

New Jersey Court of Errors and Appeals.

ALBERT G. NEGLEY, JR.,
Defendant in Error,

vs.

NEW-YORK LIFE INSURANCE COM-
PANY,
Plaintiff in Error.

*Brief for Plaintiff
in Error.*

This is an action on contract for the alleged breach of which the plaintiff brought suit for damages. The jury found a verdict for the plaintiff of \$500. The defendant moved to set the verdict aside and for a new trial, which motions were denied. It now seeks a reversal of the judgment, on account of errors on the trial.

I.

THE ISSUES OF FACT IN THE CASE.

The declaration alleged a contract between the defendant and the plaintiff whereby the plaintiff was appointed an agent for the purpose of soliciting applications for life insurance. The making of the contract is not disputed. There is no dispute either as to the termination of the contract by a notice dated July 12, 1904, which was delivered by the defendant through its agent to the plaintiff on that date.

The questions in dispute between the plaintiff and the defendant are two. The plaintiff claims that his

dismissal by the defendant was without cause. The defendant denies this and alleges that the plaintiff in several instances, two of which are particularly specified, violated the terms of the contract by giving or offering to give insurance under policies of the defendant Company for less than the amount of the regular premium,—in other words, that he gave or offered to give a rebate in two particular cases.

The defendant further claims that even if the discharge of the plaintiff was unjustified, the damages awarded by the jury were exorbitant and that this allowance of exorbitant damages resulted from the errors of the Court in the admission of improper evidence in the course of the trial.

II.

The Court erred in refusing to grant the defendant's motion for a non-suit since the plaintiff's own testimony convicted him of rebating, the offense on account of which he was discharged.

The agreement between Negley and the Company (Ex. P. 1) (P. 101, l. 30) provided (P. 106, ll. 10-20) that if Negley "shall sell or offer to sell directly or indirectly to any person or persons, policies for insurance to be issued by said party of the first part hereunder (the defendant) at any reduction from the regular table rates as furnished to said party of the second part by said party of the first part, said sale or offer of sale shall work an immediate termination of this agreement and the forfeiture of all rights and interest hereunder to said party of the first part."

The sale of insurance for less than the regular table rate is one of the worst practices that has arisen in the rapid development of the business of life insurance. "Rebating" is an evil which life

insurance companies have fought for years to suppress. Statutes have been enacted against it in many States (see *People v. Formosa*, 131 N. Y., 478). The defendant Company in its agency agreements provides for immediate termination of the contract in case an agent is guilty of the practice.

The disobedience by an agent of such an order is, of course, ground for the immediate termination of his contract of employment. *Savin vs. Kendrick*, 46 N. Y. App. Div., 90.

The giving or offering of a rebate is most difficult to detect. Both the agent and the applicant are equally anxious to prevent its discovery. Occasionally, however, the proof is clearly made and the Company is able to impose the prescribed penalty. If the transactions between Negley and Noss did not constitute both the offering and the giving of a rebate the Company may well despair of ever detecting such practice.

The facts as to the Noss rebate are perfectly clear. The proof is furnished by the plaintiff's own testimony and by letters in his own handwriting. Two brothers, Ferdinand P. and Frank W. Noss, at some time prior to the 30th of June, 1903, applied to the Company through Negley for \$5,000 of insurance each (P. 43, ll. 8-36). Subsequently and without any request on the part of either of them (P. 43, ll. 28-30) Negley—in order, according to his story, to get a further commission (P. 43, l. 23)—but, in reality, as shown by his letters of August 14 (Ex. D 1, P. 126-127) and November 20 (Ex. D 2, P. 127) for the purpose of writing the greatest possible amount of business and retaining membership in his club, asked the Company to issue two additional policies of \$3,000, one on each of these applicants. The premiums on the two \$5,000 policies amounted to \$282 (P. 47, l. 22)—the total of \$149.50, the premium on the \$5,000 policy on the life of Ferdinand P. Noss (P. 44, l. 24) and \$132.50 the premium on the \$5,000 policy of Frank W. Noss (P. 44, ll. 28-30). The premium on the \$3,000 Ferdinand P. Noss

policy was \$89.70 (P. 44, l. 27) and on the \$3,000 Frank W. Noss policy \$79.50.

The original transaction (P. 47, l. 22, ff.) was the delivery of the two \$5,000 policies in exchange for a note of \$282. Subsequently Negley delivered the two \$3,000 policies to Noss and Noss gave a note for \$382 in place of the prior note of \$282 (P. 47, l. 30). This note of \$382 was subsequently paid when due (P. 45, ll. 20-30), but there was a balance of \$69.20 which never was paid. To be sure Negley said when the question was first raised (P. 44, l. 34) that Noss paid \$69.20 cash, but he subsequently contradicted himself about this and said (P. 47, l. 33, ff.) that Noss had not given any settlement for them.

But while the contradictory testimony of Negley left this transaction somewhat clouded, the evidence furnished by three letters in his own handwriting, two to Noss and one to the Cashier of the Branch Office (Exhibits D 1, D 2 and D 3, P. 126-128) makes the transaction perfectly clear. The Nosses did not want these policies, as the letter of August 14 (P. 126) clearly shows. They had never applied for them. They had returned the policies to Negley (P. 48, l. 7). Negley sent back the policies, and in his letter of August 14 said "Now this will only cost you \$100 * * * so sign the enclosed note for \$100 due December 1, 1903." These were the two policies that called for a premium of \$169.20. Here was a perfectly clear offer to deliver the policies for \$100 and there is not a word in all of Negley's testimony to meet it. The \$100 note was never signed, but the original note for \$282 was taken up and the note for \$382 given in its place (P. 47, l. 30). This note for \$382 became due at some time prior to November 1, apparently some time in October (See Ex. D 3, P. 128), and was paid at that time through Noss's bank, although apparently Noss had been expecting an extension (P. 46, l. 3, ff.). Then three weeks later, under date of November 20, Negley again returned the \$3,000 policies to Noss, saying (Ex. D 2, P. 128) "As I paid for these additional policies of \$3,000

on your life and your brother's to make up my allotted amt. for year closing June 30, 1903, I send them to you * * * *,"

The transaction stands out perfectly clear. Negley desired before the 30th of June, 1907, to write a certain amount of business to fulfil his allotted amount. He had not obtained applications for all that he needed, so he asked the Company to issue without applications two \$3,000 policies additional to the \$5,000 policies for which the Nosses had applied, and as the Nosses did not want them and would not pay for them in full he offered to deliver them for \$100 instead of \$169.20 and accepted \$100 by exchanging the \$282 note for one of \$382 and delivered the policies, paying the balance himself. If with this evidence before it a Life Insurance Company is not justified in terminating the contract of an agent for rebating it may as well despair of ever being held justified in discharging an agent on this account.

The evidence of the offer of the rebate and the evidence of the rebate itself furnished by the plaintiff himself was so clear that the plaintiff should have been non-suited and the failure to grant defendant's motion for such non-suit was error.

III.

By reason of the errors of the Trial Court in admitting incompetent evidence the jury were left without the proper means to measure the plaintiff's damage and as a result made an award which was obviously excessive.

As the learned Trial Justice remarked in opening his charge (P. 97, l. 40),—

“The trial of the case occupied a longer time than it should have done owing to the fact that

in the early part of the case the Court was uncertain as to what the true measure of damages was.”

If the case were to be left to the jury and they were to find that the discharge of Negley was unjustified, all that Negley was entitled to recover was the amount which he would probably have earned within the thirty days from July 12, 1904, deducting what he actually did earn or might have earned by reasonable efforts during that time.

The learned Court finally reached this conclusion and properly directed the jury (P. 100, l. 7) that “where a contract of that kind is made between parties, by the terms of which either one reserves to himself the right to bring it to an end by giving thirty days’ notice, the law is that thirty days’ pay is equivalent to thirty days’ notice”. There can be no doubt whatever as to the correctness of this charge.

Freudenberg vs. Sternberg, 67 *N. J. Law*, 297.

Walsh vs. Russell, 149 *N. Y.*, 388.

Crawford vs. Mail & Express Co., 163 *N. Y.*, 404.

DeVere vs. Gilmore, 25 *Misc. (N. Y.)*, 306.

Briscoe vs. Litt, 19 *Misc. (N. Y.)*, 5.

It is also perfectly well settled that the plaintiff was not entitled to anything on account of renewal commissions after the termination of the thirty days.

Heyn vs. New-York Life, 118 *N. Y. App. Div.*, 194;
103 *N. Y. Supp.*, 20.

Wightman vs. Company, 119 *N. Y. App. Div.*,
496; 104 *N. Y. Supp.*, 214.

Aldrich vs. Company, 105 *N. Y. Supp.*, 493.

Butler vs. Company, 87 *Pac.*, 1119.

Shaw vs. Home Life Ins. Co., 49 *N. Y.*, 681.

Stagg vs. Conn. Mutual Life Ins. Co., 10 *Wall.*, 589.

Burleson vs. N. W. Mutual Life Ins. Co., 86 *Cal.*,
342.

King vs. Raleigh, 100 *Mo. App.*, 1.

Spaulding vs. New-York Life Ins. Co., 61 Me., 329.

Park vs. Piedmont Ins. Co., 48 Ga., 601.

Castleman vs. Southern Mut. Life Ins. Co., 14 Bush. (Ky.), 197.

Mut. B. Life Ins. Co. vs. Charles, 4 Ins. L. J., 265.

Phoenix Mut. Life Ins. Co. vs. Holloway, 51 Conn., 310.

N. Car. Life Ins. Co. vs. Williams, 91 N. Car., 69.

Ballard vs. Travelers Ins. Co., 119 N. Car., 187.

Scott vs. Travelers Ins. Co., 63 Atl., 376 (Md.)

Chase vs. New-York Life Ins. Co., 188 Mass., 271.

Jacobson vs. Mut. Life Ins. Co., 61 Minn., 330.

Andrews vs. Travelers Ins. Co., 70 S. W., 43 (Ky.)

But the Court early in the trial had admitted evidence on the question of damages of the most general nature and no evidence was submitted to the jury in proper form to enable them to measure the damages accurately—as was pointed out by the defendant at the time (See defendant's exceptions, P. 28, l. 12; P. 30, l. 21; P. 31. ll. 11-22; P. 32, l. 36; P. 33, l. 37; P. 34, l. 7).

The sources of the income of the plaintiff under his contract with the defendant fell under three heads, two of which were under the Agency Contract (Ex. P. 1, P. 101, ff.)—commissions on first year premiums paid to and received by said New-York Life Insurance Company during the continuance of the agency on policies applied for through Negley (P. 107, l. 19, ff.) and commissions on renewal premiums on such policies so paid for the second year of insurance (P. 108, l. 11, ff.) The third source of income was under the Nylic benefit (Ex. P. 2, P. 110 to 115).

There is no dispute as to the amount of Negley's Nylic allowance. \$30.75 was the monthly Nylic allowance to which Negley was entitled during 1904 and which he regularly received up to July 12. (P. 72, l. 34; P. 33, l. 33).

As to renewal commissions—there is not a scintilla of evidence in the case justifying any award to Negley of damages on account of renewal commissions. He was entitled to 20% on second-year premiums paid on business which he had written in 1903, which premiums were paid during the thirty days after July 12. The items, if there were any, were easily determinable. Negley himself had a record of his policies (P. 36, l. 15). The Company, in response to the request of the plaintiff, produced on the trial its books containing a record of Negley's policies (P. 32, l. 36, ff.). Before the jury were authorized to consider any award on account of renewal commissions it devolved upon Negley to show that some second-year premium was paid during those thirty days on some policy written by him in 1903. He failed to make such proof and the jury was therefore not entitled to make any award of damages on account of renewal premiums.

The only evidence as to renewal commissions due him in 1904 which Negley himself gave was the amount to which he would have been entitled in the entire year of 1904 if second-year premiums on all policies which he wrote in 1903 had been paid (P. 33, ll. 10-13; P. 37, ll. 28-30). He admitted that he had received all renewal commissions due him up to July 12 (P. 33, l. 15), and there is not a particle of evidence that he was entitled to any allowance for renewal commissions coming due to him during the thirty days after July 12.

The clause in the agency contract under which the plaintiff was entitled to claim renewal commissions is found in paragraph 20 of the agency agreement (P. 107, ll. 3-18; P. 108, ll. 11-30; P. 109, ll. 3-8). Under these provisions it was agreed that Negley should be allowed—

“The following compensation only, unless otherwise expressly stipulated in writing, namely: a commission on the original cash premiums for the first year of insurance, and, sub-

ject to conditions given in paragraph C of this section, upon the second year's premiums, which shall, during his continuance as said agent of said party of the first part, be obtained, collected, paid to and received by said party of the first part on policies of insurance effected with said party of the first part (written with 15, 20, 25 or 30-Year Accumulation periods), by or through said party of the second part, which commission shall be at and after the following rates:

If \$50,000 is secured as above, the commission to be 20% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions * * * .”

Before Negley was entitled to claim one cent for renewal commissions under this provision he was bound to show that during the thirty days in question some policy-holder (1) whose application had been made through Negley had (2) paid his premium for the second year of insurance to the Company, and (3) that he had written \$50,000 of business during the preceding year. He did testify (P. 28, l. 18) that during the preceding year he had done over \$50,000 of business, but he absolutely failed to show that a single policy-holder whose application to the Company had been made through him had paid his second-year renewal premium during the thirty days in question. The jury was therefore not entitled to consider in computing damages any award on account of renewal commissions. The Court should have so charged and its failure to so charge clearly makes the errors committed during the trial in the admission of evidence sufficient to require a reversal of the judgment.

It is well settled that where the contract specifies a particular method by which the compensation of the employee is to be determined, the evidence on the trial must be in accord with the terms of the contract, and the admission of evidence of a general

nature not specifically in accord with the terms of the contract requires the reversal of the judgment. This rule has been laid down in countless cases, of which the following are examples:

Freudenberg vs. Sternberg, 67 N. J. Law, 297.

Brightson vs. the Claflin Co., 180 N. Y., 76.

Segler vs. Bernstein, 82 N. Y. App. Div., 267.

Allen vs. Armstrong, 58 N. Y. App. Div., 427.

Ladue in re Tate Mfg. Co. 135 Fed. Rep., 910.

Westinghouse Co. vs. Tildon, 56 Neb., 129; 76 N. W., 416.

Nixon vs. The Cutting Fruit Co., 17 Mont., 90; 42 Pac., 108.

Jennery vs. Olmstead, 90 N. Y., 363.

Cranmer vs. Kohn, 7 So. Dak., 247; 64 N. W., 125.

Wolfson vs. Allen Bros. Co., 120 Ia., 455; 94 N. W., 910.

Ross vs. Portland Coffee Co., 30 Wash., 647; 71 Pac., 184.

Stern vs. Rosenheim, 67 Ind., 503; 10 Atl., 221.

Wiley vs. California Hosiery Co., 32 Pac., 522 (Cal.).

In *Freudenberg vs. Sternberg*, 67 N. J. Law, 297, the contract provided for "a commission of 3% on cash receipts, less all expenses, to be computed yearly, payable after three months' notice". In that case the Trial Justice admitted evidence under an erroneous theory for the computation of the damages and on error to this learned Court the judgment was reversed.

The case of *Brightson vs. The Claflin Co.*, 180 N. Y., 76, is even more closely parallel to the case at bar. In that case the plaintiff was entitled to commissions of "12½% of the net annual profits of the sales" of the Department of a store conducted by the defendant, of which the plaintiff was manager. It was essential of course in order to enable the plaintiff in that case to recover on account of this

commission that he should prove whether there were any net profits for the year during which he was discharged. Instead of doing this he introduced evidence as to what he had made in previous years. The New York Court of Appeals unanimously reversed the judgment in favor of the plaintiff which was reached as a result of this erroneous admission of evidence and said:

“We think that the evidence which the plaintiff produced upon the trial of this case in order to establish his claim to commissions or profits was incompetent. The only proof offered was the result in the plaintiff’s department for the two years preceding the year in which he was discharged. This evidence was received under the defendant’s objection and exception as to its competency. It appears to be an undisputed fact in the case that for the first six months of the year in question there were no net profits in the department, but on the contrary a loss of between sixteen and twenty thousand dollars. The question was whether at the end of the four months during which the plaintiff’s contract was to be in force, the situation was changed, the loss wiped out and a net profit secured upon which to base a recovery of commissions amounting, according to the verdict, to \$3,000. The books and inventories of the department were kept under the plaintiff’s supervision and *he could have produced these books or papers in court or required them to be produced, and thus the result of the business at the end of the year could be accurately known and clearly established.* The results of the business in the department for the two previous years did not prove, or tend to prove, what the result was in fact at the end of the year in question. The business was constantly changing and the expense of the department increasing. * * * There is no difficulty or hardship in requiring

the plaintiff to prove the net profits at the end of the year in question by the inventories and books of the department made up to the close of the year. The contract at most had only four months to run, and this action was commenced long after that period had expired. * * * *

But since it appears that up to the time of the plaintiff's discharge no profits had accrued, but a very considerable loss was suffered, we think it was not competent for the plaintiff to resort to vague statements as to the profits of the two previous years *when the exact figures at the end of the year were available* to him and could have been produced before the jury.

“The judgment must be reversed and a new trial granted, with costs to abide the event.”

The situation in the case at bar presents a striking parallel. Negley's renewal commissions were subject to exact proof. The books by which they might be proved were in Court (P. 32, l. 35, ff.), yet disregarding the possibility of exact proof the Court permitted Negley to testify that his renewal commissions payable during the balance of 1904 would have been \$1,394.76 (P. 33. l. 13). That was the closest the plaintiff came to testifying to what renewal commissions he would be entitled during the thirty days in question and the evidence as given was clearly incompetent. As the Learned Court of Appeals said in the Brightson case, “He could have produced these books or papers in Court or required them to be produced,” and thus proved exactly the damages to which he would have been entitled on account of renewal commissions during the thirty days in question. Just as in the Brightson case it was essential that the plaintiff show there were profits in order that he should be entitled to any commission, so in the Negley case it is essential that Negley should prove that during the thirty days in question cash premiums for the second year were paid to and received by the Company on policies of

insurance, applications for which were procured by Negley.

The only other element of damages was the probable earnings of Negley during those thirty days on account of commissions on new business which Negley might reasonably be expected to have written during the thirty days. According to Negley's own testimony the total amount of business which he did during the first six months of 1904 was worth less than \$700 (P. 37, l. 3). According to the Company's records as testified to by the Branch Office Cashier, Mr. Kederich, the commissions on new business which Negley obtained during 1904 was only about \$135 (P. 68, l. 36). The greater part of this business was written in January (P. 97, l. 16). Judging by his past record for 1904, the amount which Negley would probably have made on account of new business during the thirty days in question was less than \$25, making the total amount he might reasonably have been expected to earn under his entire contract during those thirty days less than \$55—or even allowing at his own figures for new business—less than \$150.

Moreover, the plaintiff's own testimony was to the effect that during the year following his discharge he was working for another life insurance company in whose employ he made some \$2,000 during the first year—an average monthly earning of over \$150. As he entered this employment August 2 and was therefore working for the other company for ten of the thirty days in question, the amount which he earned in his new position must therefore be deducted from the amount which he probably would have earned had he remained in the employ of the defendant.

