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Summons

The State of New Jersey to David Galowitz:

You are summoned to answer the annexed complaint of New Jersey Manufacturers Association Fire Insurance Company, a corporation of New Jersey, in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

Witness, His Honor, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 28th day of July, nineteen hundred and twenty-eight.

FRED L. BLOODGOOD,

Clerk. 20

KELLOGG & CHANCE,
Attorneys.

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Complaint

New Jersey Supreme Court

MERCER COUNTY

10	NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, a corporation of New Jersey,	}	<i>Action at Law.</i>
	<i>Plaintiff,</i>		<i>Complaint.</i>
	<i>vs.</i>		
	DAVID GALOWITZ,	}	
	<i>Defendant.</i>		

Filed August 7, 1928.

20 Plaintiff, above named with office in Trenton,
Mercer County, N. J., says:

FIRST COUNT

1. On August 9th, 1923. the defendant David Galowitz was a garage keeper for hire and as such maintained a garage on Providence Avenue near the junction of Fleming Avenue and Market Street, in the City of Newark, County of Essex and State of New Jersey.

30 2. At the said time and place there were in the said garage four automobile trucks which the defendant had received from the agents and servants of Shifman Brothers, and agreed to keep as such garage keeper for hire.

40 3. The said automobiles were owned by the said Shifman Brothers, a corporation, and were of the year and make following, to wit, two Packard trucks, 1920 model, one Maccar truck, 1919 model, and one White truck, 1921 model.

Complaint

4. On said last named date the defendant breached the contract under which he had received said automobile trucks in that he failed to take ordinary care of said automobile trucks; and negligently permitted them and other automobiles containing gasoline to be so placed and crowded in the said garage that it was impossible to isolate and move the automobiles containing dangerous and explosive gasoline when a fire broke out in one of them, and was impossible to prevent the fire which broke out in one of them from being communicated to the other of such automobiles; and was impossible to remove said automobile trucks out of said garage to places of safety; and negligently failed to keep proper watch in said garage so as to prevent fires therein and to promptly control and extinguish any fire which might break out; negligently permitted the air in said garage to become filled with highly inflammable and explosive gas; negligently failed to have and use proper fire fighting devices and apparatus to control and extinguish any fires which might arise in said garage; and failed to use reasonable care to provide a place reasonably safe and fit for the storage over night of said automobile trucks; and otherwise failed to exercise the degree of care which rested upon him by reason of the contract with Shifman Brothers, whereby defendant received said automobile trucks as a garage keeper for hire.

5. As a proximate result of defendant's said defaults and failure to use that care involved in the contract whereby he received Shifman Brothers' said automobile trucks as garage keeper, a fire broke out in the early hours of the morning, before daylight on said 9th day of August, 1923, attended with violent explosions and the said fire was suffered

Complaint

by defendant to be communicated to said automobile trucks which were thereby destroyed.

6. By reason of the premises Shifman Brothers, a corporation, suffered great damage in the loss of its said automobile trucks, to wit, a total of \$7,290.00 which is made up as follows: loss of Packard truck \$1,890.00, loss of another Packard truck \$2,070.00, loss of Maccar truck \$1,530.00, and loss of White truck \$1,800.00.

7. On August 9th, 1923, there was in existence a valid policy of insurance issued by the plaintiff to Shifman Brothers, wherein and whereby among other things, the plaintiff agreed to indemnify Shifman Brothers against loss or damage by reason of all or any hazards of fire, and the contract consummated by the giving and acceptance of said policy of insurance further providing that the New Jersey Manufacturers Association Fire Insurance Company shall be subrogated to all rights of Shifman Brothers in respect of, and may require from Shifman Brothers an assignment of a right of recovery against any party for any loss or damage any part of which is covered by said policy. Plaintiff in compliance with its duty under said policy did indemnify said Shifman Brothers and pay to it for its damage in the amount of \$7,290.00, and furthermore prior to the institution of this cause the said Shifman Brothers assigned any and all rights which it may have had against David Galowitz to the plaintiff.

Plaintiff demands \$7,290.00 damages on this count.

SECOND COUNT

1. The first, second and third paragraphs of the first count are repeated.

Complaint

2. On said August 9th, 1923, the defendant had in his charge at said garage several automobiles containing gasoline.

3. The defendant knew or by the exercise of reasonable care should have known that the said automobiles in his care, by reason of the presence of gasoline in them were highly dangerous when stored in a garage and in the event of fire were liable to ignite, explode and spread such fire and thereby cause great damage and injury to persons and property then happening to be in their vicinity.

4. By reason of said dangerous, inflammable and explosive character of said automobiles in charge of the defendant it became and was the duty of the defendant to provide a place reasonably safe and fit for the storage over night of Shifman Brothers' said automobile trucks, and to provide adequate facilities and to take proper measures for removing and isolating any automobiles which caught fire, and not congest said garage and crowd the automobiles therein together in such close proximity to each other that it would be impossible to prevent the communication of fire from one automobile to another, or to remove those not afire to places of safety, and became and was the duty of the defendant to exercise careful watch to prevent the outbreak of fire in said garage and to observe the outbreak of any fire therein, and to exercise a high degree of care to see that any fire breaking out in said garage was promptly controlled and extinguished; and to use reasonable care that the air of said garage did not become filled with inflammable and explosive gas; and to have and use proper fire fighting devices and apparatus to control and extinguish any fire which might arise in said garage, and to notify the fire department of Newark immediately upon the outbreak of any fire in said garage, said

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Complaint

municipality then maintaining as defendant well knew, a large and efficient fire department whose duty it was to respond to all notifications of fire for the purpose of extinguishing them.

5. The said defendant, notwithstanding the duties aforesaid, failed and neglected to perform the same.

10 6. On the date aforesaid, at said garage by reason of the failure of the defendant to perform his several duties in the premises, a fire occurred, attended with explosions, and was communicated to the said Shifman Brothers' automobile trucks and destroyed them.

7. As a result of the premises Shifman Brothers suffered great damage in the loss of his said automobile trucks, to wit, a total of \$7,290.00, which is
20 made up as follows: loss of Packard truck \$1,890.00, loss of another Packard truck \$2070.00, loss of Maccar truck \$1,530.00, and loss of White truck \$1,800.00.

8. On August 9th, 1923, there was in existence a valid policy of insurance issued by the plaintiff to Shifman Brothers, wherein and whereby, among other things, the plaintiff agreed to indemnify Shifman Brothers against loss or damage by reason of all or any hazards of fire, and the contract
30 consummated by the giving and acceptance of said policy of insurance further providing that the New Jersey Manufacturers Association Fire Insurance Company shall be subrogated to all rights of Shifman Brothers in respect of, and may require from Shifman Brothers an assignment of a right of recovery against any party for any loss or damage any part of which is covered by said policy. Plaintiff in compliance with its duty under said policy did indemnify said Shifman Brothers and pay to
40 it for its damage in the amount of \$7,290.00, and

Complaint

furthermore prior to the institution of this cause the said Shifman Brothers assigned any and all rights which it may have had against David Galowitz to the plaintiff.

Plaintiff demands \$7,290.00 damages on this count.

THIRD COUNT

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1. Paragraphs 1, 2 and 3 of the first count are repeated.

2. On the said 9th day of August, 1923, defendant had an accumulation of automobiles containing gasoline, stored in his garage in said position and in such close proximity to each other that such accumulation was highly dangerous and inflammable, and in the event of fire would ignite, explode and spread the same and cause great damage and injury to persons and property in said garage.

20

3. By reason of the positions of said automobiles and their close proximity to each other said accumulation thereof in defendant's garage constituted a nuisance.

4. On said date a fire broke out in said accumulation of automobiles and the gasoline in the several automobiles exploded and communicated said fire to Shifman Brothers' said automobile trucks.

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5. The damage suffered and sustained by Shifman Brothers in said fire amounted to a great sum, to wit, a total of \$7,290.00, which is made up as follows, loss of Packard truck \$1,890.00, loss of another Packard truck \$2,070.00, loss of Maccar truck \$1,530.00, and loss of White truck \$1,800.00.

6. The damage so suffered and sustained by Shifman Brothers was the direct result of the creation and maintenance by the defendant of the nuisance hereinbefore described.

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Complaint

7. On August 9th, 1923, there was in existence a valid policy of insurance issued by the plaintiff to Shifman Brothers, wherein and whereby, among other things, the plaintiff agreed to indemnify Shifman Brothers against loss or damage by reason of all or any hazards of fire, and the contract consummated by the giving and acceptance of said policy of insurance further providing that the New Jersey Manufacturers Association Fire Insurance Company shall be subrogated to all rights of Shifman Brothers in respect of, and may require from Shifman Brothers an assignment of a right of recovery against any party for any loss or damage any part of which is covered by said policy. Plaintiff in compliance with its duty under said policy did indemnify said Shifman Brothers and pay to it for its damage in the amount of \$7,290.00, and furthermore prior to the institution of this cause the said Shifman Brothers assigned any and all rights which it may have had against David Galowitz to the plaintiff.

Plaintiff demands \$7,290.00 damages on this count.

FOURTH COUNT

1. The first paragraph of the first count is repeated.
2. As garage keeper for hire defendant received in his garage four auto trucks of Shifman Brothers.
3. The third paragraph of the first count is repeated.
4. Defendant did not, nor would redeliver said auto trucks to said Shifman Brothers, but on the contrary thereof so negligently, carelessly and improperly conducted himself with respect to said trucks that by and through his misconduct said

Complaint

trucks became wholly lost to said Shifman Brothers.

5. By reason of the premises Shifman Brothers, a corporation, suffered great damage in the loss of its said automobile trucks, to wit, a total of \$7,290.00 which is made up as follows, loss of Packard truck, \$1,890.00, loss of another Packard truck \$2070.00, loss of Maccar truck \$1,530.00, and loss of White truck \$1,800.00. 10

6. On August 9th 1923, there was in existence a valid policy of insurance issued by the plaintiff to Shifman Brothers, wherein and whereby, among other things, the plaintiff agreed to indemnify Shifman Brothers against loss or damage by reason of all or any hazards of fire, and the contract consummated by the giving and acceptance of said policy of insurance further providing that the New Jersey Manufacturers Association Fire Insurance Company shall be subrogated to all rights of Shifman Brothers in respect of, and may require from Shifman Brothers an assignment of a right of recovery against any party for any loss or damage any part of which is covered by said policy. Plaintiff in compliance with its duty under said policy did indemnify said Shifman Brothers and pay to it for its damage in the amount of \$7,290.00, and furthermore prior to the institution of this cause the said Shifman Brothers assigned any and all rights which it may have had against David Galowitz to the plaintiff. 20 30

Plaintiff demands \$7,290.00 damages on this count.

KELLOGG & CHANCE,
Attorneys of Plaintiff.

Answer

NEW JERSEY SUPREME COURT

MERCER COUNTY CIRCUIT

10	NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, a corporation of New Jersey,	}	<i>Plaintiff,</i>	<i>Action at Law</i> <i>Answer</i>
	<i>vs.</i>		<i>Defendant.</i>	

Filed August 13, 1928

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ANSWER TO FIRST COUNT

The defendant, David Galowitz, residing in the City of Newark, County of Essex, and State of New Jersey, in answer to the First Count of the complaint filed in this cause, says that:

1. Paragraph 1 is denied.
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.
4. Paragraph 4 is denied.
- 30 5. Paragraph 5 is denied.
6. Paragraph 6 is denied.

7. The defendant says that he has no knowledge sufficient to form a belief as to the allegations mentioned in paragraph 7 and therefore denies same.

ANSWER TO SECOND COUNT

1. The answers to the 1st, 2nd and 3rd paragraphs of the First Count are repeated and made
- 40 part of this, the answer to the Second Count.

Answer

2. Paragraph 2 is denied.
3. Paragraph 3 is denied.
4. Paragraph 4 is denied.
5. Paragraph 5 is denied.
6. Paragraph 6 is denied.
7. Paragraph 7 is denied.
8. The defendant says that he has no knowledge sufficient to form a belief as to the allegations mentioned in paragraph 8 and therefore denies same. 10

ANSWER TO THIRD COUNT

1. Paragraphs 1, 2 and 3 of the Answers to the First Count are repeated and made part of this, the answer to the Third Count.
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.
4. Paragraph 4 is denied. 20
5. Paragraph 5 is denied.
6. Paragraph 6 is denied.
7. The defendant has no knowledge sufficient to form a belief as to the allegations mentioned in paragraph 7 and therefore denies same.

ANSWER TO FOURTH COUNT

1. The answer to the 1st paragraph of the First Count is repeated and made part of this, the answer to the Fourth Count. 30
2. Paragraph 2 is denied.
3. Answer to the 3rd paragraph of the First Count is repeated.
4. Paragraph 4 is denied.
5. Paragraph 5 is denied.
6. The defendant has no knowledge sufficient to form a belief as to the allegations mentioned in paragraph 6 of the Fourth Count and therefore denies same. 40

Answer

*FIRST SEPARATE DEFENSE TO THE FIRST,
SECOND, THIRD AND FOURTH COUNTS*

10 The defendant alleges that the plaintiff's assignor was guilty of contributory negligence in that the plaintiff's assignor or its servant or agent negligently placed the trucks of the plaintiff's assignor containing gasoline in such a position that it was impossible to isolate and move the automobiles containing dangerous and explosive gasoline when a fire broke out in said garage of the defendant.

*SECOND SEPARATE DEFENSE TO THE
FIRST, SECOND, THIRD AND FOURTH
COUNTS*

20 The defendant says that he has, at all times, exercised the care required by law of a garage keeper for hire, and has had sufficient fire fighting apparatus in his garage at all times as well as competent watchmen who were on duty at all times.

*THIRD SEPARATE DEFENSE TO THE FIRST
SECOND, THIRD AND FOURTH COUNTS*

30 The defendant alleges that the plaintiff's assignor, at the time of the hiring mentioned in all of the Counts, agreed to relieve the defendant from liability on account of loss sustained by fire.

*FOURTH SEPARATE DEFENSE TO THE
FIRST, SECOND, THIRD AND FOURTH
COUNTS*

40 The defendant alleges that the fire which took place in his garage, started from some cause unknown to the defendant and through no negligence on the part of this defendant.

Answer

*FIFTH SEPARATE DEFENSE TO THE FIRST,
SECOND, THIRD AND FOURTH COUNTS*

The defendant says that the amount paid by the plaintiff to its assignors is excessive.

MOTION ADDRESSED TO COMPLAINT:

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The defendant gives notice that at the trial of the above entitled cause, he will move to dismiss the complaint filed herein on the following grounds.

1. That the complaint filed herein does not upon its face, state a good and valid cause of action against this defendant.

2. That upon its face, the complaint filed in this cause, does not show that the defendant is guilty of any negligence whatsoever.

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3. That upon its face, the complaint filed in this cause, shows that the plaintiff was guilty of contributory negligence.

WM. L. GREENBAUM,
Attorney for Defendant.

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Reply

NEW JERSEY SUPREME COURT

MERCER COUNTY

10	NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, a corporation of New Jersey,	}	<i>Action at Law.</i> REPLY.
	<i>Plaintiff,</i>		
	<i>vs.</i>		
	DAVID GALOWITZ,	}	<i>Defendant.</i>

Filed August 14, 1928

20 Plaintiff denies all new matter alleged in the answer of the defendant.

KELLOGG & CHANCE,
Attorneys of Plaintiff.

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David Galowitz, direct

Mr. Gildea. No objection.

The Court. The amendment may be made.

(Mr. Chance opened for the plaintiff.)

(Mr. Gildea opened for the defendant.)

DAVID GALOWITZ sworn for the Plaintiff.

Direct examination by Mr. Chance:

10

Q Mr. Galowitz, are you the defendant in this case? A Yes, sir.

Q On August eighth and ninth, of 1923, did you have a garage in the city of Newark? A Yes, sir.

Q Were you at that garage on the evening of the eighth of August? A Yes, sir.

Q Were you at the garage on the morning of the ninth? A Yes, sir.

20

Q Between the time that you had been there on the evening of the eighth and the time that you got there on the morning of the ninth had there been any change in the conditions? A Yes, sir.

Q What change in the conditions had taken place? A Why, there was a fire there; that same night we had a fire in the garage and all the vehicles was destroyed.

30

Q How many vehicles do you mean? A All that there was in the garage; there was about twenty-four or twenty-eight; I do not recall exactly, but that was what was in there.

Q What time of the night was it that you had been there on the evening of the eighth? A I was there until about eleven-thirty.

Q And what time was it on the morning of the ninth when you arrived there? A I was there at the time when the fire broke out. I lived right next door to the garage.

40

Q Did Schifman Brothers have four automobiles in that garage on that evening when the fire took place? A Yes, sir.

David Galowitz, direct

Q Do you know what kind of automobiles those four automobiles of Schiffman Brothers were that were in your garage? A Yes, sir; I do.

Q Will you tell the Court and jury what kind of cars they were? A Do you want the name, or whether they were trucks?

Q Tell us the names, first. A Two Packards, 10
one Maccar and one White.

Q Were you familiar with those cars before the fire? A Yes, sir.

Q Were they in good condition? A I could not say exactly what condition they were in. They were coming in and out; they were working with them.

Q So far as you observed when you last saw them before the fire there was nothing apparent to you the matter with them, was there? A Not as I 20
could see. I never inspected them in any way. They only used to store them there.

Q Did you see them brought in on the evening of the fire? A I seen two come in around eight o'clock at night.

Q What kind were they? A I could not just recall which ones they were, but I noticed two of them come in at that hour.

Q What were the dimensions of this garage of yours? A Ten thousand square feet; one hundred 30
by one hundred.

Q How many cars were there in it? A I would say from twenty-four to twenty-eight. I do not exactly know the number of cars but it would be safe to say it was anywhere from twenty-four to twenty-eight.

Q Would you say there were not thirty-two of them? A I would not say that, no; I do not re- 40
member.

David Galowitz, direct

Q But there were approximately thirty anyhow, weren't there? A I would not even say that. To my recollection I think it was twenty-four to twenty-eight, that I can figure out.

10 Q How many watchmen did you have in that building at the time the fire took place? A One night man, one watchman, and myself. I used to be around there until eleven or twelve o'clock, or sometimes one o'clock. I lived right next door.

Q What was the first that you knew of the fire? A When the night watchman hollered "Fire," I ran down, and that is the time—I was right next door and I could not help but hear it, and I came right down and the engines was there all trying to pull the cars out.

20 Q Do you mean the engines of the Newark City Fire Department? A Yes, sir.

Q How long a time intervened between the time the watchman hollered "Fire," and the time that you got there? A I came directly right down.

Q When you got to the garage did you remove any of the automobiles to safety? A I tried to get some out. I do not just remember. I was so excited I don't know what I done, but I tried to get some of them out.

30 Q As a matter of fact, do you know whether or not any of the automobiles were removed from that place, out of the garage, in time to save them from being destroyed by the fire? A No; I could not say that. I do not remember just how many, but we tried it; we made an attempt to get them out.

By the Court:

40 Q Do you know whether you got any out or not? A No. I do not think we did. We only got them as far as the door and we could not get them any farther, the flames come up so fast.

David Galowitz, direct

By Mr. Chance:

Q You got as far as the door, you say? A Yes, sir.

Q What was there right at the door? A The flame was right around the building and it got the whole building in flame and we could not get them any farther. The flames would not let us get in. 10

Q What was there right at the door? A Nothing.

Q Where was the nearest vehicle to the door, that you saw, when you got there? A I would not exactly say that; I do not remember that.

Q Did you see any jitney buses there? A Yes, sir.

Q Having in mind jitney buses, how near to the door was the nearest jitney bus that you saw? A I do not remember that. 20

Q How near to the door was the nearest car that you recall seeing there, if you recall? A That is something I could not recall. I was all excited. I was trying to get them out, and after I could not get any out I wasn't successful and that is all I remember.

Q You do not remember anything about where any of the cars were situated in the garage? A No, sir; I do not. 30

Q Now, the following morning one of the Schiffmans, Milton Schiffman, and Mr. Swartz, the gentleman to my right, visited the scene, did they not? A The only one I seen was Mr. Schiffman. I do not remember seeing this gentleman (indicating) at all.

Q The next morning when Mr. Schiffman arrived there did you see the remains of the four Schiffman Brothers trucks? A Yes, sir. 40

David Galowitz, direct

Q In what condition were the remains of those four trucks on the following morning after the fire?

A I did not look into the condition, but they were burned; that is all I can remember; the bodies were burned.

10 Q Were they in fit condition to be operated? A I would not say that. I did not go into that detail, to find out if they would run or anything. I just looked at them and that is all I could see: the bodies were all burned and there was some merchandise laying on the bodies and that was all scattered around.

20 Q When you arrived there the next morning did you observe where the various automobiles were situated? A They were in the same place, if I can recall correctly, about the same place they were the night before.

Q Do you remember where they were on this morning? A They were entering the garage, on the right hand side.

30 Q How many cars do you recall between the Schiffman cars and the entrance to the garage? A There wasn't any cars between the entrance—They were right next to the office. There was the office as you entered, and those cars were on the same side, backed up against the wall.

Q Do you remember where any jitney buses were? A No, I do not.

Q You only remember Schiffman's cars and no others? A Oh, yes, I remember the other cars; they were there, but I do not exactly remember that certain space.

Q Do you remember any jitney buses there? A Yes, sir.

40 Q Where were any jitney buses that were there located? A That is something I do not remember,

David Galowitz, direct

just exactly where they were located, but I know they were there.

Q Who was this watchman that you say you had? A A colored fellow.

Q What is his name? A I do not just recall his name. Bell, I think, or something.

Q Was "Bell" his last name? A That was his first name. 10

Q You do not remember his last name? A No, I do not.

Q After you heard the watchman cry "Fire," I believe you said, you went directly to the garage? A Yes, sir.

Q Was there any other employee of yours at the garage at that time? A No, sir.

