordered to issue as aforesaid.

And it is further:

Ordered, that Myron J. Brown, of New York City, and Edward I. Edwards, of Jersey City, and Ernest Heppenheimer, of Jersey City, be, and they hereby are appointed receivers for the creditors, policyholders and stockholders of the said defendant corporation, with the full possession of all the powers and charged with the performance of all duties defined and prescribed by law, and especially by an act entitled "An act concerning corporations," approved April 21, 1896, and the supplements and amendments thereto and an act entitled "An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State," approved April 3, 1902, and the supplements and amendments thereto. And it is further

Ordered, that the oath and the bond in the sum of $50,000 heretofore given to the Chancellor by the said Myron J. Brown, as receiver, be and the same hereby are continued in effect.

And it is further:

Ordered, that Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer, before entering upon their duties as receivers, take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey in the sum of $50,000 each, for the faithful performance of their duties as receivers, which bond shall be approved as to form and sufficiency thereof, by one of the special masters of this Court, and shall be filed in the office of the Clerk in Chancery as required by law.

E. R. Walker, *C.*

Respectfully advised,

Vivian M. Lewis, *V. C.*

PROOF OF CLAIM

(*Filed February* 23, 1928)

In Chancery of New Jersey.

Between Edward Maxson, as Commissioner of Banking and Insurance, *Complainant,* and 10 Manufacturers' Liability Insurance Company, *Defendant.*	On Bill, &c.

To Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer, Receivers of Manufacturers' Liability Insurance Company:

Please Take Notice, that the Manufacturers' Liability Insurance Company, of which you are the 20 Receiver, is indebted to the undersigned, in the sum of $21,959.81 for unearned premium on policies according to list hereto attached and made a part hereof, and numbered 1-29 inclusive, said list, dated February 21, 1928, which was cancelled by the company, on June 2, 1927, effective June 2, 1927, the original premiums of which policies were $34,263.20, cancelled by the company at pro rata.

Yours respectfully,

30 Alfred N. La Brecque,
Claimant.

Dated February 21, 1928.

County of Norfolk,
State of Massachusetts. } *ss.*

Alfred N. La Brecque being duly sworn, says that he is the claimant named in the above proof of claim; that he has read the same, and that the statements therein contained are true.

Subscribed and sworn to before me this 21st day of February, 1928.

James A. Mulhall,
Notary Public.

(Note: List containing about 900 items attached to proof of claim.)

PROOF OF CLAIM

(*Filed March* 11, 1928)

In Chancery of New Jersey.

Between Edward Maxson, as Commissioner of Banking and Insurance, *Complainant,* and Manufacturers' Liability Insurance Company, *Defendant.*	On Bill, &c.

To Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer, Receivers of Manufacturers' Liability Insurance Company:

Please Take Notice, that the Manufacturers' Liability Insurance Company, of which you are

the Receiver is indebted to the undersigned in the sum of $961.98 for unearned premium on policies according to list hereto attached and made a part hereof, said list, dated March 9, 1928, which were cancelled by the company, on June 2, 1927, effective June 2, 1927, the original premiums of which $1,417.89, cancelled by the company, at pro rata.

Yours respectfully,

10 ALFRED N. LA BRECQUE,
Claimant.

Dated March 9, 1928.

COUNTY OF NORFOLK,
STATE OF MASSACHUSETTS. } *ss.*

ALFRED N. LA BRECQUE being duly sworn, says that he is the claimant named in the above proof of claim; that he has read the same, and that the
20 statements therein contained are true.

Subscribed and sworn to before me this 9th day of March, 1928.

JAMES A. MULHALL,
Notary Public.

(Note: List containing about 400 items attached to proof of claim.)

ASSIGNMENT OF CLAIMS

30 (*Filed January* 25, 1929)

KNOW ALL MEN BY THESE PRESENTS, That WHEREAS Paul J. Bertelsen, of Brookline, County of Norfolk and Commonwealth of Massachusetts, Irving G. Hall, Jr., of Lexington, County of Middlesex, said Commonwealth, Joseph W. Keith, of Brockton, County of Plymouth, said Commonwealth, John W. Lowrance, of Hingham, said

County of Plymouth in said Commonwealth, and Philip C. Heald, of Nashua, State of New Hampshire, have heretofore for accommodation endorsed my promissory note in the amount of $13,000. drawn in favor of the National Shawmut Bank of Boston dated October 31, 1927 which set note has been from time to time reduced and renewed, and of which principal amount there now remains unpaid the sum of $7,000 together with interest thereon from the first day of October, 1928, and 10

Whereas I desire the endorsers aforesaid to endorse a demand note dated October 1, 1928 in favor of the said National Shawmut Bank of Boston and to guarantee the payment of interest now due and to become due upon said note,

Now, Therefore, in consideration of their endorsement of the said note of $7,000 dated October 1, 1928, I Alfred N. La Brecque, of Quincy, in the County of Norfolk, Commonwealth of Massachusetts, hereby assign, transfer and set over unto 20 Irving G. Hall, Jr., as trustee nevertheless, any and all claims which I have of my own right or as assignee against the Manufacturers Liability Insurance Company of New Jersey and/or against Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer, as they are Receivers of the said Manufacturers Liability Insurance Company and/or their successors.

The purpose of this assignment and the trust by it imposed upon the said Irving G. Hall, Jr. is that 30 the said Paul J. Bertelsen, Irving G. Hall, Jr., Joseph W. Keith, John W. Lowrance and Philip C. Heald shall be indemnified and held harmless in the premises of said original loan and/or the said note in the amount of $7,000. dated October 1, 1928, and this assignment is made as security for the payment by me of any and all amounts due by way of principal or interest in the premises of said note or any renewal or extension thereof.

I hereby irrevocably appoint the said Irving G. Hall, Jr., my true and lawful attorney for me and in my name and stead to act in the premises of my claims against the said Manufacturers Liability Insurance Company and/or against Myron J. Brown, Edward I. Edwards, and Ernest Heppenheimer, as they are Receivers of the said Manufacturers Liability Insurance Company and/or their successors, as fully as if I myself were present and acting, and I hereby empower the said Irving G. Hall, Jr. to apply any and all funds by him recovered in respect of said claims to the payment of principal and interest of said note and/or any renewals or extensions of same, and he shall account to me for the balance, if any, remaining after the payment of the said note, together with interest and/or any renewals or extensions of same.

For purposes of identifying the said claims hereby assigned, reference is made, but not exclusively, to two certain proofs of claim filed with the said Receivers dated February 21, 1928, and March 9, 1928, respectively, and said proofs of claim are hereby referred to and by reference incorporated herewith and made a part of this assignment.

Nothing herein shall be construed as in any wise limiting my liability in respect of the said note to the National Shawmut Bank of Boston and/or to the aforesaid endorsers.

In Witness Whereof, I have hereunto set my hand and seal this 19th day of January, 1929.

Alfred N. La Brecque.

PETITION OF ALFRED N. LA BRECQUE

(*Filed May* 18, 1931)

IN CHANCERY OF NEW JERSEY.

BETWEEN EDWARD MAXSON, as Commissioner of Banking and Insurance, *Complainant,* AND MANUFACTURERS' LIABILITY INSURANCE COMPANY, *Defendant.*	On Bill, &c.

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To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Alfred N. La Brecque, of the City of Quincy, in the County of Norfolk and Commonwealth of Massachusetts: and Irving G. Hall, Jr., of Lexington, in the County of Middlesex and Commonwealth of Massachusetts, respectfully shows:

1. On June 2, 1927, temporary Receivers were appointed in the above entitled matter for the defendant and on August 22, 1927, Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer were appointed permanent Receivers of the defendant.

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2. On February 23, 1928, the petitioner Alfred N. La Brecque filed his claim for $21,959.81 with the said Receivers, and on March 11, 1928, the said La Brecque filed his claim for $961.98 with the said Receivers. The two said claims were filed with the defendant within the time limited for filing of

claims and were for unearned premiums assigned to the said La Brecque, as hereinafter set forth, on policies of insurance issued by the defendant and set forth in the lists attached to the said claims and made a part thereof, which policies of insurance were cancelled by the defendant on June 2, 1927, as the petitioners contend.

3. On or about January 19, 1929, the said La Brecque, in writing, assigned and set over unto the
10 petitioner Irving G. Hall, Jr., as trustee, any and all claims which he had of his own right or as assignee against the defendant and/or said Receivers, as collateral security for the payment of certain sums of money, the particulars of which are specified in the said written assignment, notice of which was given to and received by the said Receivers on or about January 25, 1929.

4. The said La Brecque, at the time of presenting to the Receivers the two said claims, did not
20 demand that a jury shall decide thereon, nor did the said Receivers demand that the said claims shall be referred to a jury.

5. The said La Brecque, on June 2, 1927, and for some time prior thereto, was an insurance broker, in Quincy, Masachusetts, with authority to issue in writing policies of insurance in the defendant company.

6. On June 2, 1927, and for some time prior thereto, one R. G. Sykes was the State Representa-
30 tive or General Agent of the defendant, in the Commonwealth of Massachusetts.

7. On June 2, 1927, Commonwealth of Massachusetts had a Compulsory Automobile Insurance Law, which required owners of automobiles to file with the Registrar of Motor Vehicles policies of insurance in a company licensed and authorized to do business in Massachusetts. On said date, Wesley E. Monk, Commissioner of Insurance of Massachusetts, revoked the license of the de-

fendant to do business in Massachusetts, alleging failure or inability to comply with the said Compulsory Automobile Insurance Law. The then Registrar of Motor Vehicles of Massachusetts notified each person holding a policy of insurance in the defendant company, that he must file new automobile insurance certificates as of June 2, 1927, of a company licensed or authorized to do business in Massachusetts, else the said person's automobile license would be subject to revocation. 10

8. On June 3, 1927, the said R. G. Sykes notified the petitioner La Brecque that he cancelled, as of June 2, 1927, all of the policies issued in the defendant company, and with the consent of the proper authorities of Massachusetts, placed all of the persons insured with the defendant on binder with another company licensed to do business in Massachusetts, thereby relieving the necessity of filing immediately new insurance certificates and preventing revocation of licenses. 20

9. At the time of the cancellation of the policies, as set forth in paragraph 8, the said La Brecque paid each holder of a policy issued by the defendant a return premium for the unexpired term of said policy of insurance, upon a pro rata basis for the time the said policy had to run, and took assignments of the said policy holders for the amount of the unearned premium, which assignments compose the claims filed by the said La Brecque and assigned by him to the said petitioner Irving G. Hall, Jr., as above set forth. 30

10. Since the filing of the said claims, as set forth in paragraph 2, the said Receivers or survivors of them have not taken up the said claims for allowance or disallowance.

11. On November 7, 1928, the Receivers filed a petition in this Court, which, among other things, contains matters of the following tenor and import: That any of the insurance brokers of Massa-

chusetts, who hold assignments of the policy holders' claims for the return of unearned premiums and who filed claims with the defendant within the time limited for filing of claims against the defendant, have submitted to the Receivers and offered to settle all outstanding accounts, including the return of unearned premiums, on the following basis:

(a) That the amount of the return unearned premiums be determined on a short rate basis.

(b) That the amount of the outstanding premiums due the defendant for earned premiums, which have not been paid the defendant, be determined on a pro rata basis and that each individual insurance broker, who acted as broker in writing any of these policies, assume the payment of the same.

(c) That from the amount due the insurance brokers, determined on the aforesaid basis, shall be deducted the amount due the Receivers on uncollected premiums, determined on the aforesaid basis, and that the Receivers then pay 50% of this balance in full and final settlement, and that the Receivers recommended this settlement, in view of the legal questions involved and expenses necessary to be incurred in collection of outstanding premiums.

12. On November 7, 1928, this Court by its order authorized the Receivers to accept the offer described in said petition mentioned in paragraph 11 and compute the same by paying to each individual policy holder or each insurance broker, who holds assignments of any claims and who filed claims, out of the funds of the defendant, in accordance with the plans set forth in the petition.

13. The petitioners at no time agreed to settle their claims on the basis and in the manner set forth in paragraph 11. The petitioners have requested the Receivers, on numerous occasions, to

allow the full amount of the claims as filed or determine how much of the said claims would be allowed or disallowed. The Receivers have not determined the claims in either manner and have not, up to this time, called upon the petitioners to prove the said claims. The petitioners, on account of the Receivers' failure to determine the amount of the claims, have not been in a position to accept or reject the offer of compromise as above set forth. 10

Your petitioners therefore pray that an order of this Court may issue, directing the Receivers of the Manufacturers' Liability Insurance Company, the defendant, to show cause before this Court why the said claims of the petitioners should not be allowed or disallowed to the end that the petitioners may have a speedy determination of their claims, or why this Court should not hear and determine the said claims and the rights of the petitioners and/or why the said petitioners should not 20 be given leave to bring an action at law against the Receivers, and that your petitioners may have such other and further relief as shall be equitable and just in the premises.

EDMUND A. HAYES,
Solicitor for petitioners,
Alfred N. LaBrecque
and Irving G. Hall, Jr.

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STATE OF NEW JERSEY,
COUNTY OF MIDDLESEX. } *ss.*

Edmund A. Hayes, of full age, being duly sworn according to law upon his oath, deposes and says:

I am the solicitor of Alfred N. La Brecque and Irving G. Hall, Jr., the petitioners in the foregoing petition named, and the matters and things therein set forth are true to the best of my knowledge and belief.

1. On June 2, 1927, temporary Receivers were appointed in the above entitled matter for the defendant and on August 22, 1927, Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer were appointed permanent Receivers of the defendant.

2. On February 23, 1928, the petitioner Alfred N. La Breque filed his claim for $21,959.81 with the said Receivers, and on March 11, 1928, the said La Brecque filed his claim for $961.98 with the said Receivers. The two said claims were filed with the defendant within the time limited for filing of claims and were for unearned premiums assigned to the said La Brecque, as hereinafter set forth, on policies of insurance issued by the defendant and set forth in the lists attached to the said claims and made a part thereof, which policies of insurance were cancelled by the defendant on June 2, 1927, as the petitioners contend.

3. On or about January 19, 1929, the said La Brecque, in writing, assigned and set over unto the petitioner Irving G. Hall, Jr., as trustee, any and all claims which he has of his own right or as assignee against the defendant and/or said Receivers, as collateral security for the payment of certain sums of money, the particulars of which are specified in the said written assignment, notice of which was given to and received by the said Receivers on or about January 25, 1929.

4. The said La Brecque, at the time of presenting to the Receivers the two said claims, did not demand that a jury shall decide thereon, nor did the said Receivers demand that the said claims shall be referred to a jury.

5. The said La Brecque, on June 2, 1927, and for some time prior thereto, was an insurance broker, in Quincy, Massachusetts, with authority to issue in writing policies of insurance in the defendant company.

6. On June 2, 1927, and for some time prior thereto, one R. G. Sykes was the State Representative or General Agent of the defendant, in the Commonwealth of Massachusetts.

7. On June 2, 1927, Commonwealth of Massachusetts had a Compulsory Automobile Insurance Law, which required owners of automobiles to file with the Registrar of Motor Vehicles policies of insurance in a company licensed and authorized to do business in Massachusetts On said date, Wesley E. Monk, Commissioner of Insurance of Massachusetts, revoked the license of the defendant to do business in Massachusetts, alleging failure or inability to comply with the said Compulsory Automobile Insurance Law. The then Registrar of Motor Vehicles of Massachusetts notified each person holding a policy of insurance in the defendant company that he must file new automobile insurance certificates as of June 2, 1927, of a company licensed or authorized to do business in Massachusetts, else the said person's automobile license would be subject to revocation.

8. On June 3, 1927, the said R. G. Sykes notified the petitioner La Brecque that he cancelled, as of June 2, 1927, all of the policies issued in the defendant company, and with the consent of the proper authorities of Massachusetts, placed all of the persons insured with the defendant on binder with another company licensed to do business in Massachusetts, thereby relieving the necessity of filing immediately new insurance certificates and preventing revocation of licenses.

9. At the time of the cancellation of the policies, as set forth in paragraph 8, the said La Brecque paid each holder of a policy issued by the defendant a return premium for the unexpired term of said policy of insurance, upon a pro rata basis for the time the said policy had to run, and took assignments of the said policy holders for the

amount of the unearned premium, which assignments compose the claims filed by the said La Brecque and assigned by him to the said petitioner Irving G. Hall, Jr., as above set forth.

10. Since the filing of the said claims, as set forth in paragraph 2, the said Receivers or survivors of them have not taken up the said claims for allowance or disallowance.

11. On November 7, 1928, the Receivers filed a
10 petiton in this Court, which, among other things, contains matters of the following tenor and import: That any of the insurance brokers of Massachusetts, who hold assignments of the policy holders' claims for the return of unearned premiums and who filed claims with the defendant within the time limited for filing of claims against the defendant, have submitted to the Receivers and offered to settle all outstanding accounts, including the return of unearned premiums, on the following
20 basis:

(a) That the amount of the return unearned premiums be determined on a short rate basis.

(b) That the amount of the outstanding premiums due the defendant for earned premiums, which have not been paid the defendant, be determined on a pro rata basis and that each individual insurance broker, who acted as broker in writing any of these policies, assume the payment of the same.

30 (c) That from the amount due the insurance broker, determined on the aforesaid basis, shall be deducted the amount due the Receivers on uncollected premiums, determined on the aforesaid basis, and that the Receivers then pay 50% of this balance in full and final settlement, and that the Receivers recommended this settlement in view of the legal questions involved and expenses necessary to be incurred in collection of outstanding premiums.

12. On November 7, 1928, this Court by its order authorized the Receivers to accept the offer described in said petition mentioned in paragraph 11 and compute the same by paying to each individual policy holder or each insurance broker, who holds assignments of any claims and who filed claims, out of the funds of the defendant, in accordance with the plans set forth in the petition.

13. The petitioners at no time agreed to settle their claims on the basis and in the manner set forth in paragraph 11. The petitioners have requested the Receivers, on numerous occasions, to allow the full amount of the claims as filed or determine how much of the said claims would be allowed or disallowed. The Receivers have not determined the claims in either manner and have not, up to this time, called upon the petitioners to prove the said claims. The petitioners, on account of the Receivers' failure to determine the amount of the claims, have not been in a position to accept or reject the offer of compromise as above set forth.

EDMUND A. HAYES.

A true copy.
EDMUND A. HAYES.

Sworn and subscribed to before me this sixteenth day of May, nineteen hundred and thirty-one.

MYRTLE L. VOULLAIRE,
Notary Public of N. J.

ORDER TO SHOW CAUSE

(*Filed May* 18, 1931)

In Chancery of New Jersey.

Between Edward Maxson, as Commissioner of Banking and Insurance, *Complainant,* and Manufacturers' Liability Insurance Company, *Defendant.*	On Bill, &c. On Petition.

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This matter being opened to the Court by Edmund A. Hayes, solicitor of the petitioners, Alfred N. La Brecque and Irving G. Hall, Jr., and it further appearing that the claims of the petitioners for $21,959.81 and $961.98 were filed on February 23, 1928, and on March 11, 1928, respectively, with the receivers, Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer, heretofore appointed for the defendant, and it further appearing that the said claims of the petitioners have not been allowed or disallowed, in whole or in part, and it further appearing that the said petitioners are desirous of a speedy determination of their claims and of their right in connection therewith;

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It is, on this 18th day of May, nineteen hundred and thirty-one, Ordered that the receivers of the Manufacturers' Liability Insurance Company, defendant, show cause before this Court, at the Chancery Chambers, in the City of Jersey City, on Mon-

day, the twenty-fifth day of May, 1931, why the receivers should not allow or disallow the claims of the petitioners to the end that the petitioners may have a speedy determination of their claims or why this Court should not hear and determine the said claims and rights of the petitioners and/or why the said petitioners should not be given leave to bring an action at law against the receivers, or why the said petitioners may not have such other and further relief as shall be equitable and just; 10 and

It is further Ordered that a true copy of the petition and this Order, certified to by the solicitor of the petitioners, be served upon Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer, as receivers, and Mark J. Townsend, counsel for said receivers, or one of them, within two (2) days from the date of the day hereof.

E. R. Walker, *C.*

Respectfully advised, 20
Vivian M. Lewis, *V. C.*

ORDER

(*Filed July* 7, 1931)

In Chancery of New Jersey.

Between	
Edward Maxson, as Commissioner of Banking and Insurance, *Complainant,* and Manufacturers' Liability Insurance Company, *Defendant.*	On Petition of Alfred La Brecque, , et al. On Order to Show Cause.

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This matter being opened to the Court by Herman H. Anekstein appearing for Edmund A.

Hayes, solicitor of petitioners Alfred N. La Brecque and Irving G. Hall, Jr., and in the presence of Mark Townsend, solicitor of the Receivers for the defendant, and it appearing that the petitions and proofs have been read and considered by the Court and the arguments of the respective counsel have been heard and considered by the Court;

It is, on this first day of June, nineteen hundred and thirty-one, ORDERED that the Receivers for the
10 defendant examine the petitioners Alfred N. La Brecque and Irving G. Hall, Jr., in relation to their said claims filed against the defendant with the said Receivers, and that after said examination or examinations, the said Receivers allow or disallow their claims, or any part thereof, and notify the said Alfred N. La Brecque and Irving G. Hall, Jr., or their solicitor, of their determination within thirty (30) days from the first day of June, nineteen hundred and thirty-one.

20 E. R. WALKER, *C.*

Respectfully advised,
VIVIAN M. LEWIS, *V. C.*

RECEIVERS' DETERMINATION

February 6, 1932.

Herman Anekstein, Esq.,
46 Paterson Street,
New Brunswick, N. J.

30 RE: *La Brecque vs. Manufacturers' Liability Insurance Company.*

DEAR SIR:

The Receivers of the Manufacturers' Liability Insurance Company have requested me to advise you that the claim of Mr. La Brecque against them has been allowed in the sum of seventeen hundred forty-nine and 08/100 ($1,749.08) dollars.

Very truly yours,
MARK TOWNSEND, JR.,
Counsel for Receivers.

PETITION OF APPEAL FROM RECEIVERS' DETERMINATION

(*Filed March* 22, 1932)

IN CHANCERY OF NEW JERSEY.

BETWEEN EDWARD MAXSON, as Commissioner of Banking and Insurance, *Complainant,* AND MANUFACTURERS' LIABILITY INSURANCE COMPANY, *Defendant.*	On Bill, &c.

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To *The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:*

The petition of Raymond F. Barrett, of the City of Milton, in the County of Norfolk and Commonwealth of Massachusetts; and Irving G. Hall, Jr., of Lexington, in the County of Middlesex and Commonwealth of Massachusetts, respectively shows:

1. On February 23, 1928, Alfred N. La Brecque, being a creditor of the defendant, filed for allowance his claim for $21,959.81 with the Receivers appointed in this cause, and on March 11, 1928, the said La Brecque filed for allowance his claim for $961.98 with the said Receivers. The said two claims were presented in due form and properly proved and filed with the Receivers within the time limited for filing of claims, and were for unearned premiums assigned to the said LaBrecque, as hereinafter set forth, on policies of insurance issued between January 1, 1927, and June 2, 1927, by the

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defendant in the Commonwealth of Massachusetts, through its agent, Alfred N. La Brecque, and which are set forth in the list attached to the said claims and made a part thereof, which policies of insurance were cancelled on June 2, 1927, as the petitioners contend, by the Commonwealth of Massachusetts, under whose authority the defendant was doing business in said Commonwealth, and by the defendant and/or by its agents or servants.

10 2. On or about January 19, 1929, the said La Brecque, in writing, assigned and set over unto the petitioner, Irving G. Hall, Jr., as trustee, any and all claims which he had of his own right or as assignee against the defendant and/or said Receivers, as collateral security for the payment of certain sums of money, the particulars of which are specified in the said written assignment, notice of which was given to and received by the said Receivers on or about January 25, 1929.

20 3. On or about January 1, 1926, the said Alfred N. La Brecque was appointed a general agent of the defendant in Massachusetts with authority to issue, in writing, and to cancel policies of insurance in the defendant company. He continued as such general agent, as hereinafter set forth.

4. On or about January 1, 1926, one R. G. Sykes was a State Representative or General Agent of the defendant in the Commonwealth of Massachusetts. He continued as such General Agent, as hereinafter set forth.

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5. On June 2, 1927, the Commonwealth of Massachusetts had a Compulsory Automobile Insurance Law, which required owners of automobiles to file with the Registrar of Motor Vehicles of said Commonwealth policies of insurance in a company licensed and authorized to do business in Massachusetts. Under the said law, all insurance policies were to terminate concurrently with the registration of automobiles. On said date, Wesley E. Monk,

Commissioner of Insurance of Massachusetts, revoked the license of the defendant to do business in Massachusetts, alleging failure or inability to comply with the said Compulsory Automobile Insurance Law. The then Registrar of Motor Vehicles of Massachusetts notified each person holding a policy of insurance in the defendant company that he must file, as of June 2, 1927, a new automobile insurance certificate of a company licensed or authorized to do business in Massachusetts, else the said person's automobile license would be subject to revocation.