Moore vs. Foundry Co., 68 N. J. L., 14; 52 Atl., 292.

Goebel vs. Pomeroy, 69 N. J. L., 610; 55 Atl., 690.

At the rate of \$150 a month this would have necessitated a deduction of some \$50, making the

damages actually shown, according to the Company's records, practically nothing and even according to the plaintiff's own story less than \$100.

In view of the evidence it is obvious that the verdict of the jury allowing \$500 damages to the plaintiff was exorbitant, and an inspection of the record shows clearly that this erroneous verdict was brought about by the failure of the learned Trial Court at the opening of the trial to exclude the evidence objected to by the defendant in which the earnings of the plaintiff were expressed in general terms.

It is impossible to read over the evidence in this case without coming to the conclusion first, that the evidence of justification for the discharge was clear and conclusive, and second, that even if the Company had unjustifiably discharged Negley, the damages for such discharge were in fact merely nominal and the assessment of damages by the jury exorbitant and based upon incorrect data placed before them because of erroneous rulings of the Court in the early part of the trial.

IV.

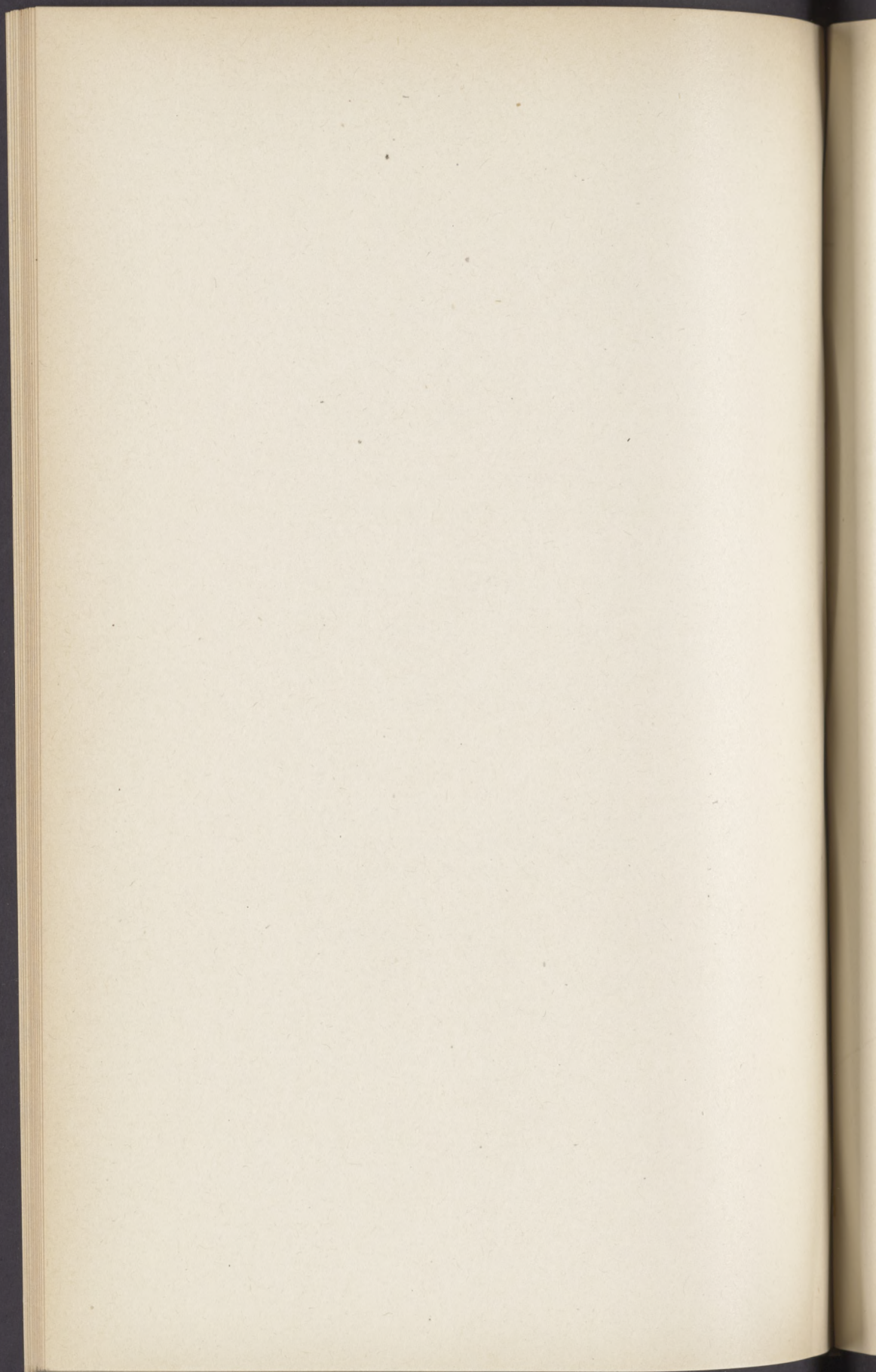
For the errors committed on the trial the defendant respectfully submits that the judgment herein should be reversed.

December 2, 1907.

FRANCIS C. LOWTHORP,
Attorney for Plaintiff-in-Error.

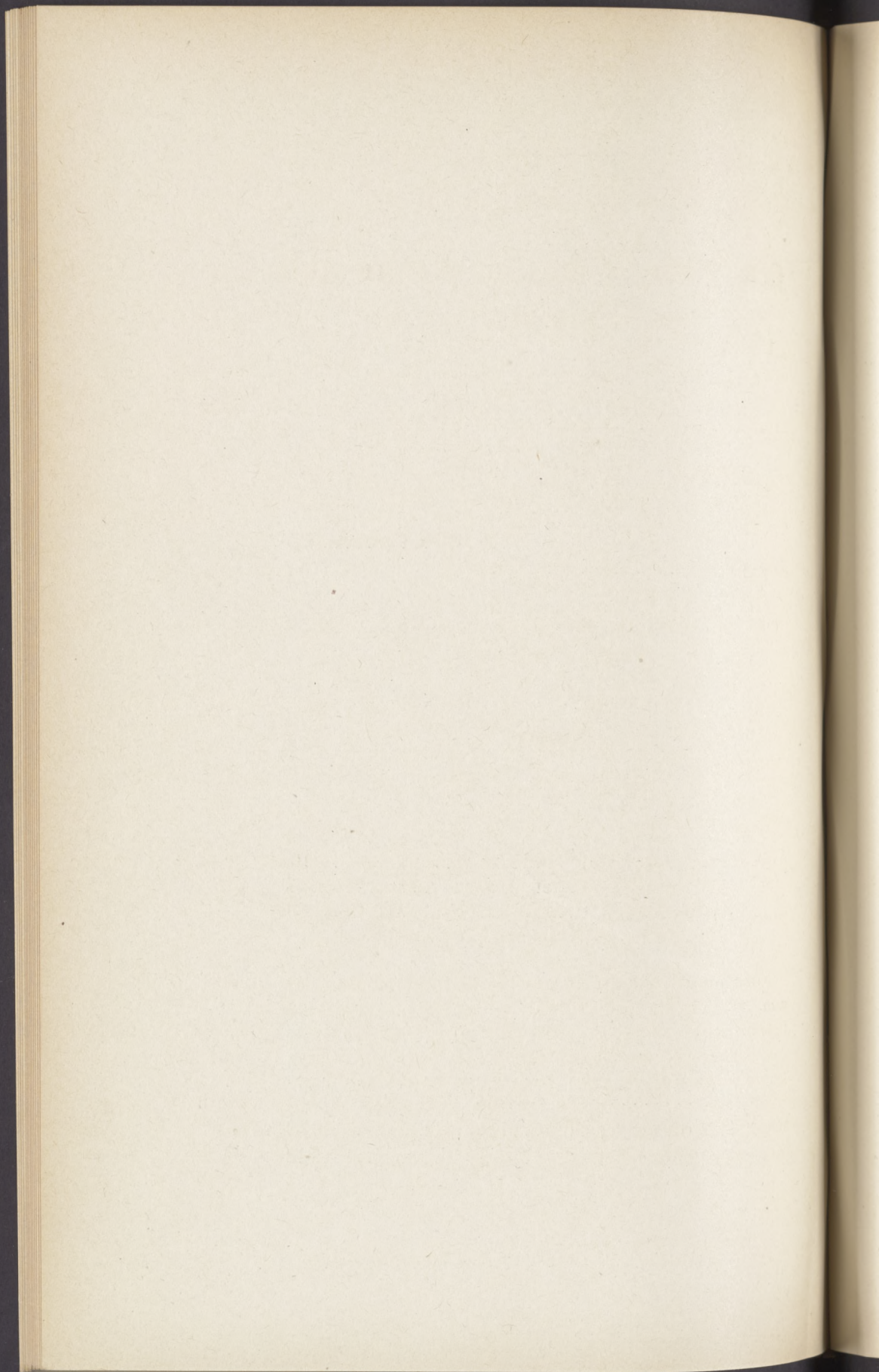
JOHN KIRKLAND CLARK,
of Counsel.

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New Jersey Court of Errors and Appeals.

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ALBERT G. NEGLEY, JR.,
Defendant in Error,
vs.
NEW-YORK LIFE INSURANCE COM-
PANY,
Plaintiff in Error.

On Contract.

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WRIT.

Filed April 11, 1907.

New Jersey, ss.: The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting:

[SEAL]

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Forasmuch as on the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Albert G. Negley, Junior, plaintiff, and New-York Life Insurance Company, defendant, in an action upon contract, manifest error hath intervened, as it is said; we being willing that the error, if any there be, should, in due

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manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twenty-third day of April, instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done. 10

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the first day of April, nineteen hundred and seven.

FRANCIS C. LOWTHORP,
Attorney.

S. B. DICKINSON,
Clerk. 20

The Answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as with we are commanded. 30

WM. S. GUMMERE, C. J.
[SEAL]

JUDGMENT.

New Jersey Supreme Court of the
twenty-sixth day of February,
nineteen hundred and six.

Essex County, ss.:

New-York Life Insurance Company, a corporation, the defendant herein, was summoned to answer unto Albert G. Negley, Jr., the plaintiff herein, in an action upon contract, and thereupon the said plaintiff by Raymond, Van Blarcom & Anthony, his attorneys, complains: 10

For that whereas, heretofore, to wit, on the tenth day of January, nineteen hundred and one, in the City of New York, in the State of New York, to wit, at Newark, in the County of Essex aforesaid, by a certain agreement in writing then and there made between the said plaintiff and the said defendant, the said plaintiff became an agent of the said defendant for the purpose of canvassing for applications for insurance on the lives of individuals, of collecting premiums on policies of insurance obtained by the said plaintiff for the said defendant, and of performing such other duties in connection therewith as might be required by the officers of said defendant and by the terms of the said agreement, as appears by said agreement, a true copy of which is hereto annexed and made part hereof, upon consideration that the defendant would pay to the plaintiff certain commissions on the original cash premiums for first year of insurance on policies procured by said plaintiff, as appears by the twentieth section of said agreement, and upon further consideration that the defendant would pay to the plaintiff certain commissions on all policies of insurance procured by him which might be renewed for a second year of insurance and the premiums for said second year of insurance paid, as appears by the twentieth section of said agreement; and in and by subdivision 20 30 40

“C” of the twentieth section of said agreement it was provided that the said defendant would pay to the said plaintiff twenty per cent. commission on the aforesaid renewal premiums that might be paid on said business for the second year of insurance, provided the said plaintiff procured fifty thousand dollars worth of insurance during any twelve calendar months of the continuance of the said agreement ending the tenth day of January, and one full year’s premium had been paid thereon; that among other things it was agreed in and by the aforesaid agreement that either party thereto might terminate the same upon thirty days’ written notice. And the said agreement being so made, afterwards, to wit, on the tenth day of January, nineteen hundred and one, at Newark aforesaid, in consideration thereof, and that the said plaintiff at the special instance and request of the said defendant, had then and there undertaken and faithfully promised the said defendant to fulfil and perform the said agreement in all things on the said plaintiff’s part and behalf to be performed and fulfilled, and it, the said defendant, undertook and then and there promised the said plaintiff to perform and fulfil the said agreement in all things on the said defendant’s part and behalf to be performed and fulfilled; and although the said plaintiff has always from the time of the making of said agreement performed and fulfilled all things on his part and behalf in the said agreement to be performed and fulfilled, and did afterwards, to wit, on the day and year aforesaid, to wit, at Newark aforesaid, enter upon and commence his work and duties, and during the twelve calendar months ending January tenth, nineteen hundred and three, did procure insurance for said defendant in accordance with the terms of said agreement to a large amount, to wit, one hundred and fifty thousand dollars, and during the twelve calendar months ending January tenth, nineteen hundred and four, did procure insurance for said defendant in accordance with the terms of said agreement to a large amount,

to wit, three hundred and fifty thousand dollars, and has always been ready and willing to perform his work and duties in pursuance of the said agreement, of all which the said defendant has had notice, to wit, at Newark aforesaid; yet the said plaintiff in fact says that the said defendant contriving and wrongfully intending to injure the said plaintiff, disregarding the said agreement and its promises and undertakings, afterwards, to wit, on the twelfth day of July, nineteen hundred and four, to wit, at Newark aforesaid, did not, nor would permit or suffer the said plaintiff to proceed with his said work and duties under said agreement, and without giving the said plaintiff thirty days' written notice to terminate said agreement as provided therein, then and there wrongfully discharged the said plaintiff from any further performance and completion of his said promise and undertaking, and did not pay to the said plaintiff his commissions on the original cash premiums for the first year of insurance or the renewal premiums on policies of insurance for the second year of insurance as provided in said agreement. Whereby the said plaintiff has lost and been deprived of the profits and advantages which he otherwise might and would have derived and acquired from the continuance of the said agreement, to wit, at Newark, in the County of Essex aforesaid, to the damage of the said plaintiff, twenty-five thousand dollars.

For that whereas, heretofore, to wit, on the tenth day of January, nineteen hundred and one, at the City of New York, in the State of New York, to wit, at Newark, in the County of Essex aforesaid, by a certain agreement then and there made between the said plaintiff and the said defendant, the said plaintiff being then and there an agent of the said defendant in good and regular standing, at the special instance and request of the said defendant, became a member of "Nylic," a system of benefits for persistent and producing agents, devised and practiced by the said defendant in order to give permanency

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and character to the work of their soliciting agents; and that the said plaintiff then signed a certificate that so long as he should remain a member of said "Nylic," he would devote all his time, talents and energies to the said defendant's service in soliciting personally for business, and thereupon the said plaintiff became a freshman "Nylic" as of January first preceding the last mentioned date; and the said defendant agreed to pay to the said plaintiff upon the consideration that he produced annually on other lives than his own not less than fifty thousand dollars of insurance, written in accordance with the rules of said "Nylic," a true copy of which in relation thereto is hereto annexed and made part hereof, on which one full year's premium in due course of business should be paid, for his third year of continuous membership in "Nylic," a monthly income equal to twenty-five cents per thousand on the amount of business procured and paid for during his first "Nylic" year, after deducting from the same the amount of said year's business which had lapsed, been cancelled or otherwise terminated up to December thirty-first of his second "Nylic" year, and for his fourth year of continuous membership in "Nylic" agreed to pay to the said plaintiff the sum of twenty-five cents per thousand on the amount procured and paid for during his second "Nylic" year, after deducting from the same the amount of said year's business which had lapsed, been cancelled or otherwise terminated up to December thirty-first of his third "Nylic" year, and for his fifth year of continuous membership in "Nylic" agreed to pay to the said plaintiff the said sum of twenty-five cents per thousand on the amount procured and paid for during his third "Nylic" year, after deducting from the same the amount of said year's business which had lapsed, been cancelled or otherwise terminated up to December thirty-first of his fourth "Nylic" year; and the said agreement being so made, afterwards, to wit, on the tenth day of January, nineteen hundred and one, at Newark

aforesaid, in consideration thereof, and that the said plaintiff at the special instance and request of the said defendant had then and there undertaken and faithfully promised the said defendant to fulfill and perform the said agreement in all things on the plaintiff's part and behalf to be performed and fulfilled, and the said defendant undertook and then and there promised the said plaintiff to perform and fulfill the said agreement in all things on the said defendant's part and behalf to be performed and fulfilled, and although the said plaintiff has always from the time of the making of the said agreement performed and fulfilled all things on his part and behalf in the said agreement to be performed and fulfilled, and did afterwards, to wit, on the day and year aforesaid, to wit, at Newark aforesaid, become a member of "Nylic" and produced annually thereafter not less than fifty thousand dollars new insurance written in accordance with the rules of the said defendant regarding "Nylic," on other lives than his own, and in the regular course of business, and on which one full annual premium was paid, and has always been ready and willing to perform his part of the said agreement, of all which the said defendant has had notice, to wit, at Newark aforesaid. Yet the said plaintiff in fact says that the said defendant contriving and wrongfully intending to injure the said plaintiff, disregarding the said agreement and its promises and undertakings, afterwards, to wit, on the twelfth day of July, nineteen hundred and four, to wit, at Newark aforesaid, did not nor would permit or suffer the said plaintiff to proceed with his said work, and has not paid the said plaintiff the moneys which have become due to him, according to the said agreement, whereby the said plaintiff has lost and been deprived of the profits and advantages which he otherwise might and would have derived and acquired from the continuance of his said work, to wit, at Newark, in the County of Essex aforesaid, to the damage of the said plaintiff ten thousand dollars.

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For that whereas the said defendant, heretofore, to wit, on the first day of February, nineteen hundred and six, at Newark, in the County of Essex, became and was indebted to the plaintiff in ten thousand dollars for goods sold and delivered by the plaintiff to the defendant at its request; and in the like sum for work done and materials furnished by the plaintiff for the defendant at its request; and in the like sum for money lent by the said plaintiff to the said defendant at its request; and in the like sum for money paid by the plaintiff for the use of the defendant at its request; and in the like sum for money received by the defendant for the use of the plaintiff; and in the like sum for interest for the forbearance by the plaintiff at the defendant's request of money due and owing from the defendant to the plaintiff; and in the like sum for money due from the defendant to the plaintiff on an account stated between them, and being so indebted, the defendant in consideration thereof, then and there promised the plaintiff to pay him the said several sums of money on request; yet the defendant, disregarding its said several promises, has not paid the said several sums of money, nor any of them, nor any part thereof, although often requested so to do, but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiff, ten thousand dollars, and therefore he brings his suit, etc.

RAYMOND, VAN BLARCOM & ANTHONY,
Attorneys for Plaintiff.