Q Now, this man that you speak of as "Bell"—Wasn't his name Crute? A It is six years ago and I could not recall exactly his name, but I know he worked for me several months. I do not just remember how many months he worked for me. 20

Q How old was he? A I could not say that. I do not know how old he was.

Q Was he a young man or an old man? A Oh, no; he was an elderly man.

Q Did he have a license as a chauffeur? A Oh, yes; he had a license. He drove a truck before, and after he come to work for me as night man. 30

Q Can you recall this time where the various cars were situated in your garage just before the fire and just afterward when you saw the ruins? A No, I could not. That is something I could not remember. I do not remember just where they were.

Q In other words, you do not remember the location of any cars except those of Schiffman Brothers; is that correct? A They had a certain space right at the entrance. That is why I remember exactly. 40

David Galowitz, direct

But the others, I do not remember just what places they were placed that night.

Q I show you a little picture here and ask you if that is a correct representation of the conditions which existed at your garage on the morning following the fire? A I would not say that; I do not
10 remember exactly. I do not know if it looks like it or not. That is something I cannot remember.

(Photograph referred to is marked P-1 for identification.)

Q I show you another picture and ask you if that is a correct representation of the conditions which existed at your place the morning following the fire? A The only thing I can see, the trusses
20 was down—

The Court. Just answer the question.

The Witness. I do not really remember. I could not say; it is so long ago.

Mr. Chance. I would like to have this marked for identification.

(Photograph referred to is marked P-2 for identification.)

Q I believe you told us how many square feet there were in this garage. Did you tell us the
30 length and breadth?

The Court. One hundred by one hundred.

Q How much of this one hundred by one hundred was taken up by the office and shop? A Sixteen by twenty, I guess. I do not exactly remember the dimensions. That is what I think it was.

Q How much of this space that you have just mentioned was shop and how much of it was office?

A It was all together, the office and the shop, one
40 in each corner; on the same side there was two rooms

David Galowitz, cross

when you first entered, and one on the other side; one was used for the shop and the other was used for the office.

Q You were receiving pay from Schiffman Brothers for the privilege of keeping their automobiles in your garage, were you not? A Yes, sir.

Mr. Gildea. I object to that, if the Court please. 10

The Court. It has been answered.

Mr. Chance. I think you may cross examine.

Cross examination by Mr. Gildea:

Q Mr. Galowitz, were you keeping the four automobile trucks of Schiffman Brothers in your garage and receiving pay for keeping them there in pursuance of a contract which you made with Schiffman Brothers? A I do not quite understand you. 20

Q How did you happen to have the cars of Schiffman Brothers in your garage? A They just stored them there and paid me rent for storage.

Q Who made the arrangements? A One of the Schiffman boys, Simon Schiffman.

Q How long before this fire? A They were in there about four years.

Q About four years before the fire? A Yes, sir. 30

Q Did you have in your garage any sign or notice in connection with the storing of cars there? A Yes, sir.

Mr. Chance. I object to that question because it is too general and the answer to it might include things which are illegal.

(Last question and answer read.)

The Court. It was answered. It may stand. Mr. Galowitz, when an objection is made by 40

David Galowitz, cross

any counsel do not answer questions until the Court rules on the objection.

Q Now, tell us what signs or notices you had in your garage, where they were, how large they were, and how long they had been there.

10 *Mr. Chance.* I object to that as too general. The answer to that might include the existence of signs which would limit the liability of the garage keeper for his own negligence, which, according to my contention, would be an illegal sign and which would be a matter not admissible in evidence.

The Court. How could that govern anyway, Mr. Gildea?

20 *Mr. Gildea.* How could what govern, your honor?

The Court. If a sign is up with certain notations on it.

Mr. Gildea. It becomes part of the contract of storage if it were called to the attention of the person storing the goods, and I will show that it was.

30 *Mr. Chance.* I have a note here of cases which I will hand up, a memorandum of what my notion is as to the law on this point.

Mr. Gildea. As a matter of fact it is in issue, because it was pleaded as a defense and no motion was made to strike out. There is simply in the pleadings a denial of the sign, which puts in issue the question of whether or not there was such a notice.

The Court. Well, I will allow it.

Mr. Chance. And note my exception?

40 *The Court.* Certainly.

(Last question read.)

David Galowitz, cross

A They had been there since the building was up.

Q What had been there? A The signs.

Q What signs? A Six by eight.

Q Where was it? A Right in front, as you entered the building.

Q What did it say? A "Not responsible for fire or theft." 10

Q When Mr. Schiffman made arrangements with you to keep the trucks in your garage over night what, if anything, was said about fire?

Mr. Chance. I object to that for the same reason, that it is immaterial what was said with regard to fire, it being illegal for a garage keeper for hire to undertake to limit his liability for his own negligence.

The Court. I am not allowing it for the purpose of limiting liability as to negligence. 20

Mr. Gildea. We do not contend we are not liable if there was any—

The Court. I will allow it and grant an exception.

(Last question read.)

A The understanding was that I am not—

The Court. No.

Q What was said? A That we are not responsible for any fire or theft; and anything on the trucks, if he comes in at night and has got merchandise I am not responsible for it. 30

Q Was his attention called to the sign? A Yes, sir.

Mr. Chance. I object to that as immaterial.

The Court. It may stand.

Q Did you render bills to Schiffman Brothers for the storage of cars in the new garage? A Yes, sir. 40

David Galowitz, cross

Q I show you a form of bill and ask you what it is. A (Witness examines paper.)

Q Will you tell us what that is? A On every bill I have—

The Court. No.

10 Q What is that? A “Not responsible—”

The Court. No. Tell what it is.

Q What is that piece of paper you have there?
A A statement.

Q A statement for what? A We send out statements every month for the rent.

Q Did you send out the statements on a form identical with that? A Yes, every month.

Q How long had you done that before this fire?
A I always done it, since I am in business.

20 Q Had you sent statements on that form to Schiffman Brothers before this fire? A Yes, sir.

Mr. Gildea. I offer it in evidence.

By Mr. Chance.

Q Do you know, as to this particular blank piece of paper, when that was printed? A It was printed when I first went in business; that is quite a few years ago.

30 Q This particular piece of paper? A Yes, sir.

Q Is that the first piece of paper— A That is the first. That is the reason I brought that down.

Mr. Gildea. I offer it in evidence.

Mr. Chance. I object to it as being immaterial. The contract is not changed nor the liability of the garage keeper changed by the notice which he puts on his bill after the service has been rendered.

The Court. Objection sustained.

40

David Galowitz, cross

Mr. Gildea. May I have an exception, your honor?

The Court. Certainly.

Q Were you in bed at the time you received notice that there was a fire in your garage? A Yes, sir.

Q When you got there were the fire engines there? A Yes, sir. 10

Q How many fire engines? A I could not remember how many. There were quite a few of them.

Q Was the fire chief there in charge of the attempt to extinguish the fire? A Oh, yes.

Q How much of a fire was it? What did it burn? A It burned the building; the roof caved in; it was a pretty good fire. 20

Q Did it burn all the automobiles in the garage? A It did not burn them down to the ground. It burned most of the bodies, and some of them was destroyed.

Q Did it burn anything in the office? A The office wasn't hardly touched.

Q How about the shop? A Some of the stuff was destroyed in the shop too.

Q When did this fire occur? What was the date? A It was August eighth; about the eighth or the ninth; I do not remember just exactly the date. 30

Q What month? A August.

Q What year? A 1923.

Q That is six years ago next August? A Yes, sir.

Q (By a juror) Could I ask if there was more than one entrance to the garage? A Yes, two.

Q One to go in and one to go out? A Yes, sir. 40

Simon T. Shifman, direct

By the Court.

Q Did you use both entrances for ingress and exit? A Yes, sir.

Q Both to go in and out? A That is right.

SIMON T. SHIFMAN, sworn for the Plaintiff.

10 *Direct examination* by Mr. Chance.

Q Mr. Shifman, you are connected with Shifman Brothers, a corporation of this state? A Yes, sir.

Q In what capacity? A Secretary and treasurer.

Q Were you such on the twentieth day of July, 1928? A Yes, sir.

20 Q I show you a paper here which purports to have your name as the attesting witness—

The Court. Do you dispute this at all, Mr. Gildea? I suppose it is to prove the assignment.

Mr. Chance. The assignment.

The Court. I was only suggesting it to save time.

30 *Mr. Gildea.* (after examining papers). We have no objection to it being introduced for the purpose for which I presume it is offered, namely, to show that whatever rights Shifman Brothers had have been assigned to the New Jersey Manufacturers' Association Fire Insurance Company.

Mr. Chance. It is offered for the purpose of showing that it is just what it says it is on its face. You have pretty accurately described what I think it is on its face, but it speaks for itself and I do not care to limit it.

40 *Mr. Gildea.* We consent, but we are not

Simon T. Shifman, direct

bound by any figures mentioned in the assignment.

Mr. Chance. Well, I offer it for whatever—

The Court. It seems as if we will save time by proving it.

Mr. Gildea. Yes.

Q I have shown you this paper and asked you 10
if you were the attesting witness to that paper?

A Yes, sir.

Q It was duly executed by—

Mr. Gildea. Objected to as calling for a conclusion—"Duly executed."

The Court. Yes.

Mr. Chance. All right.

Q Was that signed in your presence by Mr. 20
Milton Shifman? A Yes, sir.

Q And is the seal which is annexed to or im-
pressed thereon the seal of Shifman Brothers? A
Yes.

Q And was Mr. Shifman at the time he signed
this president of the company? A Yes.

Q Did he have authority to execute this on be-
half of the company?

Mr. Gildea. Objected to as calling for a
conclusion.

The Court. Objection sustained. 30

Mr. Chance. I offer the paper in evidence.

Mr. Gildea. I object upon the ground it is
not shown to be the act of the corporation. It
is not shown to have been authorized by the
board of directors of the corporation.

The Court. Let me see it, Mr. Chance. ,
(After examining papers.) I will allow it.

Mr. Gildea. I ask an exception.

The Court. Note an exception. 40

Simon T. Shifman, direct

(Paper referred to and offered in evidence is marked Exhibit P. 1.)

Mr. Chance. I will not take the time to read this to the jury now. It can go out and they can see what it is when they get it.

10 Q Now, there is mentioned the sum of \$7,290. I ask you if that \$7,290 is represented by the payment made to you by the New Jersey Manufacturers Association Fire Insurance Company by that check which I have handed you?

Mr. Gildea. Objected to.

(Last question read.)

20 *Mr. Gildea.* I object to it upon the ground that the defendant is not bound by this transaction; the assignment is in evidence, it speaks for itself, it recites the consideration, and the check is not evidence of the value of the property in question and is irrelevant.

The Court. Objection sustained.

Mr. Chance. Exception.

30 Q At the time of the fire, in August of 1923, did Shifman Brothers have four policies of insurance issued by the New Jersey Manufacturers Association Fire Insurance Company? A I don't recall whether there was one or four, but the trucks were covered by the New Jersey Manufacturers Association Fire Insurance Company.

Q Have you still in your files or possession or subject to your control the policies which were then in force? A No, sir.

Q You were subpoenaed to bring all of the records that you have? A Yes, sir.

40 Q And you made diligent search and found no such papers as policies? A I brought all that I could find.

Simon T. Shifman, direct

Q There is no policy among what you brought?

A No, sir.

Q I show you what purports to be a copy of a policy of insurance and ask you if that is a copy of one of the policies which were then outstanding?

Mr. Gildea. Objected to as immaterial.

A I could not say.

10

Mr. Gildea. Because it appears by the assignment that whatever claim Shifman Brothers had has been assigned to the plaintiff.

Mr. Chance. I guess it does not make much difference, if he does not remember.

The Court. I will allow the question.

Q Do you remember whether, so far as you can observe the form is just the same as the policies?

20

A Yes, I believe the form is the same.

Q Are you personally able to describe the automobiles which were involved in the fire? A Describe them in what way, sir?

Q Do you know anything about the automobiles? A I know what they were. There was a White truck, two Packards and a Maccar.

Q Now, let us take the Maccar, for instance. Can you tell us from your recollection or from the records which you have produced here when that car was purchased? A The Maccar?

30

Q The Maccar? A No; I have no record of it.

Q Is the same thing true with regard to all of the cars? A Yes, sir.

Q You have no record as to the price paid for any of them or when any of them were purchased?

A I could give you approximate dates but they would not be certain, and I would not care to answer anything indefinitely.

40

Simon T. Shifman, cross

Q Were you present the day following the fire at the place where the garage had been? A No, sir.

Mr. Chance. I think that is all.

Cross examination by Mr. Gildea.

10 Q How long have you been connected with Shifman Brothers? A Approximately seventeen or eighteen years.

Q As a matter of fact you were the gentleman who, on behalf of Shifman Brothers, made arrangements with Mr. Galowitz to keep these trucks in that garage, aren't you? A Yes, sir.

Q And the understanding that you had with him was—

20 *Mr. Chance.* I object to this as not cross examination. I did not ask anything about the terms of any contracts.

The Court. Objection sustained.

Mr. Gildea. That is all.

Re-direct examination by Mr. Chance.

Q Will you tell us whether you, as treasurer, received this paper which I hand you? A Yes, sir.

30 Q That was received by Shifman Brothers, you as treasurer? A Yes, sir.

Mr. Chance. I would like that marked for identification.

Mr. Gildea. May I see what the paper is?

(Paper referred to is marked P. 3 for identification.)

Q Can you tell us for what you got this paper P. 3 for identification? A Do you mean for what purpose it was given to us?

40 Q Yes? A In payment of the fire claim, fire loss.

Milton Shifman, direct

Q Was there any connection between that fire loss and the fire in Galowitz' garage? A Well, that is where the trucks were at the time they burned.

Q This check paid your loss in that fire? A Yes, sir.

Mr. Chance. I offer this in evidence.

10

(Check referred to and offered in evidence is marked Exhibit P. 2.)

Mr. Gildea. I move to exclude this check from evidence, and I move particularly to strike out the statement of the witness that this represented their loss. I do not think it was responsive to the question. It certainly is not binding on the defendant as evidence of damage.

The Court. I do not see how this check could bind this defendant, Mr. Chance. If the defendant is liable at all it is for the value of the trucks at the time of the fire.

20

Mr. Chance. Oh, yes. I am not undertaking to show this is the measure of damage.

Mr. Gildea. Then we do not object.

Mr. Chance. I am proving the right to subrogation, showing how I get in here.

MILTON SHIFMAN, sworn for the Plaintiff.

30

Direct examination by Mr. Chance.

Q Are you at the present time connected with Shifman Brothers? A I am.

Q And were you back in the time of the fire at Galowitz' garage? A I was.

Q What is your position with Shifman Brothers? A Vice-president.

Q Were you familiar with the automobiles which were involved in the fire? A I know the makes of them. Is that what you wish to know?

40

Milton Shifman, direct

Q That is one thing I wish to know, yes? A There were two Packards, a Maccar and a White; they were about a ton and a half, and the White was three-quarters ton.

Q Do you recall the details, as to the type of body on the cars? A No; I cannot recall now.

10 Q I show you a paper which purports to bear your signature. Is that your signature? A Yes; that is my signature.

Mr. Chance. I would like to have this paper marked for identification.

(Paper referred to is marked P. 4 for identification.)

Q And I show you another paper which purports to bear your signature, and ask you if it does?

20 A Yes.

Mr. Chance. I would like to have that marked for identification.

(Paper referred to is marked P. 5 for identification.)

Q I show you another paper purporting to bear your signature and ask you if it does? A Yes.

Mr. Chance. I would like to have that marked for identification.

30 (Paper referred to is marked P. 6 for identification.)

Q And one more which purports to bear your signature. Is that your signature? A That is my signature; yes, sir.

Mr. Chance. I would like this document marked for identification.

(Paper referred to is marked P. 7 for identification.)

40 Q Can you tell us when either of the Packard automobiles was purchased? A I was not em-

Milton Shifman, direct

ployed with Shifman Brothers when the cars were purchased.

Q When did you become employed with Shifman Brothers? A I do not remember now exactly the year; it was after I got out of the service.

The Court. Do you mean in 1919 or 1920?

The Witness. Yes, sir; after that; I am not sure of the year. 10

Q Will you look at P. 4 for identification and see if, from an examination thereof, you can so refresh your recollection as to tell us when that automobile was purchased?

Mr. Gildea. That is objected to upon the ground that the witness has already said he does not know when it was purchased and he was not with Shifman Brothers at the time it was purchased. If he has any information as to when it was purchased it is hearsay. 20

The Court. Objection sustained.

Q Have you any recollection as to what year you went with Shifman Brothers?

Mr. Gildea. Objected to as already asked and answered.

The Court. He said 1919 or 1920.

By the Court.

30

Q Do you know which year, Mr. Shifman? A I cannot say exactly, your honor.

Q It was in 1918 when you got out of the service, I presume? A I was employed for a time in Washington after I got out of the service, but I do not know how long; approximately a year; I would say.

Q Then you would say it was either in 1919 or 1920? A To the best of my recollection; yes, sir. 40

Milton Shifman, direct

By Mr. Chance.

Q In what condition were the four trucks of Shifman Brothers, so far as your observation showed you, on the day of the fire? A They were in operating condition, to the best of my knowledge.

10 Q Did you make out the proofs of loss in the cases of these four automobiles to your insurance company?

Mr. Gildea. Objected to as irrelevant and not in any way binding on this defendant.

The Court. I do not see the relevancy, Mr. Chance.

Mr. Chance. Well, all right. I will withdraw it.

20 Q When you signed these four papers which we have referred to, Exhibits P. 4, 5, 6 and 7 for identification, did you check the facts which you inserted in the papers?

Mr. Gildea. Objected to as irrelevant upon the ground that the witness can only testify as to matters within his own knowledge and not what he may have learned from someone else.

The Court. Objection sustained.

Mr. Chance. I ask an exception.

30 *The Court.* Note an exception.

Q Can you by examining these four papers refresh your recollection as to the type of automobile in each case, of the two Packards, the one White and the one Maccar, which it has been said were involved in this fire?

40 *Mr. Gildea.* That is objected to unless it is a matter within the witness' own knowledge, and unless his knowledge was better at the time the statements were signed by him than it is now.

Milton Shifman, direct

By the Court.

Q Had you seen these trucks, Mr. Schiffman? A Yes, I had often seen them.

Q And, without reference to any memorandum or papers, can you give us a description of the trucks, as to the tonnage and the sort of bodies they had, and so forth? A Why, I know this: 10 that I have often heard them described—

Q I want to know whether you can describe them to us without reference to any memorandum, yourself? A No, I would not want to say that, your honor; it would only be guessing.

By Mr. Chance.

Q Do you recall whether or not when you made the affidavit which is involved in each of these four exhibits you knew the facts therein stated at that time to be the truth? A Will you repeat 20 the question, please?

(Last question read.)

Mr. Gildea. That is objected to as irrelevant. I do not think we are bound by anything stated in these proofs, and I do not think counsel ought to be permitted to in any way get that in the case.

The Court. I am not going to allow them in the case. The witness has said that he saw 30 these trucks frequently but he cannot give us the description from memory now. I will let him look at the papers marked for identification and see if he can refresh his memory.

Mr. Gildea. I would like to ask a question before he does that, your honor, if I may.

The Court. Yes.

By Mr. Gildea.

Q Mr. Shifman, did you make out these state- 40

Milton Shifman, direct

ments from information given you by other people or from facts that were already within your knowledge? A To the best of my recollection these papers were made out by the insurance company and delivered to me to sign, so that we could get our check for the loss.

10 Q Who gave the insurance company the information, did you or did somebody else? A I did not, and I do not know who did.

Mr. Gildea. I object to it.

The Court. Yes.

By Mr. Chance.

20 Q Regardless to who gave the information in the first place, when you swore to these statements did you know that the facts therein stated were true, of your own knowledge?

Mr. Gildea. Objected to as immaterial in this case.

The Court. Yes, I do not think it is material.

Mr. Chance. I ask an exception.

The Court. Yes!

30 Q Can you, by referring to these papers, refresh your recollection to such an extent that you can tell of your own knowledge what the factory numbers, type of body, motive power, number of cylinders and year or model was of the four cars involved in the fire? A I haven't got so good a memory as to enable me to remember the engine numbers. The other information I have never checked. I do think the names are the same.

Q Now, take these two Packards, what capacity were they?

Mr. Gildea. If you know.

40

Milton Shifman, direct

A Well, I have read that there, but I do not know whether that is right or not.

The Court. Do you know of your own knowledge what they were?

The Witness. I would not be sure, your honor; no, sir.

Q Describe them as fully as you can recall them; that is the Packards? A We had two Packard trucks; they were about the same size. And the Maccar—I believe they were all painted red, the color which we paint our trucks. 10

The Court. Did they have a closed body?

The Witness. I think they had the same type body we have now, an open body with a top.

Q Do you know what was paid for any of those trucks? 20

Mr. Gildea. I object.

The Court. Yes. The witness said he was not connected with the company at the time of their purchase.

Q Does the statement that you were not connected with the company at the time the cars were purchased apply to all four cars? A Yes. My connection began after I got out of the service. 30

Q I show you four papers and ask you if they are copies of the insurance policies which were issued to your company by the insurance company?

Mr. Gildea. That is objected to on the ground it does not appear the witness ever saw any policies issued by the plaintiff.

The Court. Yes.

Q Well, did you ever see the policies? A I do not remember. 40

Elbert A. Perry, direct

Q You made out the proofs of loss, didn't you, after the fire? A I believe I did.

Q At that time did you see the policies? A I cannot remember.

Q Did you go to the place of the fire the day after the fire? A I did.

10 Q I show you a picture marked P. 1 for identification and ask you if that accurately portrays the situation which existed the following morning, as near as you can tell? A I do not recognize the picture.

Q You do not recognize it at all? A No.

Q Didn't you, as a matter of fact, furnish the picture to Mr. Swartz? A I did not.