6. On June 3, 1927, and before the holders of policies in the defendant company received from the said Registrar of Motor Vehicles the notice that the defendant's authority to do business in Massachusetts was revoked, the said R. G. Sykes notified the said La Brecque that he cancelled, as of June 2, 1927, all of the policies issued in the defendant company, and with the consent of the proper authorities of Massachusetts, placed all of the persons insured with the defendant on binder with another company licensed to do business in Massachusetts, thereby relieving the necessity of filing immediately new insurance certificates and preventing revocation of licenses.

7. At the time of the cancellation of the policies, as set forth in paragraph 6, the said La Brecque paid each holder of a policy issued by the defendant a return premium for the unexpired term of said policy of insurance, upon a pro rata basis for the time the said policy had to run, and took assignments, of the said policyholders for the amount of the unearned premium, which assignments compose the claims filed by the said La Brecque and assigned by him to the said petitioner, Irving G. Hall, Jr., as above set forth. None of the said policies were cancelled at the request or demand of a holder.

8. The said La Brecque received a commission of 20% for all business written by him in 1927.

9. On June 19, 1931, the Receivers conducted a hearing at the office of the defendant in Jersey City, New Jersey, at which time evidence was submitted to substantiate the claims filed by La Brecque. The amount due him in accordance with the filed claims is $22,921.79, representing the amount of unearned premiums paid by and assigned to the said La Brecque upon the policies issued by him in the defendant company, as set forth in paragraph 7. As
10 the $22,921.79 represents return premium the defendant is in equity entitled to receive from the said La Brecque a return commission on the return premium. The commissions received by said La Brecque on the 1927 business was 20%. The defendant is entitled to a credit of $4,584.36 for return commissions. Aside from the foregoing, on June 2, 1927, the said La Brecque owed to the defendant the sum of $5,639.64. After deducting the sums of $4,584.36 and $5,639.64 from the amount
20 of the filed claims, the balance due La Brecque is $12,691.79.

10. On or about September 1, 1931, the said Alfred N. La Brecque died intestate a resident of the City of Quincy, County of Norfolk, Massachusetts. Shortly thereafter your petitioner, Raymond F. Barrett, was appointed administrator of the Estate of Alfred N. La Brecque, deceased, by the Probate Court of Norfolk County, Massachusetts.

11. On February 9, 1932, the Receivers, through
30 Mark J. Townsend, their counsel, notified by mail the solicitor of the petitioners that the claim of La Brecque against the Receivers had been allowed in the sum of $1,749.08, with which determination of the Receivers the petitioners are aggrieved.

12. The Receivers contend that Wesley E. Monk, Commissioner of Insurance of Massachusetts, was without authority to revoke the license of the defendant to do business in Massachusetts and that the cancellations of the policies in the defendant

company were without authority in law and without authority from the defendant company and, therefore, the return premiums should be computed on a short rate basis.

13. Your petitioners contend that the policies were cancelled by operation of law and by authority of the Commonwealth of Massachusetts, under whose authority the defendant was doing business in Massachusetts, and by the defendant through its duly authorized agent or servant, and that the policies were not cancelled by law or as a matter of fact by the policyholders. Your petitioners further contend, if the return premiums were to be computed on a short rate basis the amount now due the Estate of Alfred N. La Brecque, deceased is $9,030.29 and not $1,749.08 as the Receivers have determined.

And your petitioners, within thirty days after notice of the determination of the Receivers, respectfully appeal from the said determination of the Receivers as aforesaid, to this Honorable Court, and pray that the same may be reversed and such order made in the premises as shall be agreeable to equity and good conscience.

RAYMOND F. BARRETT,
Administrator of the Estate of Allfred N. La Brecque, deceased.

IRVING G. HALL, JR.,
Petitioners.

By: EDMUND A. HAYES,
Solicitor of Petitioners.

ORDER TO ANSWER PETITION OF APPEAL

(*Filed March* 7, 1932)

IN CHANCERY OF NEW JERSEY.

BETWEEN

10 EDWARD MAXSON, as Commissioner of Banking and Insurance,

Complainant,

AND

MANUFACTURERS' LIABILITY INSURANCE COMPANY,

Defendant.

On Bill, &c.

20 This matter being presented to the Court by Edmund A. Hayes, solicitor of Raymond F. Barrett, Administrator of the Estate of Alfred N. La Brecque, deceased, and Irving G. Hall, Jr., petitioners on appeal from the determination of the Receivers appointed in this cause with respect to the claim filed by Alfred N. La Brecque, now deceased, and it appearing that the Receivers have notified the solicitor of the petitioners of their determination on the said claims on February 9, 1932,
30 and that the petitioners are aggrieved by the said determination of the Receivers and have appealed to this Court within thirty days after notice of such determination;

It is, on this seventh day of March, nineteen hundred and thirty-two, ORDERED that a copy of the petition of appeal and of this order, certified by the solicitor of the petitioners, be served on the Receivers by leaving a copy of the same with Mark J. Townsend, Esq., counsel for said Receivers, at his

office in Jersey City, and that the said Receivers answer the said petition within twenty days after service upon them of the said petition and of this order, as aforesaid.

E. R. Walker, *C.*

Respectfully advised,
Vivian M. Lewis, *V. C.*

ANSWER OF RECEIVERS TO PETITION OF APPEAL

(*Filed March* 28, 1932) 10

In Chancery of New Jersey.

Between Edward Maxson, as Commissioner of Banking and Insurance, *Complainant,* and Manufacturers' Liability Insurance Company, *Defendant.*	On Bill, &c. 20

The joint answer of Myron J. Brown and Ernest Heppenheimer as Receivers of the defendant herein, to the petition of Raymond F. Barrett and Irving G. Hall, Jr., petitioners. 30

These said Receivers respectively answering say:

1. They admit so much of paragraph one of said petition as alleges Alfred N. La Brecque filed claims as a creditor of the defendant herein, but

dispute the amounts of such claims as being proper and the contention of the petitioners that the policies of insurance referred to were or could be properly cancelled by the Commonwealth of Massachusetts or any of its officers.

2. They admit the allegations of paragraph 2.

3. They deny the allegations of paragraph 3.

4. They admit the allegation in paragraph 4 that R. G. Sykes was State representative as alleged therein, but deny that he continued as such, as alleged.

5. They have not sufficient knowledge or information to admit or deny the allegations of paragraph 5 as to the actions of Wesley E. Monk, Commissioner of Insurance of Massachusetts.

6. They have no knowledge or information as to the actions of R. G. Sykes, referred to in paragraph 6, but submit that any of his actions alleged were independent of these Receivers and of no effect upon them.

7. Upon information and belief they deny the allegations of paragraph 7.

8. They admit the allegation of paragraph 8.

9. They deny the allegations of paragraph 9 except they admit the hearing referred to and that there are certain sums due these Receivers.

10. They have no knowledge or information as to the allegation of paragraph 10; but they are willing to admit same.

11. They admit the allegations of paragraph 11.

12. They admit the allegations of paragraph 12.

13. They deny each and every contention of the petitioners as alleged in paragraph 13.

14. These Receivers further answering say that from the time of their appointment on June 1, 1927, they have not been represented by anyone in the State of Massachusetts or elsewhere, with the authority to cancel policies of the defendant herein;

that these Receivers did not cancel the policies referred to; that any cancellations otherwise made could not bind these Receivers and consequently were made by the assureds or their respective agents; and by reason thereof any unearned premiums should properly be based on what is known as the short rate basis, as provided in the various policies issued.

15. That they have always been willing to allow the claims of said La Brecque for the proper amount due for unearned premiums on such short rate basis, less certain indebtedness due from said La Brecque which amount they contend is $1,749.08.

16. These Receivers therefore pray that the said petition be dismissed, with their reasonable costs and charges most wrongfully sustained.

MARK TOWNSEND, JR.,
Solicitor for and of counsel with said Receivers.

ORDER SUSTAINING RECEIVERS' DETERMINATION

(*Filed June* 21, 1934)

In Chancery of New Jersey.

Between Edward Maxson, as Commissioner of Banking and Insurance, *Complainant,* and Manufacturers' Liability Insurance Company, *Defendant.*	On Bill, &c.

This matter coming on to be heard on October 11, 1932, at the Chancery Chambers in Paterson, New Jersey, in the presence of Herman H. Anekstein, appearing for Edmund A. Hayes, Esquire, Counsel for Raymond F. Barrett, Administrator of the estate of Alfred N. La Brecque, deceased, and Irving G. Hall, Jr., petitioners on appeal from the determination of the Receivers of the defendant, Manufacturers' Liability Insurance Company, on claims of Alfred N. La Brecque, filed with the said Receivers, and Mark Townsend, Jr., Counsel for the Receivers.

And the petition of appeal and answer of the Receivers thereto having been read and considered by the Court, and the arguments of the respective counsel having been heard and considered by the Court.

And the Court being of the opinion that the determination of the Receivers in allowing their

claims in the sum of $1,749.08, and disallowing the balance of their claims in the sum of $21,172.71 should be sustained and that the petition of appeal of the petitioners should be denied, it is on this 24th day of May, 1934,

Ordered, that the petition of appeal of Raymond F. Barrett, Administrator of the Estate of Alfred N. La Brecque, deceased, and Irving G. Hall, Jr., from the determination of the Receivers respecting the claims filed by Alfred N. La Brecque, be denied, and that the determination and findings of the said Receivers respecting said claims be sustained.

Luther A. Campbell, *C.*

Respectfully advised,
Vivian M. Lewis, V. C.

Edward Maxson, Commissioner of Banking and Insurance,

vs.

Manufacturers' Liability Insurance Company.

TESTIMONY BEFORE RECEIVERS AT JERSEY CITY, N. J., JUNE 19, 1931

(*Filed June* 19, 1931)

In the matter of the claim of Alfred N. Laberecque.

Appearances:

Herman H. Anekstein, Esq.,
For the Claimant.

Mark Townsend, Esq.,
For the Receivers.

ALFRED N. LABERECQUE, called as a witness in his own behalf, being sworn, was examined and testified as follows:

Direct Examination—by Mr. Anekstein:

Q. Mr. Laberecque, what was your business on June 3, 1927, and for some time prior to that?

A. Agent for and representing various insurance companies.

10 Q. Where was your business located?

A. Wallkill Street, Quincy, 1601.

Q. Did you do any business with the Manufacturers' Liability Insurance Company?

A. I was general agent for them.

Q. Write insurance with that company?

A. Yes, sir.

Q. What kind of insurance?

A. All forms of insurance, all the lines the company wrote.

20 Q. Were you a broker or an agent of the Manufacturers' Liability Insurance Company?

A. I was a general agent.

Q. When did you become an agent of the company?

A. Either the latter part of 1929 or in January, 1926, within two or three months of that.

Q. Prior to June 3, 1927—withdraw that. Who appointed you general agent of the Manufacturers' Liability Insurance Company in Massachusetts?

30 A. Mr. William Sykes.

Q. Do you know who he was?

A. State agent of the company.

Q. Prior to June 3, 1927, did you yourself, for any reason whatsoever, cancel any policies of insurance in the Manufacturers'?

A. A number of them.

Q. In cancelling these policies what rate did you use?

A. If I cancelled policies, I cancelled them pro rata.

Q. And who would you inform of that fact?

A. Through the usual routine it would go to Sykes' office.

Q. Were all the cancellations made on that basis approved by Mr. Sykes? A. Yes.

Q. With respect to the policies that were in force around June 3rd, 1927, did any of the people insured by you cancel any policies?

A. On June 2nd?

Q. Around June 3rd, 1927? A. None at all. 10

Q. I am referring to the claims that are now in dispute.

A. None of my assured cancelled themselves.

Q. Who cancelled those policies that were in force on or about June 2nd, 1927? A. Mr. Sykes.

Q. Did he notify you of that fact? A. Yes.

Q. How did he notify you?

A. Verbally and in letter.

Q. Where did he notify you verbally?

A. In his office in Boston. 20

Q. Who was present at that time?

A. A number of people, including Mr. O'Keefe.

Q. Who is Mr. O'Keefe? A. My office manager.

Q. I show you a letter——

Mr. Anekstein—I will have this marked for identification.

(Received and marked C-1 for identification.)

30

Q. I show you letter C-1 for identification and ask you if you have ever seen that letter before this time? A. Yes. I received it.

Q. From whom did you receive that letter?

A. Mr. Sykes.

Mr. Townsend—Suppose you read it into the record.

Mr. Anekstein (Reading)—"June 3rd, 1927. Mr. A. N. Laberecque, 1601 Wallkill Street, Quincy, Massachusetts. Dear Sir: In accordance with your request of June 2nd, 1927, when you called the writer from the Massachusetts Insurance Department requesting him to cancel all your policies as of June 2nd, 1927, I wish to advise you that I have this day advised Mr. D. T. Winter, former president and
10 one of the temporary receivers of the Manufacturers' Liability Insurance Company that all Massachusetts compulsory automobile policies will have to be replaced in other companies as of June 2nd, 1927, in accordance with Insurance Commissioner Wesley Monks' interpretation of the compulsory law, and that I have therefore cancelled all of the Manufacturers' Liability compulsory automobile policies as of June 2nd, 1927. Yours very truly,
20 Manufacturers' Liability Insurance Company, R. G. Sykes, State representative."

Q. Now, with respect to 1927, Mr. Laberecque, did you have an accounting for that business with the company? A. I did.

Q. The business written in 1926 was cancelled on what basis?

A. Pro rata, policies in existence on December 31st.

30 Mr. Townsend—When was this cancelled, you are speaking of? Cancelled on a pro rata basis?

The Witness—As of December 31st, cancelled by the company on account of the compulsory law coming into effect.

Mr. Townsend—What was the actual date they were cancelled?

The Witness—December 31st.

Mr. Townsend—Probably you don't understand my question. You say they cancelled as of December 31st?

The Witness—1926.

Mr. Townsend—Did they antedate their cancellation?

The Witness—No.

Mr. Townsend—Then you mean on December 31st they gave you notice?

The Witness—All existing policies were cancelled.

Q. Who notified you of their cancellation?

A. Sykes. 10

Q. Did he tell what basis to use? A. Yes.

Q. What basis? A. Pro rata.

Q. Then, in other words, all business was considered, therefore, from January 1, 1927?

A. That is correct.

Q. With whom did you settle up the 1927 business? A. With a Mr. Hogan.

Q. Tell me who he is.

A. Why, he came from the home office.

Mr. Townsend—Herman A. Hogan? 20

The Witness—Hogan. I know he wore a black derby.

Mr. Anekstein—May I have this letter marked for identification?

(Letter dated August 5th, from the Manufacturers' Liability Insurance Company, received and marked C-2 for identification, reading as follows: Address same as C-1 for identification: "Dear Sir: I wish to call to 30 your attention the fact that I find on checking the list of credits forwarded to us of pro rata cancellations from 1926 business, that the amount is $6,902.72 net, instead of $6,888.89 as quoted in your letter of July 26, 1929. The gross amount is $8,120.85, less fifteen per cent. commission, $1,218.13, or $6,902.72 net. If this list is to be considered correct, the amount of

the debits should be changed from $14,019.00 to $14,036.37 to equal the check of $4,326.38.

Will you kindly let us hear from you concerning the above so that we may properly distribute the check to the items it covers. Yours very truly, S. Halpin, Accounting Department.'')

Q. I show you C-2 for identification and ask you
10 if you ever saw that before this time? A. Yes.

Q. Mr. Laberecque, did you do your own underwriting? A. Yes.

Q. You cancelled policies on account of being poor risks? A. Yes, I did.

Q. Did Mr. Sykes notify you to cancel on account of poor risks?

A. I don't recall that he ever notified me.

Q. With whom did you do all your business in connection with the Manufacturers'? A. Sykes.

20 Q. To whom did you remit money? A. Sykes.

Q. Whom did you see in matters affecting the interests of the company? A. Sykes.

Q. Why—if you know, why were the 1926 policies cancelled as of December 31, 1926?

A. The compulsory liability act went into force January 1, 1927, and we had a lot of policies which were written in the middle of the year in various months, so, to start the slate clean, because those policies for 1926 did not conform with the standard
30 form under the compulsory act, they were all cancelled December 31st.

Mr. Townsend—You just substituted new policies, didn't you?

The Witness—No. They were already written. The January business was written for the entire year of 1927.

Mr. Townsend—I see. It was rewritten—the business was rewritten in accordance with the policy under the new compulsory act?

The Witness—No. A new policy was issued. The 1926 business was dead. Some we retained, some we did not.

Mr. Townsend—That is what I mean. Written in new policies issued in conformity with the act?

The Witness—We considered it as entirely new business.

Q. Automobile registration in Massachusetts begins with January 1st of the year, and ends on the 31st of December? A. Yes. 10

Q. In other words, new policies would run concurrently with automobile registration for the year? A. That is the law in Massachusetts.

Q. That was the reason why 1926 policies were cancelled on December 31, 1926?

A. That is so, yes.

Q. Do you know the amount of insurance you wrote in the Manufacturers' on or in 1927?

A. No. Mr. O'Keefe would have those figures.

Q. What position did Mr. O'Keefe have with you? A. Office manager. 20

Q. In computing the amount due you, or due from you to the Manufacturers' who gave you the figures? A. Sykes.

Mr. Anekstein—May I have this marked for identification?

Mr. Townsend—Offer it in evidence.

Mr. Anekstein—I just wanted you to see it first. 30

(Tabulation of figures received and marked C-3 in evidence.)

Q. I show you C-3 and ask you did you ever see that before this time? A. Yes.

Q. Where did you see that exhibit before, Mr. Laberecque? A. Mr. Sykes gave it to me.

Q. What does it show or represent?

A. The return premiums due on the 1926 business.

Q. You mean the policy return premium on policies cancelled December 31st?

A. That is right.

Q. Who computed or figured that unearned premium? A. I could not tell you.

Q. Were those figures on the exhibit when you received it from Mr. Sykes? A. Yes.

10 Q. Did you use the figures given to you by Mr. Sykes in giving credit to the assured? A. We did.

Q. You filed how many claims with the Manufacturers' Liability Insurance Company?

A. I don't know. We have a list there.

Mr. Anekstein—I think Mr. Townsend will admit that two claims were filed, one for $21,959.81 and one for $961.98.

Mr. Townsend—Yes; that is all right.

20

Q. When you were informed by Mr. Sykes that the policies were cancelled on June 3, 1927, what basis did you use in computing the amount of unearned premium? A. What date was that?

Q. June 3, 1927? A. Pro rata.

Q. Who advised you to use that basis?

A. Sykes.

Q. Do you know the exact day when the policies were cancelled?

30 A. Either the second or the third. I think it was the second.

Q. You think it was the second of June, 1927?

A. Yes.

Q. Who compiled the list of accounts for you when you submitted the claim? A. Mr. O'Keefe.

Q. Do you know how much you owed the Manufacturers' on December 31, 1926, or on January 1, 1927, for 1926 business?

A. I did not owe them anything.

Q. Why didn't you owe them anything?

A. Because I paid Hogan right up to date.

Q. What was the amount of commissions you received on 1926 business?

A. Fifteen per cent, I think.

Q. How much were you to receive on 1927 business?

A. I am not quite sure of that. Mr. O'Keefe would know that. 10

Q. I will ask you again. What was the commissions received by you on 1926 business?

A. Fifteen per cent.

Mr. Anekstein—That is all at this time, with leave to recall him.

Cross Examination—by Mr. Townsend:

Q. Mr. Laberecque, these cancellations which you gave on June 3rd—June 2nd, whichever it is, how did you give those cancellations? 20

A. How did I give them?

Q. Yes.

A. I don't quite understand that question.

Q. You say you cancelled policies. What was the mechanics of that cancellation? What were the mechanics?

A. Why there was no mechanic of it. I mean, we did not send out any cancellation notices.

Q. It is a fact, is it not, that what you did you just—— 30

Q. You represented other companies too, did you not? A. Yes.

Q. What other companies did you represent?

A. Norwich Union.

Q. Is that fire or automobile?

Q. Automobile, yes.

Q. This stuff you cancelled, did you place that with the Norwich Union?

A. All that desired being placed.

Q. You mean, all of your assured—all of your customers who desired to be placed, you immediately placed them with the Norwich Union?

A. That is true, yes.

Q. Now, how many of those did you have altogether? On June 1, 1926, how many did you have as customers of those that were insured in the Manufacturers' Liability Insurance Company, approximately?

A. I could not give you an approximate figure. Eleven or twelve hundred.

Q. Eleven or twelve hundred. How many of those did you rewrite in other companies?

A. Practically all of them.

Q. So then on June 2nd or June 3rd what the mechanics of the situation were, you as a broker for those other companies just issued new policies to your clients?

A. Agent for the other companies.

Q. I mean, as agent for the other company you issued new policies to your clients?

A. For the balance of the year.

Q. For the balance of the year. So, in effect you gave no notice of cancellation whatever to your clients but just forwarded to them or filed with the proper officials new policies?

A. They were notified by letter.

Q. After you had done it?

A. Well, during the same process. The replacement and the letter went out at the same time.

Q. At the time you replaced the policy you wrote letters to your clients stating you had replaced the policies in the Manufacturers' with the Norwich Union, or whatever other company it was?

A. Either by letter or phone call. There was quite a lot of disturbance in Massachusetts, especially in Quincy, Massachusetts, when the company was petitioned into receivership.

Q. So that new policies were in effect then, before your clients really received their letters from you? A. About the same time.

Q. We will take June 3rd, for instance. If on June 3rd you wrote a new policy in one or the other insurance companies and you cancelled, as you said, the one in the Manufacturers', at the same time you wrote a letter?

A. As soon as Mr. Sykes told me they were cancelling policies as of that date, for protection of my clients I immediately replaced that business. 10

Q. I am speaking of June 3, for instance. When you wrote a new policy replacing John Jones, for instance, with the Norwich Union, on that day you filed that policy?

A. I would not say that day, because it would be a physical impossibility. The usual process is you had to file a new registration certificate of insurance.

Q. But your policy went into effect that day? 20

A. No policy goes into effect at all until it is received by the Registrar of Motor Vehicles and accepted by him.

Q. So, as a matter of fact, that policy in many instances was filed before your client knew anything about it, wasn't it?

A. They knew as soon as they were filed.

Q. Certainly. But until they were filed they did not know anything about it, you did it yourself? 30

A. Yes, following the instructions of Mr. Sykes.

Q. But they were your customers, they were not Sykes' customers.

A. They were in the Manufacturers. Their policies were being cancelled by Mr. Sykes.

Q. The people that you wrote business for were your own customers that you had sold and not Sykes', isn't that the fact?

A. That is true, yes.

Q. So, what in effect you were doing was saving your own customers and as you thought protecting them, is that correct?

A. Yes, that is the duty of an insurance agent, also relieving the company from liability.

Q. Did you get any additional commission from the new company for writing that business?

A. Any additional commission?

Q. Yes. A. What do you mean by that?

10 Q. Did you get commission for writing this new business?

A. I got commission on the business for the balance of the year.

Q. You had already been paid your commission for what you had written in the Manufacturers, I take it, had you? A. Yes.

Q. Did you return that to the Manufacturers'? Have you returned it?

A. I assume when this matter will be adjusted

20 that will be in the adjustment.

Q. In other words, in your proof of claim have you credited that commission that you have already received?

A. I don't know whether it is in the proof of claim, but I understood that return commission was due the company.

Q. Now, did you have any contract with the Manufacturers' appointing you general agent?

A. No.

30 Q. Did you have any written authorization of any kind from the Manufacturers' appointing you general agent?

A. Any more than verbal arrangement with Sykes which I will say was accepted by the company because I was permitted to sign their contract as general agent.

Q. Whatever authority you had you say you got from Mr. Sykes verbally? A. Yes.

Q. And you considered yourself a general agent of the Manufacturers'?

A. I did, receiving a general agent's commission.

Q. Upon ascertaining that receivers had been appointed for the Manufacturers' Liability Insurance Company, did you communicate with the receivers?

A. Did I communicate with the receivers?

Q. Yes.

A. Communicated with whom I thought was the representative of the receivers. 10

Q. Mr. Sykes?

A. Yes. I asked him and he said yes.

Q. Did you communicate with me as counsel for the receivers?

A. I did not think it was necessary.

Q. So, then, you acted on the basis that Mr. Sykes had the authority to bind the receivers, is that correct? A. He told me he had.