THIS AGREEMENT, made this tenth day of January, in the year one thousand nine hundred and one, between the New-York Life Insurance Company, party of the first part, and Albert G. Negley, Jr., of New York, in the County of New York, and State of New York, party of the second part. WITNESSETH, that said parties, in consideration of the

mutual covenants and agreements hereinafter mentioned, hereby mutually covenant and agree each with the other, as follows, to wit:

That said party of the first part doth hereby appoint said party of the second part as Agent of said party of the first part, for the purpose of canvassing for applications for insurance on the lives of individuals, and of performing such other duties in connection therewith as may be required by the officers of said party of the first part, and that this appointment is made on the following terms and conditions:

1st. It is agreed that said party of the second part shall have no authority on behalf of said party of the first part to make, alter or discharge any contract, to waive forfeitures, to extend the time of payment of any premium, or to waive payment in cash, or to receive any money due or to become due to said party of the first part, except on applications obtained by or through him in exchange for conditional receipts to be furnished by said party of the first part, or on policies or renewal receipts (signed by the President, Vice-President or Actuary) sent to him for collection.

2d. It is agreed that said party of the second part shall act exclusively as Agent for said party of the first part, and as such Agent shall devote his entire time, talents and energies to the business of the Agency hereby established, and in the conducting of it shall be governed strictly by the instructions which he may receive from time to time, from said party of the first part. All applications for insurance taken by said party of the second part shall be delivered to said party of the first part, whether the same has been reported on favorably or unfavorably by the medical examiner.

3d. It is agreed that said party of the second part shall keep regular and accurate statements of all transactions for account of said party of the

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first part, and whenever required by said party of the first part, or its authorized Agent, shall transmit to said party of the first part a report in detail, embracing every item of business done by or through him, and of all moneys collected or received by or through him, for said party of the first part.

4th. It is agreed that all books of account, documents, vouchers, and other books or papers connected with the business of said Agency, shall be the property of said party of the first part, whether paid for by said party of the first part or not, and at any and all times shall be open to said party of the first part or its representative, for the purpose of examination, and shall be turned over to said party of the first part or its representative on the order of said party of the first part, or on termination of said Agency. 10

5th. It is agreed that all moneys or securities received or collected by said party of the second part for or on behalf of said party of the first part, shall be securely held by him as a fiduciary trust, and shall be used by him for no personal or other purpose whatever, but shall be by him immediately paid over to said party of the first part, in accordance with its instructions; and it is expressly stipulated and agreed between the parties hereto, that in case said party of the second part shall withhold any funds, policies or receipts belonging to said party of the first part, after such funds, policies or receipts should have been reported upon and transmitted to said party of the first part, or if he shall withhold any funds, policies or receipts after they shall have been demanded from him in writing, by said party of the first part, such dereliction shall work a forfeiture to said party of the first part, unconditionally, of all claims whatsoever, accrued or to accrue under this or any previous agreement to said party of the second part, but nothing herein shall be construed to affect any 20 30 40

claims of said party of the first part on said party of the second part.

6th. It is agreed that the District within which said party of the second part shall have permission to operate, is GREATER NEW YORK.

7th. It is agreed that said party of the second part shall thoroughly and ably canvass said above-named District; that said party of the first part may, at its option, employ other Agents in said District, and that said party of the second part shall have no claim for commissions or other remuneration on the business effected by such other Agent or Agents so employed. 10

8th. It is agreed that if in any case said party of the first part shall deem it proper in consequence of misrepresentations made, or misunderstandings had, at the time of the issue of a policy, to return the premiums thereon and cancel it, said party of the second part shall lose all right to commissions for premiums under said policy, and shall be bound to repay to said party of the first part, on demand, the amount of commissions received on premiums so returned. 20

9th. It is agreed that said party of the second part shall collect and promptly remit to said party of the first part all premiums on policies not issued through his instrumentality, renewal receipts for which may be furnished him from time to time by said party of the first part. 30

10th. It is agreed that the necessary expenses for medical examinations (except as provided in section 17th hereof), and for expressage on documents and other things sent by said party of the first part to said party of the second part, shall be paid by said party of the first part; that said party of the first part shall furnish to said party of the second part such a supply of blanks and circulars as it shall deem reasonable, to enable him to carry 40

on business as said Agent, as aforesaid; and that said party of the first part shall be liable to pay no charge other than as herein stated, or as shall hereafter be allowed by special written permission of said party of the first part.

11th. It is agreed that said party of the first part may offset against any claims for commissions under this agreement, any debt or debts due at any time by said party of the second part to said party of the first part.

12th. It is agreed that said party of the second part shall not enter the service of any life insurance company other than said party of the first part, or place any applications for insurance in any other life insurance company, without the consent in writing of said party of the first part, so long as there is any indebtedness of any nature whatever due to said party of the first part.

13th. It is agreed that the ledger account of said party of the first part shall be competent and conclusive evidence of the state of the accounts between the parties hereto. Said party of the first part agrees to furnish to said party of the second part a copy of said account (not oftener, however, than once a month), upon receipt of written request to that effect from said party of the second part, due allowance to be made for clerical delays.

14th. It is agreed that said party of the second part shall keep deposited with said party of the first part a Bond for the faithful performance of this agreement, and of all duties pertaining to said Agency, satisfactory to said party of the first part.

15th. It is agreed that when premiums on policies of insurance effected with said party of the first part by or through said party of the second part are collected otherwise than by said party of the second part, two per cent. of such premiums shall be deducted from the commission to be al-

lowed herein, for expense of collection; that commissions on premiums on all classes of policies not named in section 20th shall be determined by said party of the first part; that in case any special Agents or other parties acting for said party of the first part shall secure any business conjointly with said party of the second part, the commissions herein provided shall be divided equally between the parties to this agreement, unless specially agreed to the contrary in writing; that when policies that have been issued are changed, and an allowance made on the old policy which is applied to the payment of the new, no commission shall be allowed on the amount thus transferred from the old to the new policy; and that the commissions provided in section 20th shall not apply when the insured is over sixty years of age.

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16th. It is agreed that if said party of the second part shall sell or offer to sell directly or indirectly to any person or persons, policies for insurance to be issued by said party of the first part hereunder, at any reduction from the regular Table Rates as furnished to said party of the second part by said party of the first part, said sale or offer of sale shall work an immediate termination of this agreement and a forfeiture of all rights and interest hereunder to said party of the first part.

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17th. It is agreed that said party of the second part shall pay to said party of the first part the actual cost of medical examination for each policy issued to said party of the second part by said party of the first part in form as applied for, and subsequently returned by said party of the second part for cancellation.

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18th. It is agreed that any rights of said party of the second part under this agreement shall not be sold or assigned by him without the consent of said party of the first part in writing, but that either

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party hereto may terminate this agreement upon thirty days' written notice.

19th. It is expressly understood and agreed between the parties to this agreement, that the same shall be considered STRICTLY CONFIDENTIAL, and that under no circumstances shall said party of the second part mention or exhibit the terms thereof to any person or persons, under penalty of forfeiture of the same and of all benefits thereunder.

20th. It is agreed that said party of the second part shall be allowed, under this agreement, the following compensation only, unless otherwise expressly stipulated in writing, namely: a commission on the original cash premiums for the first year of insurance, and, subject to conditions given in paragraph C of this section, upon the second year's premiums, which shall, during his continuance as said agent of said party of the first part, be obtained, collected, paid to and received by said party of the first part on policies of insurance effected with said party of the first part (written with 15, 20, 25 or 30 Year Accumulation periods), by or through said party of the second part, which commission shall be at and after the following rates:

A. On the original cash premiums for the first year of insurance (on regular Accumulation and on Adjustable Accumulation business) —

A. Ordinary Life	40%
B. Twenty-Payment Life	40%
C. Fifteen-Payment Life	35%
D. Ten-Payment Life	30%
E. Endowments, paid by 20 or more annual premiums	40%
F. Endowments, paid by 15 annual premiums	30%
G. Guaranteed Interest Bonds, more than 10 annual premiums	30%
H. Endowments or Guaranteed In- terest Bonds paid by 10 annual premiums	25%

B. It is agreed that in addition to the foregoing compensation, said party of the first part will allow said party of the second part an additional first-year commission on policies procured on plans of insurance designated for amounts of \$2,000 or over (payable on regular Accumulation business only, and excluding all Adjustable Accumulation policies), as follows:

On policies of \$2,000, the said extra commission to be	5%	10
On policies of \$3,000, the said extra commission to be	10%	
On policies of \$4,000, the said extra commission to be	15%	
On policies of \$5,000, or over, the said extra commission to be	20%	

C. It is agreed that if the total volume of new insurance written and examined during any twelve calendar months of the continuance of this agreement ending on the tenth day of January, upon which policies are issued, delivered, and upon which one full year's premiums are duly paid to and received by said first party in cash in due course, during such twelve months, or within sixty days thereafter (policies upon which less than one full year's premiums are duly paid as above, to count *pro rata*), amounts to \$25,000, or more, said party of the second part shall be entitled to a commission on such premiums of the business so procured during such twelve months period, upon forms of policies designated herein as Classes A, B, C, D, E, F, G and H, with 15, 20, 25 or 30 year Accumulation or Adjustable Accumulation periods, as shall renew for the second year of insurance, subject to all the terms and conditions of this agreement, as follows:

If \$25,000. is secured as above, the commission to be 5% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions. 40

If \$35,000. is secured as above, the commission to be 10% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

If \$45,000. is secured as above, the commission to be 15% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

If \$50,000. is secured as above, the commission to be 20% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above. 10

21st. It is agreed that this agreement shall take effect on the tenth day of January, 1901, if duly signed by said party of the second part, and in facsimile by the President, a Vice-President or the Superintendent of Agencies of said party of the first part, and is further countersigned, on behalf of said party of the first part, by its Contract Registrar at the Home Office of said party of the first part, and by one of its Agency Directors or Managers. 20

IN WITNESS WHEREOF, the parties to this agreement have hereby subscribed the same and affixed their seals the day and year first above written.

NEW-YORK LIFE INSURANCE COMPANY,

By

D. P. KINGSLEY,
3rd Vice-President.

[SEAL.]

(Signed) ALBERT G. NEGLEY, JR.

[SEAL.]

Countersigned by

(Signed) LEE B. DURSTINE,
Supervisor.

(Signed) H. B. HALL,
Contract Registrar.

GENERAL RULES.

IV.—No agent can continue to be a Nylie of the First, Second or Third Degree, who, in addition to devoting his entire time, talents and energies to the Company, does not produce annually, on other lives than his own, at least \$50,000 of insurance (Term and 7-Y. E. insurance excepted) upon which one full year's premium in due course of business is paid.

Term 7-Y. E. insurance shall not count in any way in Nylie. 10

V.—Business written by the collection of a quarterly or semi-annual premium will ultimately be counted, provided sufficient subsequent premiums thereon are collected to cover one year's insurance. Any business which lapses before this has been done will not be considered.

VI.—*Strictly personal business only* will be counted in determining a Nylie record. If a commission, brokerage, or bonus of any kind is paid to any one for services rendered in procuring business, such business is, in so far, *not* personal business, and will be reduced in the proportion that the amount so paid bears to the agent's commission. Thus, if the agent pays out one-third of his commission in this way, the business thus produced will only count for two-thirds of its face value. 20

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Stipulation.

Filed March 20, 1906.

It is hereby consented and stipulated that the time for pleading to the declaration filed herein, be and it is hereby extended to the twenty-first day of March, nineteen hundred and six; and it is further 40

stipulated that attorney of defendant will accept short notice of trial and acknowledge service thereof.

Dated February 28th, 1906.

RAYMOND, VAN BLARCOM & ANTHONY,
Attorneys of Plaintiff.

FRANCIS C. LOWTHORP,
Attorney of Defendant. 10

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New Jersey Supreme Court, as yet
of the twenty-sixth day of February,
nineteen hundred and six.

ALBERT G. NEGLEY, JR.,

vs.

NEW-YORK LIFE INSURANCE COM-
PANY.

**On Contract.
Plea.**

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And the said defendant, by Francis C. Lowthorp,
its attorney, comes and defends the wrong and in-
jury, when, &c., and says that it did not undertake
or promise in manner and form as the said plaintiff
has above thereof complained of it, and of this it
puts itself upon the country, &c.

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FRANCIS C. LOWTHORP,
Defendant's Attorney.

STATE OF NEW JERSEY, }
County of Mercer, } ss.:

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FRANCIS C. LOWTHORP, of full age, being duly
sworn on his oath says that he is the attorney of
the defendant in the above entitled action; that said
defendant is a foreign corporation and absent from
the State of New Jersey, and that he makes this
affidavit because no officer of said corporation with
knowledge of the facts is present to make the same;
that the foregoing plea filed by the defendant in
the said cause is not intended for the purpose of
delay, and that the affiant verily believes that the

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defendant has a just and legal defense to the said action, on the merits of the case.

FRANCIS C. LOWTHORP.

Sworn to and subscribed before me }
this 19th day of March, 1906. }

ELWOOD W. MOORE,
Notary Public of N. J.

Commission expires June 25, 1908.

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Further Pleas.

And for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against it, because it says, that the sixteenth paragraph of the said agreement in writing between the said plaintiff and the defendant, mentioned in the first count of the declaration herein, provides and declares that if the said plaintiff shall sell or offer to sell, directly or indirectly, to any person or persons policies of insurance to be issued by the defendant under said contract, at any reduction from the regular Table Rates as furnished by the defendant to the said plaintiff, such sale or offer of sale shall work an immediate termination of said contract, and a forfeiture of all the rights and interest thereunder of the plaintiff. And the defendant avers that after the making of the said agreement in writing, to wit, on the tenth day of January nineteen hundred and one, the defendant furnished to the plaintiff regular Table Rates of charges or premiums at which policies on lives to be issued by the defendant should be sold or delivered by the plaintiff; and that after-

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wards, to wit, on the fourteenth day of August, nineteen hundred and three, at Newark in the county of Essex aforesaid, the said plaintiff, in breach of the said provision in said agreement in writing contained, offered to sell to one Ferdinand P. Noss and to one Frank W. Noss two certain policies of insurance, each for the sum of three thousand dollars, issued by the defendant on the lives of the said Ferdinand P. Noss and Frank W. Noss, respectively, for a certain sum of money, to wit, for the sum of one hundred dollars, and that said sum of one hundred dollars was less in amount than the sum of money called for by the regular Table Rates of premiums for said policies of insurance theretofore furnished by the defendant to the said plaintiff as aforesaid; and this the defendant is ready to verify.

And for a further plea in this behalf, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against it, because it says, that the sixteenth paragraph of the said agreement in writing between the said plaintiff and the defendant, mentioned in the first count of the declaration herein, provides and declares that if the said plaintiff shall sell or offer to sell, directly or indirectly, to any person or persons policies of insurance to be issued by the defendant under said contract, at any reduction from the regular Table Rates as furnished by the defendant to the said plaintiff, such sale or offer of sale shall work an immediate termination of said contract and a forfeiture of all rights and interest thereunder of the plaintiff. And the defendant avers that after the making of the said agreement in writing, to wit, on the tenth day of January, nineteen hundred and one, the defendant furnished to the plaintiff regular Table Rates of charges or premiums at which policies on lives to be issued by the defendant should be sold or delivered by the plaintiff; and that after-

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wards, to wit, on the twenty-fourth day of September, nineteen hundred and three, the plaintiff sold to one Archibald S. White a certain policy of insurance on the life of the said White for two hundred thousand dollars, issued by the defendant, for a price or sum of money less than the price or premium fixed therefor by the regular Table Rates theretofore furnished by the defendant to the plaintiff, and at a reduction therefrom; and this the defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against it, &c. 10

FRANCIS C. LOWTHORP,
Atty. of Defendant.

Replication to Further Pleas.

And the said plaintiff as to the plea of the said defendant by it secondly above pleaded says that he, the said plaintiff, by reason of anything had and contained in said plea, ought not to be barred from having or maintaining his aforesaid action thereof against it, the said defendant, in this behalf, because he says, that he, the said plaintiff, did not sell or offer to sell, directly or indirectly, to Ferdinand P. Noss and Frank W. Noss, or either of them, policies of insurance for a certain sum of money, to wit, one hundred dollars, or for any other sum less in amount than the sum called for by the regular table rates of premiums as provided by said agreement in violation of the sixteenth paragraph of the said agreement, and this he, the said plaintiff, prays may be inquired of by the country, etc. 20 30

And the said plaintiff as to the plea of the said defendant by it thirdly above pleaded says that he, the said plaintiff, by reason of anything in that plea had and contained, ought not to be barred from having or maintaining his aforesaid action thereof 40

against the said defendant in this behalf, because he says that he, the said plaintiff, did not sell or offer to sell, directly or indirectly, to one Archibald S. White a policy of insurance on the life of the said White at a price or sum of money less than the price or premium fixed therefor by the regular table rates contained in the said agreement, in violation of the sixteenth paragraph thereof, and this, he, the said plaintiff, prays may be inquired of by the country, etc.

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RAYMOND, VAN BLARCOM & ANTHONY,
Attorneys of Plaintiff.

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Newark, in and for the County of Essex on the third Tuesday of September, in the year of our Lord, one thousand nine hundred and six, by whom, etc., and the same day is given to the Parties aforesaid there, etc.

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And now at this day, to wit: Seventh day of November, A. D., nineteen hundred and six, before our said Supreme Court at Trenton comes the said plaintiff by his attorneys aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, at a Circuit Court holden at Newark in and for the County of Essex, before William S. Gummere, Esquire, Chief Justice of the Supreme Court, on the ninth day of October, nineteen hundred and six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant by their respective attorneys within mentioned and the jurors of the jury between the parties aforesaid, in the plea aforesaid, being also summoned, come, who to speak the truth of the matters and things therein contained, being chosen, tried and sworn, say upon their oath that the said defendant did undertake and promise in manner and form as the said plaintiff hath within

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in his said declaration alleged, and they assess the damages of the said plaintiff by reason of the not performing said promises and undertakings over and above his costs and charges by him about his suit in this behalf expended, at the sum of five hundred dollars.

Therefore it is considered that the said plaintiff do recover against the said defendant said damages by the jury in form aforesaid found to the sum of Five Hundred Dollars and also Forty-seven Dollars and eighty-eight cents for costs and charges aforesaid, by the Court now here adjudged to the said plaintiff and with his assent, which said damages, costs and charges in the whole amount to Five Hundred and Forty-seven Dollars and eighty-eight cents. 10

Judgment signed this seventh day of November, in the year of our Lord, nineteen hundred and six.

WM. S. GUMMERE, C. J. 20

Bill of Exceptions.

NEW JERSEY SUPREME COURT.

ALBERT G. NEGLEY, JR., <i>vs.</i> NEW-YORK LIFE INSURANCE COM- PANY.	} 10
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Transcript of shorthand notes of testimony taken in the above stated cause, upon the trial thereof, at the Court House, Newark, N. J., October 8, 1906.

Before Hon. WILLIAM S. GUMMERE,
Chief Justice, and a Jury. 20

RAYMOND, VAN BLARCOM & ANTHONY, for Plaintiff;
FRANCIS C. LOWTHORP, and JOHN K. CLARK, of the
New York Bar, for Defendant.

Mr. Raymond opened for the plaintiff.