20 Q I show you another picture, P. 2 for identification, and ask you if you recognize that picture as showing the situation after the fire at Galowitz' garage? A I do not recognize this picture.

Q Well, do you recognize the conditions which are revealed by that picture, P. 2 for identification? A It looks like a ruin to me but I would not want to state that that is the condition; I cannot say that. I do not know whether it is that fire or any other fire.

Mr. Chance. That is all.

30 *Mr. Gildea.* That is all.

ELBERT A. PERRY sworn for the Plaintiff.

Direct examination by Mr. Chance.

Q Mr. Perry, are you connected with the New Jersey Manufacturers Association Fire Insurance Company? A Yes, sir.

Q Were you connected with that company in 1923? A Yes, sir.

Elbert A. Perry, direct

Q What was your official position with that company in February, 1923? A Automobile underwriter.

Q What does the underwriter have to do with the issuance of policies of that company? A The underwriter directs the construction of the policy and signs them and mails them to the assured.

10

Q Do all policies sent out bear the signature of the underwriter? A Yes, sir.

Q I show you four papers here which purport to be policies of insurance issued by the New Jersey Manufacturers Association Fire Insurance Company to Shifman Brothers, and ask you if in each case you signed these as the underwriter?

Mr. Gildea. Do I understand they are the original policies?

Mr. Chance. No; they are the copies, the originals having been accounted for by Mr. Shifman, who said they could not be found.

20

A These are my signatures.

Q Look at them and see which is the name of the assured in each case, and by otherwise looking at them inform us whether these are copies of four policies issued to Shifman Brothers covering the automobiles mentioned in the schedule thereon. A (After examining papers.) I haven't any records here to verify them. We issue thousands of policies every year.

30

Q Look at the policy and look at your signature?

Mr. Gildea. I object on the ground the witness said he could not tell without his records. Of course, he cannot tell. He does not remember every policy issued by the New Jersey Manufacturers Association Fire Insurance Company.

40

Ralph M. Swartz, direct

The Court. He says the signature is his signature.

The Witness. It is my signature.

Mr. Chance. I will now offer the four documents in evidence.

10 *Mr. Gildea.* I object upon the ground they are not shown to be exact copies of the policies in question. All the witness says is that—

The Court. He says he cannot tell except from his records, but that he presumes they are. Objection sustained.

RALPH M. SWARTZ sworn for the Plaintiff.

Direct examination by Mr. Chance.

20 Q Were you employed by the plaintiff in this case in 1923? A I was.

Q What in general were your duties on that date? A Making appraisals and adjusting claims.

30 Q What experience have you had in the automobile business? A Prior to the time of the war I had five years in the automobile business, having two garages, and a year and eleven months as master engineer in charge of motor transportation for the regiment, handling trucks and cars, and then since the latter part of 1921 I have been with the New Jersey Manufacturers doing automobile work.

Q Does the automobile work which you now do include the appraising of automobiles? A Yes, sir.

Q Did it include the appraising of automobiles in August, 1923? A Yes, sir.

40 Q On the day following the fire in Galowitz' garage did you inspect the automobiles of Shifman Brothers at the ruins? A Yes, sir, on Providence Street, in Newark.

Ralph M. Swartz, direct

Q How many automobiles did you thus inspect?

A Four trucks.

Q Could you tell us whether from the ruins as you observed them it was possible to tell where the entrance to this garage had been? A Yes, sir. I went in the entrance, off of Providence Street, the lower entrance.

10

Q Between the place where the entrance was and the place where Shifman's ruined cars were situated were there other vehicles?

Mr. Gildea. Objected to unless the witness knows whether or not those other vehicles were in that position before the fire.

The Witness. I do.

The Court. Wait. The objection is sustained at this time.

20

Q Do you know whether or not any vehicles had been moved from one place to another in the ruins?

A They had not been moved.

Q How do you know that? A On account of the timbers lying across they could not be moved until it was cleared.

Q Tell us what there was between the Shifman cars and the place where the entrance was? A The last car out—just inside the door was a big bus, and in front of the bus was other cars backed in back of the Shifman cars, in the entrance.

30

Q Was there room enough to move an automobile of the size that Shifman's trucks had been, between these other cars and the entrance? A No.

Q How far from the entrance would you say Shifman's trucks were situated? A About thirty-five feet, facing the wall.

Q Could you tell us how many cars there were between those and the entrance? A I could not

40

Ralph M. Swartz, direct

tell exactly. There were several cars in back, but I could not tell exactly the number of cars.

Q Was there any place through which those automobiles could have passed in getting from the garage had anybody been there to remove them or try to move them at the time the fire broke out?

10 A Do you refer to being able to get the Shifman machines out?

Q Yes? A That bus would have to be moved, and any cars in back of them would have to be moved, in order to get the Shifman cars out.

The Court. Do you mean if they were moved first—

20 *The Witness.* Yes, the Shifman cars could have been pulled out of the garage, but these other cars were in back of them and they would have to be moved first.

Mr. Gildea. If the Court please, I do not see the relevancy of this. What right had the Shifman cars over other cars so that they should be moved first?

30 Q Can you recall of your own knowledge, without reference to any papers, the make and number and model of these several automobiles? A I can recall the makes of them, and the years, I think, but as far as the numbers, I cannot recall that without referring to my proof of loss.

Q What do you mean by your proof of loss? A Proofs of loss which I had filled out and took to Shifman Brothers to be signed before turning over the check to them and having them sign a release after the proofs of loss were verified as being correct by them.

40 Q On the proofs of loss did you see that the facts were accurately put down as you understood them? A Yes, sir.

Ralph M. Swartz, direct

Q And as you understood them of your own knowledge? A Yes, sir.

Q Did you make appraisals of those four automobiles? A I did.

Q And were those appraisals your judgment based on the experience that you have told us about as to what the value of those cars had been before the fire? A Yes, sir. 10

Q And what they were after the fire? A Yes, sir.

Q Are these papers, marked P. 4, 5, 6 and 7 for identification, the proofs of loss to which you have just referred? A (After examining papers.) Yes, sir.

Q Without reference to these papers you are unable to tell us what your estimate then was? A Well, I cannot tell you right offhand what they were. I know what the total amount was. 20

Q What was the total amount?

Mr. Gildea. That is objected to on the ground that, if in the first place, we would be entitled to more than the total amount; we would be entitled to an itemized amount, so it could be checked against; and we object on the ground the witness has not qualified as an expert. 30

The Court. I do not think the witness has been shown to be qualified as to value. The basis of his figuring with the prior value is information received from others. That is all that appears, at least. He may be qualified to give salvage value.

Q Had you been familiar with Shifmans' automobiles before the happening of this fire? A Yes, sir. 40

Ralph M. Swartz, direct

Q As a part of your regular business did you become familiar with those cars before the fire?

A Yes. I had been down to Shifman Brothers numerous times during the year prior to the fire and inspected their machines; and whenever there was an accident I was in touch with the drivers and looked the machines over.

10 Q In what condition did Shifman Brothers keep their cars, these four particularly?

Mr. Gildea. Objected to as irrelevant. The question is what was the condition immediately before the fire.

The Court. Objection sustained.

20 Q What was the condition of these four automobiles at the time you last saw them before the fire?

Mr. Gildea. Objected to unless the time is fixed.

The Court. Fix the time, when you saw them last before the fire.

The Witness. About a month before the fire.

Q In what condition were they a month before the fire?

30 *Mr. Gildea.* That is objected to as too remote from the time of the fire. A great many things might have happened to them in a month.

The Court. I think I will allow it. There may be some further testimony as to their condition later.

Mr. Gidea. May I have an exception?

The Court. Yes.

(Last question read.)

40 A In very good condition.

Ralph M. Swartz, direct

Q Viewing them after the fire, was it possible for you to form an opinion as to the condition in which they had been just before the fire, and, if so, tell us how you got at it? A Why, there were parts of the body, and the rubber on the top of the wheels, that had not been burned off, showing that the tires were still in very good condition, and the bodies were in good condition, and paint, and different places in between the trucks it had not been burned, and they had been in practically the same condition as when I had seen them before.

10

Q Now, then, what in your opinion was the value of these cars all together before the fire?

Mr. Gildea. Objected to on the ground stated before, that the witness is not shown to have had any knowledge of them immediately before the fire.

20

The Court. I think it is too remote unless there is some testimony. And I think further, Mr. Gildea, that you are entitled to a separate estimate for each car, if you are entitled to anything.

Mr. Gildea. Yes; and I do not think the witness has been qualified as a person having knowledge of the market value.

The Court. I think the objection should be sustained.

30

Mr. Chance. I ask an exception.

The Court. Certainly.

Q Can you refresh your recollection by reference to P. 4 for identification, as to what was your appraisal with respect to one Packard automobile?

Mr. Gildea. I make the same objection.

The Court. Objection sustained.

Mr. Chance. And I will make the same offer with respect to all this.

40

Ralph M. Swartz, direct

The Court. Yes; and take your exception for each separate one.

Q What was the value of these automobiles following the fire when you inspected them the next morning? A Why, they were worth nothing more than junk. They were a total loss.

10 *The Court.* What was the junk value, Mr. Swartz?

The Witness. Well, the junk value on the cars would not have been over ten or fifteen dollars, to be chopped up for old iron. They were wooden bodies and there was no value in the bodies at all; and the tires were all gone, except sections.

20 Q Just tell us how closely you inspected these cars upon your previous visits just before the accident? A I noticed the motors, the tires, the bodies, how they were kept in good condition; they were washed right along, in my opinion, practically every night when they were taken in.

30 Q Did you inspect the engines? A I heard the engines running. It is part of my duties to watch the trucks whenever I see them on the streets. I have seen them pulled up to the curbstone with the engines running, not only Shifman Brothers' but other trucks, and I have been in constant touch with them all the time.

Q Can you tell us what year models these were in all instances? A There were two 1920 Packards. There was a 1919 Maccar, and a 1921 White truck.

40 Q Was it possible for you, looking at the remains of these automobiles following the fire, to form an estimate of the market value of them before the fire had damaged them?

Ralph M. Swartz, direct

Mr. Gildea. Objected to on the ground it has already been asked, objected to and ruled out.

The Court. I do not know that that question was, but the witness has testified that they were nothing but junk afterward. I will let him answer it.

The Witness. What was the question again, please? 10

The Court. Whether from your inspection afterward you could tell the condition they were in just previous to the fire.

The Witness. Yes, sir.

Q Tell us how you could tell that?

The Court. He did testify to that—by the condition of the tires and the paint and panels and parts that were left. 20

How would that give you any indication of what the engine was?

The Witness. It would not give me an accurate knowledge of what the engines were right immediately before the fire.

Q Assuming that the engines had been in good condition one month before, when you did inspect them and heard them operating, was there any marks upon the engine or any indications of any kind about the car which would indicate that they were not still in good running condition when the fire struck them? A No, sir. 30

Q Were there any marks of accident or damage to these automobiles between the time when you had seen them in good condition and the time of the fire? A No, sir. There was only a couple of the fenders bent down where timbers had fallen on them, but there was no evidence of any accident to 40

Ralph M. Swartz, direct

the cars. Some of the radiators were melted out, but there were no holes in the radiators.

Q Was there anything the matter with anything else beside the radiator that you could observe that you could attribute to anything beside the fire?

A The radiator and the fender and wheels.

10 Q What in your opinion was the value of those automobiles when you saw them a month before the accident, if you can tell us?

Mr. Gildea. Objected to as irrelevant, and upon the grounds already urged.

The Court. Yes.

20 *Mr. Chance.* Yes, but since that time your honor, he has pointed out that there was no marks of any damage of any kind which would indicate anything had happened to them out of the ordinary between the time he last saw them and the time of the fire.

30 *The Court.* To my mind the engine is the most important part of an automobile, and you certainly cannot tell, after a fire such as this was, what the condition of that engine was immediately before. If the fire had occurred within a very short time after he had seen them I have no doubt that Mr. Swartz would be qualified to give us the value, but I cannot, by any stretch of the imagination, see that he is qualified under the present circumstances.

Mr. Chance. Well, I will ask him to step down a moment and I will call one of the Shifmans back.

Mr. Gildea. Are you through with this witness?

Mr. Chance. No.

40 *Mr. Gildea.* All right.

Milton Shifman, recalled, direct

MILTON SHIFMAN, recalled for the Plaintiff.

Direct examination by Mr. Chance.

Q Mr. Shifman, speaking with reference to the four trucks which were involved in this fire, were they all in good condition prior to the fire? A I do not know whether they were in good condition. I know they were all working and operating, but I do not know the condition of them. 10

The Witness. Your honor, may I tell my position with the company at that time?

The Court. No. Just answer the questions.

Q Refreshing your recollection, if you do not already recall, from Exhibit P. 7 for identification, can you tell us what you, on August 14, 1923, considered the value of the White automobile which was involved in this fire? 20

Mr. Gildea. That is objected to.

The Court. Objection sustained.

Mr. Chance. I ask an exception.

The Court. Certainly.

Mr. Chance. And the same question with respect to all the others?

The Court. Yes.

Mr. Chance. And an exception.

The Court. I do not see how you could even get that in under *Teets vs. Hahn*, which goes about the limit. In *Teets vs. Hahn*, as I remember it, the man who drove the automobile was a carpenter, and he was allowed to qualify as an expert to tell the value of the car, that he had driven the car, and gave the jury some idea as to the condition, and then placed his value on it. Even those conditions this witness cannot meet. 30

Milton Shifman, recalled, cross

Q Had you ever driven any of these four trucks?
A I do not believe I had, no.

Q Did you ever see the engines of them running? A Yes; I heard them running.

Q How short a time between the fire and the time when you last heard them running? A I cannot say.

10 *Mr. Gildea.* Objected to as irrelevant.

The Court. He says he cannot say.

Q Can you approximate it? A It is possible it might have been a week. It might have been a month. I do not know. It might have been a shorter time than that. It might have been a few days, but I cannot remember.

Q When you did last hear them were they in good running condition?

20 *Mr. Gildea.* Does that mean before or after the accident?

Mr. Chance. Before.

A Yes, they were in running condition.

Q Who took care of your automobiles at that time? A Who had charge of the automobiles? Is that the question?

Q Who repaired them? A The repair work was done at various garages, as the occasion might require.

30 Q Did Galowitz do it? A I do not believe he did, no.

Q Are you sure that he did not? A No, I am not sure. I would rather say I don't know.

Mr. Chance. I guess that is all.

Cross examination by Mr. Gildea.

Q Where are these automobiles now? A One
40 of them is still in service with us.

Milton Shifman, recalled, re-direct

Q Then one is still in service with you, isn't it? A Yes.

Q Which one? A The Packard.

Q What about the others? A I do not know where the others are now.

Mr. Gildea. That is all.

10

Re-direct examination by Mr. Chance.

Q When you made the proofs of loss and stated the value of these cars on what did you base the values which you stated?

Mr. Gildea. Objected to as immaterial and in no way binding upon this defendant.

The Court. Objection sustained.

Mr. Chance. I ask an exception.

The Court. Certainly.

20

Q How did you know what the value of these automobiles was when you made the affidavits involved in the several proofs of loss?

Mr. Gildea. Objected to on the same ground. I do not see how it is relevant in this case at all. In the first place, it does not appear the witness did know what the values were or that he was qualified to fix the values.

The Court. Objection sustained.

30

Q Did you know the values?

Mr. Gildea. That is objected to on the ground that if he knows it would be hearsay. He is not an expert.

The Court. He may answer that question.

Mr. Gildea. May I have an exception?

The Court. Yes.

Q Did you know the value of each of these four automobiles when you executed the proofs of loss? 40

David Galowitz, recalled, direct

The Court. Did you know, of your own knowledge?

The Witness. As I remember it, your honor, I know I obtained the values from the policies, as I remember it now. I could approximate the value from the value of the insurance in the policies.

10 Q When the values were put in the policies did you have anything to do with estimating them at that time? A I did not.

Mr. Gildea. Objected to as irrelevant.

The Court. He says he did not.

Mr. Chance. That is all.

Mr. Gildea. That is all.

20 DAVID GALOWITZ recalled for the Plaintiff.

Direct examination by Mr. Chance.

Q How often were you at your garage before the fire? A Every day.

Q Did you know whether Shifman Brothers' automobiles occupied that same place every day?

A Yes, sir.

30 Q Did you see them driven into that place every day? A I would not say every day, but most the time I did.

Q Did you see them driven in immediately before the fire? A Yes, I saw two cars come in around eight o'clock.

Q When had you last observed the other two cars driving in? A I did not see them that night.

Q Had you seen them that week? A I saw them the next day in the fire.

40 Q No, before the fire? A I would not say that. I do not remember exactly.

Elbert A. Perry, recalled, direct

Q The last time you did see them come in there who drove them in? A The drivers that always drove the same trucks.

Q They were not towed in? A No, sir.

Q Did you notice anything the matter with the running of the motors? A I never paid any particular attention to it, but as usual every once in a while a motor gets out of commission. I wouldn't say exactly they did. 10

Q Will you tell us whether you made any repairs from time to time on Shifman's cars? A I would not say that I did. I do not remember. I done some work for Shifmans but I do not just remember what I did.

Q Can you specify any particular in which any of these four trucks were not in good running order when they were received in your garage the day before the fire? 20

Mr. Gildea. Objected to as irrelevant.

The Court. Objection sustained.

Mr. Chance. Exception.

The Court. Note an exception.

Mr. Chance. I guess that is all.

ELBERT A. PERRY recalled for the Plaintiff.

Direct examination by Mr. Chance.

Q Have you got your records here so you can tell us whether or not these policies were issued, Mr. Perry? 30

The Court. Mr. Gildea, can you not let Mr. Perry verify these by his records and then, if he says so, admit them?

Mr. Gildea. Yes, sir.

The Court. So we can hear another witness in the meantime?

Mr. Gildea. Yes, sir. 40

Ralph M. Swartz, recalled, direct

RALPH M. SWARTZ recalled for the Plaintiff.

Direct examination by Mr. Chance.

10 Q Without telling us what value you fixed, will you tell us how you arrived at the value of these four automobiles as of the time when they were injured? A How I arrived at the value on the day they were—

Q Yes, what process did you use in estimating?
Mr. Gildea. Objected to.

Q What did you take into consideration?

Mr. Gildea. Objected to as irrelevant. The test is the market value and not the witness' method of making the calculation.

The Court. Objection sustained.

20 Q Since you have been appraising automobiles for the insurance company with whom you are employed, and in 1923, did you keep in touch with the market value of used cars? A Yes.

Q Were you familiar with sales and purchases of used cars? A Yes, sir.

Q At that time? A Yes.

30 Q And, speaking from your experience that you have narrated on the witness stand, and from the observation which you made of the trucks about a month before, and from the conditions which you found in the several trucks on the day following the fire, what in your opinion was the fair market value of those trucks when they were damaged by the fire?

Mr. Gildea. Objected to upon the ground the witness is not qualified as an expert on the value of used automobiles; he is not competent to answer a question of this kind.

40 (Last question read.)

Motion for Non-Suit

Mr. Gildea. I object on the further ground that it does not appear that the witness knows the condition of the trucks before the fire.

The Court. The objection will be sustained on the latter ground.

Mr. Chance. May I have an exception? 10

The Court. Certainly.

Mr. Chance. That is all.

Mr. Gildea. No questions.

Are you through with the exception of the policies?

Mr. Chance. I think I am.

(Counsel confer.)

Mr. Chance. These are the original policies. They retained them, apparently. 20

The Court. They will be marked.

(Four policies of insurance referred to are marked, respectively, Exhibit P. 3, Exhibit P. 4, Exhibit P. 5 and Exhibit P. 6.

Mr. Chance. We rest.

Mr. Gildea. If the Court please, I would like to make a motion.

(Court and counsel retire to chambers.)

Mr. Gildea. If the Court please, I move for a non-suit upon the ground that there is no evidence which shows the alleged damage to the plaintiff, and there is no evidence tending to show any negligence upon the part of the defendant. 30

(After discussion.)

The Court. Is there any use of going further than the first ground? I do not see that there is anything in the case to go to the jury to show any damage. 40

Non-Suit Granted

Mr. Chance. There is evidence that these cars were in running condition the night before and they were junk the next day.

10 *The Court.* There is no evidence to show original cost, or how far they had run. There is simply evidence that they were in running condition the night before and they were junk the next day, and that certainly is not enough to go to the jury on.

(After discussion.)

The Court. I think I am compelled to grant the motion for a non-suit.

I will allow you an exception.

Mr. Chance. I ask an exception.

(Court and counsel return into court.)

20 *The Court.* Members of the jury, the Court having granted a motion for a non-suit, you will be relieved of further consideration of the case.

30

40

Postea

NEW JERSEY SUPREME COURT

MERCER COUNTY CIRCUIT

Filed June 29, 1929.

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, a corporation of New Jersey, <i>Plaintiff,</i> <i>vs.</i> DAVID GALOWITZ, <i>Defendant.</i>	}	<i>Action at Law.</i> <i>Postea.</i>	10
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This case was tried before the Honorable A. Dayton Oliphant, Circuit Judge, at the Mercer Circuit, New Jersey Supreme Court, on the twentieth day of June, 1929. 20

The Court ordered that a non-suit be entered against the plaintiff, New Jersey Manufacturers Association Fire Insurance Company, a corporation of New Jersey, and in favor of the defendant, David Galowitz.

A. DAYTON OLIPHANT,
Judge. 30
Mercer County Circuit
New Jersey Supreme Court.

Judgment

NEW JERSEY SUPREME COURT

10	NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, a corporation of New Jersey,	<i>Plaintiff,</i>	<i>vs.</i>	DAVID GALOWITZ,	<i>Defendant.</i>	}	<i>Action at Law. On Postea. Judgment of Non-Suit. William L. Greenbaum, Attorney.</i>
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Costs \$77.20.