Q. And you took his word for it? 20

A. I had no reason to do otherwise. All my other dealings with him had been fair and square.

Q. You say you settled the 1926 business with Mr. Hogan. How did you settle it with him?

A. Paid him by check.

Q. To whose order was the check drawn?

A. The Manufacturers' Liability Insurance Company.

Q. Do you have that cancelled voucher?

A. I do not know. 30

Q. Have you looked for it? I take it, you have not looked for it?

A. No, I have not looked for it.

Q. Would you look for it and mail it to us?

A. If I can find it, yes.

Q. This Compulsory Insurance Act went into effect on January 1, 1927. Was that the first time that Massachusetts had had a compulsory automobile insurance? A. That is true, yes.

Q. And the mechanics of that was that at the time your application for license was filed, you also filed your policy of insurance, was it not?

A. No.

Q. I am a little hazy about that.

A. An application blank issued by the Registrar of Motor Vehicles gave the information about the automobile engine, motor, and so forth and so on. Then, on the end, one end, was an insurance certificate in triplicate. I think the first application was in duplicate. They have changed it, made numerous changes since the law is in operation. We certified it as agent of the company that the car on the application, described on the application was being covered to meet the requirements of the compulsory act. We tore off one of those and kept that for our records, the company records, and the application with the certification was attached to it, they were turned into the Registrar and upon the payment of the registration fee the plates were issued.

Q. Now, who would sign that certificate?

A. The agent.

Q. Well, in your particular case who signed it? You or Sykes? A. I signed them.

Q. Now that policy that was filed under that act was different from the policy that had been in effect, in some particulars, was it not?

A. Yes.

Q. What were those particulars, for instance?

A. I could not tell you.

Q. I mean roughly. Do you know any of them?

A. Well, I could not tell you. The only thing I could ask you to do is to refer to your own files and get a copy of your policy of 1926 and compare it with your Massachusetts policy of 1927.

Q. Now, it is a fact, is it not, Mr. Laberecque, that all automobile insurance companies—all automobile insurance policies issued by the various

companies in Massachusetts were cancelled as of December 31st? A. That is true, yes.

Q. That was true of the Norwich, true of the Maryland and any other company doing business?

A. Yes.

Q. And all those policies were cancelled on a pro rata basis by every company?

A. As far as my office was concerned, yes.

Q. And what you did—for instance we will take George E. Babbitt—George E. Babbitt was one of your clients who carried through you his insurance with the Manufacturers' Liability Insurance Company for the year 1926, is that not the fact? 10

A. I don't know. That is 1927 business. He may not. We got a lot of new business out in 1927 that we had in 1926, because everybody had insurance in 1927.

Q. What percentage of your 1926 business do you think you lost on December 31st, 1927?

A. That is hard to tell. 20

Q. Well, approximately?

A. I wouldn't want to give the approximate figure.

Q. Was it ten per cent.?

A. I would not want to say that.

Q. Twenty-five per cent?

A. I could not tell you any figure.

Q. Fifty per cent.? It certainly was not one hundred per cent., was it?

A. No. Certainly. I would not be here if it was. You see, a lot of people when we cancelled the policy as of December 31st did not necessarily take out their car on January 1st, and they probably did not get the cars registered until April or May, some of them in June. 30

Q. Well, now, how did you find out receivers were appointed for the Manufacturers' Liability Insurance Company? Read in the newspapers or somebody tell you?

A. No. I was a member of the Massachusetts Legislature, a member of the Committee on Insurance. I was in to the Commissioner's office to take up some bills that were before my committee with the Commissioner, and the Commissioner received a wire from the Commissioner of Insurance from New Jersey informing him of the fact and he knew that I was a very large agent for the Manufacturers' and he showed me the wire.

10 Q. That is Mr. Monk you are referring to?

A. Wesley Monk, yes.

Q. What did this telegram say, do you recall?

A. I could not recall. The substance you were in receivership.

Q. Receivers had been appointed? A. Yes.

Q. Then, it was after that you got in touch with Mr. Sykes? A. Yes, that same day.

Q. About what time of the day was it you saw this telegram? A. Some time in the afternoon.

20 Q. How long after you saw the telegram was it you were in touch with Mr. Sykes?

A. I could not recall. An hour or so.

Q. His office is where?

A. Ten minutes from me. The State House.

Q. And then how long were you in conference with Mr. Sykes, approximately?

A. Possibly whenever I could get a minute with him. He was a pretty busy boy that afternoon.

Q. How long do you think you were at his office?

30 A. Oh, probably half or three-quarters of an hour.

Q. What time of the day was it you think you left his office? A. I don't recall.

Q. Approximately? A. I couldn't recall.

Q. Then when was it you began cancelling policies, rewriting them in other companies?

A. That night, getting the registration blanks ready.

Q. When was it you actually cancelled it?

A. Two days later. Within thirty-six hours they were filed with the Registrar of Motor Vehicles.

Q. Let me see if I can't refresh your recollection. You know the day of the week you filed them?

A. No, I don't.

Q. When you were at the office of the Commissioner of Banking and Insurance you called Mr. Sykes on the telephone and asked him to cancel all your policies as of June 2nd, didn't you?

A. No. I asked him what he was going to do about it. 10

Q. Mr. Sykes' letter to you of January 3rd says this: "In accordance with your request of June second, when you called the writer from the Massachusetts department requesting him to cancel all your policies as of June second——" is that correct?

A. No. He was misinformed. I asked him to find out what he was going to do about it. I had been to see him. 20

Q. Did you ask him to cancel.

A. Did I ask him to cancel?

Q. Yes.

A. No. I wanted to know what he was going to do.

Q. You now say Mr. Sykes told you to cancel them? A. Yes, after I had been down to the office.

Q. And this letter is erroneous in that respect?

A. Beg pardon?

Q. This letter is erroneous in that respect? 30

A. In respect to my request for cancellation, yes.

Q. Why didn't you tell the receivers that on your direct examination?

A. I did not notice that particularly.

Q. You read it. Your counsel showed it to you.

Mr. Anekstein—I only asked did he receive that letter.

The Witness—Nothing was asked me about the contents of the letter.

Q. Now, Mr. Monk was the Commissioner of Banking and Insurance, wasn't he? A. Yes.

Q. Mr. Goodman was the Commissioner of Motor Vehicles? Mr. Goodman was the man who had complete and exclusive jurisdiction over all automobile licenses and policies, is that the fact?

A. I don't know.

10 Q. Did you ever look into it and find out?

A. No. The matters of insurance were left to Mr. Monk always.

Mr. Brown—You were a member of the Insurance Committee of the Massachusetts State Legislature?

The Witness—Yes.

Q. You helped put through the compulsory automobile law?

A. I don't recall if I voted for it.

Q. Did you vote against it? A. I don't recall.

20 Q. Did you consider it in your committee?

A. No, it was not before our committee.

Q. Well, isn't it a fact that the act invested complete and exclusive jurisdiction of licenses and insurance policies to be filed with the licenses with Commissioner of Motor Vehicles, and that was Mr. Goodman?

A. No. I would not say that that was the fact.

Q. And isn't it a fact that the new Massachusetts law, at least, wasn't it the fact under the Massachusetts law that the only authority that Mr. Monk

30 as Insurance Commissioner had was to determine whether a company would be authorized to do business in the State of Massachusetts or whether they would be permitted to continue to do business in the State of Massachusetts?

A. Well, he also determines the rate.

Q. The short rate table?

A. He determines the rate to be charged for compulsory liability insurance.

Q. Mr. Monk decided that?

A. The Commissioner of Insurance did, and it was from the Commissioner of Insurance that the Registrar of Motor Vehicles got the list of authorized companies.

Q. Now, did you become a representative of the Maryland Casualty Company after this time?

A. No.

Q. Mr. Sykes became their representative, didn't he, in Massachusetts? A. I couldn't tell you. 10

Q. Now, so far as your relations with your clients or the assured were concerned, you would collect a premium from them and then you would remit that to the Manufacturers less your commission, was that not the fact? A. Yes.

Q. That is what you did on the 1926 business, is it not, and that is what you did on the 1927 business?

A. That is true, yes.

Q. So that when you replaced this insurance, these automobile insurance policies—withdraw 20 that. When you cancelled these automobile insurance policies you say were replaced with the Norwich Union you did not charge your customers any additional premium—strike out the last part?

A. Yes. All my customers were charged with additional premium.

Q. They were? A. They were.

Q. Did you say they were at that time?

A. Surely.

Q. Your customers did not pay you any additional premium? A. No, they did not. 30

Q. What you did is a matter of bookkeeping? You told us in different words, what you did is a matter of bookkeeping?

A. We charged in our books against each customer the premium the Norwich Union, and it was offset by the return premium due them from the Manufacturers.

Q. Now, so that the ins d himself never had to pay any additional mon y over what he had already paid you? A. No.

Q. Now, I assume, then, that you out of your own pocket paid the Norwich Union the premium for the balance of the year on their policies? A. I did.

Q. Less whatever commission you would get from them? A. Yes.

10 By Mr. Brown:

Q. What commission did the Norwich Company allow you on this business?

A. I think it was twelve per cent on the liability.

Q. And the Manufacturers' allowed you twenty?

A. No. I would not want to make that as a definite statement.

Q. You have testified to that.

A. Yes, on the Manufacturers', but as to the Norwich Union——

20 Q. The Norwich Union paid you twelve per cent?

A. I won't say that definitely. I don't recall what they paid.

Q. It wasn't any more?

A. It might have been, yes.

Q. It might have been less?

A. No. It would not be less.

By Mr. Townsend:

Q. Mr. Laberecque, how much do you figure that

30 you owe the receivers for premiums?

A. Whatever the balance of 1927 is. Mr. O'Keefe has those figures.

Q. You don't know that off hand?

A. No. Mr. O'Keefe has those figures.

Mr. Townsend—I think that is all.

Re-direct Examination—by Mr. Anekstein:

Q. Just to straighten up this matter, Mr. Laberecque, did you cancel the policies with the Manufacturers', or did Mr. Sykes?

A. Mr. Sykes did.

Q. Mr. Townsend in a number of questions propounded to you stated that you cancelled the policies, is that so, as a matter of fact?

A. No. It isn't so.

Q. Who sent notices of cancellation to the assured? A. I didn't. 10

Q. You did not notify the assured? Did Sykes send notices?

Mr. Townsend—Don't lead him.

Q. If he knows.

Mr. Townsend—Don't lead him. That is all I am asking. 20

Q. Before June 2nd or June 3rd, 1927, if a policy in the Manufacturers' was cancelled, who sent notice of cancellation to the assured?

A. I think that Sykes did at my request possibly, but authorizations to cancel depended on the circumstances.

Q. But from whom did notices of cancellation come?

A. We could, as agents, cancel, or Sykes could. 30

Q. I am talking about what was the practice? What was actually done before this time with cancellations?

A. I think Mr. O'Keefe could answer that better. That was an office detail and he took care of that.

Q. On the policies in the Manufacturers' you wrote, you signed your name to them as agent?

A. Yes, sir.

Q. When you wrote a policy in the Manufacturers whom did you notify, and how, and what was the practice?

A. The tally would go into Sykes' office.

Q. What do you mean by the tally?

A. We would write the original policy and two tallies. One for our records.

Mr. Heppenheimer—You did not actually write a policy, it was written at the home office, wasn't it? You issued them yourself? They were sent to you in blank by the home office?

The Witness—We had supplies.

Mr. Heppenheimer—Did you sign them as local representative?

The Witness—Yes.

Q. Continue with your explanation of the tally.

A. If we wrote policies we sent a duplicate to the home office, we would send one to Mr. Sykes' office and keep an agent's copy.

Q. Were policies written in the Norwich Union on June 3rd, 1927, or were there just binders?

A. Just a binder.

Q. When were the policies written?

A. Later on.

Q. What is the nature of the binder you used and filed with the Motor Vehicle Department?

A. Why, we filed with them new certificates of insurance under the application.

Q. Was that attached to the—was the binder attached to the application for registration?

A. The registration blank.

Q. Whatever you did respecting the replacement, was that done after Sykes notified you to cancel the policies in the Manufacturers'?

Mr. Townsend—That was done after?

The Witness—After he told me that he was cancelling everything.

Q. If a person who had been insured with you in 1926 was insured in 1927, what unearned

premium did you give him? On what basis was the unearned premium computed? A. Pro rata.

Q. Now, if a person who was insured and for whom you did not replace the insurance—strike it out. If you did not reinsure a person how did you pay him?

A. Either in cash, if they called at the office, or by check.

Q. And the amount, that was determined on a pro rata basis? A. Yes. 10

Q. Do you know whether or not a receiver in Massachusetts was appointed for the Manufacturers'?

A. I also understood Mr. Sykes represented the receivers in Massachusetts.

Mr. Anekstein—That is all for the time being.

Re-cross Examination—by Mr. Townsend. 20

Q. Where did you get the understanding Mr. Sykes represented the receivers, Mr. Laberecque?

A. Mr. Sykes.

Q. Did he tell you he represented the receivers?

A. Yes.

Q. When? A. That day, June 2nd.

Q. Why didn't you telephone to the receivers at the home office to find out whether that was a true statement or not?

A. I had no reason to disbelieve anything Mr. Sykes said. He was a very honorable gentleman and my business transactions with him were perfectly honest. 30

Q. Well, now, when you say you filed binders on June 3rd, a binder, in effect, is a policy, is it not?

A. Well, I will tell you just what happened. After Mr. Sykes——

Q. No. I am not speaking about that. No.

A. That is answering your question.

Q. No. A binder, when you filed a binder, that, in effect, is a policy? It protects the insured until cancelled, just as if the policy were issued, is that correct?

A. I assume it is, yes, but this was a verbal binder, if you will let me explain to you.

Q. Who put on the verbal binder?

A. The manager of the Norwich Union.

Q. And that was supplemented later on by you
10 actually getting the written binder or by getting the written policy itself?

A. That was supplemented by the filing with the Norwich Union of the duplicate certificate of insurance that was taken off the replacement application.

Q. For instance, when you say you filed on June 3rd a policy—withdraw that. You filed your application on the Motor Vehicle Commissioner. How did you issue a certificate? Did you sign them as
20 agent for the Norwich? A. I did, yes.

Q. On the verbal binder from their general agents? A. No. I was an agent previous to that.

Q. Well, then, on your authority as agent of the Norwich?

A. With the instructions of the Norwich Union, yes.

Q. With the verbal instructions of them?

A. Yes.

Q. As a matter of fact, is it not, Mr. Laberecque
30 —you told us on your direct examination that you sent out notices of cancellation. Did you send them out or did Mr. Sykes send them out?

A. No. I notified my clients the company was cancelling their insurance and I was replacing them to save them from losing their plates.

Q. In other words, you actually wrote letters to your clients or telephoned messages?

A. Some of them.

Q. When did these new policies go into effect? June 3rd?

A. I think it was July 3rd. I am not quite sure. Within a few days.

Q. What about the provision in the policy itself, it could not be cancelled under fifteen days' notice? That is part of the standard automobile policy, isn't it? Isn't that under your law, the Massachusetts Motor Vehicle Liability Policy, Chapter 346 of the Acts of 1925, Commonwealth of Massachusetts and all acts amendatory thereto and supplementary thereof? Section three, cancellation: "Policy may be cancelled by the company or by the assured by written notice stating the day and hour thereafter when such cancellation shall be effective; such notice shall be given by the party proposing cancellation to the other party at least fifteen days prior to the intended effective date thereof." How do you get around that?

A. Why, that is got around every day now.

Q. How? How do you get around it in this provision?

A. Mr. Goodwin sent out notices. He made out a statement—gave out a statement to the papers that he would cancel within five days.

Q. That is your law, Mr. Laberecque. You were a member of the Legislature. Have you any other explanation?

A. The Insurance Commissioner said you people were not doing any business. Naturally, when your agent cancelled I had to protect my customers. So, my customers—your state agent informed me as agent he was going to cancel all my business. Naturally I am protecting my assureds, my clients, my assureds. My assureds would waive that notice as long as they were protected.

Q. What actually happened is, is it not, Mr. Laberecque, that you considered yourself the agent for the assured and you consented to this on behalf of the assured? A. No, that is not so.

Q. Well, how did you communicate with your assureds and get their consents or waiver of the statute?

A. Well, when your state agent informed me he was cancelling policies coupled with the statements issued by the Commissioners of Insurance and the Registrar of Motor Vehicles, the most natural thing in the world I did the only thing an insurance agent could do in the protection of his clients, which was to replace and protect his clients. They were without insurance.

Q. You considered those people were your clients and you were representing them, is that a fact?

A. You are agent in a dual capacity.

Q. You testified you were general agent of the Manufacturers'? A. That is very true.

Q. You have also testified that you were a broker or an agent for your assured.

A. No. I did not say I was an agent for the assured.

Q. Well, the broker for the assured. They were your clients and your customers.

A. Sure, they were my customers.

Q. Did you act in a dual capacity as agent for the Manufacturers' and agent for your customers in accepting cancellations or getting cancellations?

A. I accepted no cancellation, neither did my assured. Your state agent cancelled the policies.

Q. The statute provides that fifteen days' notice must be given.

A. That is up to your state agent, isn't it? Your state agent, that is up to him. My assureds were threatened to have their cars yanked off the road.

Q. Our state agent could not violate the statute any more than you could, except by consent, if he were our state agent at that time. Did you consent to them on behalf of your customers? A. Did I?

Q. Yes.

A. Well, I replaced the insurance and protected their interests.

By Mr. Anekstein:

Q. You had no authority to do anything? You had no authority from the assured to do anything.

A. No. I took the authority myself and assumed it. Any man in the same position would do the same thing.

Q. You are an insurance agent, not a lawyer, is that so? A. No. I am not a lawyer. 10

Q. You wrote insurance in other companies before Sykes notified you that these policies in the Manufacturers' were cancelled? A. That is so.

By Mr. Townsend:

Q. Did you know Hilde C. Berry? A. Yes, sir.

Q. Was she employed by you?

A. Employed by me, yes. She was a policy writer. 20

Q. On this binder, Mr. Laberecque, with whom did you communicate in the Norwich?

A. With the New England manager.

Q. With offices where? A. Forty Broad Street.

Q. Boston? A. Yes.

Mr. Brown—All your dealings go through that agent with the Norwich? You never communicated direct with the home office?

The Witness—No. Very similar—same procedure as with Sykes. 30

Q. Isn't it a fact that under the old policies—old automobile policies that were in effect before the compulsory automobile insurance law went into effect, that the policy could be cancelled by either side by written notice at any time upon receipt of the notice?

A. I don't know. Different policies have different provisions. Different companies have different provisions as to cancellation.

By Mr. Brown:

Q. That is more or less general, isn't it?

A. It has usually a time period in there of notification.

Q. Well, there wasn't any in this old policy. I got one here. A. They are different.

Q. Prior to 1927 every company had a different policy—had different provisions.

10 By Mr. Heppenheimer:

Q. The premiums were payable in advance, weren't they? A. No.

Q. By your assured? A. No.

Q. No. A. What I say——

Q. How long would they be issued to the assured without paying the premium?

A. That depends altogether on the amount of credit they had with the office.

Mr. Brown—That was your responsibility.

20 The Witness—Oh, yes. We assumed the premium up to a certain time.

Q. I merely wanted to establish the practice in paying premiums.

A. We wish it was paid in advance.

(Witness excused.)

Leo J. O'Keefe, called as a witness on behalf of the claimant, being sworn, was examined and testified as follows:

30

Direct Examination—by Mr. Anekstein:

Q. Mr. O'Keefe, on or about June 1st, June 2nd or 3rd, what was your position with Mr. Laberecque? A. Office manager.

Q. You prepared the claims that were filed with the receivers? A. I did.

Q. Do you know the total amount of claims that were filed with the receivers?

A. Approximately $39,000, gross.

Q. I mean the actual amount of claims filed?

A. The actual amount of claims——

Mr. Townsend—I think we have those here.

Q. What was the amount of insurance business done in 1927 through the Manufacturers', the gross amount of premiums?

A. Approximately $35,681.00. 10

Q. When the policies were cancelled on June 2, 1927, what was the amount of unearned premiums?

Mr. Townsend—You are assuming they were cancelled on June 2nd.

Mr. Anekstein—We are trying to arrive at a figures.

Mr. Townsend—Cancelled on June 2nd or as of June 2nd?

Mr. Anekstein—As of June 2nd. 20

Q. Figuring the cancellations, the unearned premiums, as of what date did you compute the figures? A. June 2nd.

Q. As you have computed the amounts, what is it? The total amount of unearned premium as of June 2nd from the policies that were written in the Manufacturers? A. Approximately $22,000.

Q. Let us have it more accurately.

A. $22,921.79. 30

Q. Now, I will ask you again, what is the gross amount of premiums for 1927 policies?

A. $39,204.81, those are gross figures.

Q. There are a number of policies cancelled as of June 2, 1927, for which you did not receive any assignment. A. That is right.

Q. What is the total amount of premiums on those policies?

Mr. Townsend—Assignments from who?

Q. From the assured. A. $3,358.30 gross.

Q. What is the amount of unearned premiums figuring pro rata basis as of June 2, 1927?

Mr. Townsend—Give us the totals.

Q. That is, on policies written in the Manufacturers' and which customers did not assign to Mr. Laberecque? A. $2,294.95.

Q. What did Mr. Laberecque owe the Manufacturers' on June 1, 1927, or in 1927?

10

A. Nothing for 1927 and nothing for 1926.

Q. Nothing for 1926, you mean?

A. That is right.

Q. Just what do you mean? Which year?

A. I mean 1926 business was never paid for.

Q. And you have computed it?

Mr. Townsend—As you have computed it how much do you claim the receivers owe you?

20

Mr. Anekstein—Is there any question about 1926 business?

Mr. Townsend—I don't think so. If there is we will let you know.

Q. What is the amount? You have given us that? What is the amount Mr. Laberecque owes for 1927?

30

Mr. Townsend—He has not given the amount yet that he claims the receivers owe them.

Mr. Anekstein—He says $22,921.79.

Q. What does Mr. Laberecque owe the company?

A. $5,639.64.

Q. What is the balance due Mr. Laberecque?

A. $10,192.17. Pardon me. I gave you the last figure wrong.

Q. What is the total amount, the amount Mr. Laberecque claims is due him? A. $10,000.

Q. No, no, the total amount. A. $22,921.79.

Q. What was the commission for 1927 insurance?

A. Twenty per cent.

Q. What is 20 per cent of the amount Mr. Laberecque claims? A. $4,584.36.

Q. Then the total amount due Mr. Laberecque is what? In other words, $22,921.79 less commissions of $4,584.36, is that correct. 10

A. Yes, that is right.

Q. Do you know what that subtraction would be? What do you say is the amount due Mr. Laberecque, taking into consideration the deductions of commissions? A. $12,000.

Q. No, no. Not taking into account what Mr. Laberecque owes the company.

A. I didn't understand your question.

Q. We will give you a free hand and you go ahead. 20

A. Well, there is due Mr. Laberecque on return premiums $22,921.79 gross, less return commissions on that amount of $4,584.36.

Q. What do you mean by return commissions?

A. Well, those commissions had already been credited to the account and on return premiums the agent always deducts the return commission. He can't take the return premium gross.

Q. All right, continue.

A. That leaves a balance of $18,337.43. 30

Q. What does Mr. Laberecque according to your figures, owe the Manufacturers'? A. $5,639.64.

Q. Now, what is the amount of Mr. Laberecque's claim, the net amount? A. $12,698.79.

Mr. Townsend—May I just ask a question while we are on this subject?

Mr. Anekstein—Yes.

By Mr. Townsend:

Q. There is $22,921.79 gross unearned premiums. Is the figure on the pro rata basis? Would it be on the short table? A. I haven't that figure.

Q. Have you that figure with you?

A. No. You would have to take into consideration each individual policy.

Q. This $22,921.79 is figured on the pro rata basis? A. That is right.

10 Q. You have never figured what it would be on the short rate table? A. No.

By Mr. Anekstein:

Q. How were cancellations effected?

A. There were a number of ways of effecting cancellations. Under the compulsory law the policy could be cancelled fifteen days' notice by either part by filing a written request by the assured to the Registrar or by the company sending out a 20 cancellation notice giving the assured fifteen days. At the end of fifteen days the policy was terminated and the registration revoked.

Q. Tell us what was done in those cases.

A. Naturally on cancellation a person could surrender his plates and the policy was automatically terminated.

Q. Who sent out notices of cancellation?

A. Sykes' office.

Q. Did Laberecque's office?

30 A. No. The cancellation notices came from Boston.

Q. What would happen if you read in a newspaper of a man who was convicted of drunken driving? What would you do in a case like that?

A. We would recommend cancellation of the policy as a poor risk.

Q. When would the cancellation become effective?

A. It would become effective fifteen days from that date unless the assured wanted to get another company and get a binder on it.