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ALBERT G. NEGLEY, JR., sworn for the plaintiff.
Direct examination by Mr. Raymond:

Q. You are the plaintiff in this suit?

A. Yes, sir.

Q. And where do you now live?

A. Plainfield.

Q. How long have you lived there?

A. A little over three years.

Q. What is your business?

A. Insurance. 40

Mr. Raymond. (Producing paper.)—I understand you will admit this is the agreement entered into by the plaintiff with the defendant company?

Mr. Lowthrop.—Yes.

Q. I show you a paper writing purporting to be an agreement between the New-York Life Insurance Co., and Albert G. Negley, Jr.; and ask you if you are the person named in that agreement? 10

A. Yes, sir.

Q. What day was the agreement entered into the day of the date?

A. Yes, sir.

Said paper offered in evidence and marked Exhibit P 1.

Q. Did you enter into another agreement with them later—

Mr. Raymond. (Producing paper.)—Do you admit that this is another agreement between the parties? 20

Mr. Lowthrop.—Yes.

Q. I show you another paper and ask you if you are the person named in this, the Nylie certificate?

A. Yes, sir.

Said paper offered in evidence and marked Exhibit P 2. 30

Mr. Raymond. (Producing book.)—I suppose you admit this is the book of rules that was given out with the Nylie certificate?

Mr. Lowthrop.—Yes.

Q. I show you a book and ask you how you got that?

A. It was given me by the company with my Nylie certificate.

Said book offered in evidence and marked Exhibit P 3. 40

Q. Now, Mr. Negley, I wish you would state when you began work under this contract, if you began work?

A. On the day of its date, the 10th day of January, 1901.

Q. And how long did you continue to work under it?

A. Until I received notice that my contract was terminated, on the 12th day of July, 1904.

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Mr. Raymond. (Producing letter.)—Do you admit that is a letter from your company?

Mr. Lowthrop.—Yes, sir.

Q. I show you this letter purporting to be signed by E. R. Perkins, Second Vice-President, on the heading of the New-York Life Insurance Company, and ask you if that is the letter you refer to?

A. Yes, sir.

Said letter offered in evidence and marked Exhibit P 4 and read.

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Q. Do you know of any reason or cause for the termination of that contract?

A. No, sir.

Q. You did nothing, then, to justify such a letter?

A. No, sir.

Q. Mr. Negley, I wish you would state what business you did under this contract during the first year of its operation?

A. (Referring to papers.)—Accepted and paid for business was \$105,000. That is not the total amount of writing, but that was all that was accepted by the company and paid for.

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Q. By that you mean what? The amount of policies you issued?

A. Yes, the total amount issued.

Q. And what was your income during that year?

A. \$3,128.75.

Q. That is the first year; now, the second year what business did you do?

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A. \$156,000.

Q. That is accepted business?

A. Yes, sir; paid for.

Q. The amount of policies issued at your solicitation, that is?

A. Yes, sir.

Q. And what was your income during that year?

A. \$5,415.88.

Mr. Lowthrop.—This testimony is objected to as irrelevant. 10

The Court.—I will admit it.

Defendant's counsel prays exception to the ruling of the Court, and the same is allowed and signed and sealed accordingly.

Q. The third year what was your income?

A. \$9,986.37.

Q. And the business you did?

A. \$344,250.

Q. That is accepted business?

A. Yes, sir. 20

Q. That is figured up to what date?

A. That is figured up until the 10th day of January, 1904; the third year of my service with the company.

Q. That year you completed, of course?

A. Yes, sir.

Q. And have you the figures on the next year?

A. The next year was not completed.

Q. No, the year was not completed. When did you become what is called a Nylic? 30

A. After I had completed the first year I was made a Nylic, beginning to draw Nylic the third year of my service with the company.

Q. Have you received any income under the Nylic certificate?

A. Yes, sir.

Q. For what years?

A. 1903 and part of 1904, up to the time of that letter, July 12th. 40

Q. That is for the whole of the year 1903?

A. Yes.

Q. And in stating what your income was during that year, did you include the Nylic income?

A. Yes, sir.

Q. That is included in the nine thousand and some dollars?

A. Yes, sir.

Q. Now, Mr. Negley, will you state to the court and jury what this Nylic is; what the system of Nylic is?

A. The Nylic is for every agent who produces \$50,000 or more the first year he is with the company, he begins drawing the third year of his service with the company three dollars per thousand per year for all the business that had renewed the second year. That is, the fourth year with the service he gets \$3 a thousand on the business he did in the second year, and renewed the third year, and so on for the first five years of his service with the company. Then—

Q. During that period, what is he called in the service of the company?

A. Freshman Nylic. Then there is a first degree, second degree and third degree Nylic in which the income is larger.

Q. Will you please state what the income is as first degree and second? What is the next degree after Freshman? First degree?

A. First degree.

Q. What is the income of the first year as Nylic?

Objected to.

The Court.—I don't see that it is material, but I will admit it.

A. The first degree Nylic is \$6 per thousand.

Q. Second degree, what?

Objected to.

The Court.—How is that material?

Mr. Raymond.—As showing what his future profits would be.

Overruled.

Q. Mr. Negley, at the time of the receipt of this letter of July 12, 1904, was any money due you for renewals?

The Court.—Let me interrupt you a moment.

By the Court:

Q. How long do you remain a first degree Nylic, five years? 10

A. Yes, sir.

Q. As a Freshman Nylic, and first degree Nylic, you cover a period of ten years?

A. Yes, sir.

Further Direct:

Q. Now, what would your income have been under that first degree Nylic, based upon the business you did, the probabilities? 20

Objected to.

The Court.—You mean per year, or per month, or what?

Mr. Raymond.—Per year.

The Court.—He may answer it.

Defendant's Counsel prays exception to the ruling of the Court, and the same is allowed and signed and sealed accordingly.

A. Do you want 1904, the balance that was due? 30

Q. The first degree Nylic, that would begin what year, in the natural course?

A. That would begin in 1906.

Q. Well, now, state what—

A. Well, the Nylic in that year would be over \$500.

Mr. Lowthrop.—I don't understand your Honor to allow this question.

The Court.—I did not understand counsel to have objected to it. 40

Mr. Lowthrop.—I object to the question.

The Court.—It is too late; you should object when the question is asked.

Q. That is for the year 1905?

A. Yes, sir. That is based on calculations a little bit lower than what I actually did.

Q. Now, what about the year 1907?

Objected to.

The Court.—I will hear it; you may have an exception.

10

Defendant's counsel prays an exception and the same is allowed, and signed and sealed accordingly.

A. Well, on the basis of \$100,000, on a slight increase, as they show in their statement, I would have been entitled in 1907 to \$696.

Q. 1908.

Objected to.

The Court.—I do not see that that is material, I will exclude that.

20

Exception to plaintiff.

Q. Now, Mr. Negley, based upon your past business, what would your renewal premiums have been for the year 1903, which you would have received in 1904?

Objected to.

Mr. Raymond.—On business done in 1903, he is entitled to renewal commissions in 1904.

The Court.—He did receive what he was entitled to receive up to the middle of July.

30

Mr. Raymond.—Beyond that.

Mr. Lowthrop.—I would like to ask the Court for the admission of Mr. John K. Clark, of the New York Bar, to assist me.

Mr. Clark.—We object to the introduction of evidence as to what his renewals would have been, without showing the basis on which the renewals were figured.

The Court.—You are entitled to have that.

40

Q. You may state the basis.

A. The business I did in 1903, the unpaid renewals is \$1,394.75; that was the business I did in 1903, and part of 1904, which I would have drawn in 1904 and 1905.

Mr. Clark.—Your honor rejected that; that was not responsive to the question.

By the Court:

Q. The question is on what basis do you figure it? 10

A. On the basis of the business I did for them.

Q. What business did you do for them, and what percentage of renewals are you entitled to on the amount of premiums?

A. Well, my policy register will show the business I did.

Q. What was it?

A. The total business in that year was \$344,250.

Q. How much were you entitled to on renewals?

A. Twenty per cent. of the premium. 20

Q. What was the premium of that business you wrote?

A. I haven't got that figured out.

Mr. Clark.—And only in case the premiums were paid, your Honor; I think that ought to be brought out.

Q. What were the amount of premiums that you got the twenty per cent. on?

A. Well, there was in that year, in 1903, considerably over \$10,000 of premiums. 30

Further direct:

Q. What would your renewals have been?

Mr. Lowthrop.—I object to these statements made in this way; there is a method of proving this exactly.

The Court.—I will permit the plaintiff to proceed, he has not the books. 40

Mr. Lowthrop.—He has given us notice to produce.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed, and signed and sealed accordingly.

Q. Now, you have stated the basis upon which your renewal commissions were given, have you?

A. Yes, sir.

10

Q. Now, what would they have been for the year 1903, payable in 1904?

A. \$1,394.75.

Q. Have you received any part of that?

A. No, sir; not of that, that is the balance. I received my renewal commissions up to the time I left the company on the termination of that contract.

Q. That is the balance you have not received?

A. This is the balance.

Q. Was there any premium due and payable to you which was not paid?

20

A. Yes, sir.

Q. The first premium, I mean, the first commission?

A. Yes, sir.

Q. How much?

A. \$21.36.

Q. Now, Mr. Negley, have you received your Nylic for 1904?

A. I received it up to July 12th.

Q. Is there a balance of that Nylic?

30

A. Yes, sir.

Q. How much?

A. \$196.45.

Q. 1905.

A. 1905—

Objected to.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

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A. — \$1,032.75.

Q. 1906.

Objected to.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court, and the same is allowed and signed and sealed accordingly.

A. 1906 would be based on 1904 business; I was deprived of doing business in 1904, but undoubtedly it would have been as much as in 1905. 10

The Court.—No, it might not have been. Some accident might have happened to you the next day, and you might not have done anything for the next six months.

Q. After receiving this letter of July 12th, how long were you out of business? 20

A. I made a contract on the 2d day of August with another company.

Q. What were the terms of that contract as to compensation, what did you receive under it?

Objected to.

Mr. Lowthrop.—Was the contract in writing?

I object to the question.

The Court.—If the contract is in writing it is the best evidence. 30

Q. What did you receive under that contract?

Objected to.

Q. What was your income for that year, beginning August 2d?

Objected to; objection overruled.

A. From the 2d of August, 1904, until September, 1905, I made in commissions in the other company less than \$2,000. 40

Mr. Lowthrop.—That is objected to on the ground that it is not responsive; he does not say what his entire income was.

Q. (*By the Court.*) Was that your entire income for that period?

A. Yes, sir.

Q. (*Further direct.*) That is, in September, 1905?

A. Yes, sir.

Q. Well, from September, 1905, to the present time, what has it been? 10

A. I have not got that, but it would not be any more.

Q. Well, tell us as near as you can.

A. About \$2,000; a little less.

Q. Have you made any efforts to get a similar contract to this with the New-York Life?

A. Yes, sir.

Q. Have you been successful, or not successful? 20

A. Been unsuccessful to get the same kind of contract.

RECESS.

AFTER RECESS.

Cross-examination by Mr. Clark:

Q. You have testified as to the compensation which you made in 1901, '02 and '03; you were with the New-York Life Insurance Company for about six months in 1904? 30

A. Yes, sir.

Q. What was your compensation for that period?

A. I haven't got that figured up.

Q. How much business did you write?

A. Not a great deal in that time.

Q. Well, how much, about eight or ten thousand, or thirty or forty; how much? 40

A. Something around thirty or forty.

Q. Paid for?

Objected to as not cross-examination.

The Court.—He is the plaintiff, and he must make out his case, whatever he is entitled to recover, and counsel on the other side are entitled to know what his earnings were, whether they held up, whether they fell off, or whether they increased.

A. 1904.—I lost my wife in November of 1904; in 1904, up to the time this letter was sent me, I was just beginning to get on my feet to do business; I hadn't done a great deal of business up to that time. 10

Q. You have not yet said how much you wrote?

A. I don't know; it is all in my policy register.

Q. You have it right here?

A. Yes, sir.

Q. You may state from memorandum what you did write during that year, paid for business?

A. It was under \$40,000.

Q. Well, it was under \$30,000, wasn't it? 20

A. I don't remember; it wasn't a great deal of business.

Q. You have a memorandum that will show that, here in Court?

A. Only my policy register.

Q. But that will show it?

A. Yes, sir.

Q. Was it \$30,000?

A. I don't remember.

Q. Was it \$20,000? 30

A. Oh, yes, I guess it was.

Q. Paid for business?

A. I think so, so far as I can remember.

Q. It wasn't over \$30,000?

A. I don't think it was.

Q. And you would have earned about how much at that rate?

A. I don't know; my policy register will show the premiums. 40

Q. Well, approximately?

A. Oh, I should say——

Q. On \$30,000 of business what would you have made?

A. Five or six or seven hundred dollars, somewhere around there.

Q. For half the year?

A. Yes.

Q. Now, you testified this morning as to your Nylie and your renewal commissions; how did you figure those? On what basis did you figure your Nylie, for instance?

A. I figured my Nylie on the business I had done, the unpaid Nylie in 1904.

Q. Yes, but your Nylie would have been based on what?

A. The business I done in 1903, my 1905 Nylie.

Q. It would have been based on the business you did in 1903, just the business you did; would you have got Nylie on all the business you did on 1903? What were the conditions of the Nylie?

A. All the business that renewed according to the rules.

Q. In other words, all the business that would have been in effect at the end of the third year?

A. Yes.

Q. If it had not been in effect at the end of the third year you would not have gotten on what had fallen out?

A. No.

Q. So it was an estimate of what you would have gotten if none of it had lapsed?

A. Yes, sir.

Q. That situation had never existed in Nylie; there was always some lapses?

A. I had a small percentage of lapses.

Q. How about renewals?

A. The same.

Q. Assuming the second year premiums had been paid you would have earned what you state?

A. Yes, sir.

Q. You don't know whether they were or not?

A. I know some of them were.

Q. You know that some were not?

A. No, I don't.

Q. You stated you knew of no cause whatever of this notice of termination. Wasn't anything said to you at the time this contract was terminated as to the reasons, by any person?

A. No, no reason given.

Q. You wrote the case of a man by the name of White, didn't you? You participated in writing it?

A. Yes.

Q. What was the premium in that case? 10

A. Nearly \$8,000, something around \$8,000.

Q. What year was that that White case was written?

A. 1903.

Q. That was part of the business you reckoned in in 1903?

A. Yes.

Q. What was the amount of that policy?

A. \$200,000.

Q. And how was that premium paid to you by Mr. White? 20

A. It was paid part cash and part in three months' note, and part in six months' note.

Q. And those notes were given when?

A. The 31st day of December, 1903.

Q. The application was taken some two months and a half previous?

A. The application had been taken some time before that.

Q. And he gave you those notes? 30

A. Yes, sir.

Q. What was the amount of those notes?

Objected to as asking for the contents of a written instrument.

Q. The premium on the White policy was \$7,830, was it not?

A. Yes, sir.

Q. And in just what way did you collect that premium? 40

A. I got \$632 in cash, and a note for \$2,500 in three months after date——

Q. That would be due March 31st?

A. Yes, sir.

Q. Yes.

A. And the balance in a note, I think was——

Q. How much?

A. Well, the difference between \$2,500 and——

Q. How much was the note?

A. \$4,698.

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Q. When was that due?

A. I think that was due the first day of June.

Q. The first day of June?

A. Yes, I think it was.

Q. That was not the six months?

A. Yes, it was five months.

Objected to as going into the contents of this instrument.

The Court.—What bearing has this?

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Mr. Clark.—The defence in this case is that the plaintiff, in this case, and certain other cases, gave what is known as rebate, in other words, collected less than the full amount of the premiums; and the knowledge of that coming to the company, the contract was terminated, according to its terms, for good cause.

The Court.—How can you raise that defence under the pleadings in this case?

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Mr. Clark.—That is one of the specifications of defences.

The Court.—Where is it?

Mr. Lowthrop.—One of the specifications of defence given under the plea of general issue.

The Court.—The statute provides that where the plaintiff in an action on a written instrument, a contract, alleges generally the performance of all conditions precedent, if the defendant intends to controvert that gen-

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eral allegation he must specify the condition which has been broken.

Mr. Lowthrop.—That is only specified under the notice of defences on the special issue.

The Court.—How can you set that up as a defence unless you plead it under the statute?

Mr. Lowthrop.—My understanding is that in a case of this kind the general issue is the proper plea. Now, if the Court rules against us on that we ask permission to amend the plea by filing specifications. 10

The Court.—I cannot do that now. The statute is quite plain.

Mr. Lowthrop.—If the Court rules we should have pleaded specially——

The Court.—Is there any doubt about the meaning of that statutory provision?

Mr. Lowthrop.—I have great doubt about its being necessary to plead specially here, and have not done so. We ask permission, as it will not be surprise to the plaintiff in this case, in view of the specification of defences, to amend the plea by inserting a special plea covering those points. 20

Mr. Raymond.—We object to that.

The Court.—It is the universal practice of courts to refuse to permit at the trial the interposition of such a plea of non-performance, where it has not been made in the pleadings. You are not asking to amend a defective plea, you are asking to interject into this case another plea. I ought not to permit the interjection now of a special plea, against the protest of the other side, without affording them an opportunity to see it, and demur to it, or reply to it, if they wish to take that course. Nor ought I to stop the proceedings except on the penalty that the plaintiff should be made whole. 30
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Mr. Raymond.—I object to that; I think the case should proceed.

The Court.—If your defence is a meritorious one, as would seem to be the case, and if the plaintiff has had information, given him in advance, of what the real defence which was to be interposed would be, I am inclined to think that I ought to grant the application to file a formal plea. But I will not do that against the protest of the plaintiff, except upon penalty of a continuance, and the costs to be paid by the defendant. If counsel are prepared to go on with the trial, and a plea of that kind to be formally entered upon the record later, that is, before the *postea* is signed, I will do that. If Mr. Raymond prefers to have this case continued by the withdrawal of a juror, in order to permit him to see the plea which you desire to file, and demur to it, or reply to it, as he sees fit, I think that is his right; but if he waives that, and would prefer to have the trial of this case to go on then I will permit a plea raising this defence to be entered upon the record, after being submitted to Mr. Raymond, at any time before the signing of the *postea*. But it is the plaintiff who must be the determinator of that question. He may have this case go off on the payment of costs, in order to enable him to take the first course I suggest, or, if he prefers to go on with the trial, he may do so.

Mr. Raymond.—I would like to know just what the defence is going to be on the general plea.

The Court.—I understand that they propose to prove, as a defence, that the plaintiff violated a rule of the company, and a provision of his contract, by writing insurance, and allowing an illegal rebate, or taking something other than cash in payment

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of premiums in the particular case which has been specified, that of Mr. White.

Mr. Lowthrop.—We have specified two cases.

The Court.—One in the White case, and the other in a similar case.

Mr. Lowthrop.—The Noss case.

Mr. Raymond.—We prefer to go on.