20 Judgment entered this twenty-ninth day of June,
 A. D. nineteen hundred and twenty-nine in favor
 of defendant and against the plaintiff for the sum
 of seventy-seven dollars and twenty cents costs.

WM. S. GUMMERE,

C. J.

30

40

Notice of Appeal

NEW JERSEY SUPREME COURT

Mercer County

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, a corporation, <i>Plaintiff-Appellant,</i> <i>vs.</i> DAVID GALOWITZ, <i>Defendant-Respondent.</i>	}	<i>Action at Law.</i> 10 <i>Notice of Appeal.</i> <i>(With Ground Stated)</i>
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To William L. Greenbaum, Esq., Attorney for Defendant:

20

Sir:

TAKE NOTICE that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole judgment of non-suit entered therein in the New Jersey Supreme Court and every part thereof, to the New Jersey Court of Errors and Appeals in the last resort of all causes and the following are the grounds of appeal:

1. The trial Judge committed error in granting the defendant's motion for non-suit. 30
2. The trial Judge committed error in not refusing to grant the defendant's motion for non-suit.
3. The trial Judge erred in allowing the following question to be answered: "Now, tell us what signs or notices you had in your garage, where they were, how large they were and how long they had been there."
4. The trial Judge erred in allowing the following question to be answered: "When Mr. Shifman 40

Notice of Appeal

made arrangements with you to keep the trucks in your garage over night, what, if anything, was said about fires?"

10 5. The trial Judge erred in not permitting the following question to be answered: "When you signed these four papers which we have referred to as exhibits P. 4, 5, 6 and 7 for identification, did you check the facts which you inserted in the papers?"

6. The trial Judge erred in not permitting the following question to be answered: "Regardless of who gave the information in the first place when you swore to these statements did you know that the facts therein were true of your own knowledge?"

20 7. The trial Judge erred in not permitting the following question to be answered: "Now, then, what in your opinion was the value of the cars all together before the fire?"

8. The trial Judge erred in not permitting the following question to be answered: "Can you refresh your recollection by reference to P. 4 for identification as to what was your appraisal with respect to one Packard automobile?"

30 9. The trial Judge erred in not permitting the witness Swartz to state whether he could refresh his recollection with respect to appraisal for each separate automobile.

10. The trial Judge erred in not permitting witness Milton Shifman to answer the following question: "Refreshing your recollection, if you do not already recall from exhibit P. 7 for identification, can you tell us what you, on August 14th, 1923, considered the value of the White automobile which was involved in this fire?"

40 11. The trial Judge erred in not permitting the witness Milton Shifman to tell what on August

Notice of Appeal

14th, 1923, he considered the value of all the other automobiles than the White which were involved in the cause.

12. The trial Judge erred in not permitting the witness David Galowitz to answer the following question: "Can you specify any particular in which any of these four trucks were not in good running order when they were received in your garage the day before the fire?" 10

13. The trial Judge erred in not permitting the witness Swartz to answer the following question: "And speaking from your experience that you have narrated on the witness stand and from the observation which you made of the trucks about a month before and from the conditions which you found in the several trucks on the day following the fire, what, in your opinion, was the fair market value of these trucks, when they were damaged by the fire?" 20

KELLOGG & CHANCE,

Attorneys of Plaintiff-Appellant.

Dated August 5th, 1929.

Endorsed:

Service of a copy acknowledged this 8th day of 30
August, 1929.

WM. L. GREENBAUM,

Attorney for Defendant-Respondent.



Exhibit P-1

KNOW ALL MEN BY THESE PRESENTS, that SHIFMAN BROTHERS, a corporation of the State of New Jersey in consideration of the sum of Seven thousand, two hundred and ninety (\$7,290.00) Dollars, to it paid by NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY, has assigned, transferred and set over, and does hereby assign, transfer and set over to said New Jersey Manufacturers Association Fire Insurance Company any and all claim, claims, demands, actions or causes of action which it ever had, now has, or hereafter can, may or shall have against David Galowitz, arising out of or in anywise connected with the fire which occurred at the garage of David Galowitz in the City of Newark, County of Essex and State of New Jersey on August 9th, 1923; and it does hereby appoint and constitute the said New Jersey Manufacturers Association Fire Insurance Company its irrevocable attorney in its name, place or stead or otherwise, to its own use, but at its own expense, to take all legal measures which may be proper for the complete recovery of all damages suffered by said Shifman Brothers by reason of the said fire, with full power of substitution.

IN WITNESS WHEREOF the said Shifman Brothers has caused its common seal to be hereto affixed and attested by its Secretary, and the name of its President to be signed this twentieth day of July, Nineteen hundred and twenty-eight.

SHIFMAN BROTHERS,

By: SAMUEL SHIFMAN,

President.

(SEAL)

Attest:

SIMON T. SHIFMAN,

Secretary.

Exhibit P-1

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this Twentieth day of July, in the year one thousand nine hundred and twenty-eight, before me the subscriber, a Notary Public of New Jersey, personally appeared Simon T. Shifman who, being by me duly sworn doth depose and make proof to my satisfaction that he well knows the corporate seal of SHIFMAN BROTHERS, named in the foregoing assignment; that the seal thereto affixed is the proper corporate seal of the said company; that the same was so affixed thereto, and the said Assignment signed and delivered by Samuel Shifman who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

“X” SIMON T. SHIFMAN,
Treasurer.

Sworn and subscribed before me
at Newark, N. J., the date afore-
said.

ARTHUR M. SHIFMAN,
Notary Public.

(SEAL)

Exhibit P-2

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY
175 West State Street, Trenton, New Jersey

Voucher No. 1505

Aug. 14, 1923

Drawn in favor of—Shifman Bros.

1923	For	Amount	Total
In payment of Fire Claim	A-30 8/9/23		
	A-31		
Policy No. AP-2575	A-32	7290.00	7290.00
	AP-3502		
	AP-2322		
	AP-3596		

void if detached

Voucher No. 1505

Trenton, N. J. Aug. 14, 1923

THE MECHANICS NATIONAL BANK OF TRENTON 55-73

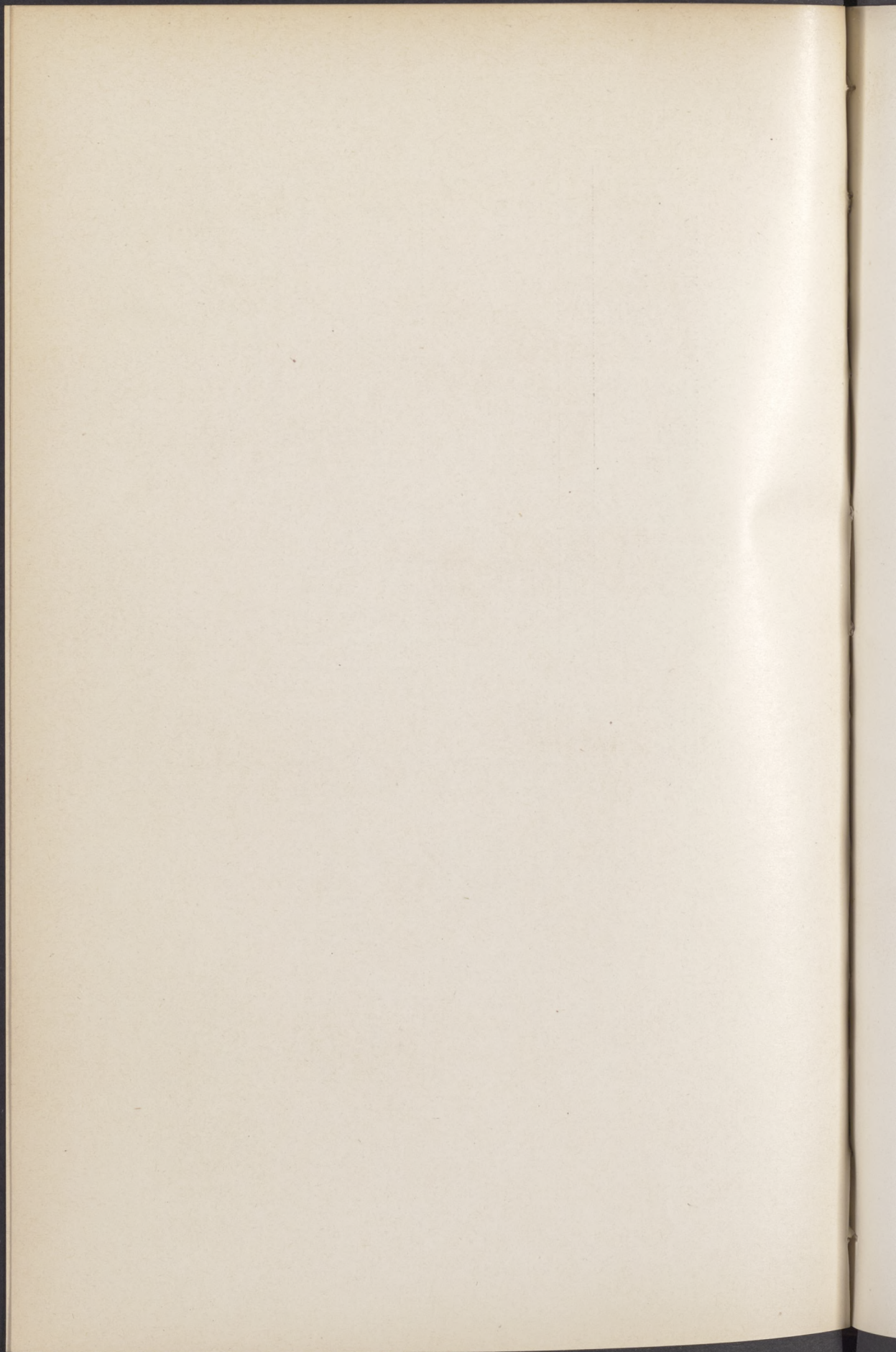
Pay to the Order of—Shifman Bros.

.....SEVEN THOUSAND TWO HUNDRED NINETY.....DOLLARS, \$7290.00

New Jersey Manufacturers Association Fire
Insurance Company

CHARGE TO SPECIAL
ACCOUNT

W. C. BILLMAN
Assistant Treasurer



No. AP 2575

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY OF TRENTON, NEW JERSEY, U.S.A.



IN CONSIDERATION of the warranties and premiums hereinafter mentioned hereby agrees to indemnify the assured named in the schedule hereof and legal representatives (SUBJECT TO THE EXCLUSIONS AND LIMITATIONS AND TO THE CONDITIONS HEREINAFTER SPECIFIED) against legal liability and/or loss or damage by reason of:

Fire
Transportation
Theft
Damage to Property of Others
Damage to Assured's Property by Collision

CLAUSE 1. Actual loss of or damage to any automobile described in the schedule hereof by (a) all or any of the hazards of fire, lightning and explosion and/or (b) by the derailment, collision, wreck, stranding, sinking or burning of any conveyance in or on which any such automobile is or may be for the purpose of transportation, including general average and salvage charges for which the assured is legally liable.

CLAUSE 2. Actual loss of or damage to any automobile described in the schedule hereof by burglary, theft, vandalism, malicious mischief and/or wrongful conversion, disposal or concealment done or committed by any person other than the assured.

CLAUSE 3. Legal liability of the assured for damage to the property of other persons, including legal liability for loss of use of such property, resulting from the ownership, maintenance and/or use of any automobile described in the schedule hereof; and also against loss and expense in defending any suit brought against the assured seeking to enforce such legal liability;

CLAUSE 4. Actual loss of or damage to any automobile described in the schedule hereof whether moving or stationary, caused solely by accidental collision with another object whether moving or stationary.

EXCLUSIONS AND LIMITATIONS

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY (HEREINAFTER CALLED THE COMPANY) SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY:

Signing
Cancelled or Omitted Insurance
Time
Location
Assignment
Bailee for Hire
Receivers, etc.
Assured's Title
Truth of Schedule
Riot, Rain & Snow, Passengers for Hire
Racing
Age of Driver
Illegal Undertaking
Load, Tools, etc.
Theft
Automobile Defined
Other Insurance
Amount of Insurance
Collision Damage to Tires

(a) Unless and until this policy and/or any endorsement attached hereto shall have been signed by the Underwriter of the company.

(b) Under any CLAUSE or CLAUSES of this policy upon the face of which or a part of which is stamped or written the words "cancelled" or "not insured" or other words of like import.

(c) For any loss or liability unless the same is sustained or incurred during the policy period mentioned in the SCHEDULE hereof.

(d) For any liability incurred or loss suffered when the automobile involved is not within the United States of America or Canada, or upon a vessel in coastwise transportation between two of the ports thereof.

(e) In the event that this policy shall have been assigned unless and until the assent of the company to such assignment is endorsed hereon in writing signed by the said Underwriter.

(f) For liability incurred or loss sustained while the automobile is in the possession of any bailee for hire under any contract, assignment or understanding whereby the benefit on this policy is sought to be made available to such bailee.

(g) To any receiver, trustee or other person to whom any interest in this policy or any automobile described herein may have passed by operation of law, for any liability or loss incurred or suffered after the date of acquiring of such interest.

(h) Unless at the time of incurring liability or suffering loss the assured's interest in the automobile is sole and unconditional ownership free and clear of all liens and mortgages.

(i) Unless the statements contained in the SCHEDULE hereof are true in fact at the time when this policy is issued and also at the time of liability incurred or loss sustained, or if the assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.

(j) For any loss suffered or liability incurred while the automobile is involved in or being used in connection with any bombardment, invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or for damage suffered by the automobile described in the schedule hereof by hail, rain, sleet, or snow, whether driven by tempest or not, or if at the time of liability incurred or loss sustained the automobile is being used for the carriage of passengers for hire or is being rented under contract or lease for the carriage of passengers for hire, or is being operated in any race or speed test or by any person contrary to law as to age or under the age of sixteen years where no statute restricts the age, or is being operated or used in furtherance of any illegal undertaking, or with the assent of the assured by any persons forbidden by law to use or operate the automobile.

(k) For or on account of any load or cargo which has been, is being, or is to be transported in any automobile described in the SCHEDULE hereof, or for or on account of any property belonging to or placed by others than the assured in the possession or control of any servant or employee of the assured, or for any tools, repair equipment, spare bodies, robes, rugs, furnishings or personal effects, except that in the event that the company pay the assured as for a total loss under CLAUSE 2 then the company will at the same time pay the assured the cash value of any tools and repair equipment stolen, converted or concealed with the automobile and not returned to the owner, provided that the company will not pay any amount in excess of the high limit set forth in the SCHEDULE in respect of the theft. The word automobile as used in this policy is understood to include only the machinery and body and the equipment permanently attached thereto, including spare tires.

(l) If at the time a loss occurs or liability is incurred there be any other insurance covering such loss or liability which would be effective if this policy had not been issued.

(m) For any liability or loss not included between the high and low limits set forth in the schedule hereof as applicable to the class of insurance under which the claim is made; it being understood that each loss is to be deemed a separate claim and the amount below the low limit is to be deducted from the amount of each claim when determined.

THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 4 OF THIS POLICY:

(n) For loss of or damage to any tire due to puncture, cut, gash, blow-out or other ordinary tire trouble, nor for loss or damage to any tire unless the accidental collision also causes other loss or damage to the automobile, provided however, that the company shall be liable for damage caused by collision to spare tires attached to the automobile.

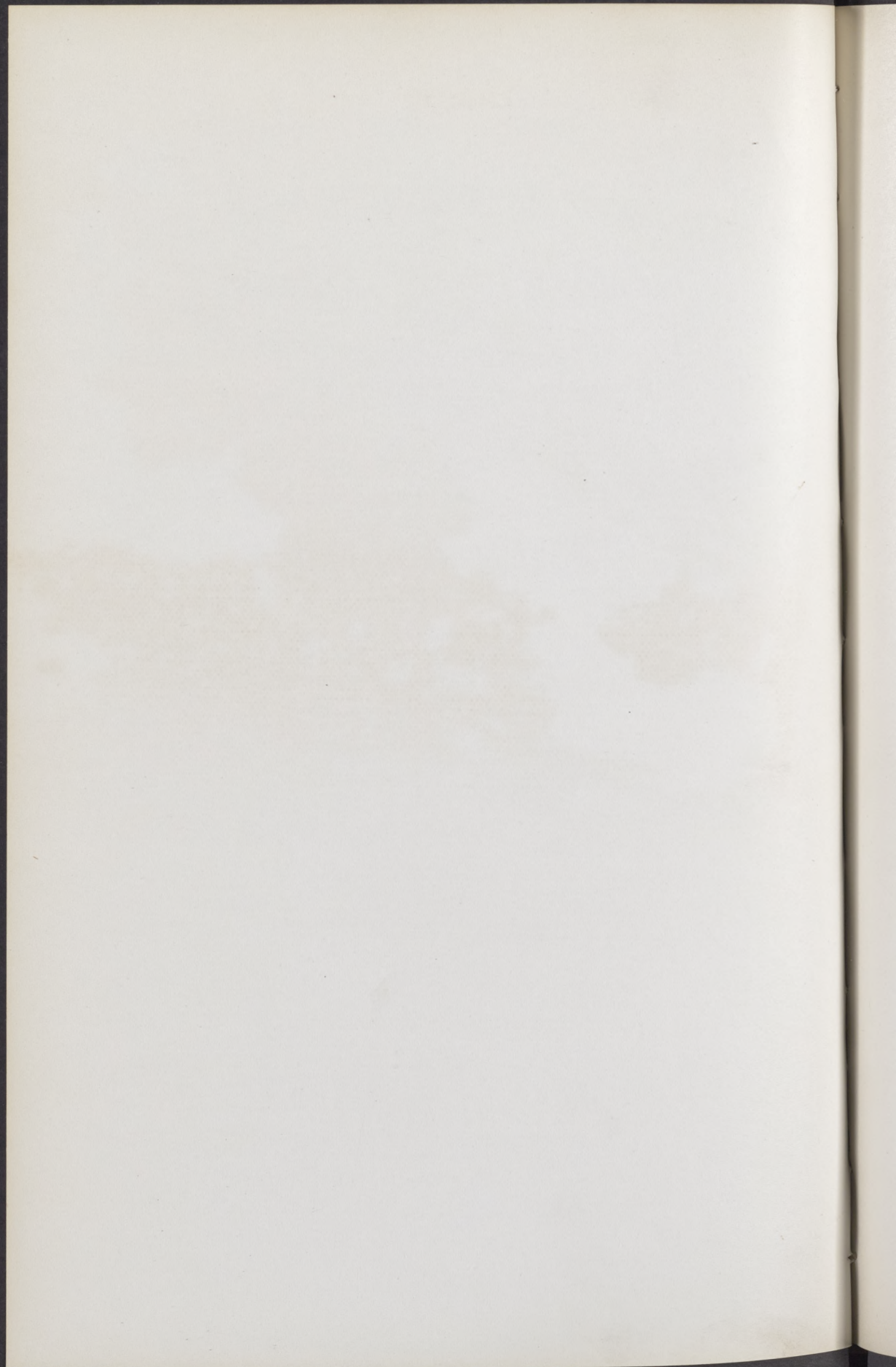


Exhibit P-3

Amount of Insurance
Amount of Insurance
Amount of Insurance
Amount of Insurance

THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY:
(o) For loss of the use of the automobile.
(p) For an amount greater than the difference between the cash value of the automobile at the time of loss or damage and the cash value of the same immediately thereafter.
(q) For an amount greater than what it would then cost to repair or replace the automobile, or such parts thereof as may be damaged, with other of like kind and quality.
(r) For any loss the total amount of which does not exceed the low limit set forth in the SCHEDULE hereof as applicable to the class of insurance under which the claim is made.

CONDITIONS

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 1 OR 2 THE COMPANY SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY FOR ANY LOSS OR LIABILITY THEREFORE OR THEREAFTER INCURRED BY THE ASSURED.

Co-operation of Assured

CONDITION 1. The assured shall at all times render to the company all co-operation and assistance in the assured's power in defending assured against claims of liability and in adjusting and minimizing loss or damage hereunder.

Fraud

CONDITION 2. The assured shall not commit or attempt any fraud or false swearing touching any matter relating to this insurance or the subject thereof whether before or after loss.

Damage to Property of Others

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 3, 4 OR 5 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 3 OF THIS POLICY FOR ANY LOSS THEREFORE OR THEREAFTER INCURRED BY THE ASSURED.

Damage to Property of Others

CONDITION 3. Upon the occurrence of any injury to the property of another by any automobile described in the SCHEDULE hereof and /or upon claim made by any person that such injury has occurred the assured shall forward immediately written notice thereof with the fullest information obtainable at the time to the company's Home Office at Trenton, New Jersey. The assured shall immediately upon receipt of any summons, process or court or other papers touching such injury to the property of another, likewise forward the same to the company. Notice given by or on behalf of the Assured to any authorized agent of the Company within the State of New Jersey, with particulars sufficient to identify the Assured, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by the Assured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible.

Notice of Accident, Claim, Suit

Damage to Property of Others

Assured not to Assume or Admit Liability or Settle Claim

CONDITION 4. The assured shall not, without the prior written assent of the company, voluntarily assume or admit the existence of any liability or incur any expense or settle any claim except at the assured's own cost.

Damage to Property of Others

Assured to Assist Company

CONDITION 5. The assured whenever requested by the company shall aid in effecting settlement, securing information and evidence and the attendance of witnesses, and in the defense of any suit and in the prosecution of any and all proceedings to review any verdict or judgment rendered therein; but without such request the assured shall not interfere in any negotiations for settlement or in any legal proceedings.

Damage to Assured's Property

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 6 OR 7 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY FOR ANY LOSS THEREFORE OR THEREAFTER INCURRED BY THE ASSURED.