Q. But you are sure that the notices of cancellation did not come from Laberecque's office?

A. No. We would request them at times, but all cancellation notices were mailed from Sykes' office.

Q. From whom did you request cancellation?

A. From Sykes.

Q. In making up the claims that were filed, from what did you gather the information necessary to make up the claim? 10

A. From the duplicates of the policies themselves, daily report.

Q. And the claims as filed were made under your supervision? A. I did it myself.

Q. And the computation of the unearned premium on a pro rata basis was made by you?

A. I figured it.

Q. Were you on or about June 2nd, 1927, with Mr. Laberecque in the presence of Mr. Sykes? 20

A. I was.

Mr. Townsend—What date was that?

Mr. Anekstein—June 2nd or June 3rd, 1927.

The Witness—June 2nd.

Q. Where was that? A. In Sykes' office.

Q. Where? A. 33 Broad Street, Boston.

Q. What was the nature of the conversation? 30

A. Well, I didn't hear the entire conversation.

Q. What did you hear?

A. Because I was doing business with—had other matters of business to take up with another clerk there.

Mr. Townsend—This is the meeting that Mr. Laberecque has testified to?

The Witness—Yes. I heard Mr. Laberecque say, "Well, what are you going to do about it?" and Sykes said, "I will cancel them pro rata today."

Q. Did you hear Mr. Laberecque request cancellation of the policies in the Manufacturers'?

A. No.

Q. Are you sure you heard Mr. Sykes say that he would cancel the policies in the Manufacturers' as of today?

A. That is all the conversation I heard.

Mr. Townsend—Did you want the policies cancelled in the Manufacturers'?

10 The Witness—No.

Mr. Townsend—You did not want them?

The Witness—Did not want them cancelled.

Mr. Townsend—Yes.

The Witness—I understood that they would.

Mr. Brown—Answer the question direct. Did you want them cancelled in the Manufacturers'?

The Witness—No. I had no choice in the matter.

Mr. Townsend—Did Mr. Laberecque in your presence want them cancelled?

20 The Witness—I did not hear anything said about that.

Mr. Townsend—You were quite satisfied to keep these policies in with the Manufacturers', even if it was in the hands of receivers, were you not?

The Witness—I did not know the exact procedure at that time.

Mr. Townsend—Will you repeat the question?

(Question repeated.)

The Witness—I had no authority to.

30 Mr. Townsend—I am asking you if you were satisfied.

Mr. Brown—Do you want it read again? Take your time. Just grasp it and answer it.

Mr. Townsend—I want a responsive answer whether he was satisfied, yes or no.

Mr. Anekstein—What difference does it make whether he was satisfied or wasn't?

Mr. Brown—As general manager of a large concern like this he had a good deal to do with the company.

Mr. Townsend—Can you answer that?

The Witness—I will answer it my own way. My duties at the office did not give me the discretion of continuing a policy in force with a certain company. I had to take everything up with Mr. Laberecque if such a situation arose. 10

Mr. Townsend—Let me ask Mr. Laberecque. (Addressing Mr. Laberecque.)

Were you satisfied in continuing the policies with the Manufacturers' notwithstanding it was in the hands of the receivers?

Mr. Laberecque—If the policies were of any value, yes.

Mr. Townsend—You did not inquire to find out whether they were, did you? 20

Mr. Laberecque—I was informed—I was not going to dispute your state agent when he said he was going to cancel the policies.

Mr. Townsend—You don't know what authority the state agent had from the receivers, do you?

The Witness—He told me he was representing the receivers.

Mr. Townsend—Why didn't you communicate with the receivers? 30

Mr. Laberecque—It wasn't necessary in my opinion.

Mr. Townsend—Did you know or have you since found out that the receivers were directed by the court to continue in effect these outstanding policies?

Mr. Laberecque—No.

Mr. Townsend—For your own information, they were.

Mr. Laberecque—I am not a lawyer.

Mr. Brown—But you are a successful business man. If you had any dealings with a concern that were in receivership you would not take the word of a district manager.

Mr. Laberecque—I would. I would take the word of a man I had known a number of years.

Mr. Brown—That is beside the point. You had no right as a successful man not to find out.

10 Mr. Laberecque—Then I am an unsuccessful business man.

By Mr. Anekstein (again addressing Mr. O'Keefe):

Q. Your relation with the Manufacturers' was all right, got along well with them.

A. Why, yes, as far as office detail went. That is all I was concerned with.

Q. So far as you were concerned it made no dif-
20 ference to you whether or not it was in the Manufacturers' or some other company?

A. None whatever.

Q. If it was in the Manufacturers' you would want to have it in the Manufacturers'?

A. That is right.

By Mr. Brown:

Q. What proportion of this $35,000 was made in the first week in December? A good deal of your
30 insurance is re-insurance, most of your business is re-insurance?

A. It depends on whether the car is registered or not.

Q. I understand that. What proportion, can you tell me off hand, of this $35,000 was in force in the first week or say the first month in January?

A. I would say around $27,000 roughly.

Q. That is about eighty per cent?

A. That is right.

Q. How often did you remit to the main office? How often for the insurance in force?

A. I don't know the exact——

Q. You were the office manager and handled all the details, didn't you?

A. They were different with other companies.

Q. Was it over thirty days or over sixty days or ninety days?

A. I believe it was sixty days. I am not sure.

10

By Mr. Anekstein:

Q. You gave a short time ago the gross amount of premiums as around $35,000. Is that correct?

A. I arrived at that figure.

Q. What are the total premiums for 1927 policies?

A. Total premiums written $39,204 but there were premiums charged on the books, say, $35,000, because some were cancelled. Of course there would be no premium for them.

20

Q. Now, if you learned of an undesirable risk, what did you do?

A. Well, if I was sure the risk was undesirable I would call Sykes' office and tell him to request a cancellation.

Q. Now, if a cancellation was made would Laberecque lose his commission? A. Yes.

Q. Is that done very often?

A. Well, it is done if the agent takes any interest in his home office and we have always tried to do that.

30

By Mr. Townsend:

Q. I understand approximately $27,000 of this gross business done in 1927 was carried over from 1926. A. Carried over?

Q. Carried over. I mean from our customers you had had in December, 1926.

A. A good number of those customers did re-insure in 1927. We also got new customers in 1927.

By Mr. Anekstein:

Q. When you put the people in another insurance company from what date did you charge the premium? A. June 3rd.

Q. What time? June 3rd what year?

A. Well, the policy would be effective one minute after midnight on June 2nd. It would be June 3, 1927, for that particular policy.

Mr. Townsend—I want to put in evidence this policy under this new law.

(Received and marked in evidence D-1 as of June 19, 1931.)

(Witness excused.)

TESTIMONY TAKEN BEFORE MYRON J. BROWN ESQ., RECEIVER, ON JANUARY 29, 1932

ALFRED N. LA BRECQUE,

vs.

RECEIVERS OF MANUFACTURERS LIABILITY INSURANCE CO.

Appearances:

MARK TOWNSEND, ESQ.

CHARLES O. TRUEX, ESQ.

SADIE HALPIN, being duly sworn, testified as follows:

Examination—by Mr. Truex:

Q. Miss Halpin, what is your position with the receivers? A. Cashier and bookkeeper.

Q. You have charge of the accounts? A. Yes.

Q. How long have you been connected with the receivers?

A. Four and one-half years with the receivers.

Q. And previous thereto, you were with the Manufacturers for how long?

A. About 11, I believe.

Q. Including the 4½?

A. No, that is outside of that.

Q. Eleven years previous with the Manufacturers? A. About that, I am not sure. 10

Q. And during all that time, have you been in the Accounting Department? A. Yes.

Q. You have at the present time complete charge of the accounts? A. Yes.

Q. Are you acquainted with the account of Alfred N. La Brecque? Yes.

Q. Do you recall having anything to do with preparing the account of Mr. La Brecque in the year 1929? A. Yes. 20

Q. Tell us what was done in the way of preparation?

A. We prepared individual statements of the different accounts, the debits totalling to $5,761.48, and the credits totalling to $10,850.91.

Q. You say that these were individual statements of policy holders? A. Yes.

Q. Was La Brecque the broker through whom these policies were written? A. Yes.

Q. That was the reason that policy holders' individual accounts were charged to him? A. Yes. 30

Q. Had La Brecque been a broker for the Manufacturers before receivership? A. Yes.

Q. These accounts that were checked up in 1929 covered all matters before receivership where he was involved? A. Yes.

Q. He had no insurance written through his office after the appointment of the receiver?

A. No.

Q. Therefore, as I understand the situation, the records show that La Brecque at the time of the receivership owed us $10,850.91?

A. That's the credits.

Q. Owed us $5,761.48? A. Yes.

Q. And there was due to policy holders written through his office $10,850.91?

A. Yes; of course, this is a gross figure and we are entitled to our deductions.

10 Q. In connection with the amount due La Brecque, what causes that amount to be so due him?

A. Cancellations of policies for which premiums had been paid to us, and the full premium had not been earned for the period the policies were in force.

Q. Had commissions been allowed at the time premiums were paid? A. Yes.

Q. Should any commission deduction be made from that gross figure?

20 A. We are entitled to deduction on commission to be made from this figure now.

Q. At what rate?

A. Commission deduction should be at the rate of 20%.

Q. Have you figured out the net or not?

A. I have not.

Q. You didn't figure out the individual cancellation credits allowed him? A. I did not.

30 Bertha Kiedel, being duly sworn, testified as follows:

Examination—by Mr. Truex:

Q. Miss Kiedel, how long have you been with the receivers? A. Four and one-half years.

Q. How long previously with the Manufacturers? A. Eleven and one-half.

Q. What is your occupation or duties with the Manufacturers or its receivers?

A. Underwriter and clerk, figuring cancellations, taking care of compensation claims, a little bit of everything.

Q. Do you recall in the year 1929 having the matter of figuring premium returns due to Alfred N. La Brecque? A. Under my jurisdiction.

Q. You were the supervisor of the premium returns for cancellations? A. Yes.

Q. On what basis did you figure the premium returns? 10

A. Where the premiums had been paid, they were cancelled on short rate basis; where the premiums had not been paid, they were cancelled on pro rata basis; that was, of course, in accordance with the agreement with the receivers and brokers and agents in Massachusetts.

Q. Did you supply the figures in the various cancellations? A. Yes.

Q. Do you know what the total amounted to?

A. No, I don't. 20

Q. Have you recently made up a list showing the amounts taken from the various statements as to each individual policy holder? A. Yes, I have.

Q. I submit herewith a list headed, "Debit Sheet, Account of Alfred N. La Brecque," and ask whether or not you prepared that list from the various individual statements you prepared?

A. Yes.

Q. On this list, the total debit appears to be $5,761.48. 30

A. Accordance to the tabulation in the Accounting Department.

(Received in evidence and marked Exhibit R-1 as of 1/29/32.)

Q. I submit herewith credit sheet of Alfred N. LaBrecque account, showing total gross credits of $10,850.91; did you prepare that list from the

individual statements of the policy holders referred to above? A. Yes, I did.

Q. And the total of that is $10,850.91?

A. Yes.

(Received in evidence and marked Exhibit R-2 as of 1/29/32.)

Q. On this list there are a number of items
10 where no PC is indicated; what does that mean?

A. Means no proof of claim was received from either LaBrecque or the assureds.

Q. And the total of no such PC item amounts to what? A. $1,496.29.

Q. Is that item included in the aforesaid $10,850.91, or is it not? A. Yes, it is.

Q. You said that you have charge of the cancellations and claims, etc., of the receivers; does that mean that you are in charge of proof of claims
20 filed for return premiums as well as others?

A. Yes.

Q. And does the notation referred to on the credit sheet mean that there are no proofs of claim filed? A. Yes.

Q. And the other items?

A. Indicate proofs of claim where there is no marking.

Q. Where there is no marking, proofs of claims have been filed? A. Yes.

30 Q. Were all the proof of claim so filed assigned to LaBrecque or not?

A. To the best of my knowledge.

Q. What do you mean by the best of your knowledge?

A. I think they are all marked; I am almost sure.

Q. You prepared that from the others?

A. Yes, I prepared this, but I only did the figuring, but where there are no proofs of claim, I just marked them, but I am sure the others have all been assigned.

Q. Do you recall whether of not La Brecque has filed a claim for any amount of return premiums with the receivers? A. He has.

Q. Have you it with you?

A. Yes. (Witness produces it.)

Q. What were the amounts and dates of the proofs of claim so filed by him?

A. Amount of $21,959.81, dated Feb. 21/28; another for $961.98, dated March 9/28.

Q. Apparently, then, the proofs of claim filed are much in excess of the amounts shown due on your lists just referred to? A. They are. 10

Q. In La Brecque's proof of claim, so far as you know, has any deduction been made for the commissions which have been deducted?

A. Not to my knowledge.

Q. In connection with La Brecque's proof of claim, has any record been given of the amount of unpaid premiums due him, and which is shown as a debit on the sheet list referred to? 20

A. From appearances, they are all credits.

Q. Has La Brecque's claim been assigned by him to any other party, according to your records?

A. There was received a letter assigning to Irving G. Hall, Jr., as Trustee, dated January 19th, 1929.

SADIE HALPIN, recalled.

Examination—by Mr. Truex:

Q. Do you recall, Miss Halpin, anything in connection with a draft having been sent to Mr. La Brecque? A. Yes, I do. 30

Q. In October, 1929? A. Yes.

Q. Do you recall the amount of such draft?

A. No, I don't; it was approximately $875.

Q. Refresh your memory by looking at this letter.

A. Yes, I do recall, the amount was $874.54.

Q. Was the draft ever presented and paid?

A. The draft was cancelled.

Q. You say this draft was returned?

A. I believe the draft was returned; I meant to say that the check was cancelled for this draft; I recollect that the draft was not accepted and returned.

CHARLES O. TRUEX, being duly sworn, testified as follows:

10 *Examination*—by Mr. Townsend:

Q. What is your position?

A. Manager for the receivers of the Manufacturers.

Q. How long have you been manager?

A. Since September, 1927.

Q. Are you familiar with the accounts and practices of the receivers? A. I am.

Q. Do you recall the account of Alfred N. La Brecque? A. I do.

20 Q. Tell us what you recall about the account?

A. Some months after the appointment of the receivers, a number of Massachusetts brokers got in touch with us through the Manufacturer's former Boston representative, R. G. Sykes, with the idea of cleaning up their accounts, and at a conference in Boston and per arrangements made by correspondence with General Counsel Townsend, after consideration by the receivers, there was a plan submitted by me, under Mr. Townsend's 30 direction, to the effect that all brokers' accounts be settled on the basis of 50 per cent of unearned premiums figured on a short rate basis, from which proper premium reductions should be made; and provided further, that such brokers pay all their debit balances on a 50 per cent basis. This proposition was made because the brokers contended that while the receivers' books might show a number of them owed balances of some consequence, that in

truth a large number of the assureds had never paid the brokers for their premiums, and it would be unfair to make them pay 100 per cent of such indebtedness. Accordingly, they felt that since the receivers were paying 50 per cent on the short rate basis, they should at least get an allowance on their indebtedness, and an arbitrary figure of 50 per cent was arrived at. About 40 or 50 brokers were assembled in conference at the meeting in Boston; among them, Mr. La Brecque, and they all consented to such an adjustment, such consent being verbal. Following such practice, we in due course settled with many, if not all, of the brokers, but the account with La Brecque was by far the largest and involved many thousands of dollars. In his case, some correspondence and personal meetings were had, and after considerable negotiations along such lines, a draft was sent to him by me on October 7, 1929, with a letter explaining the figures arrived at by me, and showing the net amount then payable as $874.54, which was the amount of the draft forwarded. I submit herewith a copy of my letter to Mr. La Brecque, copy marked Exhibit R-3, the amount and figures as supplied to me by the accounting department. Such figures showed the net premiums returnable upon the adjusted basis as being $375.15. Such amount was arrived at as follows: The totals of premium returns according to the figures supplied, were $9,375.47, these figures being on all cases where proofs of claim had been filed. Commissions were deducted on the basis of 15 per cent on $38.52 and 20 per cent on the balance, making a total commission deduction of $1,873.17, and leaving a balance of $7,502.30; 50 per cent of such balance is $3,751.15, the figures given. Against this balance, however, the record shows that there was due from La Brecque a total of $5,753.22; allowing him one-half

of such amount, $2,876.61; deducting that balance from the $3,751.15 referred to, leaves $874.54, the amount of the draft. When this draft was sent, La Brecque was advised that his records showed there were return premiums totalling $1,471.44 gross, which had not been covered by the adjustment because no proofs of claim were filed. I might here state that at the conference in Boston, he was satisfied that proofs of claim should be filed, and if the brokers were entitled to be reimbursed, assignments should be made to the brokers. After sending such letter to La Brecque, I received the draft returned to me with his letter of October 14, 1929, advising it was not acceptable, and I submit herewith his letter, which has been marked Exhibit R-4.

MARK TOWNSEND, being duly sworn, testified as follows:

Daniel T. Winter, Jr., Myron J. Brown and Edward I. Edwards were appointed temporary receivers on the morning of June 2, 1927, and at the same time I was appointed counsel for them by an order of the Court of Chancery. The said receivers were immediately qualified and took possession of the assets and business, including the building of the Manufacturers Liability Insurance Company. They did not delegate their authority to anyone or appoint any agent anywhere to act in their behalf. The order appointing temporary receivers directed them to continue in effect all outstanding policies of insurance issued by the Manufacturers Liability Insurance Company, except those which, in their discretion, they should cancel, in accordance with the terms of these policies. To my knowledge, no policies were cancelled by the said receivers until sometime in the month of July, 1927. Neither Mr. R. G. Sykes nor Mr. La Brecque had any authority whatsoever to act on behalf of the receivers.

INDEX

Exhibit D-1 of June 19, 1931.

MASSACHUSETTS MOTOR VEHICLE LIABILITY POLICY

MANUFACTURERS LIABILITY INSURANCE COMPANY 10

INCORPORATED AS A STOCK COMPANY

OF

JERSEY CITY NEW JERSEY

(HEREIN CALLED THE COMPANY)

INSURING CLAUSE

In accordance with the provisions of Chapter 346 of the Acts of 1925 of the Commonwealth of 20 Massachusetts, and all acts amendatory thereof and supplementary thereto, in consideration of the premium set forth herein, hereby agrees to indemnify the Assured named in the declarations hereby made a part hereof and any person responsible for the operation of the named Assured's motor vehicle or trailer described herein with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time 30 resulting therefrom, sustained during the term of this policy by any person other than employees of the Assured or of such other person responsible as aforesaid who are entitled to payments or benefits under the provisions of Chapter 152 of the General Laws of said Commonwealth and arising out of the ownership, operation, maintenance, control or use upon the ways of said Commonwealth of such motor vehicle or trailer to the amount or limit of five thousand dollars ($5,000) 40 on account of injury to or death of any one per-

son, and, subject to such limits as respects injury to or death of one person, of ten thousand dollars ($10,000) on account of any one accident resulting in injury to or death of more than one person.

Statutory Provisions

1. Legal Reference. (a) This policy is subject to the provisions of Sections 112 and 113 of Chapter 175 of the General Laws of the Commonwealth of Massachusetts as respects both the owner of a motor vehicle or trailer insured hereunder and any person responsible for its operation with the express or implied consent of such owner.

(b) This policy, the written application therefor, if any, and any rider or endorsement, which shall not conflict with the provisions of Chapter 346 of the Acts of 1925, and all acts amendatory thereof and supplementary thereto, and/or Section 34A of Chapter 90 of the General Laws constitutes the entire contract between the Company and the Assured as respects the motor vehicle or trailer herein described.

(c) No statement made by the Assured or on his behalf and no violation of the terms of this policy shall operate to defeat or avoid this policy so as to bar recovery within the limit provided in this policy by a judgment creditor proceeding under the provisions of Section 113 of Chapter 175 and clause 10 of Section 3 of Chapter 214 of the General Laws.

2. Insolvency or Death. If the death, insolvency or bankruptcy of the Assured shall occur within the policy period, the policy during the unexpired portion of such period shall cover the legal representatives of the Assured.

3. Cancellation. This policy may be cancelled by the company or by the named Assured by written notice stating the date and hour thereafter when such cancellation shall be effective; such notice shall be given by the party proposing cancellation to the other party at least fifteen (15) days prior to the intended effective date thereof and, except when said effective date is the date of expiration of the period of registration of the motor vehicle or trailer covered by this policy, to the Registrar of Motor Vehicles of said Commonwealth, in such form as the Division of Highways of said Commonwealth may prescribe, at least fifteen (15) days prior to said effective date and in the event of a cancellation by the named Assured he shall be entitled to receive a return premium after deducting the customary monthly short rates for the time this policy shall have been in force, in accordance with the Table printed hereon, or, in the event of cancellation by the company, shall be entitled to receive a return premium pro rata.

If after such cancellation by the Company, a finding that such cancellation is not proper and reasonable, is made under General Laws, Chapter 175, Section 113D, either by the Board of Appeal from which finding the Company takes no appeal, or by the Superior Court, the Company will in the first case within ten (10) days and in the second case within five (5) days, comply with said finding and reinstate the policy.

Notice of cancellation sent by registered mail to, or delivered at, the address of the named Assured as given in the Declarations shall be a sufficient notice. The check of the Company, or its duly authorized representative, mailed to, or delivered at such address shall be a sufficient tender of any unearned premium, when deter-

mined, but no tender shall be required, if the premium has not been paid.

Agreements

I. Expenses Incurred. The Company agrees to pay all expenses incurred by the Company for investigation, negotiation for settlement, and/or defense of any claims for such injuries and of suits or legal proceedings arising therefrom; the expense incurred by the Assured for such immediate medical or surgical relief as shall be imperative at the time any such injuries are sustained; all premiums on attachment and/or appeal bonds required in any such proceedings; all costs taxed against the Assured in any such proceedings; and all interest accruing before or after entry of judgment and up to the date of payment, tender or deposited in Court by the Company of its share of any judgment.

II. Defense. The Company agrees to defend as in this Policy provided, or at the option of the Company to settle, in the name and on behalf of the Assured any claims, suits or other legal proceedings alleging such injuries and demanding damages on account thereof, provided such suits or legal proceedings shall be commenced within one year next after the cause of action accrues, although such claims, suits, legal proceedings, allegations and demands are wholly groundless, false or fraudulent.

III. Persons Covered. The unqualified term "Assured" whenever used in this Policy shall include in each instance not only the named Assured but also any other person, firm or corporation entitled to protection under the Agreements, Conditions and Declarations of this Policy, and under the provisions of Chapter 346 of the

Acts of 1925 of the Commonwealth of Massachusetts and all Acts amendatory thereof and supplementary thereto, but the qualified term "named Assured" or "Assured named in the Declarations" shall apply only to the Assured named and described as such in the Declarations.

IV. Exclusions. This Policy shall NOT cover: 10

(a) Injuries or death arising out of the ownership, operation, maintenance, control or use of the motor vehicle or trailer described herein, elsewhere than upon the ways of the Commonwealth of Massachusetts.

(b) Injuries or death to any employee of the Assured who is entitled to payments or benefits under the provisions of Chapter 152 of the General Laws of the Commonwealth of Massachusetts. 20

General Conditions

The foregoing Agreements are subject to the following conditions:

A. Premium. The premium for this Policy is as expressed in the Declaration.

B. Notice to the Company. Upon the occurrence of death or personal injuries or any accident covered by this Policy, the Assured shall as soon as practicable after learning thereof, give written notice with full particulars to the Company or its duly authorized Agent. The Assured shall give like notice of any claim made on account of any such occurrence. If any suit or other legal proceeding mentioned in Agreement II is instituted against the Assured, on account of any such occurrence, the Assured shall immediately forward to the Company or its duly authorized Agent every notice, summons, or other process served upon the Assured. 30 40

C. Co-operation. The Assured, when requested by the Company, shall aid in effecting settlements, in securing evidence and the attendance of witnesses, in defending suits, and in prosecuting appeals, and shall at all times render to the Company all co-operation and assistance in the Assured's power. The Assured shall not voluntarily assume any liability, settle any claim or incur any expense, except at the Assured's own cost, or interfere in any negotiation for settlement or legal proceeding, without the consent of the Company previously given in writing, but the Assured may provide, at the expense of the Company, such immediate medical or surgical relief as shall be imperative at the time any such injuries are sustained.

D. Subrogation. The Company shall be subrogated in case of any payment under this Policy, to the extent of such payment, to all rights of recovery therefor of the Assured and/or of any other person claiming hereunder, against persons, corporations, associations or estates, and the Assured and/or any other person claiming hereunder shall execute all papers required and shall co-operate with the Company to secure its rights.

E. Other Insurance. If the Assured has any other liability insurance applicable to a claim covered by this policy and issued by a company authorized to transact casualty insurance in the Commonwealth of Massachusetts, the Company shall not be obliged to indemnify the Assured or pay to a judgment creditor or claimant a larger proportion of or on account of any such claim than the limit of the Company's liability under this Policy, applicable to such claim, bears to the total corresponding limits of the whole amount of such valid and collectible insurance.