The Court.—You may file a plea formally setting up the breach of that condition, and specifying, of course, in the plea, just what the breach consisted of. The plea must be filed before the postea is handed to me to be signed. 10

Q. You say, then there were two notes given to you in addition to \$632 cash?

A. Yes, sir.

Q. Now, were those notes paid to you in full? 20

A. Yes, sir.

Q. At the time they were due?

A. One of them before it was due, a few days.

Q. In that case were you the sole agent concerned?

A. Yes.

Q. You originally took the application alone?

A. No, sir.

Q. Well, then, you were not the sole agent concerned?

A. I was made so by the company, the supervisor, Mr. Durstine, by the other agent withdrawing before the policy was placed. 30

Q. Yes, but from the first you were on the case with another agent?

A. Yes, sir.

Q. Who was that?

A. A man by the name of Berry.

Q. Now, you also wrote two men by the name of Noss for insurance?

A. Yes, sir. 40

Q. What did they originally apply to you for?

Mr. Raymond.—Is that a written application?

Mr. Clark.—Yes, sir.

Mr. Raymond.—Then the application should be shown to the witness.

Q. Well, you originally had an application from him for \$5,000 insurance?

A. Yes.

Q. You subsequently applied to the company for a \$3,000 policy? 10

A. Yes, sir.

Q. Did you have any written application from him as to that?

A. No, sir.

Q. Well, how was it you came to take out that \$3,000 policy for him?

A. What do you mean by your question?

Q. You had the company write a policy of \$3,000 on the life of Ferdinand P. Noss? 20

A. As an extra policy on the original application.

Q. How did you come to ask for that?

A. To place it, and get my commission.

Q. Yes, but without any request on the part of the insured?

A. It was an extra policy that we——

Q. Without any request on the part of the applicant.

A. We did not get any request for those things, for extras. 30

Q. What did you do with that policy?

A. Delivered it to Noss.

Q. How did you deliver it?

A. In person.

Q. At what time did you make that delivery?

A. Before the 30th of July.

Q. You also had an additional policy in the same way on the life of his brother, Frank W.?

A. Yes, sir.

Q. That was written in the same way? 40

A. Yes, sir.

Q. How was that delivered?

A. The same way.

Q. To whom?

A. To Ferdinand P. Noss, he and his brother were right there together; Ferdinand P. Noss paid the premiums for he and his brother; he was the banker for his brother; he and his brother were in partnership; Ferdinand P. Noss paid the premiums in full.

Q. How did he pay them?

10

A. By note and cash.

Q. Well, in just what proportion?

A. He gave me a note for the larger portion of it, and sent me——

Q. How much?

A. \$382; that was for the total policies.

Q. That was for all four policies?

A. Yes, sir.

Q. What was the amount of the premiums on the first policy which you had issued on the life of Ferdinand P.?

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A. What was that?

Q. What was the premium on the \$5,000 policy?

A. (Referring to paper.) \$149.50.

Q. And what was the premium on the \$3,000 policy?

A. \$89.70.

Q. And what was the premium on the \$5,000 policy of Frank W. Noss?

A. \$132.50.

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Q. And on the other one?

A. \$79.50.

Q. Now, how much cash did he pay?

A. \$69.20.

Q. While you were negotiating as to placing these policies did you have any correspondence with the Nosses?

A. Yes—no; after I had placed them I had the correspondence.

Q. You wrote certain letters, did you, to Ferdinand?

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A. We had correspondence; I don't know whether it was certain letters or not.

Q. (Showing witness letters.) Is that one of the letters you wrote to him? Is that your handwriting?

A. Yes, that is my handwriting.

Said letter offered in evidence.

Objected to.

Marked D-1 for identification.

10 *Witness.*—That letter is not all the contract; there was personal conversation before that, before the policies were placed. 10

Q. (Showing witness paper.) I ask if that is your handwriting?

A. Yes, sir.

Marked D-2 for identification.

Q. Now, you say you took the note of Ferdinand P. Noss?

A. Yes. 20

Q. For how much was it? \$382?

A. Yes, sir.

Q. Was that note paid when it was due?

A. Yes, sir.

Q. How was it paid?

A. Paid through the bank that he done his business.

Q. Well, was there any trouble about getting it paid?

A. None that I know of. 30

Q. Did you expect any trouble about it?

Objected to.

A. No, sir.

Q. (showing witness a paper.) Is that your handwriting?

A. I want to read the letters (letter handed to witness). Yes, that is my handwriting.

Marked D-3 for identification.

Q. Now, who is Mr. Bloomer? 40

A. He was at that time cashier of the Park Row Branch, through which I was doing my business.

Q. Why was it you state in this letter "If I understood your letter correctly I understood the Noss note was paid. I am awful afraid Noss will be angry."

A. Because I had got a letter from Noss stating he might not be able to pay it in full.

Q. I thought you said you had not any idea—

A. Well, not any further than that. Those things happened over three years ago. 10

Q. Why was it you didn't want Mr. Noss—you say here "Don't open my desk in his presence, as he would see his own letter." Why was it you wanted to conceal the fact you had received a letter from him?

A. Well, that has nothing to do with the case at all.

Q. It has a good deal to do with it.

A. Not at all. 20

Q. Do you decline to answer?

Mr. Raymond.—I think the letter speaks for itself.

The Court.—Counsel is entitled to know whether it has anything to do with the case. I can tell better after I have heard.

Q. Well, how about it?

Witness.—Can I offer an explanation to the— 30

The Court.—You can answer the question, sir.

Q. I ask you why you didn't want him to know you had received the letter?

A. Why, I didn't want him to see that I had received a letter, because I had stated there in the letter the reason why.

Q. Whereabouts? All that you say about the Noss case here is "If I understand your note correctly the Noss note has been paid. I am awful afraid Noss will be angry. If he asks anything 40

about it say I have been away from the office since March 20th, because my wife was very sick; say I have received no letter from him." Why didn't you want him to see it?

A. Because his letter was there.

Q. You wanted the cashier to lie about it?

A. I didn't want the cashier to lie about it; I didn't want him to see the letter.

Q. You wanted to give the impression you had not received the letter?

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A. That was my private business.

Q. Why was it you were so anxious that Noss should not know you had his letter?

A. Because his note had been paid, and he didn't want to pay it in full at that time.

Q. What did he want to do with it?

A. He wanted to extend a part of it.

Q. Was this \$382 note given to you originally? Was that the first transaction you had about the note with Noss?

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A. No, sir.

Q. What was the original transaction?

A. The first policy which was \$282.

Q. The first two policies?

A. Yes, sir.

Q. That is \$149.50, and \$132.50?

A. Yes, sir.

Q. \$282, and he gave you a note for \$282?

A. Yes, sir.

Q. Subsequently he gave you a note for \$382?

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A. Yes, sir.

Q. And you at the same time delivered these policies for \$168.50?

A. The policies had been delivered to him before and I had not got any settlement for them; the policies were delivered to him and he told me he would pay them, and I paid the net premium, which was perfectly customary. There was a conversation—Mr. Noss told me to pay this, and he would pay me, which he did.

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Q. How is it, if you had already delivered these

policies to Noss, as you say you had, that you subsequently, and under date of November 20th, say in this letter "As I paid those additional policies for \$3,000 on your life——"

A. Those were the two additional——

Q. That were enclosed in this letter?

A. He had sent them back to me and said he wanted them transferred to somebody else, and I have returned them to him and told him they were paid for; that means the net premium had been paid to the company by me. 10

Q. You had settled with the company?

A. Yes, sir.

Q. Although you had gotten nothing from him?

A. I had got his note, and at that time the note was paid, including interest.

Q. If this had been paid in full, notes and interests, why were you apparently piqued with him (reading letter)? Why, if the premiums had been paid in full, and you held the policies? 20

A. He had them sent back by mail, and told me he had had a bad season in his business, and wanted me to transfer those to someone else, which I told him——

Q. Although he had paid for them in full?

A. Yes, sir.

Q. He wanted to give them away to somebody?

A. No, he didn't want to give them away, he wanted me to refund the money, and put the insurance on somebody else. He meant by that he wanted me to let somebody else have the same amount. 30

Q. In other words, have the policies canceled?

A. Have the policies canceled, and return him the amount he had paid for those policies, which could not be done.

Q. In this letter of August 14th you write to him and state "Now, it is impossible for me to transfer this six thousand to anybody else; besides you and Frank need the protection of your dear, beloved sister" * * * "Now this will only cost you \$100." 40

A. That meant at the present time it would cost him \$100.

Q. In other words, he had paid something on the policies already?

A. He had given me his word that he would pay for it, and he did pay it afterwards.

Q. But you say "this will only cost you \$100"?

A. I meant at the present time.

Q. You didn't say anything about that?

A. Well, that was the meaning, he understood it. 10

Q. You wanted him to understand he could get it for \$100.

A. No, sir. The reason he didn't give me the note in full for this total premium was that he wanted to hold out \$69, claiming that he didn't want any more than this \$392 to go through his bank; that he was a little short of funds; and he would pay me during the year, which he did.

Q. "Now, this will cost you only \$100, and if you feel so cussed poor next year I will pay it for you"? 20

A. Yes, sir.

Q. Pay what?

A. Loan him the money to pay the premium.

Q. The \$100?

A. No, sir; the total premium. I would pay it for him and take his note, I meant by that, which is customary and done by a great many men; done by your own men time and time again.

Q. Now, when these policies were delivered to you, to place, if possible, were they delivered unconditionally? 30

A. They were.

Q. You were not requested to have an application for the additional insurance signed?

A. No, sir.

Q. Wasn't that customary?

A. It was.

Q. Wasn't it a regular requirement? A. It was waived by Mr. Perkins. 40

Q. Wasn't that a rule of the company that additional policies of this kind could not be placed with-

out an application signed by the assured, and without a certificate of good health——

Mr. Raymond.—You have not pleaded such a rule. I object; no such rule appears in the pleadings.

The Court.—He may answer the question; I think that is competent.

A. It was with the exception of where it was ruled otherwise by one of the officers. 10

Q. Where does any such exception to that rule appear?

A. The exception?

Q. Yes. You say it was the rule of the company except when it was ruled otherwise by somebody; what was the rule of the company?

A. That was the rule of the company.

Q. Without any exception?

A. I answered the question before.

Q. Didn't you try to get Noss to sign these applications? 20

A. I think afterwards I did; I am not certain.

Q. And he wouldn't do it?

A. Well, at that time he——

Q. Did he ever do it?

A. Not that I know of.

Q. You are pretty sure he didn't; he never did it through you?

A. No.

Q. Now, you are aware of the fact that your contract, and the rules of the company, and the laws of the State of New York forbid the giving of any rebate? 30

A. Yes, sir.

Q. Selling insurance at less than book rate?

A. Yes, sir.

Q. Now, you have put into evidence the rules of Nylic and the certificate that you were a member of Nylic; how did you acquire that membership in Nylic? 40

A. By writing the business.

Q. Well, it didn't come simply from writing business, did it?

A. Writing the business and paying for it.

Q. Well, you have to make application for membership, don't you?

A. I don't remember whether I did or not; I complied with all the forms there were.

Q. (Showing witness paper.) You signed that application there?

A. Yes, that was sent to me by the company, and I signed it and returned it. 10

Q. And you didn't get your certificate that you were a member until after that?

A. That is right, naturally.

Said letter marked D-4 for identification.

Q. Now, in this Archibald S. White case this man Berry originally took the application, didn't he?

A. No, sir.

Q. Well, who was the man who originally knew White between you? 20

A. He had heard of him; he didn't know him.

Q. Well, who had been conducting the negotiations?

A. Together we did it.

Q. Well, in the first instance?

A. We went together, I tell you.

Q. That is not my question; who first put you on the track?

A. He said he knew of a man, he had heard of. 30

Q. He said he knew of a man?

A. He heard of him.

Q. That is, he started the thing off?

A. Yes, sir.

Q. That is, Berry?

A. Yes, sir.

Q. So Berry was the original instigator of taking the insurance, or endeavoring to get the insurance on the life of White?

A. Somebody had told him about it; he didn't know him at all. 40

Q. You said you took the application of Mr. White along in September?

A. I don't remember the date; somewhere in the fall.

Q. Well, when did you deliver that policy?

A. The 31st day of December.

Q. And what notes did you say you took at that time?

Mr. Raymond.—We have gone all over that. 10

Q. Were the two notes which you took at that time the only notes that you received from it?

A. No, sir.

Q. Well, what other notes did you receive from him?

A. Well, he renewed one note.

Q. Which note was that?

A. The \$4,698. 20

Q. He renewed that when?

A. I think it was the first of June, when it was due.

Q. He didn't pay it when it was due then?

A. No, sir.

Q. How did he renew it?

A. Divided in two.

Q. Divided it in two notes?

A. Yes, sir.

Q. What were those two notes? 30

A. I don't remember the amount correctly; I haven't got my notebook with me.

Q. What do they amount to?

A. \$4,698.

Q. Those two notes that you speak of as having been given on the 31st day of December, were the only two notes that you received from him at that time?

A. Yes, sir, they were.

Q. You received no other one at that time? 40

A. No, sir.

Q. Were those notes of White's—did you keep them in your possession all the time?

A. No, sir.

Q. What happened to them?

A. I turned them over—the last two notes I turned over to the cashier for correction.

Q. Who was the cashier?

A. Mr. Kederick.

Q. If the White case originally stood on the application as it was put in, how would the commission on that case have been divided? 10

A. If it had been placed as the application went in, it would have been divided half and half between Berry and myself; but, as a matter of fact, before it was placed, Berry surrendered all his right to the policy.

Q. Why did he do that?

A. At the request of Mr. Durstine.

Q. He had no other consideration whatever?

A. None that I know of. 20

Q. You didn't offer to compensate him in any way?

A. No, sir; except that I told him I would get him some business in the following year.

Q. Oh, "except"; in other words, you did?

A. Except?

Q. In other words you gave him a consideration; you agreed, in other words, what did you agree?

A. I agreed to get him some business.

Q. How much? 30

A. \$100,000, if I could.

Q. Just one-half the amount?

A. Yes; and then after he got it the company would not allow me credit for the full amount, after I had paid the premiums.

Q. What is that?

A. The agreement was between Mr. Durstine and myself, that if I would pay for this White policy, in order to get it into 1903 business, and bring the amount up to the allotted— 40

Mr. Raymond.—That is not a responsive answer.

The Court.—That is not responsive to the question.

Q. Did you, in order to get this agreement, this release by Berry, tell him that unless you had the release you would not carry on the case at all?

A. No, sir.

Q. You never did?

A. No, sir.

Q. You never showed Berry the note you got in that case?

A. I don't think so.

Q. You don't remember?

A. I don't remember showing them to anyone.

Q. Did you tell him the settlement which you had made in the case?

A. I told him I had got a little cash and the rest in notes.

Q. Did you tell him the same story about the notes that you have told here—that they were figured this way?

A. No.

Q. At the time that this second note you told of, of White's, came due, who was the cashier of the branch office through which you were doing your business?

A. I think Mr. Kederick was; I am not certain; I think he was.

Q. And did you have any agreement with Mr. White whatever about the second premium on his policy?

A. No, sir.

Q. Did you ever tell anybody you had such an agreement?

A. No, sir.

Q. When this larger note of White's came due did you discuss the matter at all with Mr. Kederick?

A. No, sir.

Q. Never did?

A. No, sir.

Q. You never took it up at all?

A. No, sir.

Q. You were handed the notification which has been produced in evidence, dated the 12th day of July, down at the branch office, weren't you?

A. Yes, sir.

Q. (*By the Court.*) That same day?

A. No, sir; I think it was the next day.

10

Q. (*Further cross.*) You at once accepted the termination and went out and endeavored to get a contract with somebody else?

A. No, sir.

Q. You didn't go out and endeavor—

A. I didn't go out until I was ordered out, about a week or ten days after.

Q. In other words, you were told to get out?

A. Yes, sir.

Q. You were told your contract had terminated and you had no right to be in there?

20

A. Yes, sir.

Q. And then you got out?

A. Yes, sir.

Q. You signed a contract with the Mutual on the 2nd day of August?

A. Yes, sir.

Q. Had you done any business with them before that?

A. No, sir. Oh, in previous years, yes.

30

Q. When?

A. In 1897, 1898.

Q. I mean any since the New-York Life had taken effect?

A. Yes.

Q. After the beginning of the New-York Life contract?

A. Yes, sir.

Q. You did business with the Mutual?

A. The rejected cases, cases that were rejected by the New-York Life, I took them to the Mutual.

40

Q. How were you allowed to do such business?

A. We were told to do it, and it was the custom of the agents of the New-York Life, if they did not get it through, to take it to the Mutual; we were told to by our manager.

Q. What does your contract say about that?

The Court.—What difference does that make, sir?

Mr. Clark.—The contract provides—

The Court.—But you are not specifying that as a defense.

Q. Now, isn't it a fact that when this White note, when the larger note came due, that you went to Mr. Kederick and said that you were in quite a hole, because you had agreed to pay this man's second premium, and had taken notes for one hundred and ten per cent. of the first year premium, and you had agreed to give him some evidence from the company that the second year premium was provided for, and you didn't know how to get out of it?

A. No, sir.

Q. You never had any such conversation?

A. No, sir.

Q. When you were endeavoring to get Berry to release his interest in the White case, didn't you tell him that you had made an agreement by which you would give him a ninety per cent. rebate on the second year premium, and that—

A. No, sir.

Q. You never did?

A. No, sir. Give him ninety per cent. when I was getting sixty?

Q. Oh, you were getting part of the second year?

A. Yes, getting twenty on the second year.

Q. Yes, and how much bonus?

A. Your books will show the bonus.

Q. You say you never showed Berry figures to show that you had one hundred and ten per cent. represented by note and cash from White?

A. No, sir.

Re-direct examination:

Q. Did you give any rebate to the Nosses?

A. None whatever.

Q. Did you give any rebate to White?

A. Nothing.

Q. Now, in reference to these applications, these policies that were issued without applications, did you have any conversation with any officer of the company about that previous to issuing them? 10

A. Yes, sir.

Q. Who did you have it with?

A. Mr. L. B. Durstine.

Q. What was the conversation?

The Court.—Who was he?

Witness.—He was one of the supervisors in New York City at that time, and manager of the Park Row Branch, and the man that I made my 20

Q. The man to whom you were accountable? 20

The Court.—You will have to show something more than that, in order to stand on the claim that the supervisor, or manager, had any power to alter the rules of the company itself.

Mr. Raymond.—Well, I have the contract, here.

The Court.—Of course, I don't know what the rules are. I gather, from what has been said, that this company has rules that are formulated and formally enacted by the company itself. Now, those rules cannot be altered, except by the authority of the company; that is, either by the company itself, or by some duly authorized agent of the company. 30

PLAINTIFF RESTS.

40

Mr. Lowthrop.—In this case we move for a non-suit on the ground that the contract upon which the suit is brought, and which is in evidence, shows that, among other things, it is provided by paragraph 16 as follows:

“It is agreed that if said party of the second part shall sell or offer to sell, directly or indirectly to any person or persons, policies for insurance to be issued by said party of the first part, herein, at any reduction of the regular table rates * * * such sale or offer of sale shall work immediate termination of this agreement, and forfeiture of all rights and interest hereunder to said party of the second part.” The proof appears to consist, by the plaintiff’s own showing, that in the Noss case there was an offer made to sell a policy at less than the regular table rates, the plaintiff being the sole witness.