Damage to Assured's Property

CONDITION 6. Upon the occurrence of any loss or damage to any automobile described in the SCHEDULE hereof by any of the hazards insured against by CLAUSES 1, 2 or 4, the assured shall give immediate written notice to the company; stating the time, place and cause (if then known) of such loss and damage; and within sixty days after such loss or damage, unless such time is extended in writing by this company, the assured shall render a statement to the company signed and sworn to by the assured, stating place, time and cause of the loss or damage, the interest of the assured and of all others in the automobile, the sound value thereof and the amount of loss or damage thereto, all encumbrances thereon, and all other insurance whether valid or not covering such automobile; and the assured, as often as required, shall exhibit to any person designated by this company what remains of the property insured and submit to examinations under oath by any person named by this company, and subscribe the same, and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Notice of Loss

Damage to Assured's Property

Proof of Loss

Damage to Assured's Property

Rewards

CONDITION 7. In the event of loss or damage occasioned by a hazard insured against by CLAUSES 1, 2 or 4, the assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this policy. Any such loss of the assured, of this company or its agents, in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expense thus incurred shall constitute a claim under this policy, provided however, that this company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the company.

FURTHER AGREEMENTS

The Company and the Assured agree:

Company to Defend Suits

1. That the company will, upon compliance by the assured with the foregoing CONDITIONS provided CLAUSE 3 is in force, defend at the expense of the company, any action (whether groundless or not) brought against the assured to enforce a liability described in said CLAUSE 3. The indemnity provided by Clause 3 of this policy is extended so that the same shall be available, in the same manner and under the same conditions as it is available to the named assured, to any person or persons while riding in or lawfully operating the automobile described in the schedule 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 be an individual, with the previous permission of an adult member of the named assured's household other than a chauffeur or domestic servant.

Omnibus

Interest and Costs

2. That in case where the company pays any amount for or toward satisfaction of any liability under CLAUSE 3 hereof the company will also pay or satisfy (without regard to the high limit applicable to said clause) any court costs and expense arising out of the defense against such liability and will also pay all interest accrued on the amount paid by the company toward the satisfaction of any judgment finally determining such liability.

Damage to Assured's Property

Adjustment and Payment of Loss

3. The company on receipt of sworn statement of loss or damage under CLAUSES 1, 2 or 4 will proceed promptly to determine the amount if any which it is prepared to pay thereon and will notify the assured of such amount and (unless the assured shall object in writing to such amount within ten days of such notification) will pay the amount so determined within sixty days of receipt of such sworn statement. If the Company does not deny all liability and if the assured shall so object to the amount which the company offers to pay, and the parties do not within thirty days of the giving of such notice of objection agree upon an amount to be paid, either party may apply to the judge of any county court of record of the county within which the loss occurred or the assured is located for the appointment of an umpire to whom the parties shall submit their difference and whose decision as to the value of the property stolen or damaged both before and after the loss shall be final within the limits fixed by this policy. The expenses of such umpire shall be borne equally by the parties irrespective of what award he may make. If such award be within the limits of this policy then the company agrees to pay the same within ten days after receipt of a copy of such award.

Appointment of Umpire

Expense

4. It shall be optional with the company to take all or any part of the property at the appraised value where appraisal is made by an umpire, but there can be no abandonment thereof to the company; and where theft is insured against the company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Abandonment

Bailee for Hire

5. Where loss or damage occurs for which a bailee may be liable and which would be covered hereunder were it not for LIMITATION (f) hereof this company will advance to the assured by way of loan the money equivalent of such loss or damage which loan shall in no circumstance affect the question of the company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the assured from the bailee after deducting cost and expenses of collection.

Faint, illegible text, possibly bleed-through from the reverse side of the page. The text is too light to transcribe accurately.

Exhibit P-3

- Subrogation and Assignment** 6. This company shall be subrogated to all rights of the assured in respect of, and may require from the assured an assignment of, a right of recovery against any party for any loss or damage any part of which is covered by this policy. In the event that the company shall recover from any third party a sum in excess of the amount which the company may expend in payments to the assured and in expenses of making such recovery, then such excess amount shall be paid by the company to the assured.
- Cancellation** 7. This policy or any CLAUSE thereof shall be cancelled at any time at the request of the assured, in which case the company shall, upon demand and surrender of this policy refund the excess of paid premium above the customary short rate premium for the expired term. This policy or any CLAUSE thereof may be canceled at any time by the company by giving to the assured five days' written notice of cancellation with or without tender of the excess paid premium above the pro rata premium for the expired term, which excess if not tendered shall be refunded on demand. Notice of cancellation mailed to the address of the assured stated in the SCHEDULE hereof shall be sufficient notice.
- Warranty** 8. The assured hereby warrants the truth of each and every statement contained in the SCHEDULE hereof and this policy shall be void if at the time of issuance hereof any of these statements are untrue in fact.
- Bankruptcy Clause** 9. That if judgment is recovered against the assured and execution thereon is returned unsatisfied because of the insolvency or bankruptcy of the assured, and if the company would have been liable under the terms of this policy to indemnify the assured had such execution been satisfied, then the person recovering such judgment may maintain an action against the company under the terms of this policy for the amount of such judgment not exceeding the amount of this policy.
- Suit on Policy Against Company** 10. No suit or action against the company on this policy shall be brought unless instituted within ninety days after disavowal in writing by the company of liability to the assured for the relief claimed in such action or suit; but if any provision of this paragraph is in conflict with the statutes of any state within which action on this policy is instituted, the conditions of this paragraph shall be inoperative in so far as in conflict with such statute.
- Policy Entire Contract--Changes and Endorsements** 11. This policy constitutes the entire and complete contract between the company and the assured and no erasure or change appearing on the face of this policy as originally printed shall have the effect of extending or increasing the liability of the company under this policy, but such erasure or change may have the effect of reducing or decreasing such liability. No extension or waiver of the EXCLUSIONS, LIMITATIONS, CONDITIONS or AGREEMENTS of this policy shall be valid or effectual unless endorsed hereon in writing signed by the Underwriter of the company.
- Reference to By-Laws** 12. The attention of the assured is called to Article IV, Section 2, of the by-laws of the company which is printed on this policy.

(Here attach endorsements if any)

SCHEDULE

1. Name of the Assured: Shifman Brothers
2. Address of Assured: Passaic Avenue, Newark, New Jersey
3. The policy period is from noon October 18 1922 to noon October 18 1923, Eastern Standard Time.
4. The uses to which the automobile described herein will be put are Commercial
5. The nature of the business is Bedding Manufacturers
6. The automobile described is usually kept in Public garage, located at Halsey Street, Newark, New Jersey
7. The following is a description of the automobile.

Year	Model or No. of Cylinders	Trade name	Type of body: If truck state tonnage	Factory or serial number	Motor No.	List Price
1920	E-4	PACKARD	1 1/2 T TRUCK	186011		\$3200. Ch. 250. Bdy.

8. The facts with respect to the purchase of the described automobile and the assured's interest therein are as follows:

Acquired by Assured			Actual cost to Assured including equipment	The automobile described is fully paid for by the Assured and is not mortgaged or otherwise encumbered except as follows:
Mo.	Year	New or Second Hand		
October	1920	New	\$3600.00	No exceptions

9. The limits of insurance, the rates charged and the amount of premiums are as follows:

Under Clause	Low Limit	High Limit	Rate per Hundred	Amount of Premiums
1 Fire	0	\$2100.00	\$1.05	\$ 22.05
2 Theft	0	2100.00	.15	3.15
3 Property damage	0	1000.00	--	30.00
4 Collision	0	--	--	--
TOTAL				\$ 55.20

IN WITNESS WHEREOF the company has caused this policy to be executed by its President and by its Secretary but this policy shall not be in force until countersigned by its Underwriter.

J. Philip Bird

President.

W. B. Dillman

Secretary.

Countersigned this 18th day of October 1922, but effective only within policy period shown in the Schedule hereof.

[Signature]

Underwriter.

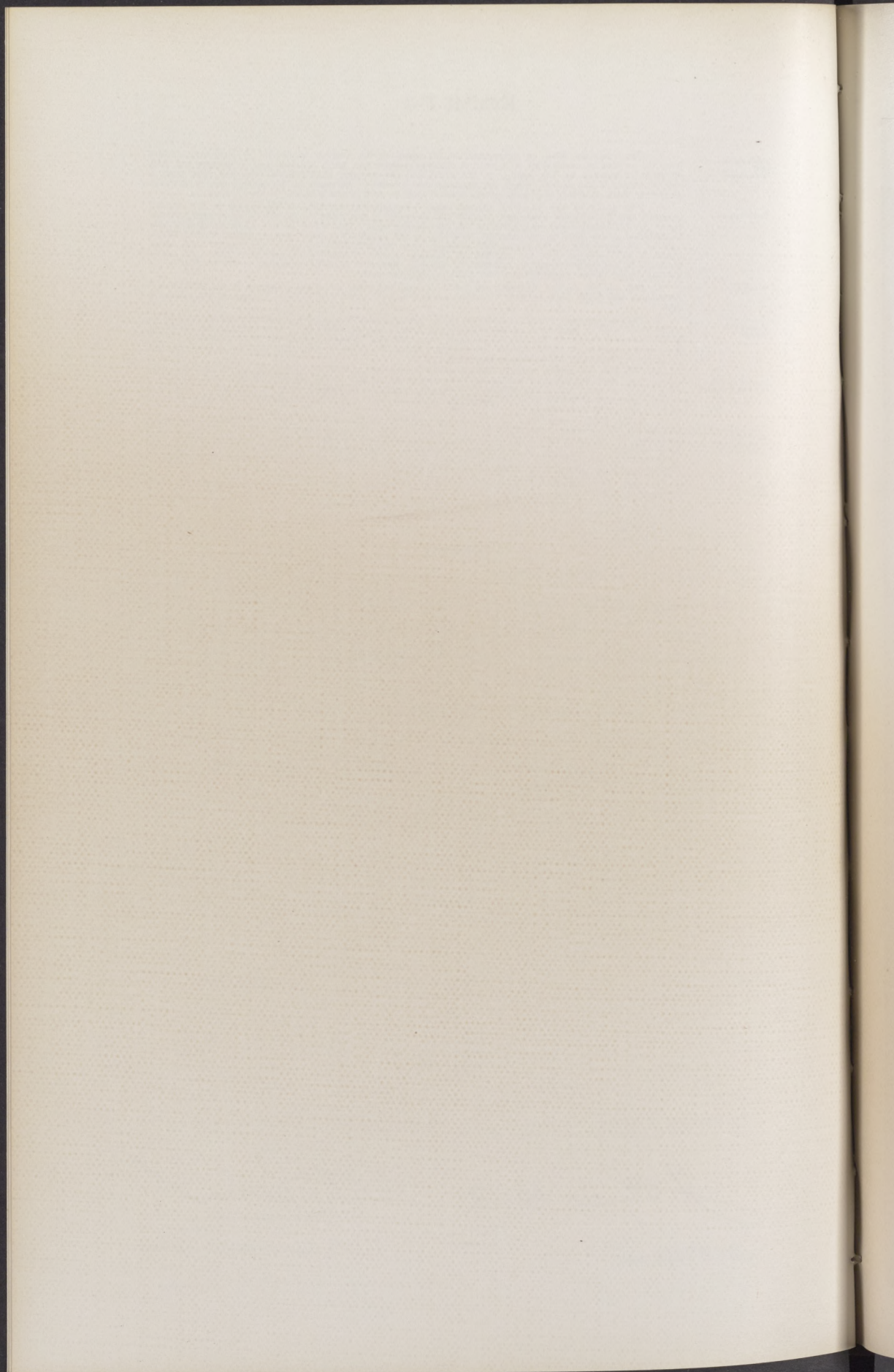



Exhibit P-3

Extract From By-Laws DIVISION OF UNDERWRITING PROFITS ARTICLE IV, SECTION 2

Section 2. After setting aside the necessary reserves and providing for the regular and further dividends above referred to, the Board of Directors may from time to time in their discretion determine the advisability of paying to policyholders a dividend upon the net premiums received and to be received on policies written in the then previous fiscal year of the company and the rate of any such dividend. All determinations in favor of such dividends shall be submitted to the Commissioner of Banking and Insurance of the State of New Jersey; and when and not before said Commissioner shall have informed the company that he does not object to or does consent to or approves, or omits for thirty days to inform the company that he disapproves, any such determination in whole or in part, the company shall become obligated for the payment of such dividend to the extent thus allowed by said Commissioner; provided, however, that the company shall not be so obligated in respect of any policy covering a risk in the State of Pennsylvania, or other state where the company may be or become authorized to do business, until, nor beyond the extent to which, such dividend shall have been likewise acted upon by the Insurance Commissioner of such other state. No dividend to a policy holder shall be payable until after the termination of the policy, the completion of the payroll audit (if there be any) and the receipt of all balance of premiums on said policy.

AUTOMOBILE PROPERTY COVERAGE POLICY	 <p>NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY</p>	Operated by the Manufacturers' Association of New Jersey J. PHILIP BIRD President W. C. BILLMAN Secretary	HOME OFFICE TRENTON, N. J.
Policy No. AP 2575			
HOME OFFICE No. 1350		\$ 22.05	
FIRE PREMIUM		3.15	
THEFT PREMIUM		30.00	
PROPERTY DAMAGE PREMIUM		--	
COLLISION PREMIUM		\$ 55.20	
TOTAL PREMIUM		--	
ASSURED		Shifman Brothers	
EXPIRATION		October 18 1923	
PLEASE READ YOUR POLICY			

1875

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

REPORT OF THE PHYSICS DEPARTMENT

FOR THE YEAR 1875

CHICAGO, ILL.

1876

PRINTED BY THE UNIVERSITY PRESS

CHICAGO, ILL.

1876

PHYSICS DEPARTMENT

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PHYSICS DEPARTMENT

REPORT OF THE PHYSICS DEPARTMENT

FOR THE YEAR 1875

CHICAGO, ILL.

1876

No. AP 3502

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY



OF TRENTON, NEW JERSEY, U.S.A.

IN CONSIDERATION of the warranties and premiums hereinafter mentioned hereby agrees to indemnify the assured named in the schedule hereof and legal representatives (SUBJECT TO THE EXCLUSIONS AND LIMITATIONS AND TO THE CONDITIONS HEREINAFTER SPECIFIED) against legal liability and /or loss or damage by reason of:

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fire

Transportation

Theft

Damage to Property of Others

Damage to Assured's Property by Collision | <p>CLAUSE 1. Actual loss of or damage to any automobile described in the schedule hereof by (a) all or any of the hazards of fire, lightning and explosion and /or (b) by the derailment, collision, wreck, stranding, sinking or burning of any conveyance in or on which any such automobile is or may be for the purpose of transportation, including general average and salvage charges for which the assured is legally liable.</p> <p>CLAUSE 2. Actual loss of or damage to any automobile described in the schedule hereof by burglary, theft, vandalism, malicious mischief and /or wrongful conversion, disposal or concealment done or committed by any person other than the assured.</p> <p>CLAUSE 3. Legal liability of the assured for damage to the property of other persons, including legal liability for loss of use of such property, resulting from the ownership, maintenance and /or use of any automobile described in the schedule hereof; and also against loss and expense in defending any suit brought against the assured seeking to enforce such legal liability;</p> <p>CLAUSE 4. Actual loss of or damage to any automobile described in the schedule hereof whether moving or stationary, caused solely by accidental collision with another object whether moving or stationary.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

EXCLUSIONS AND LIMITATIONS

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY (HEREINAFTER CALLED THE COMPANY) SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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| Signing

Cancelled or Limited Insurance

Time

Location

Assignment

Balice for Hire

Receivers, etc.

Assured's Title

Truth of Schedule

Riot, Rain & Snow, Passengers for Hire

Racing

Age of Driver

Illegal Undertaking

Load, Tools, etc.

Theft

Automobile Defined

Other Insurance

Amount of Insurance

Collision Damage to Tires | <p>(a) Unless and until this policy and /or any endorsement attached hereto shall have been signed by the Underwriter of the company.</p> <p>(b) Under any CLAUSE or CLAUSES of this policy upon the face of which or a part of which is stamped or written the words "cancelled" or "not insured" or other words of like import.</p> <p>(c) For any loss or liability unless the same is sustained or incurred during the policy period mentioned in the SCHEDULE hereof.</p> <p>(d) For any liability incurred or loss suffered when the automobile involved is not within the United States of America or Canada, or upon a vessel in coastwise transportation between two of the ports thereof.</p> <p>(e) In the event that this policy shall have been assigned unless and until the assent of the company to such assignment is endorsed hereon in writing signed by the said Underwriter.</p> <p>(f) For liability incurred or loss sustained while the automobile is in the possession of any bailee for hire under any contract, assignment or understanding whereby the benefit on this policy is sought to be made available to such bailee.</p> <p>(g) To any receiver, trustee or other person to whom any interest in this policy or any automobile described herein may have passed by operation of law, for any liability or loss incurred or suffered after the date of acquiring of such interest.</p> <p>(h) Unless at the time of incurring liability or suffering loss the assured's interest in the automobile is sole and unconditional ownership free and clear of all liens and mortgages.</p> <p>(i) Unless the statements contained in the SCHEDULE hereof are true in fact at the time when this policy is issued and also at the time of liability incurred or loss sustained, or if the assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.</p> <p>(j) For any loss suffered or liability incurred while the automobile is involved in or being used in connection with any bombardment, invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or for damage suffered by the automobile described in the schedule hereof by hail, rain, sleet, or snow, whether driven by tempest or not, or if at the time of liability incurred or loss sustained the automobile is being used for the carriage of passengers for hire or is being rented under contract or lease for the carriage of passengers for hire, or is being operated in any race or speed test or by any person contrary to law as to age or under the age of sixteen years where no statute restricts the age, or is being operated or used in furtherance of any illegal undertaking, or with the assent of the assured by any persons forbidden by law to use or operate the automobile.</p> <p>(k) For or on account of any load or cargo which has been, is being, or is to be transported in any automobile described in the SCHEDULE hereof, or for or on account of any property belonging to or placed by others than the assured in the possession or control of any servant or employee of the assured, or for any tools, repair equipment, spare bodies, robes, rugs, furnishings or personal effects, except that in the event that the company pay the assured as for a total loss under CLAUSE 2 then the company will at the same time pay the assured the cash value of any tools and repair equipment stolen, converted or concealed with the automobile and not returned to the owner, provided that the company will not pay any amount in excess of the high limit set forth in the SCHEDULE in respect of the theft. The word automobile as used in this policy is understood to include only the machinery and body and the equipment permanently attached thereto, including spare tires.</p> <p>(l) If at the time a loss occurs or liability is incurred there be any other insurance covering such loss or liability which would be effective if this policy had not been issued.</p> <p>(m) For any liability or loss not included between the high and low limits set forth in the schedule hereof as applicable to the class of insurance under which the claim is made; it being understood that each loss is to be deemed a separate claim and the amount below the low limit is to be deducted from the amount of each claim when determined.</p> <p style="text-align: center;">THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 4 OF THIS POLICY:</p> <p>(n) For loss of or damage to any tire due to puncture, cut, gash, blow-out or other ordinary tire trouble, nor for loss or damage to any tire unless the accidental collision also causes other loss or damage to the automobile, provided however, that the company shall be liable for damage caused by collision to spare tires attached to the automobile.</p> |
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 LIBRARY
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 Library
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 Chicago, Illinois 60637

Exhibit P-4

Amount of
Insurance
Amount of
Insurance
Amount of
Insurance
Amount of
Insurance

THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY:

- (p) For loss of the use of the automobile.
(q) For an amount greater than the difference between the cash value of the automobile at the time of loss or damage and the cash value of the same immediately thereafter.
(r) For an amount greater than what it would then cost to repair or replace the automobile, or such parts thereof as may be damaged, with other of like kind and quality.
(s) For any loss the total amount of which does not exceed the low limit set forth in the SCHEDULE hereof as applicable to the class of insurance under which the claim is made.

CONDITIONS

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 1 OR 2 THE COMPANY SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY FOR ANY LOSS OR LIABILITY THEREFORE OR THEREAFTER INCURRED BY THE ASSURED.

CONDITION 1. The assured shall at all times render to the company all co-operation and assistance in the assured's power in defending assured against claims of liability and in adjusting and minimizing loss or damage hereunder.

CONDITION 2. The assured shall not commit or attempt any fraud or false swearing touching any matter relating to this insurance or the subject thereof whether before or after loss.

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 3, 4 OR 5 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 3 OF THIS POLICY FOR ANY LOSS THEREFORE OR THEREAFTER INCURRED BY THE ASSURED.

CONDITION 3. Upon the occurrence of any injury to the property of another by any automobile described in the SCHEDULE hereof and/or upon claim made by any person that such injury has occurred the assured shall forward immediately written notice thereof with the fullest information obtainable at the time to the company's Home Office at Trenton, New Jersey. The assured shall immediately upon receipt of any summons, process or court or other papers touching such injury to the property of another, likewise forward the same to the company. Notice given by or on behalf of the Assured to any authorized agent of the Company within the State of New Jersey, with particulars sufficient to identify the Assured, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by the Assured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible.

CONDITION 4. The assured shall not, without the prior written assent of the company, voluntarily assume or admit the existence of any liability or incur any expense or settle any claim except at the assured's own cost.

CONDITION 5. The assured whenever requested by the company shall aid in effecting settlement, securing information and evidence and the attendance of witnesses, and in the defense of any suit and in the prosecution of any and all proceedings to review any verdict or judgment rendered therein; but without such request the assured shall not interfere in any negotiations for settlement or in any legal proceedings.