F. Right of Recovery. No recovery against the Company by the Assured shall be had hereunder until the amount of loss or expense shall have been finally determined either by judgment against the Assured after actual trial or by written agreement of the Assured, the Claimant, and the Company, nor in any event unless suit is instituted within two years thereafter.

G. Changes in Policy. No Agreement or Condition of this Policy shall be waived or altered except by an endorsement attached hereto, signed by its President and Secretary, nor shall notice to any Agent, nor shall knowledge possessed by any Agent, or by any other person, be held to effect the waiver of, or a change in, any part of this Policy. Changes in the written portions of the Declarations made a part hereof may be made by an endorsement attached hereto, countersigned by the authorized representative countersigning this Policy. Endorsements, when so countersigned and attached hereto, shall be construed as a part of this Policy.

H. Rate Changes. This Policy is issued by the Company and accepted by the named Assured with the agreement that the classifications and rates of premium expressed in the Policy or any endorsement attached thereto, are subject to modification to the extent that they are approved and required by the Commissioner of Insurance in accordance with the law, and become applicable from and after the date required by said Commissioner.

I. Reimbursement. The named Assured by the acceptance of this Policy declares the several statements in the Declarations hereby made a part hereof to be true; agrees to the several provisions and conditions hereof; in consideration of the

several agreements of the Company, agrees to reimburse the Company for any losses or payments the Company suffers or makes by reason of the provisions of said Policy provided any statements made in the Declarations are to the named Assured known to be false, or any terms or conditions of the Policy are violated by the Assured.

J. Inspection. The Company shall be permitted to inspect any motor vehicle or trailer described herein if it so desires, but the Company assumes no responsibility by reason of any such inspection or the omission thereof.

In Witness Whereof, the Company has caused this Policy to be executed by its President and Secretary, but this Policy shall not be binding upon the Company unless countersigned by a duly authorized representative of the Company.

D. T. Winter, Jr.
President.

John G. Johnson
Secretary.

Countersigned at Boston, Mass. this 5th day of April 1927.

R G Sykes
R. G. Sykes
Authorized Representative

It is hereby understood and agreed that Defense AGREEMENT (II) contained in the attached policy is hereby amended to read as follows:

> "The Company agrees to defend as in this Policy provided, or at the option of the Company to settle, in the name and on behalf of the Assured any claims, suits or other legal proceedings alleging such in-

juries and demanding damages on account thereof, although such claims, suits, legal proceedings, allegations and demands are wholly groundless, false or fraudulent."

This endorsement shall be effective as of even date with the policy.

Nothing herein contained shall be held to waive, vary, alter or extend any of the terms, conditions, agreements or limitations of the undermentioned policy, other than as above stated. 10

Attached to and forming a part of Policy No. 202903 issued by the MANUFACTURERS' LIABILITY INSURANCE COMPANY, in favor of Enos Gaudet of Lynn, Mass. but the same shall not be binding unless countersigned by a duly authorized agent of the Company.

20

D. T. WINTER, JR.
President

JOHN G. JOHNSON
Secretary

Countersigned at Boston, Mass. this 5th day of April 1927.

R G SYKES
Authorized Agent.

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MANUFACTURERS' LIABILITY INSURANCE CO.

EXTRA-TERRITORIAL COVERAGE ENDORSEMENT

It is hereby understood and agreed, in consideration of the additional premium stated below that the policy to which this endorsement is attached is extended to indemnify the named Assured against loss by reason of his legal liability to pay damages to others for bodily injuries, including death at any time resulting 40

therefrom, accidentally sustained during the term of this policy by any person or persons not hereinafter excluded, arising out of the ownership, operation, maintenance, control or use of the motor vehicle or trailer described in the policy within the limits of the Continental United States of America and the Dominion of Canada elsewhere than upon the ways of the Commonwealth of Massachusetts.

It is a condition of this endorsement as respects the coverage provided herein that Statutory Provisions, Section 1 (Legal Reference Clauses) 1a—1b and 1c and Agreements III (Persons Covered) and IV (Exclusions) and General Condition I (Reimbursement) shall be null and void.

Omnibus Coverage

The terms and conditions of this endorsement are so extended as to be available, in the same manner and under the same conditions as they are available to the named Assured, to any person or persons while riding in or legally operating any of the motor vehicles or trailers described in the declarations, and to any person, firm or corporation legally responsible for the operation thereof, provided such use or operation is with the permission of the named Assured or, if the named Assured is an individual, with the permission of an adult member of the named Assured's household other than a chauffeur or a domestic servant; except that the terms and conditions of this paragraph shall not be available to any public automobile, garage, repair shop, sales agency, service station, or the agents and employees thereof.

Cancellation

This endorsement may be cancelled at any time by either the named Assured or by the Company upon fifteen (15) days written notice to the other party and the effective date of such cancellation shall then become the end of the period for the coverage provided by this endorsement. If such cancellation is at the request of the named Assured the Company shall be entitled to an earned premium adjusted according to the short rate table shown on the policy. If such cancellation is at the Company's request the earned premium shall be computed and adjusted on the pro rata basis. Notice of cancellation mailed to or delivered at the address of the named Assured as given in the declaration on the policy shall be a sufficient notice. The check of the Company mailed to, or delivered at such address shall be a sufficient tender of any unearned premium when determined but no tender shall be required if the premium has not been paid.

Special Statutes

If any of the Agreements, Conditions or Declarations of this endorsement are at variance with any specific statutory provisions in force in any State, Territory, District or Province within which coverage is granted, such specific statutory provisions shall supercede any such Agreement, Condition or Declaration of this endorsement inconsistent therewith.

Exclusions

This endorsement shall not cover;

(a) when any of the said motor vehicles or trailers are being

(1) operated by any person contrary to law as to age, or any person under the age of sixteen (16) years in any event; or

(2) used in any race or speed contest; or

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(3) used in towing or propelling any trailer, or other vehicle used as a trailer, unless such privilege is endorsed on this policy and a proper premium charged therefor, or such trailer is also insured by the Company; or

(4) used for renting or livery use or the carrying of passengers for a consideration; or

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(b) personal injuries or death to any employee under any Workmen's Compensation Agreement, Plan or Law or while engaged in any business or occupation of the Assured or in the operation, maintenance or repair of any automobile described in this policy.

30 ADDITIONAL PREMIUM $1.52

This endorsement is effective from 12.01 A. M. March 30 1927 to date of expiration as expressed in this policy.

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

Attached to and forming a part of Policy No. 202903 issued by the MANUFACTURERS' LIABILITY

40

INSURANCE COMPANY, of New Jersey to Enos Gaudet of Lynn, Mass.

Dated at Boston, Mass. this 5th day of April 1927

JOHN G. JOHNSON
Secretary.

D. T. WINTER, JR. 10
President.

R G SYKES
Countersigned R. G. SYKES
Authorized Representative.

DECLARATIONS

ITEM 1. Name Assured Enos Gaudet

ITEM 2. Address 101 Newhall St., Lynn, Mass.

ITEM 3. The named Assured is Individual 20

ITEM 4. Named Assured's occupation or business is Carpenter

ITEM 5. The Policy period shall be from 12.01 o'clock A.M. March 30, 1927, to 12.01 o'clock A.M. January 1928, Standard time.

ITEM 6. The motor vehicles and/or trailers covered hereby are principally garaged in the city or town of Lynn, Mass. 30

ITEM 7. The motor vehicles and/or trailers covered by this Policy and the Premium charges therefor are as follows:

Trade Name, Type of Body and Number of Cylinders	Model Year	Engine Number	Serial Number	Load Capacity (If truck)	Seating Capacity (If bus)	Premium
Essex Coach	1923	124635	530845		5/10	16.70
			Extra Territorial			1.52
				Total Premium		$18.22

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ITEM 8. The purposes for which the above described motor vehicles and/or trailers are to be used are: Pleasure & Business

ITEM 9. None of the motor vehicles and/or trailers herein described is or will be rented to others or used to carry passengers for a consideration during the period of this Policy, except as follows: No Exception

ITEM 10. No Company has declined to issue or has cancelled motor vehicle liability insurance for the Named Assured during the past three years, except as follows: No Exception

SHORT RATE TABLE

If Policy was written for ONE year and has been in force any number of days or months indicated in the left hand column of the table the Company may retain from the annual premium the percentage thereof indicated in the right hand column.

No. of days Or months	Percentage	No. of days Or months	Percentage
15 days	14	81 to 85 "	39
16 "	14	86 to 90 " or 3 mo.	40
17 "	15	91 to 105 "	45
18 "	16	106 to 120 " or 4 mo.	50
19 "	16	121 to 135 "	55
20 "	17	136 to 150 " or 5 mo.	60
21 to 25 days	19	151 to 165 "	65
26 to 30 days or 1 month	20	166 to 180 " or 6 mo.	70
31 to 35 days	23	181 to 195 "	73
36 to 40 "	26	196 to 210 " or 7 mo.	75
41 to 45 "	27	211 to 225 "	78
46 to 50 "	28	226 to 240 " or 8 mo.	80
51 to 55 "	29	241 to 255 "	83
56 to 60 days or 2 mo.	30	256 to 270 " or 9 mo.	85
61 to 65 "	33	271 to 285 "	88
66 to 70 "	36	286 to 300 " or 10 mo.	90
71 to 75 "	37	301 to 315 "	93
76 to 80 "	38	316 to 330 " or 11 mo.	95
		331 to 360 " or 12 mo.	100

MASSACHUSETTS MOTOR
VEHICLE LIABILITY POLICY

MANUFACTURERS LIABILITY
INSURANCE COMPANY
JERSEY CITY NEW JERSEY
A STOCK COMPANY

10

Policy No. 202903

Issued to Enos Gaudet

IMPORTANT

ALL ACCIDENTS MUST BE REFORTED IMMEDIATELY. Seemingly unimportant ones require prompt attention in order to avoid serious results later. Secure names and addresses of all witnesses to accidents.

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PLEASE READ YOUR POLICY

FRED B. GOODWIN
Insurance

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Exhibit R-1 of January 29, 1932.

ALFRED N. LA BRECQUE CO. (1)

DEBIT SHEET

	Policy No.	Assured	Charge	Credit	Bal. Due
10					
	172672	Abrams	54.40		54.40
	173775	Grady	51.00		51.00
	172325	MacIntosh	17.84		17.84
	172279	Williams	47.82		47.82
	172430	Zilg	37.40		37.40
	166993	Bryan	45.05		45.05
	172472	Paulson	37.40		37.40
	166112	Berman & Aronson	12.79		12.79
	164969	Lemieux	18.70		18.70
	166424	Fisk	10.13		10.13
	172829	Neth	27.61		27.61
	172539	Gately	35.13		35.13
20	172280	Haugh	20.09		20.09
	205445	Abate	27.14	24.10	3.04
	172447	Abbott	29.60		29.60
	203785	Acores	35.02	29.35	5.67
	202523	Adolfson	24.25	17.25	7.00
	200637	Alinskas	17.68	14.98	2.70
	204751	Anderson	29.67	24.47	5.20
	205532	Anderson	15.72	14.61	1.11
	203788	Andrea	35.42	28.83	6.59
	201113	Arsenault	23.00	19.34	3.66
	205035	Arnold	42.81	35.66	7.15
	201098	Ashworth	29.29	24.40	4.89
	172326	Baker	37.40		37.40
30	201100	Barnes	23.28	19.39	3.89
	201022	Bates	3.01		3.01
	202589	Krauss	47.77	35.58	12.19
	166849	Bedell	34.19		34.19
	202979	Bibeault	31.52	24.43	7.09
	172960	"	11.78		11.78
	205043	Bjornholm	23.35	19.38	3.97
	166780	Bouchard	11.71		11.71
	178044	Breasole	43.35		43.35
	166406	Brooks	13.48	8.96	4.52
	202909	Brundage	37.46	29.44	8.02
	178088	Burg	7.78		7.78
40	200640	Burns	41.84	35.53	6.31
	172075	Campbell	43.35		43.35
	171210	Campbell	19.98		19.98
	166940	Catler	41.66		41.66
	205521	Caputo	20.46	18.89	1.57
	201099	Cariani	51.82	43.17	8.65
	201129	Castine	21.78	18.14	3.64
	204789	Caswell	23.62	19.42	4.20
	201025	Chella	30.35	24.44	5.91
	205525	Cheverie	15.80	14.63	1.17

Debit Sheet (2)

Policy No.	Assured	Charge	Credit		Bal. Due	
205037	Christie	23.28	19.39		3.89	
166957	Clark	12.74			12.74	
172737	Cliffe	18.37			18.37	
172535	Clifford	38.38			38.38	
201018	Colby	46.51	35.68			10
166211	"		2.66		8.17	
200628	Corner	48.24	42.69		5.55	
200627	Cortese	33.67	28.68		4.99	
202906	Cremin	19.54	15.05		4.49	
205451	Cresswell	21.23	18.09		3.14	
172548	Crocker	21.84			21.84	
203077	Cumming	39.00	28.54	Cash 17.55		
202520	"	54.60	24.57	19.66	3.28	
204781	Cushman	29.48	24.38		5.10	
201027	Davenport	44.18	35.69			
172362	"		.93		7.56	
205221	Day	20.33	17.93		2.40	20
205503	Dintini	39.05	35.10		3.95	
172738	Dodge	46.34				
200227	"		24.46		21.88	
202918	Dorr	24.46	19.45		5.01	
201108	Duffy	22.94	19.36		3.58	
205060	Dunbar	47.05	42.39		4.66	
172903	Duncan	15.41			15.41	
172908	Dwyer	10.59			10.59	
202930	Edwards	43.43	35.70		7.73	
178086	Everson	7.58			7.58	
182268	Fay	22.74			22.74	
200621	Fenby	28.20	24.25		3.95	
205565	Figueirdeo	16.24	14.73		1.51	30
200620	Fisher	40.30	35.34			
172728	"		4.50		.46	
178092	Fleishman	26.19				
203279	"		15.04		11.15	
200619	Fowler	28.63	24.31		4.32	
166972	Ganley	1.68			1.68	
204754	Ganley	13.71	11.27		2.44	
172220	Giangranti	33.18			33.18	
201105	Goodwin	19.98	16.86		3.12	
201024	Granite Mill Supply Co.	46.69	37.59		9.10	
205062	Granlund	42.92	35.62			
166097	"		2.36		4.94	
178008	Green	8.96			8.96	40
203272	Griffin	19.13			19.13	
172077	Gustafson	31.45				
200203	"		10.85		20.60	

Debit Sheet

(3)

	Policy No.	Assured	Charge	Credit	Bal. Due
	172680	Hajjar	51.40		51.40
	166017	Hanco	3.31		3.31
	178007	Hayden	9.56		9.56
10	172282	Hayes	37.40		37.40
	202992	Higuera	37.17	28.81	
	172647	"		1.89	6.47
	166545	Hingston	4.83		4.83
	178119	Holmes	4.06		4.06
	202937	Hodstrom	42.92	35.62	7.30
	200610	Hornbrook	22.69	19.33	3.36
	205059	Houston	21.14	19.05	2.09
	205537	Hoxie	20.12	18.79	1.33
	205570	Huff	15.52	14.54	.98
	172218	Johnson	29.60		
	200255	"		12.25	17.35
	201122	Johnson	23.10	19.36	3.74
20	178087	Jones	9.01		9.01
	205449	Jones	41.10	35.46	5.64
	205535	Jones	25.55	23.74	1.81
	201127	Kane	12.02	10.02	2.00
	178116	Katajer	6.36		6.36
	204779	Kamanen	23.44	19.39	4.05
	200601	Keegan	41.84	35.53	6.31
	203255	Kilroy	68.25	40.61	27.64
	166075	Kiniley	15.97		15.97
	166928	Kirby	6.00		6.00
	193598	Kneeland	2069.19		2069.19
	172740	La Brecque	50.06	13.19	36.87
	172594	La Brecque	7.48		7.48
30	166401	Lieberson	4.30		4.30
	164968	McCabe	37.40		37.40
	201030	McAuliffe	24.80	19.44	5.36
	202907	McClellan	37.60	29.47	8.13
	205214	McKenzie	5.35		5.35
	200594	McLaughlin	12.81	11.16	1.65
	200592	McWilliams	22.35	19.29	3.06
	200597	McWilliam	22.84	19.35	3.49
	200598	Macinnis	22.07	19.23	2.84
	205065	MacKinnan	23.35	19.38	3.97
	202922	Marchetti & Piazza	49.98	37.53	
	166023	"	8.80		21.25
	200596	May	22.84	19.35	3.49
40	172183	Mayo	31.45		31.45
	205573	Melnick	20.12	18.79	1.33
	205058	Mercurio	40.92	36.87	4.05
	200595	Miller	30.85	28.05	2.80
	172636	Milligan	37.84		37.84

Debit Sheet (4)

Policy No.	Assured	Charge	Credit	Bal. Due	
205447	Moller	40.76	35.38	5.38	
172252	Morrison	37.40		37.40	
172429	Murphy	.20		.20	
202910	Nader	24.65	19.44	5.21	10
166949	Nardone & Nardone	86.70		86.70	
205531	Nicholls	39.30	36.51	2.79	
205529	Nielson	20.31	18.87	1.44	
202916	Norten & Marden	24.46	19.45		
202915	"	47.44	37.72	14.73	
178071	Old Colony Ldry. Co. Inc.	9.96			
178163	"	.74		10.70	
172838	Oldfield	44.13		44.13	
204788	Olsen	23.53	19.41	4.12	
204980	Parker	34.55	28.78	5.77	
172127	Papani	43.35			
203035	"		16.10	27.25	
172693	Parsons	30.57		30.57	20
172217	Parsons	37.40		37.40	
205516	Parsons	20.56	18.93	1.63	
205063	Parsons	42.92	35.62	7.30	
203149	Pausey	31.00	18.11	12.89	
166968	Pecde	31.45		31.45	
202913	Peterson	24.55	19.44	5.11	
205227	Petrilli	22.42	19.28	3.14	
166967	Pinel	31.45			
200375	"		16.10	15.35	
205229	Pitts	17.56	14.96	2.60	
172082	Pollard	68.00		68.00	
172211	Pratt	31.45		31.45	
205509	Robicheau	38.42	34.97	3.45	30
205267	Rogantino	37.80	36.02	1.78	
205339	Rostelli	50.65	43.00	7.65	
178107	Rupp	7.07		7.07	
202535	Ruska	39.39	29.34	10.05	
200645	Russo	28.23	25.62	2.61	
166612	Ryan	5.34		5.34	
205344	Rydings	22.69	19.33	3.36	
166900	Sanderson	17.12		17.12	
178091	Saulnier	8.65		8.65	
205066	Schragle	23.35	19.38	3.97	
172648	Schwartz	31.45		31.45	
172846	Shanks	5.34		5.34	
166498	Shaw	2.46		2.46	40
205520	Simpson	20.46	18.89	1.57	
172048	Silverman	37.40		37.40	
166400	Smith	7.29		7.29	
204790	Smith	23.62	19.42	4.20	

Debit Sheet

(5)

	Policy No.	Assured	Charge	Credit	Bal. Due
	205296	Smith	30.13	28.39	1.74
	172968	Spaulding	11.78		11.78
	200643	Stackhouse	39.76	34.20	5.56
10	172047	Stevens	17.02		
	200244	"	.33		17.35
	205298	Stockman	30.27	28.45	1.82
	205560	Stover	25.12	23.61	1.51
	166658	Stuart	3.09		3.09
	166860	Sussman	.15		.15
	205569	Syrjala	20.05	18.79	1.26
	172584	Tabor	43.35		43.35
	166198	Tangherlini	14.43		14.43
	172278	Tansey	29.06		29.06
	204983	Thomson	23.28	19.39	3.89
	201004	Tolpin	87.00	67.45	19.55
	205507	Toner	20.98	19.02	1.96
20	172583	Toomey	.22		.22
	205357	Toye	17.56	14.96	2.60
	205519	Tremholm	20.46	18.89	1.57
	202911	Vaughn	37.22	29.48	7.74
	172184	Ve Doe Paterson Co.	35.87		35.87
	204898	Wade	29.29	24.40	
	172277	"		1.54	3.35
	204797	Warden	23.87	19.43	4.44
	172011	Wentworth	12.75		12.75
	172246	White	42.02		42.02
	172747	White	35.92		35.92
	201026	Whittemore	44.35	35.71	
	166114	"		3.11	5.53
30	205083	Wick	29.37	24.37	5.00
	200647	Wingersky	28.01	24.26	3.75
	172371	"	82.45		82.45
	172283	Wixen	37.40		37.40
	202518	Ballou	32.69	24.35	8.34
	202938	Barnicoat	42.92	35.62	7.30
	204755	Bates	17.76	14.99	2.77
	204775	Bennett	43.26	35.69	7.57
	200636	Berman	33.99	29.23	4.76
	202993	Berwick	46.06	35.70	10.36
	204783	Billings	21.92	18.13	3.79
	204799	Bone	23.87	19.43	4.44
	202987	Boudreau	37.81	28.82	8.99
40	202920	Boulanger	30.58	24.47	6.11
	205225	Bresciani	32.95	27.91	5.04
	201102	Brogioli	34.55	28.78	5.77
	205061	Brown	16.36	14.74	1.62
	205057	Brown	33.17	28.63	4.54

Debit Sheet (6)

Policy No.	Assured	Charge	Credit	Bal. Due	
200635	Brown	22.26	19.28	2.98	
200634	Cahill	22.76	19.33	3.43	
205042	Calderara	34.65	28.76	5.89	
200633	Campbell	26.43	22.44	3.99	10
204752	Campbell	23.53	19.41	4.12	
205505	Capone	38.87	35.02	3.85	
200632	Carlson	28.31	24.29	4.02	
201114	Castle	34.13	28.70	5.43	
204784	Caulfield	18.08	15.00	3.08	
200631	Caron	22.35	19.31	3.04	
201109	Chapman	42.18	35.60	6.58	
200629	Chapman	28.63	24.31	4.32	
204138	Chapman	45.43	35.71	9.72	
205032	Chella	30.03	24.44	5.59	
205448	Chigli	22.35	19.29	3.06	
200630	Clarke	21.91	19.22	2.69	
205501	Copp	32.34	28.98	3.36	20
201021	Coughlin	18.02	15.01	3.01	
202921	Coughlin	25.98	19.35	6.63	
200626	Coulon	21.67	19.18	2.49	
200625	Cumming	32.75	28.53	4.22	
204758	Curry	32.38	28.39	3.99	
200624	Daly	32.75	28.53	4.22	
201111	Dean	28.86	24.36	4.50	
202998	Dill	21.60	16.93	4.67	
200623	Dillon	27.76	24.18	3.58	
203000	Downing	34.19	26.33	7.86	
205038	Doyle	32.80	26.30	6.50	
205442	Ellis	31.65	28.37	3.28	
201104	Evans	17.76	14.99	2.77	30
205374	Fratus	46.24	39.26	6.98	
202988	Gagnon	38.55	28.71	9.84	
202999	Gibson	41.18	32.61	8.57	
201112	Gillis	28.93	24.33	4.60	
200618	Goode	28.54	24.32	4.22	
201101	Gow	34.55	28.78	5.77	
205502	Goldner	31.52	28.33	3.19	
201119	Gutro	42.47	35.59	6.88	
200617	Hammett	22.26	19.28	2.98	
200615	Harding	20.27	17.94	2.33	
205034	Hay	42.81	35.66	7.15	
200616	Hayes	33.67	28.68	4.99	
200614	Hays	33.27	28.62	4.65	40
204800	Hendrickson	23.87	19.43	4.44	
202986	Hill	44.97	35.76	9.21	
202914	Holmgren	24.55	19.44	5.11	
200611	Hopkins	46.83	39.76	7.07	

Debit Sheet

(7)