The Court.—What is the proof?

Mr. Lowthrop.—The proof would appear to be by the plaintiff himself, and by his admission of the letter—

The Court.—The letters have not been offered in evidence; you cannot refer to them.

Mr. Lowthrop.—He has testified he made this offer of \$100, as I understand it, on these two policies to the Noss Brothers, and also that he sent them the policies, which were valueless to him, he having paid the premium himself thereon. It seems to me that the evidence of the plaintiff himself, without reference to the letters, is sufficient to warrant the Court in granting a non-suit for having committed an act in violation of the contract, which, *ipso facto*, terminated the contract.

The Court.—I overrule the motion.

Defendant’s counsel prays exception to the ruling of the Court and the same is allowed, and signed and sealed accordingly.

Mr. Lowthrop opened for defendant.

FRED M. JOHNSON, sworn in behalf of defendant.

Direct examination by Mr. Clark:

Q. What is your business?

A. Life insurance.

Q. How long have you been in the life insurance business?

A. About twelve years. 10

Q. With whom are you connected in the life insurance business?

A. The New-York Life Insurance Company.

Q. Been with them all that time?

A. I have.

Q. What is your present position?

A. Premium cashier.

Q. Where?

A. At the home office, 346 Broadway, New York. 20

Q. And in that connection what are your duties?

A. The handling of the premiums that are received by the company for renewal premiums, and other work in connection with that.

Q. You are the person to whom anyone coming in with a complaint would naturally come?

Objected to as leading. Objection sustained.

Q. In case anyone came into the home office with some cause of complaint, to whom would he probably be referred? 30

A. To me.

Q. In your capacity as premium cashier, did these letters which have been marked as exhibits 2 and 1 for the defendant, come into your hands?

A. They would; yes, sir.

Q. Well, did these particular papers, Exhibits 1 and 2 come into your hands?

A. Yes, sir.

Q. How did they come to you? 40

A. Came into my department, and being referred to me for attention, action taken on them.

Q. What did you do with them when they came to you?

A. I referred them to the recorder.

Q. Who is the recorder?

A. Ford.

Q. I mean his duties?

A. General supervision of agents and their accounts?

Q. In the course of your business as premium cashier did this letter come to you (showing witness a paper)?

A. It did.

Q. What did you do when——

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

Mr. Raymond.—It is immaterial.

Said paper marked D-5 for identification.

Mr. Clark.—I offer the letter in evidence.

Mr. Raymond.—I object. It is written by a man named Noss to the company; it cannot be binding upon the plaintiff.

The Court.—If you want to prove anything against the plaintiff relevant to this case, you will have to call Mr. Noss; I understand this is a letter which Noss wrote to the company.

Mr. Clark.—These letters are from Negley. The notes are in the company's possession.

The Court.—If they are in the company's possession, that is enough. If it is material to show how these letters, which you say were written by Mr. Negley to Mr. Noss, reached the company, the only way to prove that is to call the person who was the recipient of Mr. Noss's letter?

Mr. Clark.—That is all.

No cross-examination.

GEORGE A. KEDERICK, sworn in behalf of defendant:

Direct examination by Mr. Clark:

Q. What is your business?

A. Cashier of the Park Row Branch of the New-York Life Insurance Company.

Q. How long have you held that position?

A. For the last two years and a half.

Q. You were cashier at the time the contract with Negley was terminated?

A. I was. 10

Q. You are acquainted with Negley, the plaintiff in this action?

A. I am.

Q. You were familiar with the case of Archibald S. White, in which Mr. Negley acted as agent?

A. I was.

Q. How was the case of White first called to your attention?

A. Mr. Negley personally called it to my attention.

Q. In what way? 20

A. He called me into his private office and told me he was in rather a tight fix, and wanted to know whether I could possibly suggest a way out of it. He said that he had helped to write the policy; that he had sole charge of the settlement of the policy; and that he had promised the insured ninety per cent. rebate, obtaining from the insured part cash and notes covering one hundred and ten per cent. of one annual premium, he giving the insured to understand that the policy was paid for two full years. 30

Q. What did he tell you about the case; how did he come to consult you?

A. Well, he told me that the time was drawing nigh when he had to show to the applicant a letter showing the premium had been paid for two years; the notes were falling due, one note was about to fall due, which would show the entire transaction; if that did come to light the officers of the company, and White also, would have found out he had given this rebate. 40

Q. Well, what arrangement did he tell you that he had made with White?

A. He had secured notes for one hundred and ten per cent. of an annual premium; in other words, allowed him rebate of ninety per cent., which would have paid the policy for two years.

Q. Entirely in notes?

A. Part cash and part notes.

Q. What else did he say when he was telling you this? 10

A. He told me he had given Mr. White a letter written over his own signature, testifying that the premium for the second year had been paid; that he had promised Mr. White to secure from the company a letter, over the signature of one of the officers, to the effect that the premium had been paid for two years; that he had this note for five thousand four hundred and some odd dollars, I can give you the exact amount, in fact, he showed me the note; for \$5,481. That, together with the \$2,500 note, which was paid on March 31st, and the \$632 paid in cash— 20

Mr. Raymond.—What is he reading from? I object.

The Court.—Where did you get these figures?

Witness.—Figures from the office book, which I jotted down just to familiarize myself with.

Q. Are these the amounts which Mr. Negley mentioned to you? 30

A. Yes, sir; the note for \$2,500, that is connected with our office, and the other note for \$5,481 he personally showed me.

Q. Well, what was the rest of the conversation?

A. He said that the payment of the note for \$5,481—or at least that the due date drawing night, it would show that he had given this rebate; and in order to get himself out of difficulty he asked that I suggest some method. I told him he was treading on rather thin ice; and he then said, "Well," 40

he says, "I am going down to him with the idea that I will get an official letter from the company; I am going to ask him to change the note from one note into three notes; the two notes will represent that part of the premium together with the amount previously paid, to make one annual premium, and the other note for \$783, which would show ten per cent. payment of the second year's premium I will destroy, thereby destroying all evidence of the fact that I had given rebate." He then went down to see Mr. White, and returned several days— 10

Q. Well, that was all the conversation you had with him at that time?

A. Yes.

Q. What were the commissions that he would have been entitled to if the policy had been paid for two annual premiums?

A. The total commissions?

Q. Yes.

A. The first year commission at sixty per cent. and renewal commission at twenty per cent. 20

Q. And would the business have been worth anything else to him? That is, would he have received anything else as the result of having secured that business?

A. Yes, sir; he would have received some cash bonus, which he did receive.

Q. How much?

A. In the neighborhood of \$1,450.

Q. And how much was the ten per cent. of this premium? 30

A. \$783.

Q. Well, would the commission for the first year and the commission for the second year, and the bonus, have exceeded ninety per cent. of the annual premium? In other words, he was going to allow the insured ninety per cent., was he not?

A. Yes.

Q. And when he was on the stand just now he scoffed at the idea that he could have afforded to allow ninety per cent.? 40

A. He could have afforded it with the bonus, commissions, and twenty per cent. renewal.

Q. How much would it have amounted to? More or less than ninety per cent.?

A. Possibly more.

The Court.—Can't you tell certainly?

Q. The premium, as already shown, is \$7,830; ten per cent. would be \$783?

A. Yes. 10

Q. And the other compensation to which he would have been entitled on the first contract was eighty per cent., was it not? That is to say, sixty on the first annual——

A. Yes.

Mr. Raymond.—Are you testifying, or is he?

The Court.—Let me ask you a question.

Q. (*By the Court.*) Would this cash bonus that you speak of amount to more than ten per cent. of the premium for one year? 20

A. Yes, sir.

The Court.—That seems to be what you want to know.

Q. (*Further direct.*) In other words, he could have allowed ninety per cent. rebate, and made money?

A. He could have. 30

Q. Now, subsequently did you have any conversation with him about this transaction?

A. Yes.

Q. At what time?

A. Possibly around the latter part of June.

Q. Well, what was the conversation then?

A. He then told me that he had seen Mr. White, secured the three notes, two of which notes he turned over to me, and said, "That completes the one hundred per cent. premium, and that clears my skirts absolutely; shows that I have received one hundred 40

per cent. of the premium, and the other ten per cent. which would have paid the second year's premium I have destroyed. Now, we will have to fix up White when they send the notice for the second year's premium."

Q. What did he propose to do to White to fix up that second year; what did he say with regard to that?

Objected to as leading.

The Court.—He may answer it; if he said anything, what was said? 10

Witness.—What was the question?

Q. (Question read.)

A. He told me that time that White, and, in fact, no other person, had any evidence of the fact that he had manipulated the deal to the disadvantage of White.

Q. Can you tell me in any way just when this conversation took place, and when these notes were handed to you? 20

A. Yes.

Q. In what way can you tell?

A. I can tell from the official record of the company which I have here.

Q. It appears in there?

A. Appears in there, yes.

Q. Kindly look in there and tell us just when the conversation was had?

A. (Referring to book.) Mr. Negley handed me the notes on July 11. 30

Q. What did you do when those notes were placed in your possession?

A. I immediately sent notice to the home office and called their attention to the transaction; the irregularity of the transaction.

Q. To whom did you send it?

A. To Recorder Ford; Recorder Ford's duties are to have general supervision of the agents and agencies. 40

Q. Who are his immediate superiors?

A. Mr. Perkins, the second Vice-President; his particular sphere is general supervision of the agency department.

Q. Who has power to make and terminate contracts?

A. Mr. Perkins, the second Vice-President.

Q. And this was the day before the notice of termination was sent?

A. Yes, sir.

Q. Now, Mr. Negley has testified that this notification of the termination of his contract was handed 10
to him at the branch office, of which you are cashier?

A. Yes, sir.

Q. Did you know anything about that?

A. Yes, sir.

Q. What did you know?

A. I was present when the letter of termination was handed to him.

Q. What took place at that time?

A. He was handed the letter of termination, and 20
he said it wasn't at all right, that he had done nothing particularly wrong, but what other agents were practicing and doing, and he thought his case ought to be reopened, but we told him we were sorry, but his case could not be reopened.

Q. Was anything said as to the cause of his termination?

A. Yes; we mentioned the White case, that the White case was the cause of the termination.

Q. Now, Mr. Negley has testified as to his writing 30
business the various years, and, although he had not the figures with him, he said that the paid for business in 1904, before the termination of his contract, amounted to something less than \$30,000. Are you able to tell exactly what was the amount of paid for business which Mr. Negley procured for the New-York Life Insurance Company for the year 1904?

A. \$9,000.

Mr. Raymond.—You were asked whether 40

you were able to tell; I think you ought to answer that question first.

Q. Well, are you able to?

A. Yes, sir.

Q. How can you tell?

A. I figure it from the official records.

Q. How was Mr. Negley's business transacted?

Mr. Raymond.—Objected to until he shows 10
where he got the information.

The Court.—Proceed. Have you got the
books here to show it?

Q. How was the business of Mr. Negley done?
When he procured an application for insurance what
happened to it?

A. He turned it into our office, and we in turn
forwarded it to the main office for final action.

Q. It came under your control? 20

A. It came under my control.

Q. What happened to the application after that?

A. It was sent to the home office, the home office
acted upon it, and of course, sent us their decision.

Q. Sent to whom?

A. Returned to us their decision.

Q. Who would receive that?

A. I would receive it.

Q. So if Negley made an application and the
policy was issued, you were bound to know it? 30

A. Yes, sir.

Q. And you recorded it—did you keep any record
of those facts?

A. Yes, sir.

Q. Where was it kept?

A. In the official registers of the Park Row
Branch.

Q. Which you kept yourself?

A. Which I personally kept.

Q. From those records so kept by you can you 40
tell exactly the amount of paid for business which

Mr. Negley wrote between the first of January, 1904, and the 12th of July, 1904?

A. I can.

Q. What was it?

A. I figure it \$9,000 paid for business.

Q. And can you tell what his commissions were on that \$9,000 paid for business?

A. No, I can't tell.

Q. Well, what was the rate of commission under Mr. Negley's contract?

A. Technically termed sixty per cent. graded; according to the size of the policy.

Q. What was the rate of commission on these various policies aggregating \$9,000?

Mr. Raymond.—That is objected to; that is covered by the written agreement between the parties.

Mr. Clark.—I am asking what it actually was on each of the policies making up the \$9,000?

A. Graded according to the amount; average about fifty per cent.

Q. Can you tell it from——

A. I can't tell it from this book.

Q. What can you tell it from?

A. From my register.

Q. Can you tell the amount of premium?

A. No.

Q. The highest rate was sixty per cent., wasn't it?

A. Highest rate sixty per cent.

Q. And the average premium, about?

A. About \$30.

Q. So that on \$9,000 of paid for business——

A. The commission would be about \$135.

Q. Not anything like a thousand dollars, as he testified this morning?

A. Not anything like a thousand dollars.

Q. In case an agent's contract is terminated, either on thirty days' notice, or for cause, what hap-

pened to the compensation which he would otherwise have been entitled to?

A. Any that might accrue under the contract would be credited to his account.

Q. After the termination?

A. He is entitled to commission within the thirty days' clause; any that might accrue within the thirty days.

Q. If his contract is terminated for cause?

A. Renewals and all compensation terminated? 10

Q. Now, as to Nylie—

Mr. Raymond.—That is not in the agreement, that all compensation terminated. I ask that that be stricken out.

The Court.—It is not material.

Q. Now, under the Nylie agreement under which Mr. Negley was receiving benefits, how would the amount which he would be paid annually be derived? 20

A. From the business which was renewed, and which was written two years previous.

Q. And which was still in force at the beginning of that year?

A. Still in force at the beginning of that year.

Q. Can you tell from the figures which you have what were the—which of the policies written by Mr. Negley during the last year of his contract, last complete year of his contract, failed to renew?

A. Except I could eliminate \$200,000 of the amount in the White case, which lapsed. 30

Q. Well, can you tell from the records which you have there, the amount of the other policies written by him during 1903?

A. I could, yes.

Q. Well, will you take that up?

A. It will take me about fifteen or twenty minutes to do it.

The Court.—We can't wait for that. 40

Q. Well, you can tell by running over your policy

register the various policies which he wrote during 1903, and what happened to them?

A. Yes.

The Court.—He said it would take ten or fifteen minutes to do it; we can't wait ten or fifteen minutes for him to go over his books.

Mr. Clark.—I merely wish to take up the various policies he wrote in 1903, and tell which of those were not renewed in 1904. 10

Q. Will you tell us from your register which you have there, which policies which were written by Negley during 1903, lapsed during 1904? Just give us the numbers of the policies issued, and the names.

Mr. Raymond.—I want to know what record this is?

Q. Is this the record to which you have referred?

A. Those are the Company's official records. 20

Q. Well, is this the record which is under your control as cashier of the company?

A. They are.

Q. And the renewals which were made in 1904 were entered there by you and the lapses entered by you?

A. Yes, sir.

Mr. Raymond.—Entered from what source?

The Court.—Entered by you? 30

Witness.—Entered by me, yes.

Mr. Raymond.—From what information did he enter them? Where did he get his information from?

Witness.—From the official information of the home office.

Mr. Raymond.—That is mere hearsay.

Witness.—Checked by Mr. Negley. 40

The Court.—Proceed.

Q. Give us the numbers, names and amount of premiums?

A. You want those which were simply renewed, or those which lapsed?

Q. Those which were written in 1903, which lapsed in 1904, and those which did not; give us each. Well, take the ones that were paid for which did not lapse.

A. Here is one renewed, No. 3402889; Peters; \$2,000 policy; renewal commission, \$9.02.

10

The Court.—How many of these policies are there? We cannot spend two minutes for each of these policies if there is any large number.

Mr. Clark.—According to our records there are seven which were renewed.

Witness.—You are referring to 1904 business?

Q. 1903, which was renewed in 1904.

A. That is one which was renewed. Policy No. 2152161; Browner; \$10,000; renewal commission \$146.64. No. 2158341; West; \$10,000; \$38.87. No. 2159207; West; \$5,000 policy, \$19.44. No. 3449358; Negley; \$10,000 policy, \$56.23. I believe that completes the list.

20

Q. So that the only policies on which he was entitled to renewal commission in case he had stayed in the employ of the company would have been those five policies?

A. No, he has already been credited with those renewal commissions.

30

Q. I mean those were the ones which were renewed for the year of all that he wrote in 1903?

A. 1903, which were renewed in 1904.

Q. Those were the only ones which were renewed in 1904?

A. Yes, sir.

Q. And of those he has been credited with the entire amount?

A. He has been credited with the entire amount.

40

Q. So, for the balance of the year, after his con-

tract was terminated, how much would he have been entitled to for renewal commissions?

A. At most about \$120, \$125.

Q. You say he had been credited with these?

A. Had been credited with these renewal commissions.

Q. And there were also \$120 more?

A. Possibly; I haven't got all the records here; possibly about that much more.

Q. But not more than that? 10

A. I don't think any more than that.

Q. What policies that were written by him during 1903, renewed by paying their renewal commissions, paying the second year premiums, during the thirty days after the termination of the contract?

A. I believe there were two cases.

Q. What did they amount to?

A. I couldn't tell you the amount.

Q. Can you tell which cases they were?

A. Not from the records here. 20

Q. The amount of business that Mr. Negley did for Nylic; what was the amount of Mr. Negley's Nylic in 1904?

A. \$30.75 a month allowed him for six months.

Q. And up to what date was that paid?

A. Paid up to the time of the termination of his contract, July 12th.

Q. And if he had remained in the company's services for thirty days longer how much would he have been entitled to? 30

A. A proportionate amount per month between July 12th and July 31st.

Q. I mean a month from July 12th.

A. \$30.75.

Cross-examination by Mr. Raymond:

Q. Mr. Kederick, what about the A. Bender policy, \$5,000, 1903, wasn't that renewed? No. 3,667,385?

A. What month was it written in? 40

Q. Issued on January 12, 1903?

A. Bender policy?

Q. Yes.

A. He didn't write that case in 1903. The date of the issuance of a policy does not mean the date of the writing of the application.

Q. When did he write it, do you know?

A. No, I haven't got the book here.

Q. What about S. T. Hart, \$10,000, issued January 20, 1903? Never mind that; we will admit that lapsed. What about E. O. Scrap, issued May 1, 1903? 10

A. According to my records the policy is lapsed.

Q. When?

A. That I can't tell you.

Q. The first year?

A. Possibly, the second year premium.

Q. Was not paid, eh? What about E. W. Daton, issued on the 5th day of May, \$25,000, No. 3423196?

A. Policy lapsed.

Q. J. D. Thackeray, issued the 8th of June, 1903, two policies, \$1,000 each? 20

A. I have no record of its payment.

Q. No record of its lapsing, either, have you?

A. No record of the payment of the premium.

Q. No record of its lapsing, either, have you?

A. No official record, no, I will have to concede that.

Q. F. H. Willoughby, \$5,000, 11th of July, 1903?

A. According to the record, second premium not paid. 30

Q. Now, Mr. Kederick, when did you first have a conversation with Mr. Negley in reference to this White policy?

A. The early part of June, 1904.

Q. Never had a conversation prior to that?

A. I had a conversation with him on the White case, but not relating to the payment of the premium, or the notes.

Q. Then the conversation that you refer to took place in June, 1904? 40

A. Regarding the notes in the case, yes.

Q. Did you have other conversations about the White case besides about the notes?

A. Yes.

Q. When?

A. Some time prior to June.

Q. What time, about?

A. Possibly thirty days.

Q. When was this conversation when he told you he was in a tight place, as you say?

A. The latter part of June, 1904. 10

Q. How long after did the conversation follow in which he told you he had destroyed all the evidence of having given a rebate?