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 6 OR 7 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY FOR ANY LOSS THEREFORE OR THEREAFTER INCURRED BY THE ASSURED:

CONDITION 6. Upon the occurrence of any loss or damage to any automobile described in the SCHEDULE hereof by any of the hazards insured against by CLAUSES 1, 2 or 4, the assured shall give immediate written notice to the company; stating the time, place and cause (if then known) of such loss and damage; and within sixty days after such loss or damage, unless such time is extended in writing by this company, the assured shall render a statement to the company signed and sworn to by the assured, stating place, time and cause of the loss or damage, the interest of the assured and of all others in the automobile, the sound value thereof and the amount of loss or damage thereto, all encumbrances thereon, and all other insurance whether valid or not covering such automobile; and the assured, as often as required, shall exhibit to any person designated by this company what remains of the property insured and submit to examinations under oath by any person named by this company, and subscribe the same, and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

CONDITION 7. In the event of loss or damage occasioned by a hazard insured against by CLAUSES 1, 2 or 4, the assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this policy. Any such act of the assured, of this company or its agents, in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expense thus incurred shall constitute a claim under this policy, provided however, that this company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the company.

FURTHER AGREEMENTS

The Company and the Assured agree:

1. That the company will, upon compliance by the assured with the foregoing CONDITIONS provided CLAUSE 3 is in force, defend at the expense of the company, any action (whether groundless or not) brought against the assured to enforce a liability described in said CLAUSE 3. The indemnity provided by Clause 3 of this policy is extended so that the same shall be available, in the same manner and under the same conditions as it is available to the named assured, to any person or persons while riding in or lawfully operating the automobile described in the schedule 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 be an individual, with the previous permission of an adult member of the named assured's household other than a chauffeur or domestic servant.

2. That in case where the company pays any amount for or toward satisfaction of any liability under CLAUSE 3 hereof the company will also pay or satisfy (without regard to the high limit applicable to said clause) any court costs and expense arising out of the defense against such liability and will also pay all interest accrued on the amount paid by the company toward the satisfaction of any judgment finally determining such liability.

3. The company on receipt of sworn statement of loss or damage under CLAUSES 1, 2 or 4 will proceed promptly to determine the amount, if any which it is prepared to pay thereon and will notify the assured of such amount and (unless the assured shall object in writing to such amount within ten days of such notification) will pay the amount so determined within sixty days of receipt of such sworn statement. If the Company does not deny all liability and if the assured shall so object to the amount which the company offers to pay, and the parties do not within thirty days of the giving of such notice of objection agree upon an amount to be paid, either party may apply to the judge of any county court of record of the county within which the loss occurred or the assured is located for the appointment of an umpire to whom the parties shall submit their difference and whose decision as to the value of the property stolen or damaged both before and after the loss shall be final within the limits fixed by this policy. The expenses of such umpire shall be borne equally by the parties irrespective of what award he may make. If such award be within the limits of this policy then the company agrees to pay the same within ten days after receipt of a copy of such award.

4. It shall be optional with the company to take all or any part of the property at the appraised value where appraisal is made by an umpire, but there can be no abandonment thereof to the company; and where theft is insured against the company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

5. Where loss or damage occurs for which a bailee may be liable and which would be covered hereunder were it not for LIMITATION (f) hereof this company will advance to the assured by way of loan the money equivalent of such loss or damage which loan shall in no circumstance affect the question of the company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the assured from the bailee after deducting cost and expenses of collection.

Co-operation
of Assured

Fraud

Damage to
Property of
Others

Damage to
Property of
Others

Notice of
Accident;
Claim, Suit

Notice Clause

Damage to
Property of
Others

Assured not
to Assume
or Admit
Liability or
Settle Claim

Damage to
Property of
Others

Assured to
Assist
Company

Damage to
Assured's
Property

Damage to
Assured's
Property

Notice of
Loss

Damage to
Assured's
Property

Damage to
Assured's
Property

Proof of Loss

Damage to
Assured's
Property

Protection
of Property

Damage to
Assured's
Property

Rewards

Company to
Defend Suits

Omnibus

Interest
and Costs

Damage to
Assured's
Property

Adjustment
and Payment
of Loss

Appointment
of Umpire

Expense

Abandonment

Bailee
for Hire

THE FIRST PART OF THE HISTORY OF THE
REIGN OF CHARLES THE FIRST

CHAPTER I

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

CHAPTER II

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

THE KING'S RETURN FROM EXILE
AND HIS FIRST ACTS OF GOVERNMENT

Exhibit P-4

THIS GROUP IS SUBJECT TO THE CONDITIONS OF AND AS PER THE POLICY AND MADE AFAK BY No. 985367

ENDORSEMENT

It is hereby understood and agreed that the location of the garage under Article 6 of the schedule of this policy is corrected to read Mott Street, Newark, N. J. and not as heretofore.

All other terms, exclusions, limitations, conditions, warranties and agreements of the policy remain unchanged.

Attached to and forming a part of policy No. AP... 2502 of the New Jersey Manufacturers Association Fire Insurance Company of Trenton, New Jersey.

Dated... February 18 23 19... 23

Carney
Underwriter.

- Name of the Assured: Shifman Brothers
- Address of Assured: Passaic Avenue Newark New Jersey
- The policy period is from noon February 18 19 23, to noon February 18 19 24, Eastern Standard Time.
- The uses to which the automobile described herein will be put are Commercial
- The nature of the business is Mattress Manufacturers
- The automobile described is usually kept in Public garage, located at Halsey Street Newark New Jersey

Year	Model or No. of Cylinders	Trade name	Type of body If truck state tonnage	Factory or serial number	Motor No.	List Price
1920		PACKARD	TRUCK 1 1/2 T		177952	\$3800.00

6. The facts with respect to the purchase of the described automobile and the assured's interest therein are as follows:

Acquired by Assured			Actual cost to Assured including equipment.	The automobile described is fully paid for by the Assured and is not mortgaged or otherwise encumbered except as follows:
Mo.	Year	New or Second Hand		
Dec.	1920	New	\$4000.00	No exceptions

9. The limits of insurance, the rates charged and the amount of premiums are as follows:

Under Clause	Low Limit	High Limit	Rate per Hundred	Amount of Premium
1 Fire	0	\$2300.00	\$ 1.35	\$ 31.05
2 Theft	0	2300.00	.15	\$ 3.45
3 Property damage	0	1000.00	-	\$ 30.00
4 Collision	0	--	-	\$ -
TOTAL				\$ 64.50

IN WITNESS WHEREOF the company has caused this policy to be executed by its President and by its Secretary but this policy shall not be in force until countersigned by its Underwriter.

J. Philip Bird
President.

H. P. Dillman
Secretary.

Countersigned this 18th day of February 19 23, but effective only within policy period shown in the Schedule hereof.

Carney
Underwriter.

Received of the Treasurer of the
Board of Directors of the
City of New York the sum of
Five Hundred Dollars (\$500.00)
for the purchase of the
City of New York

Witness my hand and the seal of the
City of New York this
10th day of
January 1875

Mayor of the City of New York

City of New York


James M. Smith
James M. Smith

Exhibit P-4

Extract From By-Laws

DIVISION OF UNDERWRITING PROFITS ARTICLE IV, SECTION 2

Section 2. After setting aside the necessary reserves and providing for the regular and further dividends above referred to, the Board of Directors may from time to time in their discretion determine the advisability of paying to policyholders a dividend upon the net premiums received and to be received on policies written in the then previous fiscal year of the company and the rate of any such dividend. All determinations in favor of such dividends shall be submitted to the Commissioner of Banking and Insurance of the State of New Jersey; and when and not before said Commissioner shall have informed the company that he does not object to or does consent to or approves, or omits for thirty days to inform the company that he disapproves, any such determination in whole or in part, the company shall become obligated for the payment of such dividend to the extent thus allowed by said Commissioner; provided, however, that the company shall not be so obligated in respect of any policy covering a risk in the State of Pennsylvania, or other state where the company may be or become authorized to do business, until, nor beyond the extent to which, such dividend shall have been likewise acted upon by the Insurance Commissioner of such other state. No dividend to a policy holder shall be payable until after the termination of the policy, the completion of the payroll audit (if there be any) and the receipt of all balance of premiums on said policy.

AUTOMOBILE PROPERTY COVERAGE POLICY	 <p>NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY</p>	Operated by the Manufacturers Association of New Jersey J. PHILIP BIRD President W. C. HILLMAN Secretary HOME OFFICE TRENTON, N. J.	POLICY No. AP 3502 HOME OFFICE No. 1330 FIRE PREMIUM ——— \$ 31.05 THEFT PREMIUM ——— 3.45 PROPERTY DAMAGE PREMIUM ——— 30.00 COLLISION PREMIUM ——— — TOTAL PREMIUM ——— \$ 64.50 ASSURED — <u>Shifman Brothers</u> EXPIRATION <u>February 16 1924</u>
PLEASE READ YOUR POLICY			

THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

Year	Month	Day	Event
1625	Jan	27	Charles I. crowned King of England
1625	Feb	1	Charles I. crowned King of Scotland
1625	Mar	1	Charles I. crowned King of France
1625	Apr	1	Charles I. crowned King of Spain
1625	May	1	Charles I. crowned King of Portugal
1625	Jun	1	Charles I. crowned King of Sicily
1625	Jul	1	Charles I. crowned King of Naples
1625	Aug	1	Charles I. crowned King of Jerusalem
1625	Sep	1	Charles I. crowned King of Armenia
1625	Oct	1	Charles I. crowned King of Ethiopia
1625	Nov	1	Charles I. crowned King of Persia
1625	Dec	1	Charles I. crowned King of the East Indies

No. AP 3596

NEW JERSEY MANUFACTURERS ASSOCIATION

FIRE

INSURANCE COMPANY



OF TRENTON, NEW JERSEY, U.S.A.

IN CONSIDERATION of the warranties and premiums hereinafter mentioned hereby agrees to indemnify the assured named in the schedule hereof and legal representatives (SUBJECT TO THE EXCLUSIONS AND LIMITATIONS AND TO THE CONDITIONS HEREINAFTER SPECIFIED) against legal liability and/or loss or damage by reason of:

- Fire
 - Transportation
 - Theft
 - Damage to Property of Others
 - Damage to Assured's Property by Collision
- CLAUSE 1.** Actual loss of or damage to any automobile described in the schedule hereof by (a) all or any of the hazards of fire, lightning and explosion and/or (b) by the derailment, collision, wreck, stranding, sinking or burning of any conveyance in or on which any such automobile is or may be for the purpose of transportation, including general average and salvage charges for which the assured is legally liable.
- CLAUSE 2.** Actual loss of or damage to any automobile described in the schedule hereof by burglary, theft, vandalism, malicious mischief and/or wrongful conversion, disposal or concealment done or committed by any person other than the assured.
- CLAUSE 3.** Legal liability of the assured for damage to the property of other persons, including legal liability for loss of use of such property, resulting from the ownership, maintenance and/or use of any automobile described in the schedule hereof; and also against loss and expense in defending any suit brought against the assured seeking to enforce such legal liability;
- CLAUSE 4.** Actual loss of or damage to any automobile described in the schedule hereof whether moving or stationary, caused solely by accidental collision with another object whether moving or stationary.

EXCLUSIONS AND LIMITATIONS

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY (HEREINAFTER CALLED THE COMPANY) SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY:

- Signing
 - Cancelled or Omitted Insurance
 - Time
 - Location
 - Assignment
 - Bailee for Hire
 - Receivers, etc.
 - Assured's Title
 - Truth of Schedule
 - Riot, Rain & Snow, Passengers for Hire
 - Racing
 - Age of Driver
 - Illegal Undertaking
 - Load, Tools, etc.
 - Theft
 - Automobile Defined
 - Other Insurance
 - Amount of Insurance
 - Collision Damage to Tires
- (a) Unless and until this policy and/or any endorsement attached hereto shall have been signed by the Underwriter of the company.
- (b) Under any CLAUSE or CLAUSES of this policy upon the face of which or a part of which is stamped or written the words "cancelled" or "not insured" or other words of like import.
- (c) For any loss or liability unless the same is sustained or incurred during the policy period mentioned in the SCHEDULE hereof.
- (d) For any liability incurred or loss suffered when the automobile involved is not within the United States of America or Canada, or upon a vessel in coastwise transportation between two of the ports thereof.
- (e) In the event that this policy shall have been assigned unless and until the assent of the company to such assignment is endorsed hereon in writing signed by the said Underwriter.
- (f) For liability incurred or loss sustained while the automobile is in the possession of any bailee for hire under any contract, assignment or understanding whereby the benefit on this policy is sought to be made available to such bailee.
- (g) To any receiver, trustee or other person to whom any interest in this policy or any automobile described herein may have passed by operation of law, for any liability or loss incurred or suffered after the date of acquiring of such interest.
- (h) Unless at the time of incurring liability or suffering loss the assured's interest in the automobile is sole and unconditional ownership free and clear of all liens and mortgages.
- (i) Unless the statements contained in the SCHEDULE hereof are true in fact at the time when this policy is issued and also at the time of liability incurred or loss sustained, or if the assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.
- (j) For any loss suffered or liability incurred while the automobile is involved in or being used in connection with any bombardment, invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or for damage suffered by the automobile described in the schedule hereof by hail, rain, sleet, or snow, whether driven by tempest or not, or if at the time of liability incurred or loss sustained the automobile is being used for the carriage of passengers for hire or is being rented under contract or lease for the carriage of passengers for hire, or is being operated in any race or speed test or by any person contrary to law as to age or under the age of sixteen years where no statute restricts the age, or is being operated or used in furtherance of any illegal undertaking, or with the assent of the assured by any persons forbidden by law to use or operate the automobile.
- (k) For or on account of any load or cargo which has been, is being, or is to be transported in any automobile described in the SCHEDULE hereof, or for or on account of any property belonging to or placed by others than the assured in the possession or control of any servant or employee of the assured, or for any tools, repair equipment, spare bodies, robes, rugs, furnishings or personal effects, except that in the event that the company pay the assured as for a total loss under CLAUSE 2 then the company will at the same time pay the assured the cash value of any tools and repair equipment stolen, converted or concealed with the automobile and not returned to the owner, provided that the company will not pay any amount in excess of the high limit set forth in the SCHEDULE in respect of the theft. The word automobile as used in this policy is understood to include only the machinery and body and the equipment permanently attached thereto, including spare tires.
- (l) If at the time a loss occurs or liability is incurred there be any other insurance covering such loss or liability which would be effective if this policy had not been issued.
- (m) For any liability or loss not included between the high and low limits set forth in the schedule hereof as applicable to the class of insurance under which the claim is made; if being understood that each loss is to be deemed a separate claim and the amount below the low limit is to be deducted from the amount of each claim when determined.
- THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 4 OF THIS POLICY:**
- (n) For loss of or damage to any tire due to puncture, cut, gash, blow-out or other ordinary tire trouble, nor for loss or damage to any tire unless the accidental collision also causes other loss or damage to the automobile, provided however, that the company shall be liable for damage caused by collision to spare tires attached to the automobile.

THE NEW YORK LIBRARY

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OF THE
NEW YORK PUBLIC LIBRARY
ASTOR LENOX AND TILDEN FOUNDATIONS
1054 FIFTH AVENUE
NEW YORK, N. Y.

Exhibit P-5

Amount of Insurance
Amount of Insurance
Amount of Insurance
Amount of Insurance

THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY:

- (c) For loss of the use of the automobile.
- (d) For an amount greater than the difference between the cash value of the automobile at the time of loss or damage and the cash value of the same immediately thereafter.
- (e) For an amount greater than what it would then cost to repair or replace the automobile, or such parts thereof as may be damaged, with other of like kind and quality.
- (f) For any loss the total amount of which does not exceed the low limit set forth in the SCHEDULE hereof as applicable to the class of insurance under which the claim is made.

CONDITIONS

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 1 OR 2 THE COMPANY SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY FOR ANY LOSS OR LIABILITY THERETOFORE OR THEREAFTER INCURRED BY THE ASSURED.

Co-operation of Assured

CONDITION 1. The assured shall at all times render to the company all co-operation and assistance in the assured's power in defending assured against claims of liability and in adjusting and minimizing loss or damage hereunder.

Fraud

CONDITION 2. The assured shall not commit or attempt any fraud or false swearing touching any matter relating to this insurance or the subject thereof whether before or after loss.

Damage to Property of Others

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 3, 4 OR 5 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 3 OF THIS POLICY FOR ANY LOSS THERETOFORE OR THEREAFTER INCURRED BY THE ASSURED.

Damage to Property of Others

CONDITION 3. Upon the occurrence of any injury to the property of another by any automobile described in the SCHEDULE hereof and/or upon claim made by any person that such injury has occurred the assured shall forward immediately written notice thereof with the fullest information obtainable at the time to the company's Home Office at Trenton, New Jersey. The assured shall immediately upon receipt of any summons, process or court or other papers touching such injury to the property of another, likewise forward the same to the company. Notice given by or on behalf of the Assured to any authorized agent of the Company within the State of New Jersey, with particulars sufficient to identify the Assured, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by the Assured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible.

Notice of Accident, Claim, Suit

Damage to Property of Others

Assured not to Assume or Admit Liability or Settle Claim

CONDITION 4. The assured shall not, without the prior written assent of the company, voluntarily assume or admit the existence of any liability or incur any expense or settle any claim except at the assured's own cost.

Damage to Property of Others

CONDITION 5. The assured whenever requested by the company shall aid in effecting settlement, securing information and evidence and the attendance of witnesses, and in the defense of any suit and in the prosecution of any and all proceedings to review any verdict or judgment rendered therein; but without such request the assured shall not interfere in any negotiations for settlement or in any legal proceedings.

Damage to Assured's Property

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 6 OR 7 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY FOR ANY LOSS THERETOFORE OR THEREAFTER INCURRED BY THE ASSURED:

Damage to Assured's Property

CONDITION 6. Upon the occurrence of any loss or damage to any automobile described in the SCHEDULE hereof by any of the hazards insured against by CLAUSES 1, 2 or 4, the assured shall give immediate written notice to the company; stating the time, place and cause (if then known) of such loss and damage; and within sixty days after such loss or damage, unless such time is extended in writing by this company, the assured shall render a statement to the company signed and sworn to by the assured, stating the place, time and cause of the loss or damage, the interest of the assured and of all others in the automobile, the sound value thereof and the amount of loss or damage thereto, all encumbrances thereon, and all other insurance whether valid or not covering such automobile; and the assured, as often as required, shall exhibit to any person designated by this company what remains of the property insured and submit to examinations under oath by any person named by this company, and subscribe the same, and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

Notice of Loss

Damage to Assured's Property

Proof of Loss

CONDITION 7. In the event of loss or damage occasioned by a hazard insured against by CLAUSES 1, 2 or 4, the assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this policy. Any such act of the assured, of this company or its agents, in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expense thus incurred shall constitute a claim under this policy, provided however, that this company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the company.

Damage to Assured's Property

Protection of Property

Damage to Assured's Property

Rewards

FURTHER AGREEMENTS

The Company and the Assured agree:

Company to Defend Suits

1. That the company will, upon compliance by the assured with the foregoing CONDITIONS provided CLAUSE 3 is in force, defend at the expense of the company, any action (whether groundless or not) brought against the assured to enforce a liability described in said CLAUSE 3. The indemnity provided by Clause 3 of this policy is extended so that the same shall be available, in the same manner and under the same conditions as if it were available to the named assured, to any person or persons while riding in or lawfully operating the automobile described in the schedule 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 be an individual, with the previous permission of an adult member of the named assured's household other than a chauffeur or domestic servant.

Omnibus

Interest and Costs

2. That in case where the company pays any amount for or toward satisfaction of any liability under CLAUSE 3 hereof the company will also pay or satisfy (without regard to the high limit applicable to said clause) any court costs and expense arising out of the defense against such liability and will also pay all interest accrued on the amount paid by the company toward the satisfaction of any judgment finally determining such liability.

Damage to Assured's Property

Adjustment and Payment of Loss

3. The company on receipt of sworn statement of loss or damage under CLAUSES 1, 2 or 4 will proceed promptly to determine the amount if any which it is prepared to pay thereon and will notify the assured of such amount and (unless the assured shall object in writing to such amount within ten days of such notification) will pay the amount so determined within sixty days of receipt of such sworn statement. If the Company does not deny all liability and if the assured shall so object to the amount which the company offers to pay, and the parties do not within thirty days of the giving of such notice of objection agree upon an amount to be paid, either party may apply to the judge of any county court of record of the county in which the loss occurred or the assured is located for the appointment of an umpire to whom the parties shall submit their difference and whose decision as to the value of the property stolen or damaged umple shall be borne equally by the parties irrespective of what award he may make. If such award be within the limits of this policy then the company agrees to pay the same within ten days after receipt of a copy of such award.

Appointment of Umpire

Expense

Abandonment

4. It shall be optional with the company to take all or any part of the property at the appraised value where appraisal is made by an umpire, but there can be no abandonment thereof to the company; and where theft is insured against the company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Bailee for Hire

5. Where loss or damage occurs for which a bailee may be liable and which would be covered hereunder were it not for LIMITATION (f) hereof this company will advance to the assured by way of loan the money equivalent of such loss or damage which loan shall in no circumstance affect the question of the company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the assured from the bailee after deducting cost and expenses of collection.

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Exhibit P-5

Subrogation and Assignment

6. This company shall be subrogated to all rights of the assured in respect of, and may require from the assured an assignment of, a right of recovery against any party for any loss or damage any part of which is covered by this policy. In the event that the company shall recover from any third party a sum in excess of the amount which the company may expend in payments to the assured and in expenses of making such recovery, then such excess amount shall be paid by the company to the assured.

Cancellation

7. This policy or any CLAUSE thereof shall be cancelled at any time at the request of the assured, in which case the company shall, upon demand and surrender of this policy refund the excess of paid premium above the customary short rate premium for the expired term. This policy or any CLAUSE thereof may be canceled at any time by the company by giving to the assured five days' written notice of cancellation with or without tender of the excess paid premium above the pro rata premium for the expired term, which excess if not tendered shall be refunded on demand. Notice of cancellation shall state that such excess premium (if not tendered) will be refunded on demand. Notice of cancellation mailed to the address of the assured stated in the SCHEDULE hereof shall be sufficient notice.