	Policy No.	Assured	Charge	Credit	Bal. Due
	202974	Howard	26.50	20.70	5.80
	200609	Hoyle	22.69	19.33	3.36
	200608	Hurley	50.85	43.07	7.78
10	202985	Hutchinson	19.84	15.00	4.84
	200638	Inman	26.72	24.02	2.70
	200607	Inman	33.39	28.64	4.75
	204794	Ireland	29.80	24.40	5.40
	201103	Jackson	23.28	19.39	3.89
	204903	Jankkiri	34.55	28.78	5.77
	200606	Jarvelin	22.76	19.33	3.43
	204780	Jenner	23.43	19.38	4.05
	202983	Jensen	35.64	28.23	7.41
	200605	Jess	25.86	22.89	2.97
	202929	Johnson	42.53	35.59	6.94
	204896	Johnson	34.55	28.78	5.77
	204793	Johnson	23.70	19.41	4.29
20	200603	Johnson	28.63	24.31	4.32
	200604	Johnson	22.17	19.24	2.93
	202917	Johnson	24.46	19.45	5.01
	201128	Kasakaitis	35.30	29.41	5.89
	200602	Keating	22.84	19.35	3.49
	204902	Keene	29.29	24.40	4.89
	202989	Kelly	37.36	28.77	8.59
	204778	Kent	23.43	19.38	4.05
	200600	Kerans	22.50	19.30	3.20
	204792	Kerr	23.69	19.40	4.29
	204895	Knight	23.28	19.39	3.89
	202997	Lane	45.77	35.75	10.02
	201023	Landry	30.46	24.46	6.00
30	202996	Learoyd	45.77	35.75	10.02
	205041	Lewis	23.35	19.38	3.97
	204900	Libby	29.29	24.40	4.89
	204787	Lindhal	23.62	19.42	4.20
	200599	Lodico	13.21	12.31	.90
	204982	Lynch	42.01	35.59	6.42
	204782	McGregor	29.48	24.38	5.10
	202995	MacKenzie, Jr.	78.70	61.47	17.23
	201106	McKenzie	22.94	19.36	3.58
	200593	McSherry	15.55	13.64	1.91
	205040	MacKenzie	34.65	28.76	5.89
	204785	Manuel	26.36	21.87	4.49
	204753	Marston	22.09	18.16	3.93
40	202991	Mastrogianopoulous	37.45	28.84	8.61
	204756	Mattson	22.84	19.35	3.49
	201028	May	22.42	18.18	4.24
	200639	May	27.57	24.18	3.39
	204757	Mayo	33.90	28.72	5.18

Debit Sheet

(8)

Policy No.	Assured	Charge	Credit	Bal. Due	
204791	Merrymount Bottling Co.	45.84	37.54	8.30	
202994	Messina	36.95	28.86	8.09	
202977	Morey	39.39	29.34	10.05	
201120	Mossberg	29.06	24.35	4.71	10
201107	Mullen	22.94	19.36	3.58	
201121	Murphy	29.06	24.35	4.71	
204979	Murray	23.28	19.39	3.89	
201115	Mushlin	34.13	28.70	5.43	
200591	Nelson	17.68	14.98	2.70	
205222	Newell	17.56	14.96	2.60	
205223	Newell	22.84	19.35	3.49	
205450	Nicholson	22.50	19.30	3.20	
204901	O'Brien	29.29	24.40	4.89	
204777	O'Connor	23.43	19.38	4.05	
205452	O'Neil	28.63	24.31	4.32	
205224	Packard	33.90	28.72	5.18	
205226	Palombo	22.17	19.24	2.93	20
201110	Parkinson	42.18	35.60	6.58	
202978	Pelto	25.14	19.43	5.71	
205331	Pelto	21.49	19.13	2.36	
205033	Perry	29.29	24.40	4.89	
204798	Perry	35.42	28.83	6.59	
205228	Peterson	34.12	29.27	4.85	
204978	Philips	23.28	19.39	3.89	
204796	Phinney	43.89	35.72	8.17	
205230	Porcea	22.07	19.23	2.84	
205453	Porter	39.92	34.24	5.68	
205330	Potter	20.50	17.98	2.52	
205067	Pyke	34.77	28.76	6.01	
205068	Reed	34.92	28.81	6.11	30
201123	Riley	23.10	19.36	3.74	
205340	Riley	22.17	19.24	2.93	
205064	Risker	29.37	24.37	5.00	
203787	Rivard	31.30	26.23	5.07	
205341	Rizzi	34.50	29.29	5.21	
204897	Rouleau	29.29	24.40	4.89	
205342	Roust	22.50	19.30	3.20	
200646	Ruggiano	22.84	19.35	3.49	
205343	Ryan	40.30	35.34	4.96	
205345	Sebean	41.21	35.44	5.77	
202908	Sabean	47.82	37.59	10.23	
201124	Saltus	34.28	28.73	5.55	
202982	Sampson	25.63	19.38		40
205346	"	28.20	24.25	10.20	
205347	Scanlon	21.73	19.16	2.57	
204981	Scheydecker	23.28	19.39	3.89	
202980	Seadale	25.48	19.42	6.06	

Debit Sheet

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Policy No.	Assured	Charge	Credit	Bal. Due
205349	Sebjersen	22.76	19.33	3.43
205348	Shiner, Sr.	34.12	29.27	4.85
201116	Siegan	34.13	28.70	5.43
202984	Siegers	32.25	24.38	7.87
202990	Skeldon	55.96	43.25	12.71
204538	Smith	37.17	28.81	8.36
201020	Smith	18.02	15.01	3.01
205350	Smollett	21.91	19.22	2.69
205351	Spencer	28.54	24.31	4.23
205352	Stevens	22.26	19.28	2.98
202919	Stowers	24.31	19.46	4.85
204904	Stowers	42.81	35.66	7.15
205036	Strout	23.28	19.39	3.89
205353	Sundstrom	24.47	21.66	2.81
205338	Swansey	39.22	35.14	4.08
204137	Swinton	36.58	28.85	7.73
204786	Tansey	34.66	28.76	5.90
205354	Taylor	22.84	19.35	3.49
205355	Thebideau	33.17	28.63	4.54
205356	Tower	17.62	14.96	2.66
204776	Tucker	23.43	19.38	4.05
205358	Waite, Jr.	28.12	24.26	3.86
200649	Walker	17.08	14.88	2.20
201118	Walter	35.02	29.35	5.67
201019	Waters	23.97	19.44	4.53
202981	Watson	25.48	19.42	6.06
201125	Welch	21.61	18.11	3.50
202939	Wheeler	34.55	28.78	5.77
200648	Wheeler	27.26	24.13	3.13
201117	White	73.02	61.19	11.83
200641	Williams	40.58	35.35	5.23
200642	Wood-Sims	22.42	19.28	3.14
201126	Wrigley	23.10	19.36	3.74
204899	Younie	29.29	24.40	4.89
				$5761.48

Exhibit R-2 of January 29, 1932.

ALFRED N. LA BRECQUE a/c (1)

CREDIT SHEET

Policy No.	Assured	Charge	Credit	Bal. Due Assured
202516	Asworth		17.35 No P/c	17.35
203011	Baker		100.20 No P/c	100.20
203153	Banks		13.55 No P/c	13.55
217420	Butterworth		31.00 No P/c	31.00
200292	Capehart		24.15 No P/c	24.15
202525	Carlson		26.22 No P/c	26.22
203163	Cashook		10.85 No P/c	10.85
166266	Castle		3.81 No P/c	3.81
200373	Cattinio		19.95 No P/c	19.95
172692	Chapman		3.18 No P/c	3.18
166991	Chapman		1.76 No P/c	1.76
?	Cherardi	Cash—	40.57 No P/c	40.57
166917	Clements		4.40 No P/c	4.40
200308	Cohen		60.00 No P/c	60.00
200309	"		60.00 No P/c	60.00
203455	"		25.11 No P/c	25.11
203194	Cowing		11.41 No P/c	11.41
166001	D'Alesandre	93.50	128.54 No P/c	35.04
200215	Davis		19.95 No P/c	19.95
205084	Di Rage		19.95 No P/c	19.95
170204	Edison Park Garage		6.20 No P/c	6.20
203283	Everson		16.10 No P/c	16.10
200248	Fullerton		19.95 No P/c	19.95
203258	Giocamo		12.34 No P/c	12.34
203054	Glidden		34.30 No P/c	34.30
200315	Goose		10.85 No P/c	10.85
203157	Gorman		9.55 No P/c	9.55
202548	Griffin		17.08 No P/c	17.08
203410	Harris		8.40 No P/c	8.40
203121	Harrington		10.85 No P/c	10.85
203124	Hayward		10.85 No P/c	10.85
203210	Jameson		20.13 No P/c	20.13
166355	Jones		1.59 No P/c	1.59
166129	Kurlansky		5.44 No P/c	5.44
203413	Laitinen		10.85 No P/c	10.85
203453	Lakins Flower Store		34.30 No P/c	34.30
166512	Lane		3.07 No P/c	3.07
166358	Learoyd		5.19 No P/c	5.19
203259	Levine		53.55 No P/c	53.55
203177	"		13.65 No P/c	13.65
203243	Loftus		33.40 No P/c	33.40
202538	McIsaac		26.75 No P/c	26.75
202539	MacLeod		12.35 No P/c	12.35
200252	Maguire		16.10 No P/c	16.10
200218	Marto		8.40 No P/c	8.40
166282	Morris		31.86 No P/c	31.86
203110	Mullaney		10.85 No P/c	10.85

Credit Sheet

(2)

	Policy No.	Assured	Charge	Credit	Bal. Due Assured
	203417	Musette		30.45 No P/c	30.45
	202537	Nolan		11.79 No P/c	11.79
	203237	Ohs		16.10 No P/c	16.10
10	202504	Peaslel		10.15 No P/c	10.15
	202501	Romeri		12.70 No P/c	12.70
	200318	Saluaggio		21.00 No P/c	21.00
	203088	Saluti		10.85 No P/c	10.85
	?	Sarkin	Cash	31.00 No P/c	31.00
	203087	Selenzi		10.85 No P/c	10.85
	203180	Sevigny		19.95 No P/c	19.95
	200332	Shriber		16.10 No P/c	16.10
	166945	Silver		3.60 No P/c	3.60
	202532	Smith		16.00 No P/c	16.00
	172654	Stanton		2.28 No P/c	2.28
	166247	Star Bottling Co.		25.16 No P/c	25.16
	202508	Stenfors		13.65 No P/c	13.65
20	172904	Stern		6.98 No P/c	6.98
	203060	Sullivan		21.64 No P/c	21.64
	200254	Sullivan		10.85 No P/c	10.85
	172603	Sundstrom		4.80 No P/c	4.80
	172808	Thebdeau		5.16 No P/c	5.16
	203196	Thibault		16.70 No P/c	16.70
	172471	Tower		1.91 No P/c	1.91
	172185	Tower		1.39 No P/c	1.39
	166372	Viner		37.40 No P/c	37.40
	203101	Whitcomb		10.85 No P/c	10.85
	203082	White		10.85 No P/c	10.85
	202530	Wickham		7.28 No P/c	7.28
	200242	Wixen		13.65 No P/c	13.65
30	203004	Woods		91.80 No P/c	91.80
	200294	Young		10.15 No P/c	10.15
	200376	Adair		10.15	10.15
	200381	Adie		19.95	19.95
	200379	Aguzzoli		13.65	13.65
	203265	Angelo		16.10	16.10
	202890	Antoon	77.60	61.46	
	203013	"		80.90	64.76
	203113	Archambault		10.85	10.85
	203049	Arsenault		16.10	16.10
	200274	Aruisoino		16.10	16.10
	200290	Buker		1.95	1.95
	203192	Barry		14.70	14.70
40	203162	Boyle	11.79	17.78	5.99
	203147	Bradford		11.54	11.54
	200311	Brids		16.10	16.10
	164804	"		5.09	5.09
	203152	Cislaghi	42.01	49.67	7.66

Credit Sheet (3)

Policy No.	Assured	Charge	Credit	Bal. Due Assured	
203009	Cumming		19.95	19.95	
203098	Cutler		13.65	13.65	
202553	Daly		16.34	16.34	
203168	Di Tullio		10.85	10.85	10
200206	Doring		19.95	19.95	
200278	Drake		19.95	19.95	
200622	Duane	32.25	28.44		
203033	"		24.15		
172152	"	4.36		15.98	
203123	Dwyer		10.85	10.85	
200338	Kankola		12.25	12.25	
200361	Fanstini		8.40	8.40	
200322	Flahire	9.54	14.19	4.65	
200304	Gamble & Son		31.85		
200303	"		31.85		
166541	"	8.43		55.27	
200250	Freeman		11.45	11.45	20
200359	Guays System Bakeries		87.85		
178090	"	13.05		74.80	
203020	Gustafson	8.16	18.96	10.80	
200307	Halpin	8.50	11.37	2.87	
203038	Hamblin	8.61	22.96	14.35	
200202	Hathaway	11.45	17.66	6.21	
200277	Hermanson	13.73	15.66	1.93	
200613	Hersey	22.17	19.24		
172833	"		4.01	1.08	
200240	Hibbett		16.10		
166861	"	12.14		3.96	
203057	Hill		19.95	19.95	
200228	Hislop		13.23	13.23	30
203069	Hobart	9.74	11.81	2.07	
200612	Hoffstein	41.10	35.46		
203132	"	29.79	31.43	4.00—debit	
203287	Holma		12.29	12.29	
203173	Ichel		10.85	10.85	
202540	Illingworth		9.65	9.65	
201014	Johnson	6.57	15.87	9.30	
200238	Jannson		16.10	16.10	
203070	Johnson	1.30	6.65	5.35	
203102	Johnson		10.85	10.85	
200397	Jordon	5.17	19.20	14.03	
203092	Joyce		16.45		40
203139	"		13.65		
172364	"	9.92		20.18	
200261	Kelty		47.55	47.55	
202550	Kurtzis		23.48		
172945	"		7.23	30.71	

Credit Sheet

(4)

	Policy No.	Assured	Charge	Credit	Bal. Due Assured
	203079	Lane		11.24	11.24
	203176	Lemond		14.66	14.66
	203129	Leverce		30.45	30.45
10	203261	Lewis		34.30	34.30
	166046	Liberty Baking Co.	21.55	23.13	1.58
	203280	McDermott		8.26	8.26
	203257	MacDonald		.89	.89
	203090	McLeod	9.45	18.88	9.43
	203256	Magnuson	14.42	17.70	3.28
	203258	Manuel		23.58	23.58
	200306	Murray	6.01	12.95	6.94
	203034	O'Brien		53.35	53.35
	200300	Old Colony Ldry.	54.40	249.27	194.87
	200353	Payne	4.69	12.49	7.80
	203051	Pepe	6.69	22.12	
	178100	"	6.13		9.30
20	203248	Vedge Paterson Co.		17.34	17.34
	202510	Pierson		13.58	13.58
	202509	Piper		10.85	10.85
	203032	Quincy Bldg. Wrecking Co.		107.10	
	172842	"	5.37		101.73
	202544	Quinn		17.04	17.04
	203420	Randazzo		19.95	19.95
	202536	Robbins	8.19	18.57	10.38
	203232	Rogers	5.01	15.86	10.85
	203056	Nardone		34.30	34.30
	200374	Sears		24.15	
	200350	"		16.10	
	172629	"	5.60		34.65
30	202534	Smith		16.51	16.51
	200384	Smith		19.06	
	178013	"	1.05		18.01
	200297	Smith		12.25	
	166904	"	3.70		8.55
	200385	Stanton	8.89	19.21	
	200386	"		19.95	30.27
	204905	Thomas	23.35	19.38	
	203055	"		16.10	
	?	"	Cash	15.86	27.99
	203146	Tolpin		50.75	50.75
	200241	Trembley		12.15	12.15
40	203130	Vergobbe		10.85	10.85
	203419	Wade		10.76	10.76
	203170	Walter		52.65	52.65
	203786	Weeder	42.92	26.61	
	172370	"		40.58	24.27
	200367	Westland & Co.		9.15	9.15

Credit Sheet (5)

Policy No.	Assured	Charge	Credit	Bal. Due Assured	
203036	Wiley		16.10	16.10	
200324	Wrightman	6.93	23.07	16.14	
202517	Babbitt		22.78	22.78	
200365	Badger		19.95	19.95	10
200378	Badst		13.65	13.65	
200389	Baker		440.39	440.39	
200214	Barrows		16.10	16.10	
203030	Beal		14.70	14.70	
202524	Bedders		20.66	20.66	
203071	Bell		12.95	12.95	
203095	Benn		13.65	13.65	
201017	Bent		15.58	15.58	
200396	Berg	11.48	17.67	6.19	
200363	Berger		22.80	22.80	
203269	Berger		19.95	19.95	
203072	Berger		10.15	10.15	
200317	Berghaus		10.85	10.85	20
201015	Berini		24.70	24.70	
203104	Berry		10.85	10.85	
201016	Bertoni		36.48	36.48	
200357	Besselman		10.15	10.15	
200233	Bianchi		12.25	12.25	
200232	Bianchi		18.20	18.20	
203160	Bisset		10.85	10.85	
200246	Blackmore		10.85	10.85	
203193	Blanchard		24.15	24.15	
203108	Blonde		13.65	13.65	
200349	Brand		10.85	10.85	
203289	Brandes		12.26	12.26	
203161	Bric		10.15	10.15	30
200312	Brids		31.85	31.85	
203125	Brown		10.85	10.85	
203140	Brown		10.85	10.85	
203076	Brown		13.65	13.65	
203249	Brown		14.89	14.89	
203107	Buckley		10.15	10.15	
200230	Bunker		47.25	47.25	
203187	Calabro		12.25	12.25	
200243	Campgana		16.10	16.10	
200213	Campbell		19.95	19.95	
203116	Carlberg		13.65	13.65	
200271	Carlson		10.85	10.85	40
203191	Carp		24.15	24.15	
203188	Carriker		16.10	16.10	
203029	Carson		16.10	16.10	
200393	Carson		14.70	14.70	
203190	Cassani		16.10	16.10	

Credit Sheet

(6)

	Policy No.	Assured	Charge	Credit	Bal. Due Assured
	203068	Gerety		10.85 No P/c	10.85
	200217	Checchi		19.95	19.95
	200216	Christie		16.10	16.10
10	203154	Christopher		12.34	12.34
	200339	Giacomazzi		21.00	21.00
	200212	Cislaghi		16.10	16.10
	200273	Clark		16.10	16.10
	201011	Clark		16.10	16.10
	203408	Clark		8.40	8.40
	203151	Cohen		13.65	13.65
	200334	Colletta		31.85	31.85
	200333	"		16.10	16.10
	200234	Condes		16.10	16.10
	200391	Cantin		19.95	19.95
	202519	Coughlin & Donovan		41.21	
	203052	"		34.30	
20	166922	"		1.53	77.04
	203172	Cronin		10.50	
	203158	"		14.28	
	?		Cash	.30	25.08
	200296	Crooker		8.40	8.40
	200204	Crosby		14.70	14.70
	200316	Cutler		62.10	62.10
	200267	Damon		19.95	19.95
	203166	Davis		21.00	21.00
	203081	"		42.00	42.00
	200279	Dawes		16.10	16.10
	203167	Day		13.65	13.65
	203164	De Cato		13.65	13.65
30	203298	Decoste		16.10	16.10
	203282	Delorey		24.15	24.15
	203159	Delorey		9.52	9.52
	200266	Densmore		10.85	10.85
	200291	Deschamplain		10.85	10.85
	200323	Dicesare		31.85	31.85
	203005	Dickson		16.10	16.10
	200219	Diersch		5.60	5.60
	203024	Donaher		16.10	16.10
	203127	Donovan		10.85	10.85
	200310	Downs		10.85	10.85
	200223	Doyle		10.50	10.50
	200224	"		10.50	10.50
40	202526	Driscoll		12.46	12.46
	200295	Drummond		19.95	19.95
	203227	Duggan		52.50	52.50
	203447	Duncanson		16.10	16.10
	203169	Dunn		13.65	13.65

Credit Sheet (7)

Policy No.	Assured	Charge	Credit	Bal. Due Assured	
203281	Durante		14.70	14.70	
202527	Eacobacco		10.22	10.22	
200399	Edelstein		19.95	19.95	
203247	"		29.44	29.44	10
200211	Edwards		19.95	19.95	
203448	Egan	7.68	18.79	11.11	
200283	Elcock		10.15	10.15	
203246	Epstein		17.49	17.49	
200239	Epstein		19.95	19.95	
203165	Fahie		8.40	8.40	
200245	"		12.25	12.25	
203014	Ferguson		12.25	12.25	
200209	Files		16.10	16.10	
200372	Fillibroun		21.70	21.70	
203046	Fisher		24.15	24.15	
200205	Fisk		16.10	16.10	
203284	Fitzgerald		16.10	16.10	20
203027	Fitzgerald		16.10	16.10	
200319	Fitzgerald		13.65	13.65	
203126	Flinkman		10.85	10.85	
200256	Ford		16.10	16.10	
203271	Forrest		16.10	16.10	
201008	Foy		10.85	10.85	
203285	Frazier		16.10	16.10	
203409	Frazer		10.85	10.85	
200225	Freedman		16.10	16.10	
203075	Gabrielson		10.85	10.85	
200302	Gamble		19.95	19.95	
203421	Gardner		30.45	30.45	
203138	Gatto		32.40	32.40	30
203189	Gavrelis		12.25	12.25	
203010	Gelotte		16.10	16.10	
200262	Gelotte		19.95	19.95	
203031	General Seltzer Mfg. Co.		193.55	193.55	
200355	Geraldi	10.18	20.68	10.50	
202515	Gillis		16.10	16.10	
200305	Golbranson		19.95	19.95	
203297	Goldstein		34.30	34.30	
203045	Granite Wet Wash Ldry.		115.50		
172826	"	.33		115.17	
205446	Granite City Ice Cream Co.	60.81	53.82		40
203136	"		40.25	33.26	
203084	Grant		12.51	12.51	
200364	Grassick		51.80	51.80	
200265	Green		19.95	19.95	
203135	Griffin		10.85	10.85	
203119	Grule		13.65	13.65	

Credit Sheet

(8)

	Policy No.	Assured	Charge	Credit	Bal. Due Assured
	203017	Gillis		16.10	16.10
	200366	Gustavson		10.85	10.85
	200299	Hadlock		19.95	19.95
	200360	Hajjar		30.10	30.10
10	203012	Haley		19.95	19.95
	203015	Halloran		16.10	16.10
	203042	"		16.10	16.10
	203007	Hamlin		16.10	16.10
	200395	Hamilton		13.65	13.65
	204893	Hanigan	34.55	28.78	
	203254	"		22.68	16.91
	202541	Hanks		12.42	12.42
	200348	Hanna		17.68	17.68
	200314	Harron		13.65	13.65
	203097	Hasey		10.85	10.85
	203037	Hayes		16.10	16.10
20	200286	Hercules Oil Co.		16.10	16.10
	203117	Hendry		40.25	40.25
	203118	Hendry		13.65	13.65
	200235	Hibbett & Sons		36.05	36.05
	202547	Hibbett		18.94	18.94
	200207	Higgins		16.10	16.10
	201009	Hoffman		12.25	12.25
	203454	Golden		19.95	19.95
	200282	Holmgren		10.85	10.85
	203023	Housman		19.95	19.95
	203053	Hultin		19.95	19.95
	200387	Hurd		16.10	16.10
	200222	Ireland		7.70	7.70
30	202549	Jellon		22.85	22.85
	203229	Johansen		15.21	15.21
	203085	Johnson		21.00	21.00
	203061	Johnson		10.85	10.85
	203273	Johnson		16.10	16.10
	203174	Jones		13.65	13.65
	203274	Jordon		14.70	14.70
	203091	Joyce		13.65	13.65
	200370	Katz		31.85	31.85
	200337	Kankola		14.70	14.70
	200268	Kenna		14.70	14.70
	200347	Kennedy		12.25	12.25
	200346	Kennedy		12.25	12.25
40	203175	Kennedy		21.00	21.00
	203008	Kerr		16.10	16.10
	200369	Knaut		27.60	27.60
	201013	Kotzen		16.10	16.10
	200249	Koveter		18.20	18.20

Credit Sheet (9)

Policy No.	Assured	Charge	Credit	Bal. Due Assured	
203106	Ladd		8.40	8.40	
203262	Ladd		16.10	16.10	
202551	Leavitt		24.82	24.82	
200330	Leppanen		8.40	8.40	10
203411	Lacroix		10.85	10.85	
203412	Lacroix		21.00	21.00	
203263	Laing		9.45	9.45	
203156	Laird		15.52	15.52	
203414	Lande		10.85	10.85	
203016	Leander		16.10	16.10	
200329	Lavelle		16.10	16.10	
200328	"		19.95	19.95	
203264	Lea		16.10	16.10	
203137	Lewis		10.85	10.85	
200331	Lewis		19.95	19.95	
203041	Libertine		24.15	24.15	
200237	Lindahl		16.10	16.10	20
203270	Lindberg		16.10	16.10	
203178	Lindquist		10.85	10.85	
200313	Linscott		12.25	12.25	
200270	Litchfield		8.40	8.40	
200362	Locicero		16.10	16.10	
203025	Lofgren		19.95	19.95	
203021	Lefgren		16.10	16.10	
203415	Loftus		10.85	10.85	
200327	Lovejoy		9.45	9.45	
200298	Lutz		12.25	12.25	
203047	McCloud		16.10	16.10	
203195	McGarry		12.20	12.20	
200201	McGilvray		29.58	29.58	30
201005	McIntosh		24.15	24.15	
203209	MacDougal		27.44		
172348	"		.89	28.33	
203086	MacLeod		13.65	13.65	
203148	McNablloy		7.70	7.70	
202529	McNeil		11.87	11.87	
200345	MacDonnell		12.25	12.25	
203452	MacKay		16.10	16.10	
203266	MacKenzie, Jr.		19.25	19.25	
203268	Mackinnon		19.95	19.95	
203028	MacLeod		19.95	19.95	
203416	MacLeod		13.65	13.65	40
200358	MacPherson		19.95	19.95	
200236	Madden		16.10	16.10	
203064	Mahon		10.85	10.85	
200377	Maida		19.95	19.95	
203451	Main		19.95	19.95	