A. Possibly anywhere within two weeks of that date.

Q. You say he asked you whether you could help him out; did you find any way of helping him out?

A. No, I told him I had a clear conscience.

Q. You told him you had?

A. Yes. 20

Q. Now, you gave some testimony on the direct examination with reference to the bonus on this White policy, didn't you? Do you know what bonus he got for the year 1904, altogether, and 1903?

A. You mean the business paid for during 1903?

Q. The bonus. You gave some testimony about bonus given for that year, didn't you?

A. Yes.

Q. And you said his bonus was \$1,400, didn't you?

A. In that neighborhood. 30

Q. On the White policy?

A. No; his earnings for 1903 business, amounted to \$1,400.

Q. You didn't say it was on the White policy?

A. Most of it on the White policy.

Q. And the White policy, was it issued?

A. Yes.

Q. How much bonus did he get that year, do you know?

A. In the neighborhood of \$1,400. 40

Q. How do you know that?

A. From the entry here; official entry.

Q. In the book. Well, have you looked at it today?

A. Yes, sir.

Q. You don't know how much he absolutely got, aside from the books, do you? You don't know how much he was paid for bonus for that year, do you?

A. Yes, the books show.

Q. Wasn't it, as a matter of fact, \$628.39?

10

A. Wasn't the balance of the bonus.

Q. What do you mean by that?

A. That he drew in bonuses in the neighborhood of \$1,400.

Q. I want the actual amount. You have got books there, now you ought to be able to give us the amounts?

A. I can give them to you in just a minute's time.

Q. Give them to us?

A. \$1,445.

20

Q. How was it made up, do you know? Have you got the figures right there?

A. Yes.

Q. Read them off, will you?

A. \$628.39, \$427.13, \$395.28.

Q. What is that?

A. All make up the bonus.

Q. What is that?

A. Beg pardon?

Q. Now, Mr. Kederick, what do you find on your books with reference to this \$395.28; is that a bonus, or is that amount transferred to the 1904 account? You know he was given statements from time to time, don't you, by your bookkeeper?

30

A. Yes, sir.

Q. Under your directions?

A. That was prior to my assuming the cashiership. Those entries are all back of my assumption of the office.

Q. Then, as a matter of fact, you knew nothing

40

about it when you first testified, except what you saw in the books?

A. The official entry of the company.

Q. I thought you said at that time you had this information direct, and put it in the books yourself?

A. I don't so testify.

Q. Then you don't know as a matter of fact anything about what bonuses he got that year, do you?

A. Oh, yes, from the company's official record.

Q. Well, but you don't know from your own information; you don't know from your own knowledge anything about it, except what you glean from the books of the company? 10

A. Oh, no, and he told me the bonuses he earned in order to pay the White case.

Q. Then you learned from what he told you, and not from what you know?

A. From what he told me and the books. The books gave me official information, and his personal information to bear it out. 20

Q. Do the books give you any such information as that he received fourteen hundred and some odd dollars for bonus?

A. I see some entries here that look that way.

Q. Will you read the entries?

A. January 29th, \$628.39, credit from A. D. Hall, \$427.13.

Q. There is nothing about bonus there?

A. No, but it is on account of bonus.

Q. I am asking you to say what it says? 30

A. It doesn't say here.

Q. And you knew nothing about it at the time it happened?

A. Not at that time.

Q. And now what about \$395 and some odd cents, what have you to say about that?

A. Transferred to 1904 account.

Q. Nothing about bonus there, is there?

A. No, the word "bonus" is not mentioned.

Q. Then, why do you say "bonus" when you were not there at the times these entries were made? 40

A. I so understood it to be from the record.

Q. Oh, you made it from what you understood?

A. According to the records.

Q. You gave some testimony about the premiums, the commissions, that Mr. Negley would have made on this White policy; figured out how he would have made considerable money by giving a policy for a premium, and a renewal, and one hundred and ten per cent., didn't you?

A. Yes, sir. 10

Q. You figured that out. Would you mind doing that again, show us the figures, how he would make any money on that?

A. The renewal commission, if the premium were paid, would be \$1,560.

Q. What is that?

A. If the renewal commissions were paid it would be \$1,560; he drew the bonus, \$1,400.

Q. What did you say he drew? Bonus of what?

A. \$1,400. I am giving you these figures that Mr. Negley himself gave me. 20

Q. I am talking about your information now in these matters. You gave testimony here that under your system it was possible for him to make, by giving this policy for a premium for two years, at one hundred and ten per cent.; now, I want you to explain again; not from what he said, but from what you know about it. Tell us how he could make anything under such an arrangement as that?

A. He had collected \$632 in cash, had a note payable of \$2,500— 30

Q. Collected how much cash?

A. \$632.

Q. Then, what else?

A. A note payable at \$2,500 on March 31st; that, together with the bonus, would more than pay the net premium of the company.

Q. What bonus, bonus on what?

A. Bonus for his cabinet for that year.

Q. How much was that bonus on cabinet?

A. In the neighborhood of \$1,400. 40

Q. Oh, no, according to your books, \$628, you know that; look at your books again.

A. I have got the books right here.

Q. Look at it again, then?

A. I have looked at it.

Q. Does not cabinet say \$628?

A. You ask me to look at the books and find the amount paid on bonus, and I am telling you.

Q. Cabinet, \$628?

A. Yes, and he had another check, \$328.13. 10

Q. Was that bonus?

A. It doesn't say so.

Q. I want you to tell us how he could make any money on that?

A. I have explained it to you.

Q. Well, you don't know much about it; that is all, sir.

Re-direct examination:

Q. Let us get this White commission and bonus clear before the jury. Under his contract there were two annual premiums paid in the White policy. What per cent. would he have been entitled to on that the second year? 20

A. Eighty per cent. plus the bonus.

Q. And on that \$200,000 policy written by him during the year 1903, he would have been entitled, on account of the volume of his business, would he, to a bonus? 30

A. A bonus, yes.

Q. And that \$200,000 case would increase his bonus to what extent?

A. Increase it possibly a thousand dollars.

Q. And the premium on his policy was \$7,830, wasn't it?

A. Yes.

Q. And ten per cent. would have been \$783?

A. \$783.

Q. And if he got that bonus of a thousand dollars, and two commissions, he would have cleared on it some \$200? 40

A. He would have.

Mr. Raymond.—Are you testifying, or is the witness? I object to that as leading.

The Court.—Yes, it was quite leading.

Q. With the commissions to which you have testified he would have been entitled, and with the bonus which he drew, was he in a position to more than pay the amount required?

The Court.—That is a mere matter of mathematics. 10

Re-cross examination:

Q. Now, what percentage did he get on the first premium on the White case?

A. What commission he drew?

Q. Yes.

A. Allowed sixty per cent.

Q. The second year what did he get? 20

A. Didn't get anything, because the policy lapsed.

Q. Then how do you make out he would make a thousand dollars?

A. He figured that he would have——

Q. Oh, that is all, sir.

Adjourned for the day.

NEWARK, N. J., October 9, 1906. 30

Continued pursuant to adjournment.

Appearances as before.

GEORGE A. KEDERICK resumes the stand.

Further Re-direct examination:

Q. In testifying yesterday as to the new business done by Mr. Negley during the year 1904, prior to his discharge, you testified, I believe, that he wrote policies aggregating \$9,000? 40

A. Yes, sir.

Q. Have you consulted your books as to that?

A. I consulted my books.

Q. What do you find?

A. I find the correct amount is \$10,000.

Q. As you omitted \$1,000?

A. I omitted \$1,000.

Q. Can you tell from your records what was the amount of commission earned by Mr. Negley on those policies?

A. \$151.62. That covered the period from January 1st, 1904, to the time of the termination of this contract. 10

Q. And that was the entire amount due to him and paid to him by the Company as first year's premium during that period?

A. The entire amount.

The Court.—Can Mr. Kederick state what the earnings on old business were during 1904? 20

Mr. Clark.—I asked that yesterday, your Honor.

The Court.—I haven't a note of it.

Mr. Clark.—The renewals that accrued on his business in 1904, which had renewed prior to the date of his termination.

The Court.—Can you state again off-hand?

Witness.—Not off-hand, no, sir. 30

Further Re-cross examination:

Q. Where do you reside?

A. New York.

Q. Have you a book showing lapsed policies?

A. No, no book here.

Q. What is that?

A. I have no record here.

Q. And you didn't have yesterday, did you? A. No, not showing the direct lapses, no. 40

Q. The book you had yesterday shows that at cer-

tain times certain premiums had not been paid, so far as that book shows, is that correct?

A. Yes.

Q. That is all it shows. When did you begin to work for the company as premium cashier?

A. As premium cashier?

Q. Is that what you are now?

A. No, I have the title of cashier now.

Q. I thought you said yesterday you were premium cashier?

10

A. I don't believe I so stated.

Q. Oh, Mr. Johnson was premium cashier?

A. Mr. Johnson.

Q. You are cashier, are you?

A. Of the Park Row Branch.

Q. How long have you been cashier?

A. First of March, thereabouts, 1904.

Q. Were you with the company previous to that?

A. Yes.

Q. In what capacity?

20

A. Clerk in the Home Office.

Q. Mr. Kederick, do I understand you to say that the second year premiums pass through your books, and under your inspection?

A. Notifications of the payment of second year premiums are passed through my hands, written previously through the Park Row Branch.

Q. You are at the Park Row Branch?

A. The Park Row Branch.

Q. Have you a book showing them?

30

A. No.

Q. Don't you make some record of it as they pass through your hands?

A. The payment of all premiums, where renewal commissions are due, we are notified of the payment of the premium, and credit the agent's account with the commission.

Q. Are you notified of the lapses?

A. Inquiries are made by agents as to the lapses, and we take it up at the home office, and then notify them.

40

Q. There must be some original book in which the lapses appear, isn't there?

A. No, except from our home office records.

Q. You have nothing then, at the Park Row Branch?

A. Nothing at the Park Row Branch showing the direct lapse, except by the non-credit of the agent's commission.

Further re-direct examination:

10

Q. Where are the accounts of the agents kept?

A. Accounts of agents?

Q. Yes; in what way are credits and debits made of the agents' accounts?

A. By our regular office ledger.

Q. And where are the commissions to which the agents are entitled credited to them?

A. To their respective accounts on the Branch Office ledger.

20

Q. And in case a premium is paid to which the agent is entitled to commission, are you notified by the Home Office?

A. Immediately notified by the Home Office, and credit the agent's account with the renewal commissions due him.

Q. So you do know, as a fact, what credits the agent is entitled to as renewal commission?

Objected to as leading.

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Q. Do you?

Objected to.

The Court.—He has already testified what this plaintiff's renewal commissions were in 1904.

Further re-cross examination:

Q. You said yesterday that accounts were issued by your department to the agents, and Mr. Negley had his. (Showing witness paper.) I show you 40

that paper; was that furnished at the Home Office; do you know?

A. That I couldn't say.

Q. You don't know whether that emanated from the branch office or not, do you?

A. I couldn't say positively, no.

Q. They do furnish accounts, don't they?

A. It is our practice now, it wasn't at that time.

Q. What time?

A. Started on June 1, 19— Well, I couldn't tell you the exact date. We now have regular printed accounts for furnishing the agents. 10

Q. How do you know at this time they didn't do it?

A. I was not so informed of the company's practice.

ALEXANDER T. BERRY, sworn for the defendant.

Direct examination by Mr. Clark:

Q. What is your business, Mr. Berry? 20

A. Solicitor of life insurance.

Q. For what company?

A. The New-York Life.

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

A. Since 1900.

Q. Do you know the plaintiff in this case, Mr. Negley?

A. I do. 30

Q. How did you come to know him?

A. Association in the office, first; he was associate agent.

Q. At the same time with you, and at the same office?

A. Yes, sir.

Q. He testified yesterday that in the case of one Archibald S. White, a man by the name of Berry was associated with him in the procuring of that insurance; are you that man? 40

A. I am.

Mr. Raymond.—He didn't say that at all. I object.

The Court.—He said that Berry was the man who initiated the communication with Mr. White.

Q. Are you the Berry who was in some way connected with the Archibald S. White case?

A. I am.

Q. Tell us what was the history of that case? 10

A. I discovered that Mr. White was the holder of quite a large amount of insurance, and through information——

Mr. Raymond.—I object to this; I think the question ought to call for a direct answer from the witness's own knowledge.

The Court.—Yes.

Q. Tell us the way in which you started in to get the application of Archibald S. White? 20

A. I called on him to see if I could insure him, solicited the business.

Q. What time was this? A. This was probably three months before he was written.

Q. When was he written?

A. September 24, 1903.

Q. Well, what was the result of your call, what followed your call?

A. I met Mr. Hunter, Mr. White's secretary; I failed to meet Mr. White, even after calling on him half a dozen times; I always met his secretary; never reached White. 30

Q. Well, what finally happened when the application of Mr. White was taken; what were the circumstances?

A. On Thursday previous to Saturday, September 24th, I met Mr. White, found he had not seen any of the directions I left——

Mr. Raymond.—I object. Was Mr. Negley there? 40

Witness.—No, sir.

Mr. Clark.—Mr. Negley testified he was the moving factor in this White insurance yesterday. We merely want to show that the——

The Court.—Is it material?

Mr. Clark.—It will become distinctly material later because of controversy over the distribution of the commissions from the White policy. 10

The Court.—The only question your case raises is whether Mr. Negley violated the contract by allowing rebate?

Mr. Clark.—And we propose to show that Mr. Negley, in order to secure entire credit for this application, on the 31st of December, he states the settlement was made, took up the question with Mr. Berry.

The Court.—Well, get to that. 20

Q. Tell us what happened on the 31st of December, relating to the application, and the policy of Archibald S. White?

The Court.—Between you and Mr. Negley.

A. I had Mr. White examined September 24th, took the application to the Park Row Branch; I attached my signature, and Mr. Negley attached his under mine; the policy was written, passed on by the company, some time during November. We jointly, at separate times, and together, tried to deliver the policy. We failed to do so, and on the 31st of December, and previous, Mr. Negley said that the policy might be delivered with a rebate. 30

Q. A little louder.

A. Previous to—on the 31st of December, Mr. Negley said the policy could be delivered by rebate; the rebate was so much it would be necessary for him to have the entire credit, including the cabinet bonus, to make it profitable to him. 40

Q. (*By the Court.*) Who did he say that to?

A. Said it to me. And after discussion I released Mr. Negley from my half.

Q. (*Further direct.*) What did he say to you in that discussion?

Mr. Raymond.—He has just said.

Q. (*By the Court.*) Anything else? Did he say anything else about the matter other than you have just stated?

A. He said on account of the rebate he could not deliver the policy unless he had the entire amount to his credit, which would give him a small profit. 10

Q. (*Further direct.*) Did he at that time state to you what sort of rebate he made?

Objected to.

The Court.—He may answer it.

A. He at that time told me that—he didn't give me the exact arrangement at that time. Afterward, when I came to sign over my cabinet, which I always refused doing, then he explained to me the settlement. 20

Q. When was this?

A. After the first of January, after the policy had been delivered.

Q. What did he say to you at that time?

A. He made the statement he had received six hundred odd in cash, two notes, one of \$2,500, and one of fifty-four hundred and odd dollars, making a total amount of one hundred and ten per cent. 30

Q. Of what?

A. Of the two years' premium.

Q. One hundred and ten per cent. of the two years' premiums?

A. One hundred per cent. of the first premium, and ten per cent. of the second, or *vice versa*.

Q. What else was said at that time? Give the entire conversation between you, what he said and what he did?

A. At the time he showed me these notes, explained these notes to me? 40

Q. Yes, at the time in December when the cabinet bonus was discussed?

A. He said he would be at a large loss unless I assigned my cabinet bonus to him; it would not reach a sufficient amount to give him a profit.

Q. Was that all that he said or did at that time? You said something about the time he showed you these notes, was that this time?

A. Yes; that was at the time of the conversation about my cabinet bonus; that ran over four or five days, if not longer. 10

Q. Tell us what happened; what he said and what he did; what his actions, in words and deeds, were, at that time?

A. Well, he showed me the transaction, showed me where it was necessary for him to have my bonus, or his portion of my bonus that the White case entitled him to, to bring the percentage up where it would bring a profit above the eighty per cent. he received, and the twenty per cent. renewal; Nylic, plus that amount, would give him a profit. It placed me really in a— 20

The Court.—Never mind that?

Q. In what way did he explain this to you?

A. Well, he said there was \$600 in cash, received \$2,500 on notes, and \$5,400 on notes.

Q. Did he show you those notes at that time?

A. He did not show me the money, but he showed me the \$5,400 note, and he showed me the—the office showed me the \$2,500 note; I had seen that before. 30

Q. You saw both of those notes?

A. Yes.

Q. Did he explain to you how it was possible for him to make a rebate of ninety per cent.?

A. Yes.

Q. How?

A. By the fact that the cabinet bonus—the total amount was short ten per cent. unless he received this cabinet bonus. 40

Q. What do you mean, the total amount was short?

A. The total amount Mr. White paid him was short ten per cent., unless he received the cabinet bonus. The Nylic which he received the \$600 Nylic was plus that, but that was only to be received after the second premium was paid.

Q. What commissions would he have been entitled to on these policies?

A. Sixty per cent on the first premium, twenty per cent. on the second premium, and \$3 per thousand per annum on the Nylic the third year. 10

Q. Was that the actual amount he would be entitled to?

A. Unless he was discharged.

Q. Well, suppose the policy lapsed?

A. Well, if it was paid the second year it would not make any difference; it depended on the second year's payment; the first and second year, he would receive the \$600 in \$50 a month instalments. 20

Q. Did he tell you what the amount of his cabinet bonus would be with the aid of that case?

A. It was figured about at that time it was somewhere in the neighborhood of twelve and fourteen hundred dollars; it was figured about that; he had not received that at that time, I don't think.

Q. Well, you state that this amounted to about \$1,200; now, how would that \$1,200 have been made up?

A. By the cabinet—— Well, the man writing \$100,000, and under \$150,000 was entitled to \$1 a thousand; the man writing \$150,000 and under \$200,000 was entitled to \$1.50 a thousand; the man writing \$200,000 was entitled to \$2 a thousand and the amount that was lost to the \$150,000 man, and the \$150,000 to \$200,000 man, was to pass to the credit of the man writing over \$200,000; and the amount was credited according to his grading. I believe Mr. Negley at that year was one of the high class men on account of the White case, receiving 40 one of the largest bonuses.

Q. And how was the commission in the White case allowed by the home office?

Mr. Raymond.—I object unless he knows.