Warranty

8. The assured hereby warrants the truth of each and every statement contained in the SCHEDULE hereof and this policy shall be void if at the time of issuance hereof any of these statements are untrue in fact.

Bankruptcy Clause

9. That if judgment is recovered against the assured and execution thereon is returned unsatisfied because of the insolvency or bankruptcy of the assured, and if the company would have been liable under the terms of this policy to indemnify the assured had such execution been satisfied, then the person recovering such judgment may maintain an action against the company under the terms of this policy for the amount of such judgment not exceeding the amount of this policy.

Suit on Policy Against Company

10. No suit or action against the company on this policy shall be brought unless instituted within ninety days after disavowal in writing by the company of liability to the assured for the relief claimed in such action or suit; but if any provision of this paragraph is in conflict with the statutes of any state within which action on this policy is instituted, the conditions of this paragraph shall be inoperative in so far as in conflict with such statute.

Policy Entire Contract—Changes and Endorsements

11. This policy constitutes the entire and complete contract between the company and the assured and no erasure or change appearing on the face of this policy as originally printed shall have the effect of extending or increasing the liability of the company under this policy, but such erasure or change may have the effect of reducing or decreasing such liability. No extension or waiver of the EXCLUSIONS, LIMITATIONS, CONDITIONS or AGREEMENTS of this policy shall be valid or effectual unless endorsed hereon in writing signed by the Underwriter of the company.

Reference to By-Laws

12. The attention of the assured is called to Article IV, Section 2, of the by-laws of the company which is printed on this policy.

(Here attach endorsements if any)

SCHEDULE

1. Name of the Assured: Snifman Brothers
2. Address of Assured: Passaic Avenue Newark New Jersey
3. The policy period is from noon March 2, 1923, to noon March 2, 1924, Eastern Standard Time.
4. The uses to which the automobile described herein will be put are Commercial
5. The nature of the business is Mattress Manufacturers
6. The automobile described is usually kept in Public garage, located at Halsey Street Newark New Jersey
7. The following is a description of the automobile.

Year	Model or No. of Cylinders	Trade name	Type of body If truck state tonnage	Factory or serial number	Motor No.	List Price
1919		MACCAR	1 1/2 T TRUCK	873	18585	\$2750. Ch. 700. Bdy.

8. The facts with respect to the purchase of the described automobile and the assured's interest therein are as follows:

Acquired by Assured			Actual cost to Assured including equipment	The automobile described is fully paid for by the Assured and is not mortgaged or otherwise encumbered except as follows:
Mo.	Year	New or Second Hand		
Feb.	1920	New	\$3450.00	No exceptions

9. The limits of insurance, the rates charged and the amount of premiums are as follows:

Under Clause	Low Limit	High Limit	Rate per Hundred	Amount of Premium
1 Fire	0	\$1700.00	\$ 1.70	\$ 28.90
2 Theft	0	1700.00	.15	2.55
3 Property damage	0	1000.00	--	30.00
4 Collision	0	---	--	--
TOTAL				\$ 61.45

IN WITNESS WHEREOF the company has caused this policy to be executed by its President and by its Secretary but this policy shall not be in force until countersigned by its Underwriter.

J. Philip Bird

President.

W. H. Dillman

Secretary.

Countersigned this 2nd day of March, 19 23 but effective only within policy period shown in the Schedule hereof.

Underwriter.


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Exhibit P-5

Extract From By-Laws

DIVISION OF UNDERWRITING PROFITS ARTICLE IV, SECTION 2

Section 2. After setting aside the necessary reserves and providing for the regular and further dividends above referred to, the Board of Directors may from time to time in their discretion determine the advisability of paying to policyholders a dividend upon the net premiums received and to be received on policies written in the then previous fiscal year of the company and the rate of any such dividend. All determinations in favor of such dividends shall be submitted to the Commissioner of Banking and Insurance of the State of New Jersey; and when and not before said Commissioner shall have informed the company that he does not object to or does consent to or approves, or omits for thirty days to inform the company that he disapproves, any such determination in whole or in part, the company shall become obligated for the payment of such dividend to the extent thus allowed by said Commissioner; provided, however, that the company shall not be so obligated in respect of any policy covering a risk in the State of Pennsylvania, or other state where the company may be or become authorized to do business, until, nor beyond the extent to which, such dividend shall have been likewise acted upon by the Insurance Commissioner of such other state. No dividend to a policy holder shall be payable until after the termination of the policy, the completion of the payroll audit (if there be any) and the receipt of all balance of premiums on said policy.

<p>AUTOMOBILE PROPERTY COVERAGE POLICY</p>	<p>NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY</p> 	<p>Operated by the Manufacturers' Association of New Jersey</p> <p>J. PHILIP BIRD President</p> <p>W. C. BILLMAN Secretary</p> <p>HOME OFFICE TRENTON, N. J.</p>
<p>POLICY No. AP 3596</p>		
<p>HOME OFFICE No. 1330</p>		
<p>FIRE PREMIUM \$ 23.90</p>		
<p>THEFT PREMIUM 2.55</p>		
<p>PROPERTY DAMAGE PREMIUM 30.00</p>		
<p>COLLISION PREMIUM --</p>		
<p>TOTAL PREMIUM \$ 61.45</p>		
<p>ASSURED Shifman Brothers</p>		
<p>EXPIRATION March 2 1924</p>		
<p>PLEASE READ YOUR POLICY</p>		

No. AP 2322

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE

INSURANCE



COMPANY

OF TRENTON, NEW JERSEY, U.S.A.

IN CONSIDERATION of the warranties and premiums hereinafter mentioned hereby agrees to indemnify the assured named in the schedule hereof and legal representatives (SUBJECT TO THE EXCLUSIONS AND LIMITATIONS AND TO THE CONDITIONS HEREINAFTER SPECIFIED) against legal liability and/or loss or damage by reason of:

Fire

CLAUSE 1. Actual loss of or damage to any automobile described in the schedule hereof by (a) all or any of the hazards of fire, lightning and explosion and/or (b) by the derailment, collision, wreck, stranding, sinking or burning of any conveyance in or on which any such automobile is or may be for the purpose of transportation, including general average and salvage charges for which the assured is legally liable.

Transportation

CLAUSE 2. Actual loss of or damage to any automobile described in the schedule hereof by burglary, theft, vandalism, malicious mischief and/or wrongful conversion, disposal or concealment done or committed by any person other than the assured.

Theft

CLAUSE 3. Legal liability of the assured for damage to the property of other persons, including legal liability for loss of use of such property, resulting from the ownership, maintenance and/or use of any automobile described in the schedule hereof; and also against loss and expense in defending any suit brought against the assured seeking to enforce such legal liability;

Damage to Property of Others

CLAUSE 4. Actual loss of or damage to any automobile described in the schedule hereof whether moving or stationary, caused solely by accidental collision with another object whether moving or stationary.

Damage to Assured's Property by Collision

EXCLUSIONS AND LIMITATIONS

NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY (HEREINAFTER CALLED THE COMPANY) SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY:

Signing

(a) Unless and until this policy and/or any endorsement attached hereto shall have been signed by the Underwriter of the company.

Cancelled or Omitted Insurance

(b) Under any CLAUSE or CLAUSES of this policy upon the face of which or a part of which is stamped or written the words "cancelled" or "not insured" or other words of like import.

Time

(c) For any loss or liability unless the same is sustained or incurred during the policy period mentioned in the SCHEDULE hereof.

Location

(d) For any liability incurred or loss suffered when the automobile involved is not within the United States of America or Canada, or upon a vessel in coastwise transportation between two of the ports thereof.

Assignment

(e) In the event that this policy shall have been assigned unless and until the assent of the company to such assignment is endorsed hereon in writing signed by the said Underwriter.

Bailee for Hire

(f) For liability incurred or loss sustained while the automobile is in the possession of any bailee for hire under any contract, assignment or understanding whereby the benefit on this policy is sought to be made available to such bailee.

Receivers, etc.

(g) To any receiver, trustee or other person to whom any interest in this policy or any automobile described herein may have passed by operation of law, for any liability or loss incurred or suffered after the date of acquiring of such interest.

Assured's Title

(h) Unless at the time of incurring liability or suffering loss the assured's interest in the automobile is sole and unconditional ownership free and clear of all liens and mortgages.

Truth of Schedule

(i) Unless the statements contained in the SCHEDULE hereof are true in fact at the time when this policy is issued and also at the time of liability incurred or loss sustained, or if the assured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof.

Riot, Rain & Snow, Passengers for Hire

(j) For any loss suffered or liability incurred while the automobile is involved in or being used in connection with any bombardment, invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or for damage suffered by the automobile described in the schedule hereof by hail, rain, sleet, or snow, whether driven by tempest or not, or if at the time of liability incurred or loss sustained the automobile is being used for the carriage of passengers for hire or is being rented under contract or lease for the carriage of passengers for hire, or is being operated in any race or speed test or by any person contrary to law as to age or under the age of sixteen years where no statute restricts the age, or is being operated or used in furtherance of any illegal undertaking, or with the assent of the assured by any persons forbidden by law to use or operate the automobile.

Racing

Age of Driver

Illegal Undertaking

Load, Tools, etc.

(k) For or on account of any load or cargo which has been, is being, or is to be transported in any automobile described in the SCHEDULE hereof, or for or on account of any property belonging to or placed by others than the assured in the possession or control of any servant or employee of the assured, or for any tools, repair equipment, spare bodies, robes, rugs, furnishings or personal effects, except that in the event that the company pay the assured as for a total loss under CLAUSE 2 then the company will at the same time pay the assured the cash value of any tools and repair equipment stolen, converted or concealed with the automobile and not returned to the owner, provided that the company will not pay any amount in excess of the high limit set forth in the SCHEDULE in respect of the theft. The word automobile as used in this policy is understood to include only the machinery and body and the equipment permanently attached thereto, including spare tires.

Theft

Automobile Defined

(l) If at the time a loss occurs or liability is incurred there be any other insurance covering such loss or liability which would be effective if this policy had not been issued.

Other Insurance

Amount of Insurance

(m) For any liability or loss not included between the high and low limits set forth in the schedule hereof as applicable to the class of insurance under which the claim is made; it being understood that each loss is to be deemed a separate claim and the amount below the low limit is to be deducted from the amount of each claim when determined.

Collision Damage to Tires

THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 4 OF THIS POLICY:

(n) For loss of or damage to any tire due to puncture, cut, gash, blow-out or other ordinary tire trouble, nor for loss or damage to any tire unless the accidental collision also causes other loss or damage to the automobile, provided however, that the company shall be liable for damage caused by collision to spare tires attached to the automobile.

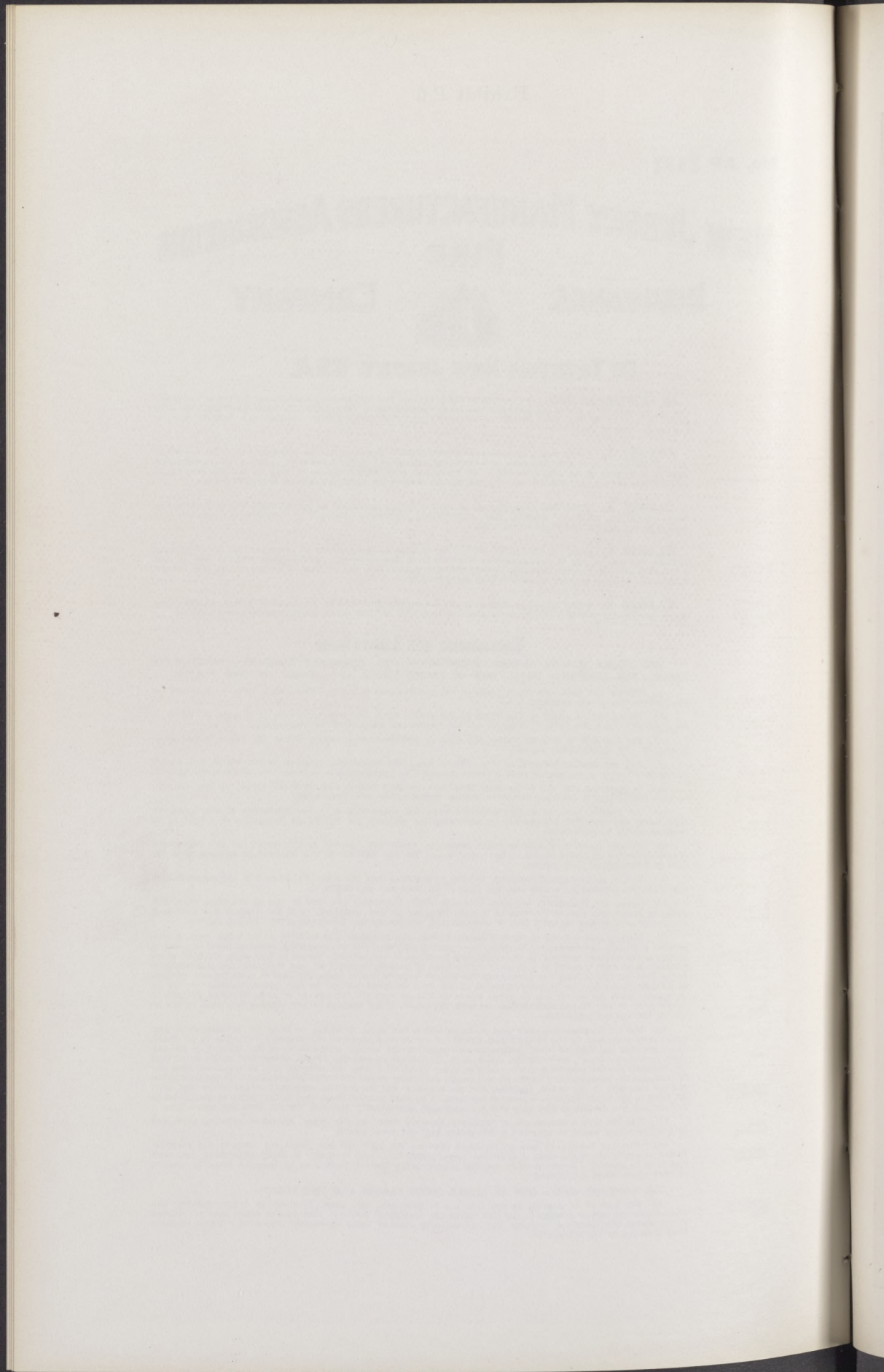


Exhibit P-6

Amount of Insurance

Amount of Insurance

Amount of Insurance

Amount of Insurance

Co-operation of Assured

Fraud

Damage to Property of Others

Damage to Property of Others

Notice of Accident, Claim, Suit

Notice Clause

Damage to Property of Others

Assured not to Assume or Admit Liability or Settle Claim

Damage to Property of Others

Damage to Assured's Property

Damage to Assured's Property

Notice of Loss

Damage to Assured's Property

Damage to Assured's Property

Rewards

Company to Defend Suits

Omnibus

Interest and Costs

Damage to Assured's Property

Adjustment and Payment of Loss

Appointment of Umpire

Expense

Abandonment

Bailee for Hire

THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY:

- (o) For loss of the use of the automobile.
- (p) For an amount greater than the difference between the cash value of the automobile at the time of loss or damage and the cash value of the same immediately thereafter.
- (q) For an amount greater than what it would then cost to repair or replace the automobile, or such parts thereof as may be damaged, with other of like kind and quality.
- (r) For any loss the total amount of which does not exceed the low limit set forth in the SCHEDULE hereof as applicable to the class of insurance under which the claim is made.

CONDITIONS

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 1 OR 2 THE COMPANY SHALL NOT BE LIABLE UNDER ANY CLAUSE OF THIS POLICY FOR ANY LOSS OR LIABILITY THERETOFORE OR THEREAFTER INCURRED BY THE ASSURED.

CONDITION 1. The assured shall at all times render to the company all co-operation and assistance in the assured's power in defending assured against claims of liability and in adjusting and minimizing loss or damage hereunder.

CONDITION 2. The assured shall not commit or attempt any fraud or false swearing touching any matter relating to this insurance or the subject thereof whether before or after loss.

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 3, 4 OR 5 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSE 3 OF THIS POLICY FOR ANY LOSS THERETOFORE OR THEREAFTER INCURRED BY THE ASSURED.

CONDITION 3. Upon the occurrence of any injury to the property of another by any automobile described in the SCHEDULE hereof and /or upon claim made by any person that such injury has occurred the assured shall forward immediately written notice thereof with the fullest information obtainable at the time to the company's Home Office at Trenton, New Jersey. The assured shall immediately upon receipt of any summons, process or court or other papers touching such injury to the property of another, likewise forward the same to the company. Notice given by or on behalf of the Assured to any authorized agent of the Company within the State of New Jersey, with particulars sufficient to identify the Assured, shall be deemed to be notice to the Company. Failure to give such notice within the time specified in the Policy shall not invalidate any claim made by the Assured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible.

CONDITION 4. The assured shall not, without the prior written assent of the company, voluntarily assume or admit the existence of any liability or incur any expense or settle any claim except at the assured's own cost.

CONDITION 5. The assured whenever requested by the company shall aid in effecting settlement, securing information and evidence and the attendance of witnesses, and in the defense of any suit and in the prosecution of any and all proceedings to review any verdict or judgment rendered therein; but without such request the assured shall not interfere in any negotiations for settlement or in any legal proceedings.

IF THE ASSURED SHALL FAIL TO PERFORM AND ABIDE BY ANY OF THE TERMS OF CONDITIONS 6 OR 7 THE COMPANY SHALL NOT BE LIABLE UNDER CLAUSES 1, 2 OR 4 OF THIS POLICY FOR ANY LOSS THERETOFORE OR THEREAFTER INCURRED BY THE ASSURED:

CONDITION 6. Upon the occurrence of any loss or damage to any automobile described in the SCHEDULE hereof by any of the hazards insured against by CLAUSES 1, 2 or 4, the assured shall give immediate written notice to the company; stating the time, place and cause (if then known) of such loss and damage; and within sixty days after such loss or damage, unless such time is extended in writing by this company, the assured shall render a statement to the company signed and sworn to by the assured, stating place, time and cause of the loss or damage, the interest of the assured and of all others in the automobile, the sound value thereof and the amount of loss or damage thereto, all encumbrances thereon, and all other insurance whether valid or not covering such automobile; and the assured, as often as required, shall exhibit to any person designated by this company what remains of the property insured and submit to examinations under oath by any person named by this company, and subscribe the same, and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

CONDITION 7. In the event of loss or damage occasioned by a hazard insured against by CLAUSES 1, 2 or 4, the assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this policy. Any such act of the assured, of this company or its agents, in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expense thus incurred shall constitute a claim under this policy, provided however, that this company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the company.

FURTHER AGREEMENTS

The Company and the Assured agree:

1. That the company will, upon compliance by the assured with the foregoing CONDITIONS provided CLAUSE 3 is in force, defend at the expense of the company, any action (whether groundless or not) brought against the assured to enforce a liability described in said CLAUSE 3. The indemnity provided by Clause 3 of this policy is extended so that the same shall be available, in the same manner and under the same conditions as it is available to the named assured, to any person or persons while riding in or lawfully operating the automobile described in the schedule 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 be an individual, with the previous permission of an adult member of the named assured's household other than a chauffeur or domestic servant.

2. That in case where the company pays any amount for or toward satisfaction of any liability under CLAUSE 3 hereof the company will also pay or satisfy (without regard to the high limit applicable to said clause) any court costs and expense arising out of the defense against such liability and will also pay all interest accrued on the amount paid by the company toward the satisfaction of any judgment finally determining such liability.

3. The company on receipt of sworn statement of loss or damage under CLAUSES 1, 2 or 4 will proceed promptly to determine the amount if any which it is prepared to pay thereon and will notify the assured of such amount and (unless the assured shall object in writing to such amount within ten days of such notification) will pay the amount so determined within sixty days of receipt of such sworn statement. If the Company does not deny all liability and if the assured shall so object to the amount which the company offers to pay, and the parties do not within thirty days of the giving of such notice of objection agree upon an amount to be paid, either party may apply to the judge of any county court of record of the county within which the loss occurred or the assured is located for the appointment of an umpire to whom the parties shall submit their difference and whose decision as to the value of the property stolen or damaged both before and after the loss shall be final within the limits fixed by this policy. The expenses of such umpire shall be borne equally by the parties irrespective of what award he may make. If such award be within the limits of this policy then the company agrees to pay the same within ten days after receipt of a copy of such award.

4. It shall be optional with the company to take all or any part of the property at the appraised value where appraisal is made by an umpire, but there can be no abandonment thereof to the company; and where theft is insured against the company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

5. Where loss or damage occurs for which a bailee may be liable and which would be covered hereunder were it not for LIMITATION (f) hereof this company will advance to the assured by way of loan the money equivalent of such loss or damage which loan shall in no circumstance affect the question of the company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the assured from the bailee after deducting cost and expenses of collection.

Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 10th inst.

and in reply to inform you that the same has been forwarded to the proper authorities.

I am, Sir, very respectfully,
Your obedient servant,

J. H. [Name]

[Address]

[Address]

[Address]

Exhibit P-6

THIS ENDORSEMENT IS SUBJECT TO THE CONDITIONS OF AND AS FOR THE POLICY. IT IS NOT TO BE TAKEN AS A PART OF THE POLICY.

ENDORSEMENT

It is hereby understood and agreed that the automobile described under this policy is garaged in a public garage located at Mott St., Newark, N.J. and not as heretofore.

All other terms and conditions remain unchanged.

All other terms, exclusions, limitations, conditions, warranties and agreements of the policy remain unchanged.

Attached to and forming a part of policy No. AP. ²³²²53670 of the New Jersey Manufacturers Association Fire Insurance Company of Trenton, New Jersey.

Dated September 27, 1922

Alby
Underwriter.