Credit Sheet

(10)

	Policy No.	Assured	Charge	Credit	Bal. Due Assured
	203062	Maloney		40.25	40.25
	200341	Mannix		19.95	19.95
	203230	Marinelli		22.43	22.43
	200335	Marine & Piazza		31.65	31.65
10	200321	Martell		16.10	16.10
	203112	Martin		10.85	10.85
	203197	Martineau		12.16	12.16
	203100	Masecarelli		13.65	13.65
	202511	Massimo		24.24	24.24
	203286	Mecagui		11.72	11.72
	200390	Mehne		16.56	16.56
	203083	Menhinick		16.45	16.45
	200351	Merrick		19.95	19.95
	200356	Millar		16.10	16.10
	200394	Monson		13.65	13.65
	203275	Morrison		19.95	19.95
20	200226	Moorehead		22.68	22.68
	203048	Morganti		34.30	34.30
	200293	Morton		16.38	16.38
	203002	Moshnicka		14.70	14.70
	203267	Mulhall		16.10	16.10
	203093	Mullen		10.85	10.85
	200287	Mullen		16.10	16.10
	203065	Mullin		10.85	10 85
	203063	Mulready		8.40	8.40
	203253	Murphy		27.45	27.45
	203105	Myatt		62.30	62.30
	203236	Nannis		19.95	19.95
	203155	Nash		23.88	23.88
30	202503	Nash		19.95	19.95
	200280	Neal		18.27	18.27
	200281	Nelson		19.95	19.95
	203066	Newdahl		10.85	10.85
	203122	Newell		40.25	40.25
	203001	"		19.95	19.95
	202552	Nicholas		19.47	19.47
	200257	Nissen		10.85	10.85
	200263	O'Connor		12.25	12.25
	200269	O'Leary		16.10	16.10
	202542	Olindy		20.66	20.66
	203255	Page		19.95	19.95
	203401	Palelis		27.44	27.44
40	202543	Paradise		13.25	13.25
	203234	Parker		19.95	19.95
	200289	Paterson		19 95	19.95
	203099	Paul		10.15	10.15
	202502	Perry		19.95	19.95

Credit Sheet

(11)

Policy No.	Assured	Charge	Credit	Bal. Due Assured
203202	Persion		27.44	27.44
200231	Peterson		27.44	27.44
203150	Picard		8.40	8.40
200340	Pierce		14.70	14.70
203073	Pispa		10.15	10.15
203103	Pitkanen		13.65	13.65
203103	Pitonof		48.30	48.30
203233	"		24.15	24.15
200325	Pollara		49.00	49.00
203418	Porter		21.43	21.43
203018	Pratt		16.10	16.10
202514	Pride		12.88	12.88
203115	Prunier		13.65	13.65
203231	Quinn		11.55	11.55
200382	Quincy New System Wet Wash		42.00	42.00
200380	Quincy Point Meat Mkt.		31.85	31.85
202545	Ranieri		12.61	12.61
203260	Reed		10.85	10.85
200301	Reed		12.25	12.25
203096	Reggiannini		21.00	21.00
200344	Reiyenger		8.40	8.40
201010	Richardson		16.10	16.10
203244	Rice		22.32	22.32
200221	Richmond		19.95	19.95
200320	Riepke		10.85	10.85
202546	Ritchie		12.16	12.16
203239	Rogers		19.25	19.25
203058	Rogers		13.65	13.65
200272	Ross		16.10	16.10
200276	Rosseau		12.25	12.25
201012	Rosseau		12.25	12.25
200247	Ruggles		10.15	10.15
200251	Sandford		10.85	10.85
203003	Sargent		16.10	16.10
203186	Sarkisian		24.15	24.15
203182	Scroth		16.10	16.10
203183	Sears		19.95	19.95
203044	Sherman		19.02	19.02
203050	Shulman		19.95	19.95
203067	Skeldon		10.50	10.50
200288	Smith		14.70	14.70
203022	Smith		16.10	16.10
203184	Sneath		16.10	16.10
203185	Snowdon		16.10	16.10
203080	Somerville Mch. & Fdry. Co.		21.00	21.00
200352	Spargo		19.95	19.95
203133	Sprague		10.85	10.85

Credit Sheet

(12)

	Policy No.	Assured	Charge	Credit	Bal. Due Assured
	200259	Stenfors		16.10	16.10
	203039	Sternberg		19.95	19.95
	203181	Stewart		19.95	19.95
10	203043	Stone		18.27	18.27
	200336	Strout		16.10	16.10
	202507	Sundstrom		10.85	10.85
	200208	Svedeman		24.15	24.15
	200253	Swanson		12.25	12.25
	203074	Swansen		7.70	7.70
	203179	Sylvester		14.70	14.70
	203006	Taber		16.10	16.10
	202528	Taber		25.00	25.00
	203114	Tangherlini		40.25	
	204795	"	8.17		
	200644	"	25.05		7.03
	200383	Tarbox		13.65	13.65
20	200398	Taylor		30.63	30.63
	203026	Taylor		14.70	14.70
	203111	Thomas		13.65	13.65
	203290	Thorner		19.95	19.95
	200264	Tilly		15.83	15.83
	203128	Tonello		13.65	13.65
	203238	Ulvila		16.10	16.10
	203094	"		10.85	10.85
	201029	Vail		23.82	23.82
	200284	Valasis		24.15	24.15
	200388	Viner		69.65	69.65
	200392	Viner		19.95	19.95
	203019	Viscarola		19.95	19.95
30	203131	Vollman		16.45	16.45
	203120	Walton		8.40	8.40
	203040	Walsh		24.15	24.15
	200275	Ward		16.10	16.10
	200229	Warnick		12.25	12.25
	202505	Waterhouse		13.65	13.65
	201007	Waters		10.15	10.15
	203245	Watson & Pinault		13.94	13.94
	203089	Weagle		10.85	10.85
	200210	Weinners		19.95	19.95
	203293	Weixler		19.95	19.95
	203109	Welke		10.85	10.85
40	202531	Wenners		16.55	16.55
	200368	Westland		13.85	13.85
	200285	White		19.95	19.95
	203513	White		20.12	20.12
	203250	White		13.73	13.73
	203252	Whiting		20.63	20.63

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Credit Sheet (13)

Policy No.	Assured	Charge	Credit	Bal. Due Assured
200258	Whiting		12.25	12.25
203294	Whittemore		19.95	19.95
202973	Whittemore & Durgin Glass Co.	46.85	35.70	
203292	"		34.30	23.15
203277	Wholley		12.06	12.06
203171	Wilbur		10.85	10.85
203278	Wilkinson		12.96	12.96
203251	Williams		13.78	13.78
200260	Williams		41.85	41.85
203134	Williams		13.65	13.65
203291	Wing		16.10	
172489	"	.23		15.87
201006	Wolf		16.10	16.10
202533	Wolfe		9.55	9.55
200371	Wollaston Lbr. Co.		65.90	65.90
200326	Yavner		19.95	19.95
203295	Yerxa		19.95	19.95
203078	Young		40.25	40.25
203296	Zohler		19.95	19.95
				$10850.91 gross
	Of which no Ps/c =			1496.29
	Ps/c rec'd & assigned to La B.			$ 9354.62

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In Chancery of New Jersey

64-330.

July 30, 1935.

Between EDWARD MAXSON, as Commissioner of Banking and Insurance, *Complainant,* and MANUFACTURERS' LIABILITY INSURANCE COMPANY, *Defendant.*	Appeal of Raymond F. Barrett, Administrator of the Estate of Alfred N. LaBrecque, *et al.* OPINION

(SYLLABUS)

1. In the absence of proof to the contrary, an insurance company's state representative is without authority to cancel outstanding policies of insurance by reason of the mere appointment of Receivers for the company so as to render it liable to the holders of such policies, under the provisions thereof, for the unearned premium thereon on a pro rata basis.

2. A determination made by Receivers after a full and fair hearing, where amply supported by the better quality of the evidence adduced, will be sustained on appeal.

EDMUND A. HAYES, Esq., HERMAN H. ANEKSTEIN, Esq., Solicitors of Complainant.

MARK TOWNSEND, JR., Esq., Solicitor of Defendant.

LEWIS, V. C.

Alfred N. LaBrecque, an insurance broker of Quincy, Massachusetts, filed claims aggregating $22,927.79 for return premiums on policies of insurance issued by the Manufacturers Liability Insurance Company to his clients with Myron J. Brown, Edward I. Edwards and Ernest Heppenheimer who, on August 22, 1927, after the return of an order to show cause and the conclusion of the summary inquiry thereon, were appointed as the permanent Receivers of that company. After the submission of oral testimony and other evidence before them with respect thereto, the Receivers allowed his said claims to the extent of $1,749.08 from which determination Raymond F. Barrett, administrator of the estate of said claimant, who died on September 1, 1931, and Irving O. Hall, Jr., to whom said claimant, during his lifetime, had assigned his said claims as collateral security for an existing indebtedness, have both appealed to this court.

The inflated and exaggerated nature of the claim as filed is forcefully demonstrated by the testimony of Leo J. O'Keefe, claimant's office manager, which was adduced at the hearing before said Receivers in support thereof, and from which it appears that the net amount due to claimant on his said claims was but the sum of $12,698.79, assuming that his figures and basis of computations were correct; as is, however, not the fact. As against this, there was produced on behalf of the Receivers the testimony of Sadie Halpin, Bertha Kiedel and Charles O. Truex, based upon and substantiated by the insurance company's books and records, from all of which it convincingly appears that the gross amount due to said claimant is but the sum of $10,850.91 from

which, however, there is to be deducted $1,496.29, for which no proofs of claim were ever filed; twenty per centum of the difference thus obtained, for commissions paid to and now to be refunded by said claimant thereon; and $5,761.48, due to the insurance company from the said claimant on his general account with it; thus leaving a net balance in favor of said claimant of a little less than the amount found and allowed by the Receivers in their determination.

The credibility of none of these witnesses has been questioned nor has the accuracy or integrity of the insurance company's said books and records, kept in the regular and orderly course of its business and under the strict supervision of the banking and insurance department, in any wise here been impugned. In view of the existing dispute and discrepancies between these records and those kept by claimant, I cannot say that the Receivers were not justified in accepting this reliable and convincing proof in preference to the unsatisfactory character of that produced on behalf of said claimant, or that their determination based thereon and fully substantiated thereby is erroneous.

Appellants urge as a further ground for reversing the determination appealed from the fact that it represents unearned premiums as computed on a short rate instead of a pro rata basis, predicating their contention upon the theory that the mere appointment of a Receiver for an adjudged insolvent corporation, *ipso facto,* operates as a cancellation of all of its outstanding existing contracts, and here by analogy the policies in question. This contention, founded upon an obviously false premise, is, however, wholly inapplicable to the incontrovertible facts established in the case at bar. The ground upon which the Receivers

were here appointed was not the insolvency of the company—no due adjudication of insolvency ever having been entered against it—but the mismanagement of its officers. Moreover, by the provisions of the amended order under which they were appointed, the Receivers were expressly authorized and empowered, *inter alia,* "to conduct and to continue to conduct the business" of the defendant insurance company without interruption.

Appellants further insist that the return premiums should have been computed on a pro rata basis even if the appointment of the Receivers had not, *ipso facto,* effected a cancellation of these policies in question, because, as claimed by them, the cancellations were directed and made by the insurance company and not the holders of said policies or their representatives. There is, however, no satisfactory proof to support any such claim on their part. Even if, as they claim, the insurance company's Massachusetts representative, R. G. Sykes, had cancelled these policies on June 3, 1927 as of June 2d, 1927, I am unable to find any competent proof of his ever having been vested with authority to cancel issued and outstanding policies of insurance by reason of the mere appointment of Receivers for the company so as to render it liable to such policy holders, under the provisions of said policies, for the unearned premiums on a pro rata basis. Clearly, in the absence of such proof, he was without authority to do so. Nor is sight to be lost of the fact that had he, in the first instance, possessed any such authority, it undoubtedly would have been terminated on June 1st, 1927, when the order was made and entered appointing temporary receivers for said insurance company and at the same time enjoining and restraining the exercise

of any of the company's privileges or franchises, excepting through said receivers, none of whom admittedly ever authorized him to order or effect said cancellations.

Moreover, it was claimant alone who testified that the policies in question were cancelled not upon his request or order but upon that of the said R. G. Sykes. It is strange indeed that claimant not only failed to produce him as a witness but even failed to account for his failure to do so. Instead, claimant produced and offered in evidence a letter under date of June 3d, 1927 which he claims to have received from Mr. Sykes and wherein the latter clearly states that he, in accordance with claimant's request of June 2, 1927, had cancelled all of the policies in question as of the latter date, thus lending contradiction rather then corroboration to claimant's said testimony.

In view of all of the foregoing, I am constrained to the conclusion that the determination here appealed from is amply supported by the better quality of the evidence adduced and that it is in all respects proper and correct, by reason of which the petition of appeal must be dismissed and it will so be ordered.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

Between

EDWARD MAXSON, as Commissioner of Banking and Insurance,
Complainant,

and

MANUFACTURERS' LIABILITY INSURANCE COMPANY,
Defendant.

RAYMOND F. BARRETT, Administrator of the Estate of Alfred N. LaBrecque et al.,
Appellants,

vs.

MYRON J. BROWN and ERNEST HEPPENHEIMER, as Receivers of Manufacturers' Liability Insurance Company,
Appellees-Respondents.

On Bill, &c.
On Appeal from Chancery.

BRIEF OF APPELLANTS

THE FACTS

This is an appeal by Raymond F. Barrett, Administrator of the Estate of Alfred N. LaBrecque, deceased, and Irving G. Hall, Jr., Trustee, from

an order of the Court of Chancery sustaining the receivers of the defendant in their determination of the claims filed by the said LaBrecque in his lifetime.

One claim was filed on February 23, 1928, for $21,959.81. A second claim was filed on March 11, 1928, for $961.98. The receivers allowed the claims in the sum of $1,749.08. The appellants, being aggrieved, appealed to the Court of Chancery, which court sustained the receivers.

On June 1, 1927, temporary receivers for the defendant were appointed by the Court of Chancery. On August 22, 1927, permanent receivers were appointed.

The defendant, before and on June 2, 1927, was doing business in Massachusetts. On said date, Massachusetts had a compulsory automobile insurance law which required automobile owners to file with the Registrar of Motor Vehicles a certificate of insurance in a company licensed and authorized to do business in Massachusetts. The policies were against liability for personal injuries in the sum of $5,000.00 for injuries to one person and $10,000.00 for injuries to more than one person—Chapter 346 of the Acts of 1925, and Chapter 368 of the Acts of 1926.

Under the said law all policies were to terminate concurrently with the automobile registration. On June 2, 1927, on learning of the appointment of temporary receivers by the court, the then Commissioner of Insurance revoked the license of the defendant to do business in Massachusetts, alleging the failure or inability of the defendant to comply with the said compulsory automobile insurance law. The then Registrar of Motor Vehicles notified each person holding a policy of insurance with the defendant company that he must file, as of June 2, 1927, a new automobile insurance certificate of a company licensed or authorized to do

business in Massachusetts, else the said person's automobile license would be subject to revocation and his automobile would be taken off the road. These facts are also set forth and verified in a petition filed by the receivers on November 13, 1928.

Before and on June 2, 1927, one R. G. Sykes was the Massachusetts State Agent for the defendant and appointed Alfred N. LaBrecque as a general agent of the defendant with authority to issue in writing and to cancel policies for the defendant company. The said LaBrecque was such general agent before and on June 2, 1927, and had written and cancelled policies in the defendant company.

On June 3, 1927, and before the holders of policies in the defendant company received from the said Registrar of Motor Vehicles the notice that the defendant's authority to do business in Massachusetts was revoked, the said R. G. Sykes notified the said LaBrecque that he cancelled, as of June 2, 1927, all of the policies issued in the defendant company, and with the consent of the proper authorities of Massachusetts, placed all of the persons insured with the defendant on binder with another company licensed to do business in Massachusetts, thereby relieving the necessity of filing immediately new insurance certificates and preventing revocation of licenses (p. 40, ls. 1-21).

At the time of the cancellation of policies, as set forth above, the said LaBrecque paid each holder of a policy issued by the defendant a return premium for the unexpired term of said policy upon a pro rata basis, and took assignments from the said policy holders for the amount of the unearned premium, which assignments compose the claims filed by said LaBrecque.

On or about January 19, 1929, the said LaBrecque, in writing, assigned and set over unto the petitioner Irving G. Hall, Jr., as trustee, any

and all claims which he had of his own right or as assignee against the defendant and/or said receivers, as collateral security for the payment of certain sums of money, the particulars of which are specified in the said written assignment, notice of which was given to and received by the said receivers on or about January 25, 1929.

On or about September 1, 1931, the said Alfred N. LaBrecque died intestate, a resident of the City of Quincy, County of Norfolk, Massachusetts. Shortly thereafter, the appellant Raymond F. Barrett was appointed administrator of the estate of Alfred N. LaBrecque, deceased, by the Probate Court of Norfolk County, Massachusetts.

None of the said policies were cancelled at the request or demand of a holder thereof (p. 39, ls. 6-15).

The said LaBrecque received a commission of 20 per cent for all business written by him in 1927. The policies issued by LaBrecque from January 1, 1927, to June 2, 1927, are now in issue. This is admitted by the Receivers.

The receivers have computed the unearned premiums on a short rate basis. They contend the Commissioner of Insurance was without authority to revoke the license of the defendant to do business in Massachusetts; that cancellations of the policies were without authority in law and without authority from the receivers. The appellants contend the receivers should have computed the unearned premiums on a pro rata basis.

POINT I

The amount due the appellants on the claims filed by Alfred N. LaBrecque is $11,500.76.

On June 19, 1931, the receivers conducted a hearing at the defendant's office in Jersey City, New Jersey, at which time evidence was submitted to substantiate the claims filed by LaBrecque. The amount of the filed claims is $22,921.79, representing the amount of unearned premiums paid by and alleged to have been assigned to the said LaBrecque upon the policies issued by him in the defendant company.

Since June 19, 1931, it has been learned that assignments were not filed for claims totaling $1,496.29. Deducting this amount from $22,921.79, there is a balance of $21,425.50. As LaBrecque received a commission of 20 per cent on 1927 business, 20 per cent must be deducted from this which amounts to $4,285.10, leaving a balance of $17,140.40. LaBrecque was indebted to the defendant for unpaid premiums from January 1, 1927, in the sum of $5,639.64. After deducting this indebtedness, there is a net balance due LaBrecque of $11,500.76. A short statement is as follows:

Amount of claim filed on February 23, 1928	$21,959.81	
Amount of claim filed on March 11, 1928 ..	961.98	
Total	$22,921.79	
Amount of claims for which no assignments have been filed	1,496.29	
Balance of claims		$21,425.50
Commission of 20% to be returned		4,285.10
Net balance of claims		$17,140.40
Due from LaBrecque to defendant		5,639.64
Net balance due LaBrecque		$11,500.76

POINT II

The authority of the defendant to do business in Massachusetts was revoked by operation of law, by and with the authority of the Commissioner of Insurance of Massachusetts under its law and under whose authority the defendant was doing business in said Commonwealth.

(Specification 2-A.)

So far as doing business in Massachusetts was concerned, the defendant was a foreign corporation. It is fundamental that a foreign corporation cannot do business in a State unless it complies with the law of that State. It must first obtain authority before transacting any business. Its authority to do business is subject to the rules, regulations and conditions imposed upon it by law. In Massachusetts, insurance is regulated entirely by Statute and is supervised by the Commissioner of Insurance. Foreign insurance companies may do business in Massachusetts under certain conditions, among other things, satisfying the Commissioner of Insurance of their fitness and soundness—Acts of 1924, Chapter 400—General Laws, Chapter 175, Sections 23A, 150 and 151. One of the elements of fitness is financial responsibility or solvency. The defendant, having been given the authority to do business in Massachusetts, first had to satisfy the Commissioner of Insurance that it was sound and solvent. This was necessary for the protection of the persons doing business with it. In the opinion of the Commissioner, the appointment of receivers in New Jersey was due to defendant's unsoundness, whereupon he revoked its license.

POINT III

The defendant, having been adjudicated insolvent and having had receivers appointed for it by the Court of Chancery of New Jersey on June 1, 1927, the policies of insurance issued by defendant and then in force, no longer afforded the holders thereof, the protection against liability required by the laws of Massachusetts, in accordance with which the policies were issued, and the defendant was no longer financially fit and violated the condition of financial fitness imposed upon it by the laws of said Commonwealth.

(Specification 2-B.)

From the provisions of the Massachusetts Laws cited, it is beyond any question that financial responsibility is one of the conditions upon which authority to do business is predicated. When receivers were appointed for the defendant in New Jersey on June 1, 1927, it became a fact that the defendant was no longer responsible and one of the conditions upon which it was given authority to do business in Massachusetts was breached or violated. Upon such happening, it was entirely within the province of the Commissioner of Insurance, acting reasonably and as the person designated by law to grant authority to foreign insurance companies and to supervise their conduct in Massachusetts, to revoke the authority previously given the defendant—General Laws, Chapter 175, Section 5. The appellants contend this chapter, among other things, provides that if the Commissioner of Insurance is satisfied that any foreign company is insolvent or in an unsound financial condition he may revoke or suspend the license given to such foreign company.

In New Jersey, transaction of business by foreign insurance companies is regulated by Statute, which also sets forth the requirements for admission—2 C. S. 2855, Sections 58, 59. Our Insurance

Act also provides that the authority of an insurance company of another State may be revoked if it shall violate or neglect to comply with any provision of law obligatory upon it, or whenever in the opinion of the Commissioner of Banking and Insurance, its condition is unsound—2 C. S. 2856, Section 62; P. L. 1931, Chapter 195, page 492.

When the receivers were appointed, the defendant's liability under its policies was affected. The defendant agreed to indemnify each assured from at least $5,000.00 to $10,000.00. After the defendant was insolvent, the assured no longer had the protection the defendant agreed to give and for which it was paid. Each automobile registrant was compelled by law to place a certificate of insurance with the Registrar of Motor Vehicles of a company authorized to do business in Massachusetts.

General Laws of Massachusetts, Chapter 90, Section 34A provides as follows:

> "Motor vehicle liability policy—a policy of liability insurance which provides indemnity for or protection to the insured and any person responsible for the operation of the insured's motor vehicle with his express or implied consent against loss by reason of the liability to pay damages to others for bodily injuries, including death at any time resulting therefrom or consequential damages consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services in connection with or on account of such bodily injuries or death, sustained during the term of said policy by any person other than employees of the insured or of such other person responsible as aforesaid who are entitled to payments or benefits under the provisions of chapter one

hundred and fifty-two, and arising out of the ownership, operation, maintenance, control or use upon the ways of the commonwealth of such motor vehicle, to the amount or limit of at least five thousand dollars on account of injury to or death of any one person, and, subject to such limits as respects injury to or death of one person, of at least ten thousand dollars on account of any one accident resulting in injury to or death of more than one person, or a binder as defined in section one hundred and thirteen A of said chapter one hundred and seventy-five providing indemnity or protection as aforesaid pending the issue of such a policy."

It was, among other things, in accordance and in compliance with the last mentioned provision that the policies in question were issued.

The Massachusetts laws specifically provide that a return premium is to be calculated on a pro rata basis if a company shall cease for any reason to be authorized to transact business in the Commonwealth.

General Laws, Chapter 175, Section 113A, paragraph (3), provides for this as follows:

"That if the company shall cease for any reason to be authorized to transact business in the commonwealth the insured shall, if he has paid the premium as aforesaid, be entitled to a return premium calculated on a pro rata basis as of the effective date of the new certificate, if any, filed by him under said section thirty-four H, or, if no certificate is filed as aforesaid, as of the effective date of the revocation under said section thirty-four H of the registration of the motor vehicle or trailer covered by the policy."

The testimony produced at the hearing on June 19, 1931, shows that the authority of the defendant to transact business in Massachusetts ceased by reason of the action of the Commissioner of Insurance. Binders provided for by General Laws, Chapter 90, Section 34A were filed as of June 2, 1927, and subsequently the certificates were filed. This being done, the Statute provides in such a case that the return premium shall be calculated on a pro rata basis, which was done by LaBrecque.

General Laws, Chapter 175, Section 113A, paragraph (2), provides as follows:

> "That no cancellation of the policy, whether by the company or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and, except when the intended effective date thereof is the date of expiration of the registration of the motor vehicle or trailer covered by the policy, to the registrar of motor vehicles in such form as the department of public works may prescribe, at least fifteen days in each case prior to the intended effective date thereof, which date shall be expressed in said notice, and that, in the event of a cancellation by the insured, he shall, if he has paid the premium on the policy to the company, or to its agent who issued the policy, or to the duly licensed insurance broker, if any, by whom the policy was negotiated, be entitled to receive a return premium after deducting the customary monthly short rates for the time the policy shall have been in force, or in the event of cancellation by the company, the insured shall, if he has paid the premium as aforesaid, be entitled to receive a return premium calculated on a pro rata basis; provided, that if the insured after receiving a

notice of cancellation by the company files a new certificate under section thirty-four H of said chapter ninety prior to the intended effective date of such cancellation, the filing of said certificate shall operate to terminate the policy on the date of said filing, and the return premium, if any, payable to the insured shall be computed as of the date of said filing, instead of the intended effective date of cancellation expressed in the notice thereof; and provided further, that if the final effective date of cancellation by the company is fixed by an order of the board of appeal on motor vehicle liability policies and bonds or of the superior court, or a justice thereof, as provided in section one hundred and thirteen D, the return premium, if any, payable to the insured shall be computed as of such final effective date."

POINT IV

The policies were cancelled by the proper authorities of Massachusetts acting within their scope of authority, and also by the defendant's duly authorized agent or agents. None of said policies were cancelled by any holder thereof.

(Specifications 2-C and 2-D.)

This point has also been argued under point three. In addition, the testimony at the hearing of June 19, 1931, indicates that R. G. Sykes, the defendant's State Agent, cancelled the policies after the license of the defendant to do business in Massachusetts was revoked by the Commissioner of Insurance (p. 40, ls. 1-21). The testimony is that no policyholder cancelled his policy (p. 39, ls. 6-15). The testimony taken at the receivers' hearing on January 29, 1932, does not reveal that any policy-

holder cancelled his policy. The statute provides that the short rate basis is to be used only where the assured proposes the cancellation.

The policies issued by the defendant contained a reference to the statutory provisions regarding cancellation which is as follows:

> "3. Cancellation. This policy may be cancelled by the company or by the named assured by written notice stating the date and hour thereafter when such cancellation shall be effective; such notice shall be given by the party proposing cancellation to the other party at least fifteen (15) days prior to the intended effective date thereof and, except when said effective date is the date of expiration of the period of registration of the motor vehicle or trailer covered by this policy, to the Registrar of Motor Vehicles of said Commonwealth, in such form as the Division of Highways of said Commonwealth may prescribe, at least fifteen (15) days prior to said effective date and in the event of a cancellation by the named assured he shall be entitled to receive a return premium after deducting the customary monthly short rates for the time this policy shall have been in force, in accordance with the table printed hereon, or, in the event of cancellation by the company, shall be entitled to receive a return premium pro rata.
>
> "If after such cancellation by the company, a finding that such cancellation is not proper and reasonable is made under General Laws, Chapter 175, Section 113D, either by the Board of Appeal from which finding the company takes no appeal, or by the Superior Court, the company will in the first case within ten (10) days and in the second case within five (5) days, comply with said finding and reinstate the policy.

"Notice of cancellation sent by registered mail to, or delivered at, the address of the named assured as given in the Declarations shall be a sufficient notice. The check of the company, or its duly authorized representative, mailed to, or delivered at such address shall be sufficient tender of any unearned premium, when determined, but no tender shall be required, if the premium has not been paid."

POINT V

The receivers should have instituted proceedings in the courts of Massachusetts to determine the legality of the action of the Commissioner of Insurance in revoking defendant's authority to do business in said Commonwealth.

(Specification 2-E.)

If the action of the Commissioner of Insurance and Registrar of Motor Vehicles was illegal, it was incumbent upon the receivers to institute proceedings to test the legality of their action. The defendant issued the policies subject to the law. The power giving the defendant permission to do business revoked the license. It is against conscience and equity to have required each policyholder to test the validity of the officials' actions. Appellants contend that in fact the General Laws, Chapter 175, paragraph (5), provides a procedure of appeal to the Supreme Judicial Court for the county of Suffolk if a company is aggrieved by revocation or suspension of its license. The receivers did not take any action to test the revocation of the license nor to protect the policyholders.

POINT VI

If the policies do not contain any provision to meet the situation existing at the time the Court of Chancery appointed temporary receivers for the defendant and at the time defendant's authority to do business in Massachusetts was revoked they should be construed against the receivers and therefore, return unearned premiums should be computed on a pro rata basis.

(Specification 2-F.)

The appellants contend Chapter 175, section 113 A, paragraph (3) of the General Laws meets the situation and directs the return premium to be calculated on a pro rata basis. If this provision is regarded as inadequately meeting the situation, the provision of the policy regarding cancellation mentioned in POINT V certainly does not contemplate or cover the situation brought about June 1, 1927. Under the decisions of our Courts, it is well settled that if there is any ambiguity in the policy or any doubt as to the meaning of a provision in a policy, the ambiguity or doubt is to be resolved in favor of the assured and against the company issuing the policy—*Wanner* vs. *Columbia Casualty Insurance Company, N. J. Sup. Ct. Aug.* 29, 1929, 147 *Atl.* 196; *Weiss* vs. *Union Indemnity Co.,* 107 *N. J. L.* 348; *Gans* vs. *Columbia Insurance Company,* 99 *N. J. L.* 44, *Aff.* 100 *N. J. L.* 400; *Connell* vs. *Commonwealth Casualty Co.,* 96 *N. J. L.* 510.

POINT VII

The action of the Massachusetts authorities did not impair the obligation of any contract.

(Specification 4.)

The action taken by the authorities of Massachusetts was not an interference with any contractual rights, nor did it impair the obligation of any contract. We have seen that Chapter 175, section 113 A, paragraph (3) of the General Laws provides that if the company shall cease for any reason to be authorized to transact business in Massachusetts, the return premium shall be computed on a pro rata basis. This is one of the conditions upon which the policy was issued and accepted by the State. The company was bound by the law, *State* vs. *New Jersey Indemnity Co.*, 95 *N. J. L.* 308.

CONCLUSION

For the reasons hereinbefore urged, the order of the Chancellor should be wholly reversed, set aside and for nothing holden, and that the receivers should be directed to allow the claims of the appellants in the sum of $11,500.76.

Respectfully submitted,

Edmund A. Hayes,

Herman H. Anekstein,
Solicitors of Appellants.

Edmund A. Hayes,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

EDWARD MAXSON, as Commissioner of Banking and Insurance,
Complainant,

and

MANUFACTURERS' LIABILITY INSURANCE COMPANY,
Defendant,

RAYMOND F. BARRETT, Administrator of the Estate of Alfred N. LaBrecque, *et al.,*
Appellants,

v.

MYRON J. BROWN and ERNEST HEPPENHEIMER, as Receivers of Manufacturers' Liability Insurance Company,
Appellees-Respondents.

On Bill, &c.

On Appeal from Chancery.

Sat Below:
Campbell, C.;
Lewis, V. C.

BRIEF OF APPELLEES-RESPONDENTS.

Facts.

On June 1st, 1927 temporary Receivers were appointed by the New Jersey Chancery Court in a proceeding to liquidate the Manufacturers' Liability Insurance Company, a corporation of the State of New Jersey and they qualified on June 2nd, 1927; and on August 22nd, 1927 permanent Receivers were appointed. That insurance company wrote various forms of liability and com-

pensation insurance in a number of the states, among which was Massachusetts, where it maintained an office under the supervision of a state agent, Mr. R. G. Sykes. Through the office of Sykes hundreds of policies were written, most of them by numerous insurance agents or brokers scattered throughout the state, among them being Alfred N. LaBrecque, who maintained an insurance office at Quincy, Massachusetts. Most of the policies so written covered automobile liability for the calendar year, since Massachusetts then had, and still has, a compulsory automobile insurance law, under which certificates of insurance from licensed insurances companies are filed with the Registrar of Motor Vehicles, certifying as to coverage held by respective automobile owners for the calendar year. On June 2nd, 1927, upon hearing of the said appointment of Receivers, the Massachusetts Commissioner of Insurance revoked the license theretofore issued, of said insurance company to do business in Massachusetts and the Registrar of Motor Vehicles of Massachusetts instructed each person holding coverage in said insurance company to file a new certificate from a licensed insurance company. Immediately thereafter the policies of the Manufacturers' written through LaBrecque's office were cancelled and coverage placed elsewhere by him.

LaBrecque contends that said Sykes also cancelled all the policies so written under the Massachusetts compulsory insurance law, but that is disputed by the Receivers.

Subsequently, and by reason of urgent requests from the Massachusetts brokers to secure a return of unearned premiums, a conference was held in Boston attended by most of such brokers, including LaBrecque, Sykes and counsel for the Receivers, where all in attendance agreed to an

adjustment under which unearned paid premiums should be calculated on a short rate basis and the payment of premiums due said insurance company, for the time earned assumed by the respectively interested agents or brokers on a pro rata basis; and the Receivers were to pay 50% of any difference due the agents or brokers, in full and final settlement. Settlements were made with a large number of brokers on such basis and without any objections, except when remittance of $874.54 was sent to LaBrecque, he returned same, claiming a greater amount was due him.

Thereupon he filed two proofs of claim, totaling $22,921.79 and thereafter assigned part of his claims to Irving G. Hall, Jr., as Trustee; still subsequently LaBrecque died.

Hearings were held by the Receivers, resulting in a determination by the Receivers to allow LaBrecque's claim to the extent of $1,749.08, as determined by the records and accounts of the Insurance Company. At that time LaBrecque reduced the amount claimed by him from $22,921.79 to $12,691.79.

From such determination of the Receivers said LaBrecque appealed to the Chancellor, who upheld the Receivers' determination. Thereafter LaBrecque appealed to this Court.

Argument.

The contentions set forth in appellants' appeal from determination of Receivers (p. 31) are that the policies were cancelled by operation of law, by authorities of Massachusetts and by the insurance company through its authorized agent, and not by the policyholders; and further in any

event the amount due LaBrecque is $9,030.29 and not $1,749.08 as allowed by the Receivers. Subsequently they, in the copies of points served on May 10th, 1935, elaborated somewhat in detail as to these two contentions, segregating them into four points.

Nevertheless the questions at issue between the appellants and the Receivers can well be boiled down to two, namely: First, how cancelled and the effect of such cancellation; and secondly, the amount due, which naturally depends on whether short rate or prorate basis be used.

The Receivers contend that the assureds, either themselves or through LaBrecque as their agent cancelled the policies and, therefore, said Receivers were justified in using the short rate basis in this calculation and further that the amount due LaBrecque on claims assigned to him is $1,749.08.

POINT I.

The records of the insurance company should control in determining the status of the accounts.

Appellants' Point I merely states the amount due LaBrecque is $11,500.76. While this is a further reduction of the amount originally claimed, it still is much in excess of the $1,749.08 allowed by the Receivers. As to the large difference in the amount as claimed by LaBrecque and as shown by the insurance company's books, it is submitted that the insurance company's figures rather than those of the claimant, should be regarded as controlling. This insurance company operated in ten different states, was under

the supervision and control of the Insurance Departments, Superintendents or Commissioners of all the states where it did business and its book of accounts and all records were subject to strict examination at any and all times and without prior notice. It had been in existence for many years and had been thoroughly examined at various times by experienced examiners assigned and employed by state authorities for the very purpose of ascertaining what, if anything, was irregular or improper, giving special attention to the accounts and methods of accounting. It had gone through these years with a clean record. Had its records been kept in a manner subject to criticism, it would immediately have been checked and corrected. There was not the same controlling reason for LaBrecque to use any particular degree of care in keeping his accounts. The testimony of Sadie Halpin (pp. 74 to 76 and 79) and Bertha Keidel (pp. 76 to 79), disinterested employees of many years' service, produced on behalf of the Receivers, is clear, concise and convincing.

POINT II.

Unearned premiums should be figured on short rate basis.

In determining the amount of return premium credits due LaBrecque the Receivers used the short rate basis table which is endorsed on all policies (see Ex. D-1 referred to on p. 74). That table is used where policies are cancelled by assureds or on their behalf. The appellants in their Point 2 contend that the pro rata basis should have been used, and under four of the six

subdivisions of Point 2 cite authorities alleged as covering. We reply to those six subdivisions as follows:

In subdivision a, they refer to certain sections of the Massachusetts and the New Jersey insurance law as to the authority of Insurance Commissioners to issue and revoke licenses of foreign insurance companies. The Receivers have never questioned such authority and in fact the Manufacturers' Liability Insurance Company always recognized such and governed its operations and proceedings in accordance therewith. They maintain, however, that authority to revoke a license to continue to do business does not grant the right to cancel policies already issued.

In subdivision b, they state appointment of Receivers no longer afforded protection and refer to certain other sections of the Massachusetts insurance and motor vehicle law, as follows:

Chapter 175, Mass. General Laws, Sec. 5. Such section recites the various grounds upon which the commissioner of insurance may revoke a license to do business. It also provides that a company, after being notified of such revocation "shall not make any contracts, or issue any policies, of insurance in the commonwealth *after* such revocation or suspension is effective nor until its license is restored by the Commissioner." The use of the words quoted as to restoring license would seem to preclude any idea that a license revocation was a cancellation of policies.

Chapter 175, Mass. General Laws, Sec. 113A. That section provides for approval by the insurance commissioner of policy forms and sets forth various provisions to be covered in substance. It probably is recited because of clause (3) thereof, which provides for a pro rata premium re-

turn where a company's authority to do business has ceased. Now that particular part of Section 113A was passed in June, 1928, more than a year after these Receivers were appointed; and it was undoubtedly passed by reason of this very Receivership. Rather than being a help to the appellants, the Receivers themselves will cite it in their favor. The very fact that such amending section was passed in 1928 is indicative of prior conditions being such as to cause the amendment. Surely a pro rata distribution law passed and effective in 1928 cannot affect conditions existing as here, in the year 1927.

Chapter 90, Mass. General Laws, Sec. 34A. There is nothing in such section, pertinent to the matter involved in this proceeding. The section simply sets forth the meaning of words used in Sections 34A to 34J. It does define a "Motor Vehicle liability policy" as one providing indemnity or protection to the insured. We never have disputed that.

Under their subdivision c, stating that policies were cancelled by proper authorities of Massachusetts, they cite only the same Section 5 of the Massachusetts insurance law that they cite in subdivision b and which section merely provides for revocation of license. We repeat our contention that the authority to revoke a license to continue to do business is quite distinct from any right to cancel policies issued while the license was in effect. In this subdivision they also state cancellation was by defendant's duly authorized agent. In answer to that we beg to refer to our argument hereinafter set forth under subdivision d.

Their subdivision d states that none of the policies were cancelled by a policyholder. Regardless of any action by the policyholders, we

submit that cancellations were made by LaBrecque as their agent. That the policies were cancelled after the appointment of the Receivers is not disputed. The testimony of LaBrecque (p. 52, *et seq.*) clearly admits that after he heard of the Receivers' appointment he got busy on cancelling policies written through his office. This is also borne out by letter of Sykes to LaBrecque of June 3rd, 1927, produced by LaBrecque and marked Exhibit C-1 (pp. 39-40).

Now, immediately upon the appointment of the Receivers any authority previously held or assumed by either LaBrecque or Sykes was terminated, and any action taken by either of them with knowledge of the Receivership was independent of any previous representation as agents or otherwise of the Manufacturers' Liability Insurance Company.

They could not cancel any policy or do anything affecting the Receivers unless properly authorized so to do. The Receivers had not authorized either of them to act for the Receivers as is shown by testimony of Mark Townsend (p. 82). Now, in LaBrecque's own testimony (p. 46) it appears he immediately replaced his customers' policies in other companies placing coverage in the Norwich Union of all that desired to be placed therein. It is submitted that such action on his part clearly indicates he was agent for the policyholders, and since the cancellation of policies with the Manufacturers was coincided with the new coverage, the cancellations were made by the policyholders.

In this connection we refer to the case of *Smith & Wallace Company* v. *Prussian National Insurance Company,* 68 N. J. L. 674, wherein it is held that

> "Whether one acts as agent for the insurer or the insured is to be determined by the circumstances of the particular case; one cannot be the agent for both parties."

Attention is called to the fact that these cancellations and replacements all took place on June 2nd, 1927, or immediately thereafter. The Receivers cancelled no policies before July, 1927, per testimony of Mark Townsend (p. 82). Accordingly cancellation on a pro rata basis would show a greater amount of earned premium than is referred to herein as of June 2nd, 1927. In other words, LaBrecque cannot well maintain that a pro rata basis should be used with cancellations effective June 2nd, 1927, for that date was used upon the theory of cancellation by policyholders and per agreement with the brokers as to cancelling on short rate basis. If pro rata rate should apply, then a later date should be used with consequent greater charge against LaBrecque than made by the Receivers.

In their subdivision e the appellants contend the Receivers should have instituted proceedings in the courts of Massachusetts to determine the legality of the Insurance Commissioner in revoking the license and again cite the same Section 5 of the Massachusetts law. While the provisions of Section 5 do give an aggrieved insurance company the right to institute the proceedings referred to, the Receivers, as previously stated herein, have never disputed the right of revocation nor the action of the Massachusetts Insurance Commissioner in that respect.

In their subdivision f they contend that the pro rata basis should apply, because the policies contained no provision to meet the situation, and cite four New Jersey cases to support them. All

the cases so cited merely refer to the well known principle of insurance law that where ambiguity appears in a policy the construction or interpretation shall be the one less favorable to the insurance company. Taking up the cited cases in order, the matters involved in same are as follows:

Wanner v. *Columbia Casualty Insurance Co.*, 147 Atl. 196, merely holds a rate manual was properly excluded as evidence on the ground that it had not been proved by the corporation.

Weiss v. *Union Indemnity Co.*, 107 N. J. L. 348, refers to the amount payable to a beneficiary under an accident policy, whether or not a special indemnity clause required a payment in excess of the general indemnity coverage.

Gans v. *Columbia Insurance Co.*, 99 N. J. L. 44, aff. 100 N. J. L. 400, refers to an insurance policy issued to cover damage to a seaplane from collision with the earth. The plane made an emergency landing in the sea, drifted upon the beach in a fairly heavy surf and suffered material damage. It was held the grounding was a collision within the policy terms.

Connell v. *Commonwealth Casualty Co.*, 96 N. J. L. 510, holds that insurance coverage applied to a jitney bus, which was not at the time carrying passengers and was not following the route prescribed for it by local ordinance.

However, these Receivers contend there is no ambiguity in this matter. The policy form clearly provides that pro rata calculation applies only when the insurance company cancels; otherwise the short rate is used. It also provides in schedule printed thereon how the short rate is calculated (Ex. D-1, p. 74).

As to such endorsement we submit the decision in *Cristal* v. *American Casualty Company,* 107 N. J. L. 394, holding:

> "Provisions of policy and endorsement thereon are to be read together."

As to this question of premium return, we refer to *Davidson* v. *German Insurance Company,* 74 N. J. L. 490, wherein this Court considered such matter. The opinion delivered by Justice Garretson and concurred in unanimously, agrees with the opinion of Chief Judge Parker of the New York Court of Appeals in *Tisdell* v. *New Hampshire Fire Insurance Company,* 155 N. Y. 163. We quote as follows from such opinion:

> "The policy having been put an end to by cancellation at the insistence of one party or the other, then the situation of the parties is such that the company has in its possession certain premiums which it has not earned, and which it does not desire to earn, and the other party has in his possession a policy of insurance, no longer, of course, of use to him, and of no particular value to the company, except that when it finally comes into the company's possession it, of itself furnishes evidence that the unearned premiums have been paid to the insured. With this situation, then, the agreement undertakes to deal, and it provides that upon the surrender of the policy the unearned premium whether at short rate or prorate premium, depending upon which party brought about the cancellation, shall be returned to the insured. Practically, it says to the insured 'you return the policy to the place where you got it from and the company will at once turn over the unearned premium to which you are entitled under this contract.' This agreement is so clearly expressed that there does not seem to be op-

portunity for insisting that the language means something quite different from what is suggested to the mind upon the first reading. And still other readings will not prompt the thought that there is possibly any ambiguity."

POINT III.

Receivers' figures are supported by testimony and exhibits.

Appellants' statement in their Point 3 that the Receivers have never made known the figures, computations and calculations adopted by them in arriving at their determination is directly contrary to the facts, and so appears by reference to the State of the Case, prepared and filed herein by them. They themselves set forth that the Receivers contend that their debts totaled $5,761.48 (p. 77, Ex. R-1) and credits $10,850.91 (p. 78, Ex. R-2) and that from the latter amount twenty (20%) per cent. should be deducted on account of commission previously allowed LaBrecque on same (Testimony Sadie Halpin, pp. 75-76). It is therein further set forth the Receivers contend that from such credit total of $10,850.91 there should be deducted $1,496.29 (Testimony Bertha Keidel, p. 78) for the reason that no proofs of claim had been filed to cover the various items making up such $1,496.29. Calculating accordingly we find that by deducting $1,496.29 from $10,850.91 there is a balance of $9,354.62; deducting $1,873.17 for commission previously allowed on same leaves a net credit of $7,483.70. From such $7,483.70 we then deduct the $5,761.48 due from LaBrecque and have a net credit balance of $1,722.22, which is practically

the amount of $1,749.08 allowed by the Receivers as a proper claim. As to the use of this method of calculation in arriving at the balance due, see testimony of Charles O. Truex (p. 81).

While the above shown credit of $9,354.62 is arrived at by using the short rate basis, contrary to appellants' contention that pro rata basis should be used, it is common knowledge in the insurance field that the pro rata basis figures on six months' coverage are about twenty (20%) per cent. greater than the short rate. Further the schedule of rates printed on all the policies (p. 74, Ex. D-1) distinctly sets forth such twenty (20%) per cent. difference as applicable upon six months' cancellation. If this Court should determine that LaBrecque could not be compelled, either on the above-mentioned verbal agreement or otherwise, to accept the short rate basis; then he surely should not receive the fifty (50%) per cent. allowance on his debit balance, also forming a conditional part of such verbal agreement; and accordingly the net credit balance, reflecting his total claim, would be $3,218.96 instead of $1,749.08. Such $3,218.96 is far distant from the $12,691.79 sought in this proceeding.

POINT IV.

Action by Massachusetts authorities was ineffective as regards existing policies.

Appellants' Point 4 sets forth that action by the Massachusetts authorities did not impair the obligations of any contract. Just why this point is raised, we cannot understand. The Receivers have never raised the question, but have admitted the right of the Massachusetts authorities to re-

voke the license of the insurance company to continue to do business in Massachusetts. If they mean that the action of the Massachusetts authorities did in effect cancel the policies, then their point seems incongruous. They cite *State* v. *New Jersey Indemnity Co.*, 95 N. J. L. 308. That case merely upheld the right of the State to impose a $500.00 statutory penalty because the defendant engaged in the business of insurance without first being licensed so to do by the Commissioner of Banking and Insurance.

However, we submit that the Receivers were expressly directed by order of the Chancellor to continue the defendant's business and to continue in effect policies issued by the defendant, except such as they deemed it advisable to cancel. Therefore we submit that what is done by authorities in other states should not be recognized as abrogating, qualifying or limiting the order of His Honor, the Chancellor of this State.

POINT V.

The agreement of brokers to accept cancellations on a short rate basis is binding.

In addition to what has been heretofore set forth, we submit that the agreement, even though verbal, recited in the testimony of Charles O. Truex (p. 81) should be held binding upon the appellants. Here we have a conference where all agreed to the plan of cancellation, and the Receivers carried out their part. Just because the amount proffered LaBrecque struck him as being insufficient should not be allowed to effect the arrangement made. He secured the same treatment as the other brokers. That he should

now be accorded preferential treatment seems beyond reason.

Furthermore, as indicated above, if he, or his assignee, seek to repudiate the agreement, then he should not receive the benefit of the early cancellation date of June 2nd, 1927, but the Receivers should be permitted to make their calculations as of such later date when they cancelled other policies; and that would mean greater debts and lesser credits against his account.

POINT VI.

The determination of the Receivers, sustained by the Chancellor, should be affirmed.

We respectfully submit that the appellants have failed in their efforts to support their grounds of appeal, and hence that the action of the Receivers, as already sustained by the Chancellor of this State, should be affirmed by this Honorable Court.

MARK TOWNSEND, JR.,
Solicitor for and of Counsel with Receivers-Appellees.

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