- 2. Address of Assured: Passaic Avenue Newark New Jersey
- 3. The policy period is from noon September 27, 1922, to noon September 27, 1923, Eastern Standard Time.
- 4. The uses to which the automobile described herein will be put are Commercial purposes
- 5. The nature of the business is Bedding Manufacturers
- 6. The automobile described is usually kept in Public garage, located at Halsey Street Newark New Jersey

7. The following is a description of the automobile.

Year	Model or No. of Cylinders	Trade name	Type of body If truck state tonnage	Factory or serial number	Motor No.	List Price
1921	15-4	WHITE	TRUCK 3 T	84043	41679-GK	\$ 400. Bdy. 2400. Ch.

8. The facts with respect to the purchase of the described automobile and the assured's interest therein are as follows:

Acquired by Assured			Actual cost to Assured including equipment.	The automobile described is fully paid for by the Assured and is not mortgaged or otherwise encumbered except as follows:
Mo.	Year	New or Second Hand		
Sept.	1921	New	\$3057.00	No exceptions

9. The limits of insurance, the rates charged and the amount of premiums are as follows:

Under Clause	Low Limit	High Limit	Rate per Hundred	Amount of Premium
1 Fire	0	\$1700.00	\$ 1.10	\$ 18.70
2 Theft	0	1700.00	.30	\$ 5.10
3 Property damage	0	1000.00	--	\$ 26.00
4 Collision	0	--	--	\$ --
TOTAL				\$ 49.80

IN WITNESS WHEREOF the company has caused this policy to be executed by its President and by its Secretary but this policy shall not be in force until countersigned by its Underwriter.

J. Philip Bird President. *H. P. Dilleman* Secretary.

Countersigned this 27th day of September, 1922, but effective only within policy period shown in the Schedule hereof.

Alby
Underwriter.

MEMORANDUM

TO THE HONORABLE SECRETARY OF THE INTERIOR
FROM THE COMMISSIONER OF THE GENERAL LAND OFFICE
SUBJECT: [Illegible]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]


[Illegible text]

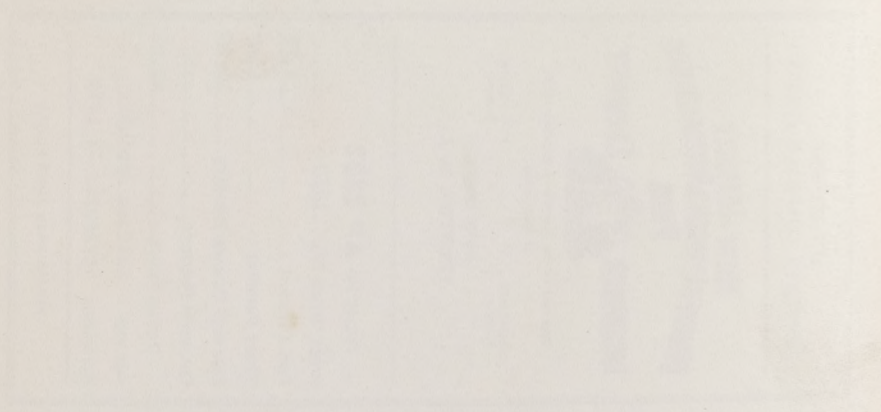
Exhibit P-6

Extract From By-Laws

DIVISION OF UNDERWRITING PROFITS ARTICLE IV, SECTION 2

Section 2. After setting aside the necessary reserves and providing for the regular and further dividends above referred to, the Board of Directors may from time to time in their discretion determine the advisability of paying to policyholders a dividend upon the net premiums received and to be received on policies written in the then previous fiscal year of the company and the rate of any such dividend. All determinations in favor of such dividends shall be submitted to the Commissioner of Banking and Insurance of the State of New Jersey; and when and not before said Commissioner shall have informed the company that he does not object to or does consent to or approves, or omits for thirty days to inform the company that he disapproves, any such determination in whole or in part, the company shall become obligated for the payment of such dividend to the extent thus allowed by said Commissioner; provided, however, that the company shall not be so obligated in respect of any policy covering a risk in the State of Pennsylvania, or other state where the company may be or become authorized to do business, until, nor beyond the extent to which, such dividend shall have been likewise acted upon by the Insurance Commissioner of such other state. No dividend to a policy holder shall be payable until after the termination of the policy, the completion of the payroll audit (if there be any) and the receipt of all balance of premiums on said policy.

AUTOMOBILE PROPERTY COVERAGE POLICY	 <p>NEW JERSEY MANUFACTURERS ASSOCIATION FIRE INSURANCE COMPANY</p>	Operated by the Manufacturers' Association of New Jersey J. PHILIP BIRD President W. C. BILLMAN Secretary HOME OFFICE TRENTON, N. J.	POLICY No. AP 2322 HOME OFFICE No. <u>1330</u> FIRE PREMIUM <u>\$ 18.70</u> THEFT PREMIUM <u>5.10</u> PROPERTY DAMAGE PREMIUM <u>26.00</u> COLLISION PREMIUM <u>---</u> TOTAL PREMIUM <u>\$ 49.80</u> ASSURED <u>Shifman Brothers</u> EXPIRATION <u>September 27 1923</u>
			PLEASE READ YOUR POLICY



New Jersey Court of Errors and Appeals

NEW JERSEY MANUFACTURERS AS-
SOCIATION FIRE INSURANCE
COMPANY,

Plaintiff-Appellant,

vs.

DAVID GALOWITZ,

Defendant-Respondent.

*On Appeal
from Supreme
Court.*

BRIEF FOR APPELLANT

This is an appeal from a judgment of non-suit granted by Circuit Court Judge Oliphant in a Supreme Court action tried at the Mercer Circuit.

The issues on the appeal are whether the trial judge erred (1) in granting a non-suit because the evidence of damage was not more specific, and in (2) the exclusion of certain evidence of damages.

While the statute of limitations would now bar a new action, that was not so at the conclusion of the trial. However, believing that the granting of the non-suit for lack of more specific evidence as to damages is so clearly error, instead of paying the costs of \$77.20 and starting a new suit, the appellant preferred to appeal in the hope that this court would not only set aside the judgment, but would also pass upon the propriety of the exclusion of evidence so that on a new trial the trial court would have the benefit of a ruling by this court on this subject.

FACTS

It appears by the evidence that on August 8th, 1923, four automobiles were left at the garage of the defendant, a garage keeper for hire, by Shifman Brothers. In the night, along with twenty or more other cars, they were destroyed by fire. The next day when the ruins were examined it was apparent that cars had been placed between those of Shifman Brothers and the entrance in a manner which made it impossible to remove Shifman Brothers' cars without first removing the other cars. In fact no cars were removed. Shifman Brothers held policies of insurance issued by the plaintiff, by the terms of which plaintiff was entitled to subrogation and assignment. Plaintiff paid Shifman Brothers \$7,290.00 and a written assignment to the plaintiff was taken. This action was instituted to recover for the damage done to Shifman Brothers' four trucks by the fire. The plaintiff claimed that \$7,290.00 was the damages.

The evidence in greater detail is as follows:

On August 8th and 9th, 1923, David Galowitz, the defendant, kept a garage in Newark (case, page 16, line 15). On the night of the 8th of August a fire burned this garage and destroyed all the automobiles in it (case page 16). Mr. Galowitz said he could not recall exactly how many automobiles were in the garage and destroyed, but that there were about twenty-four or twenty-eight (page 16, lines 27 to 30). Mr. Galowitz arrived at the fire about 11:30 in the evening (case, page 16, line 33). Among the cars burned were four trucks, two Packards, 1 Maccar and one White belonging to Shifman Brothers (page 17, lines 1 to 10). Mr. Galowitz said that as far as he could see there was nothing apparent the matter with them, although he never inspected them (page 17, line 20). Two of them he

saw brought in the evening of the fire about eight o'clock. There was one watchman in charge of the garage at the time the fire broke out (page 18, line 10), and in the night Mr. Galowitz heard the watchman holler "fire" and he came down from right next door where he lived and found fire department engines trying to pull the cars out (page 18, line 20). After some difficulties of recollection Mr. Galowitz told the court he did not think they succeeded in getting out any of the automobiles. They only got as far as the door, the flames would not let them in (page 19, line 10). He could not recall how near to the door the nearest car was, or where any of the cars were situated in the garage. The next morning the Shifman cars were found burned (page 20, lines 1 to 5). He did not remember whether any jitney bus was located in the ruins (page 20, line 39). The watchman was an elderly colored man. Galowitz did not remember whether two pictures shown to him showed the condition which existed the morning following the fire. He admitted that he was receiving pay from Shifman Brothers for the privilege of keeping their automobiles in his garage (page 23, lines 9 and 23).

Simon T. Shifman identified an assignment of whatever rights Shifman Brothers had against Galowitz to the New Jersey Manufacturers Association Fire Insurance Company. He testified that the four trucks in the fire were covered by the New Jersey Manufacturers Association Fire Insurance Company policies (page 30, line 30), and that there were the four trucks above mentioned involved in the fire (page 31, line 25), but he had no record or recollection of the prices paid (page 31, line 40); that he received check of the New Jersey Manufacturers Association Fire Insurance Company which was offered in evidence in payment of their fire loss

on the said trucks in the said fire (page 33, line 10). This check (Exhibit P-2) is for \$7,290.00. (Admitted in evidence, page 33, line 12.)

Milton Shifman, Vice-President of Shifman Brothers said that he knew the makes of the cars involved in the fire; that they were one and a half ton trucks, except the White, which was three-quarters of a ton (page 34, line 5); that the four trucks were in operating condition to the best of his knowledge on the day of the fire (page 36, line 8) and he had various doubts and difficulties of recollection.

Elbert A. Perry verified the policies of insurance which were marked in evidence and which provide, among other things, that the insurance company making the payment of loss thereunder is entitled to subrogation and assignment of claims against third parties (policies admitted page 57, line 21).

Ralph Swartz testified to his experience as an automobile man and automobile appraiser expert. He visited the cars following the accident and from their condition could tell that none had been removed since the fire. They were 35 feet away from the entrance without room to move them because there were other cars between them and the entrance (page 43) and that other cars would have to be moved before they could be moved (page 44, line 20). His other testimony relates to damages and will be detailed under the point in which the illegal exclusion of evidence as to damages is considered.

Milton Shifman, vice-president of Shifman Brothers was recalled and testified that the four trucks were working and operating, but he did not know the condition of them (page 51, lines 6 to 12). He was asked if refreshing his recollection from Ex-

hibit P-7 for identification which at page 34, line 33, he said bore his signature, he could tell what on August 14th, 1923, he considered the value of the White automobile which was involved in the fire (page 51, lines 17 to 21). Answer was excluded and the same question with respect to all the other automobiles was likewise excluded (page 51).

David Galowitz being recalled said (page 54) he saw Shifman's cars driven in most of the time, but he would not say every day, and two of them he saw come in around eight o'clock on the day of the fire. That the cars were not towed in. Could not remember whether he had made any repairs to Shifman's cars. On his being asked if he could specify any particular in which any of the four trucks were not in good running order when they were received in his garage the day before the fire, answer was excluded (page 55, lines 11 to 21).

GROUNDS OF APPEAL

1. The trial Judge committed error in granting the defendant's motion for non-suit.
2. The trial Judge committed error in not refusing to grant the defendant's motion for non-suit.
3. The trial Judge erred in allowing the following question to be answered: "Now, tell us what signs or notices you had in your garage, where they were, how large they were and how long they had been there."
4. The trial Judge erred in allowing the following question to be answered: "When Mr. Shifman made arrangements with you to keep the trucks in your garage over night, what, if anything, was said about fires?"
5. The trial Judge erred in not permitting the following question to be answered: "When you signed these four papers which we have referred

to as exhibits P. 4, 5, 6 and 7 for identification, did you check the facts which you inserted in the papers?"

6. The trial Judge erred in not permitting the following question to be answered: "Regardless of who gave the information in the first place when you swore to these statements did you know that the facts therein were true of your own knowledge?"

7. The trial Judge erred in not permitting the following question to be answered: "Now, then, what in your opinion was the value of the cars all together before the fire?"

8. The trial Judge erred in not permitting the following question to be answered: "Can you refresh your recollection by reference to P. 4 for identification as to what was your appraisal with respect to one Packard automobile?"

9. The trial Judge erred in not permitting the witness Swartz to state whether he could refresh his recollection with respect to appraisal for each separate automobile.

10. The trial Judge erred in not permitting witness Milton Shifman to answer the following question: "Refreshing your recollection, if you do not already recall from exhibit P. 7 for identification, can you tell us what you, on August 14th, 1923, considered the value of the White automobile which was involved in this fire?"

11. The trial Judge erred in not permitting the witness Milton Shifman to tell what on August 14th, 1923, he considered the value of all the other automobiles than the White which were involved in the cause.

12. The trial Judge erred in not permitting the witness David Galowitz to answer the following question: "Can you specify any particular in which

any of these four trucks were not in good running order when they were received in your garage the day before the fire?"

13. The trial Judge erred in not permitting the witness Swartz to answer the following question: "And speaking from your experience that you have narrated on the witness stand and from the observation which you made of the trucks about a month before and from the conditions which you found in the several trucks on the day following the fire, what, in your opinion, was the fair market value of these trucks, when they were damaged by the fire?"

POINTS

POINT I. THE TRIAL JUDGE ERRED IN NON-SUITING THE PLAINTIFF.

POINT II. THE TRIAL JUDGE EXCLUDED LEGAL EVIDENCE.

ARGUMENT

POINT I.

THE TRIAL JUDGE ERRED IN NON-SUITING THE PLAINTIFF.

This point involves grounds one and two stated in the notice of appeal. The trial judge granted the non-suit solely on the ground that the damages were not specifically shown. In taking this position he erred. The rule is that the lack of proof showing the specific amount of damages does not justify a non-suit.

Lance vs. Apgar, 60 N. J. L., 447.

Dickerson vs. Levine, 98 N. J. L., 313.

Jurnick vs. Manhattan Optical Co., 66 N. J. L., 380.

Furniture Co. vs. Board of Education, 58 N. J. L., 646.

In this connection it should not be overlooked that Mr. Swartz's inspection of the cars about a month before the fire showed them to be in good condition, that a particular condition is presumed to continue until the contrary is shown; that Mr. Swartz's examination of the cars after the fire enabled him to say that there were no marks showing accident or injury to the trucks between the time when he saw them and the fire, and also that the four cars were in good running order when driven into the garage on the day of the fire, but that they were junk after the fire.

It was undisputed that the assignment above mentioned transferred to the plaintiff whatever rights Shifman Brothers had against the defendant. That conclusion would have followed from the subrogation clauses of the insurance policies, but in addition to these there was the written assignment. Then comes the question of whether there was any evidence for the jury on the question of liability, because even though the trial judge granted the non-suit solely on the ground that the proof of damages was not specific, if the ruling were proper on another ground it should be sustained.

In 2 Ruling Case Law, Section 46, 1210, it is said:

"If the garage keeper is unable by reason of the destruction of the car to make return thereof the burden is cast on him to show that the car was not destroyed by his negligence."

This is merely applying to a garage keeper the rule adopted in *Jackson vs. McDonald*, 70 N. J. L., 594, that the proof of loss or injury establishes a sufficient prima facie case against the bailee to put him upon his defense.

In *Bussey vs. Hatch*, 95 N. J. L., 56, a garage

owner's duty is spoken of as like that involved in *Levine vs. Wolff*, 78 N. J. L., 306. The last named case involved the burning of a chattel left with the defendant. The court said:

"When, therefore, the plaintiff proved the delivery of the chattels in good condition to the defendant, and their destruction thereafter by fire upon the defendant's premises, the law presumes the negligence of the bailee to be the cause of the loss, and this presumption could be rebutted only by affirmative proof of reasonable care upon defendant's part."

That the chattels involved in this case, the automobile trucks, were delivered to defendant's garage is uncontradicted in the evidence as is the fact that they were greatly damaged, in fact destroyed by fire. Accordingly there was enough to make a question for the jury—a *prima facie* case was made on the question of liability.

Furthermore, there was evidence that other cars stood between Shifmans' cars and the entrance; that there was only one watchman in the garage; that a jitney was in the entrance and that all the cars burned before a single one was removed. A jury could hold any of these things negligence on defendant's part. It was therefore, error to grant a non-suit.

POINT II.

THE TRIAL JUDGE EXCLUDED LEGAL EVIDENCE.

Upon reflection we consider that there is a question as to the validity of the fifth and sixth grounds of appeal. Accordingly they are waived.

The seventh, eighth, ninth and thirteenth grounds of appeal relate to the exclusion of certain question asked Ralph Swartz, concerning damages.

Mr. Swartz testified to his experience in the automobile business and in making appraisals and adjusting claims for the insurance company. He had been five years in the automobile business, had two garages and for a year and eleven months was master engineer in charge of motor transportation during the war, and then since 1921 had been doing automobile appraising (page 42); that he visited the ruins involved in this case the day following the fire and from the condition could tell that no cars had been moved. He stated that he made appraisals of the four automobiles and put them down on paper called proofs of loss (page 44, and 45); that without reference to these papers he could not tell what the items were, but that he knew the total amount; that he had been familiar with the Shifman's automobiles before the fire (page 45, line 40) and as a part of his regular business became familiar with these cars before the fire; he had been to Shifman Bros. numerous times during the year prior to the fire and inspected their machines and whenever there was an accident got in touch with the drivers and looked the machines over; that he saw these machines about a month before the fire when they were in good condition (page 46, line 40); that he could tell from an inspection of the cars after the fire what their condition had been just before the fire and that the way he got at that information was that there were parts of the body and the rubber on top of the wheels had not been burned off showing that the tires were in very good condition and the bodies were in good condition; that different places in between the trucks had not been burned and they had been in practically the same condition as when he had seen them before (page 47, lines 1 to 10). His previous inspections had included the motors, the tires, the bodies and

the engines and he had been in constant touch with them all the time (page 48, line 30). He said from his inspection afterwards he could tell the condition the cars were in just previous to the fire. He said there were no marks on the cars which would indicate that there had been any accident or damage to them between the time when he saw them a month before and the time of the fire (page 49).

Later, Mr. Swartz gave further evidence of his familiarity of the market value of automobiles and his familiarity with sales and purchases (page 56).

The question involved in the seventh ground of appeal is: "Now then what in your opinion was the value of these cars altogether before the fire?" (page 47, line 16.)

The question involved in the eighth ground of appeal is: "Can you refresh your recollection by reference to P-4 for Identification as to what was your appraisal with reference to one Packard automobile?" (page 47, line 35.)

The ruling involved in the ninth ground of appeal was the refusal to permit the witness Swartz to state whether he could refresh his recollection with respect to the appraisal for each separate automobile (page 48, line 1) and the question involved in the thirteenth ground of appeal, asked at the conclusion of Mr. Swartz's testimony is: "Speaking from your experience that you have narrated on the witness stand and from the observations which you made of the trucks about a month before, and from the conditions which you found in the several trucks on the day following the fire, what in your opinion was the fair market value of these trucks when they were damaged by the fire?"

The trial judge at page 50, line 29, indicated that he believed Mr. Swartz qualified as an expert, and that the basis of the excluding of Mr. Swartz's tes-

timony on all of the excluded questions is that his familiarity with the damaged automobiles one month before the fire was too remote to allow his opinion to be admitted.

Of course, the criterion of the damage is the difference between the value immediately before and immediately after the time of the loss or injury, but as to the admissibility of evidence concerning value the rule is stated in 42 C. J., page 1295, as follows:

“Proof of its value theretofore or thereafter, within a reasonable time under the circumstances of the particular case is proper and the lapse of time affects the weight rather than the admissibility of the evidence.”

It has been held in this state that the cost of an article is admissible on the question of damage, *Luse vs. Jones*, 39 N. J. L., 708. Certainly if the cost of an article which might have been long before is not too remote, neither is the value a month before the damage. It would be ridiculous to say that one claiming damages for injury to an automobile must prove its value by opinion evidence which related to the precise time of injury. That would necessitate carrying an expert on every truck constantly engaged in making estimates so that the instant a damage occurred he would have up to the minute information as to value to tell about when the case came up in court some time later.

As indicated above, Mr. Swartz was familiar with the cars in the fire, saw them about a month before when they were in good condition (page 46, line 40), and his examination of the cars after the fire enabled him to say that there were no marks showing accident or injury to the trucks between the time when he saw them and the fire (page 49), and there was evidence that the four cars were in good running order when driven into the garage on the

day of the fire. Supplementing this there is the presumption that a condition is presumed to continue until the contrary is shown. These things and his extended experience were all included in the matters on which Mr. Swartz was asked to state the value before the fire. We submit that applying the rule from *Corpus Juris* above mentioned the lapse of thirty days between the time of his inspection and the time of the fire affected the weight rather than the admissibility of the evidence and that its exclusion was error.

The tenth and eleventh grounds of appeal involve the question of whether an officer of a corporation owning automobiles may testify as to their value. In this state an individual owner was allowed to testify as to the value *Teets vs. Hahn*, 140 Atl., 427. The precise contention which we make is that this privilege should extend to an officer of a corporate owner.

The twelfth ground of appeal is directed at the refusal of the trial judge to permit the defendant to answer the following question :

“Can you specify any particular in which any of these four trucks were not in good running order when they were received in your garage the day before the fire?”

It was perfectly proper for the plaintiff to show that there were no apparent defects in the trucks. Mr. Galowitz said that he saw two of the trucks driven in. If there were obvious particulars in which they were not in good running condition, he would have seen them and it was proper for the plaintiff to be allowed to prove that there was apparently nothing the matter with the trucks by obtaining an answer to the excluded question.

CONCLUSION

The trial judge erred in non-suiting the plaintiff, and legal evidence was excluded. Accordingly THE JUDGMENT APPEALED FROM SHOULD BE REVERSED.

Respectfully submitted,

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