The Court.—First find out whether he knows.

Q. Do you know what was the distribution of the commission on the White case made by the home office?

A. Do you mean the entire commission on the first year? 10

Q. The first year's commission.

A. It was over \$4,600.

Q. How was that allowed by the home office, if you know? That is, whether it was allowed to Negley, or to you, or to any other person; do you know?

A. Well, the company refused to accept my turning—

Q. Answer the question first; do you know how the— 20

A. I can't answer that question absolutely; I know I didn't receive it, that is all.

The Court.—Well, he doesn't know.

Q. Explain a little bit more to the jury, so they will understand, what this bonus was; just what the bonus was, and just how it was essential that this credit should have been passed over to Negley in order to enable him to make the ninety per cent.

Objected to as immaterial. 30

The Court.—He has explained what Negley said to him.

Q. Now, I want to make perfectly clear just how Mr. Negley was counting on getting the cabinet bonus sufficient to make up that ten per cent.

The Court.—He has told what Mr. Negley told him, and that is all that is material.

Q. Subsequently were you allowed any bonus as a result of your participation in the White case? 40

A. The company allowed me a bonus of \$535 as my part of my business, and I then turned over, through the Branch Office, \$427.15.

Q. To whom?

A. To Mr. Negley.

Q. Why did you do that?

Objected to.

The Court.—He may state it.

A. I did that because I didn't want to have any- 10
thing to do with the White case; that was my whole
object in turning the thing over.

Q. (*By the Court.*) It wasn't by reason of your
arrangement with Mr. Negley.

A. No, although it was the arrangement.

Q. Did you have any arrangement with Mr.
Negley?

A. I had turned the whole thing over to Mr.
Negley, everything, the renewal and cabinet and
everything. 20

Q. Did you give it to him, or simply have an ar-
rangement?

A. We had an arrangement, and signed a letter
giving it to him, turning it over.

Q. As the application stood as sent to the home
office, what would have been the allowance of com-
mission made by the home office?

A. I would have received \$2,300 as the first year's
premium, one-half, thirty per cent. of the entire— 30

The Court.—You have been over and over
that.

Q. I show you this letter signed A. G. Negley,
and ask you if you ever received that letter?

A. Yes, sir.

Q. From whom?

A. From Mr. Negley; he kept a copy, and this
is the original.

Said letter marked D-6 for identification. 40

Q. Was that the evidence of the consideration

which Mr. Negley gave to you for your surrender of your rights in the White case?

A. No, sir.

Q. What were they?

A. Mr. Negley was to have given me \$100,000 worth of business between the 1st of January of that year and the first of July.

Q. That is the agreement contained in that letter.

A. Was that what it says here? I didn't read it; I simply recognize the letter (letter shown witness). Yes, that is it. 10

(Letter read.)

Q. Did you release to Mr. Negley all your commissions in the White case?

A. I certainly did.

Cross-examination by Mr. Raymond:

Q. Mr. Berry, you have just testified as I understand you, that it would have been possible for Mr. Negley to have allowed a rebate, sell those policies for 110% for two years, and made a profit out of them, as I understand? 20

A. Yes, sir.

Q. You testify to that as an expert in insurance matters?

A. I do.

Q. Now, would you mind explaining to me how that was possible? In the first place, let me lead you along a little, and see if I am right in my idea of it. In the first place the premium, as I understand it, on the policy was—— 30

A. \$7,830.

Q. \$4,898——

The Court.—That is not according to what the witness says; he says it was \$7,830.

Q. The first year's premium was \$7,830?

A. Yes, sir.

Q. And the second year's premium under ordinary conditions would be the same? 40

A. Yes, sir.

Q. And out of the first year's premium Mr. Negley's commission was how much?

A. Can I refer to a note?

Q. Well, it was sixty per cent., that would be \$4,698, or thereabouts?

A. Yes, sir.

Q. The second year's commission on premium would be twenty per cent?

A. Yes, sir. 10

Q. That would be \$1,566, wouldn't it?

A. About that.

Q. And his bonus would be about \$1,200 as you put it?

A. In that neighborhood; I am not sure about that.

Q. Well, those figures are pretty near right, aren't they?

A. Yes, sir.

Q. The total is \$7,464, isn't it? 20

A. I have got it reversed a little—let me figure it. I am reversing it by taking in my figures—I take the total cost you have to pay the company.

Q. Well, it works out on my plan just as well as yours?

A. Yes, sir.

The Court.—He is the man doing the testifying, give him an opportunity to figure.

The Witness.—If you will reverse those figures and take the net cost. 30

Q. Well, figure them up.

A. Give me a piece of paper, please. (Witness figures.)

Q. Have you got the figures?

A. I have.

Q. Well, now, what will it be?

A. The first year's profit will be \$4,698, the second year \$1,566, cabinet bonus \$1,200—that I won't swear to, but about that—plus the Nylic that he was entitled to by the payment of the second year's pre- 40

mium, which was \$600, giving him a total profit of \$8,064 on the White case alone.

Q. Is the Nylie in there?

A. The Nylie was due when the second premium was due; it is based on the second premium.

Q. How much is that?

A. \$8,064.

Q. How much had to be paid to the Company on the first premium; I understand forty per cent., is that correct? 10

A. Yes, sir.

Q. That would be how much?

A. That would be \$3,132.

Q. The second year's premium?

A. Yes, sir, paid \$6,264.

Q. The total of that?

A. \$9,396.

Re-direct Examination:

Q. Will you explain to the jury how this Nylie benefit was figured? 20

Objected to.

The Court.—It is not material unless it becomes a matter of controversy.

Q. What was the plan of this policy?

The Court.—What difference does that make?

Mr. Clark.—We want to show——

The Court.—Well, it is not re-direct examination. 30

Q. What was the sum of the various amounts which Mr. Negley told you he received from it?

The Court.—We have been all over that.

Re-cross Examination:

Q. Did you release everything to Mr. Negley in the White case? 40

The Court.—He said he did.

Q. (*By the Court.*) Did you say so?

A. I did.

Q. (*Further re-cross.*) How about your part of the Nylic, did you assign that?

A. I received no Nylic on it, because the case was never renewed, and I never would receive any; there was no Nylic on the case.

Q. What is that?

A. There never was any Nylic, because the case never was renewed.

Q. Then there never was a Nylic to Mr. Negley, was there?

A. No, sir; not on that case.

Q. (*By Mr. Clark.*) Why wasn't there a Nylic?

A. Because Mr. Negley did not pay the second premium, as was supposed to be done.

Q. (*By Mr. Raymond.*) Where do you live, Mr. Berry?

A. Rutherford, New Jersey.

Mr. Clark.—These various letters which were marked for identification yesterday we wish to offer in evidence.

Mr. Lowthrop.—I wish to offer in evidence the paper that was marked D-6 this morning.

The Court.—Let counsel read the letters.

(Letters read.)

Mr. Raymond.—I object to the letter D-6 as immaterial.

The Court.—I will receive it.

Mr. Clark.—We offer the application for Nylic marked D-4 for identification.

Mr. Raymond.—There are some pencil memoranda on it to which I object.

The Court.—They may be erased.

DEFENDANT RESTS.

ALBERT G. NEGLEY, JR., recalled for the plaintiff
in rebuttal.

Direct examination by Mr. Raymond:

Q. Mr. Negley, you heard Mr. Kederick testify to a conversation which he said he had with you, in June, I think, 1904?

A. Yes, sir.

Q. Did you ever have any such conversation with him?

A. No, sir.

Q. Did you ever have any such conversation on the subject of the Noss policy with him? A. No, sir. 10

Q. Or the White policy?

A. No, sir.

Q. Did you have the conversation with Mr. Berry that he has testified to just now?

A. No, sir.

Q. You did have a conversation with Mr. Berry, didn't you, of some kind?

A. When the——

Q. Well, did you have any conversation with Mr. Berry in reference to the White policy? 20

A. Yes.

Q. Well, what was it?

A. When he turned over the White policy to me, all except the Nylic,—he didn't turn over the Nylic, as he testified he did, he didn't do that—I gave Mr. Durstine, sent Mr. Berry that letter that he purported to be given to him, and Mr. Durstine induced Mr. Berry to turn it over to me. 30

Objected to.

The Court.—Yes, that is a conclusion; strike that part out.

Q. Now, Mr. Negley, I wish you would explain to the Court and jury how it was, during the year 1904 from January to July, that your profits were so small?

The Court.—He said on account of the sickness to his wife which interfered with his work. Proceed. 40

A. I lost my wife on the 12th day of November, 1903, she being sick for quite a long time, and it left me in very bad shape, and I broke down completely, and I didn't recover from that breakdown, and I don't suppose that I worked in that time more than six weeks or two months, and at the time of the dismissal, I was just getting on my feet so that I could do business.

Cross examination by Mr. Clark:

Q. Your wife, died, you say, the 12th day of November?

A. Yes, sir.

Q. And you were entirely broken down?

A. Yes, sir.

Q. And what was the date when you concluded the White case?

A. The 31st day of December.

Q. Just a little over a month later?

A. Yes, sir.

Q. That was the largest case you ever wrote?

A. That wasn't written then; it was written before my wife died.

Q. That was the largest you ever placed?

A. Yes, sir.

Q. When was it placed?

A. The 31st of December.

Q. You heard the testimony of Mr. Kederick, taken from the books of the company, that there was \$10,000 written?

A. Yes, sir.

Q. You said yesterday it was something under \$30,000; you have had an opportunity to look at your books since?

A. I haven't looked at it.

Q. You had an opportunity to look at them?

Objected to as not cross examination.

Objection sustained.

Q. You say that you were knocked out and were

not in any shape to work; when did you write the business that you did write in 1904?

A. I don't remember; it was only in small cases that I had worked before; business that I could not neglect, and I had to.

Q. Didn't you write four cases in January?

A. I don't remember.

Q. You have your book here?

A. Yes, sir.

Q. Can't you tell from that book?

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A. Yes, sir. (Book handed to witness). Yes, sir; that is right, four cases.

Q. That was the majority of the business you did that year, wasn't it, paid for business, that you turned in to the company?

A. Yes, sir.

Q. Now, how were you just getting on your feet then in July?

A. As I explained to you a minute ago this was business that I had already worked up——

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Q. I am asking you about July now (previous question read).

A. I didn't testify I was just getting on my feet in July; I told you that I was just getting on my feet about six weeks before this termination, just beginning to write business.

Q. And yet you did most of your business of that year during that first month?

The Court.—Yes, he said he did.

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PLAINTIFF RESTS.

TESTIMONY CLOSED.

Counsel summed up.

The Court charged the jury as follows:

GUMMERE, C. J.

Gentlemen of the Jury.—The trial of this case has occupied a longer time than it should have done,

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owing to the fact that, in the early development of the case yesterday I felt somewhat uncertain as to what the true measure of damages was, in the event of the plaintiff being entitled to a verdict; and so I permitted testimony to be put in, throwing light on the question of damages, which, as the case has developed, I am now satisfied was immaterial. Without saying anything about what the testimony was, I am quite certain you will perceive what was immaterial in what was testified to yesterday, from my instructions to you now. 10

Now, what is this case? The plaintiff, Mr. Negley, and the defendant, the New-York Life Insurance Company, entered into a written contract, which you will have before you, by the terms of which the New-York Life Insurance Company employed Negley to act as its agent, and his duties and rights, and the obligations of the Company, are fully set out in the contract. Failure on the part of Mr. Negley to observe the duties which the contract put upon him,—breach of the contract by Mr. Negley, in other words—would justify his discharge by the company. That he was discharged on the 12th of July, 1904, is not disputed. The question in dispute between him and the company is whether that discharge was lawful. Now, it was unlawful, so far as this case is concerned, unless you shall find that the position taken by the defendant company here at the trial has been established, namely, that Mr. Negley violated the contract between him and the company when he wrote the insurance in the Noss case, or when he wrote the insurance in the White case. The company claims that in each one of those cases he violated the 16th Article of his contract. That article is this: "If the party of the second part," that is, Negley, "shall sell, or offer to sell, directly or indirectly, to any person or persons, policies for insurance to be issued by the party of the first part,"—that is the company —"at any reduction from the regular table rates, such sale, or offer to sell, shall work immediate ter- 20 30 40

mination of this agreement." Now, they say that in each one of the cases to which I have referred Mr. Negley violated this provision of the contract by selling, or offering to sell, insurance at less than the table rates. If your consideration of the evidence leads you to the conclusion that in either one of these instances Mr. Negley did violate this provision of the contract, his discharge was lawful, and he has no claim for damages against the company; your verdict in that case should be for the defendant. 10

If, on the other hand, you come to the conclusion, after your consideration of the evidence shall be finished, that neither in the Noss case, nor in the White case was there any violation by Mr. Negley of this agreement, then Mr. Negley is entitled to a verdict against this company. If you find that there was no violation of this 16th Article of the agreement in either one of those cases by Mr. Negley you take up for consideration the question what is the amount of the damages which he has sustained? 20

What is the measure of his recovery? And, in determining that, you look at the next article but one of this agreement, the 18th Article, the concluding part of it: "Either party hereto"—that is, to this agreement, either Mr. Negley or the company—"may terminate this agreement upon thirty days' written notice." That is, if Mr. Negley got tired of working for the company, or if he was offered more profitable employment by somebody else, he was under no obligation to continue indefinitely to work for the New-York Life Insurance Company. 30

He could, by saying to that company, "Gentlemen, thirty days from to-day you and I part company," have brought the agreement to an end at the expiration of the thirty days, and could have gone away without being under any obligation to the company. And the company could have done the same thing. If they had an opportunity to fill Mr. Negley's place with a man whom they considered more desirable, they had a right to say to Mr. Negley, "Mr. Negley, 40

at the end of thirty days from to-day your contract

is terminated, you will no longer be an employee of this company." If they had done that Mr. Negley would have had no legal cause to complain, because he agreed with the company that they might terminate the agreement at their option, by giving him thirty days' notice.

Now, where a contract of that kind is made between parties, by the terms of which either one reserves to himself the right to bring it to an end by giving thirty days' notice, the law is that thirty days' pay is equivalent to thirty days' notice. That is, if you, Mr. Foreman, employ the twelfth man on the jury to do service for you for a period not fixed by the contract, and agree between yourselves that you shall, either one of you, have the right to terminate the contract by thirty days' notice, you can say to the twelfth juror, "We will quit to-day, and I will pay you for thirty days' further service," and that is just the same as thirty days' notice; and the reason of it is that if you say to the twelfth man, "I give you notice to-day that we will terminate our relations at the end of thirty days," all that the twelfth man can get is the wages for the thirty days after the notice. So when you say, "You are discharged to-day," it is equivalent to saying, "I notify you to-day that you are discharged at the end of thirty days, here is your thirty days' pay, get out now." If you find a verdict for the plaintiff, therefore, you must determine how much would Mr. Negley have earned between the 12th day of July, and the 12th day of August, if he had not been wrongly discharged on the 12th day of July, and award him that amount. Now, there is nothing to show exactly what he would have earned, because he was deprived of the opportunity of earning; and so you have to calculate from what he had earned in the past, what he would probably earn in the future. During the year 1903, he says he earned somewhere between nine and ten thousand dollars, in 1902, he earned between four and five thousand dollars; in 1901, I think somewhere in the neigh-

borhood of \$2,500, but in 1904, he fell off, and only earned, according to his own story, some five or six hundred dollars, and, according to the testimony of the defendants, about \$150, in six months. He says himself that his ability to work in 1904 had become, to a large extent, a negative quantity, he had broken down by reason of the affliction which came to him in the death of his wife, and he had hardly been able to get back into the saddle until about a month or six weeks before his discharge, and then that he was beginning to get back the capacity to do the work that he had been doing in the past. Now, with the facts before you as to what he had been earning in previous years, as to the condition of his health in 1904, and as to his gradual recovery, you must make up your minds what he would have earned by way of commission, and other moneys which he would have been entitled to under his agreement, in the thirty days subsequent to the day of his discharge, and that amount you will allow him, if you find a verdict in his favor.

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Plaintiff's counsel prays exception to that part of the charge relating to the measure of damages.

WM. S. GUMMERE, C. J.

[SEAL.]

Exhibit P1.

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THIS AGREEMENT, made this tenth day of January, in the year one thousand nine hundred and one, between the New-York Life Insurance Company, party of the first part, and Albert G. Negley, Jr., of New York, in the County of New York, and State of New York, party of the second part, WITNESSETH, that said parties, in consideration of the mutual covenants and agreements hereinafter mentioned, hereby mutually covenant and agree each with the other, as follows, to wit:

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That said party of the first part doth hereby appoint said party of the second part as Agent of said party of the first part, for the purpose of canvassing for applications for insurance on the lives of individuals, and of performing such other duties in connection therewith as may be required by the officers of said party of the first part, and that this appointment is made on the following terms and conditions:

1st. It is agreed that said party of the second part shall have no authority on behalf of said party of the first part to make, alter or discharge any contract, to waive forfeitures, to extend the time of payment of any premium, or to waive payment in cash, or to receive any money due or to become due to said party of the first part, except on applications obtained by or through him in exchange for conditional receipts to be furnished by said party of the first part, or on policies or renewal receipts (signed by the President, Vice-President or Actuary) sent to him for collection.

2d. It is agreed that said party of the second part shall act exclusively as Agent for said party of the first part, and as such Agent shall devote his entire time, talents and energies to the business of the Agency hereby established, and in the conducting of it shall be governed strictly by the instructions which he may receive from time to time, from said party of the first part. All applications for insurance taken by said party of the second part shall be delivered to said party of the first part, whether the same has been reported on favorably or unfavorably by the medical examiner.

3d. It is agreed that said party of the second part shall keep regular and accurate statements of all transactions for account of said party of the first part, and whenever required by said party of the first part, or its authorized Agent, shall transmit to said party of the first part a report in detail, em-

bracing every item of business done by or through him, and of all moneys collected or received by or through him, for said party of the first part.

4th. It is agreed that all books of account, documents, vouchers, and other books or papers connected with the business of said Agency, shall be the property of said party of the first part, whether paid for by said party of the first part or not, and at any and all times shall be open to said party of the first part or its representative, for the purpose of examination, and shall be turned over to said party of the first part or its representative on the order of said party of the first part, or on termination of said Agency. 10

5th. It is agreed that all moneys or securities received or collected by said party of the second part for or on behalf of said party of the first part, shall be securely held by him as a fiduciary trust, and shall be used by him for no personal or other purpose whatever; but shall be by him immediately paid over to said party of the first part, in accordance with its instructions; and it is expressly stipulated and agreed between the parties hereto, that in case said party of the second part shall withhold any funds, policies or receipts belonging to said party of the first part, after such funds, policies or receipts should have been reported upon and transmitted to said party of the first part, or if he shall withhold any funds, policies or receipts after they shall have been demanded from him in writing, by said party of the first part, such dereliction shall work a forfeiture to said party of the first part, unconditionally, of all claims whatsoever, accrued or to accrue under this or any previous agreement to said party of the second part, but nothing herein shall be construed to affect any claims of said party of the first part on said party of the second part. 20 30

6th. It is agreed that the District within which said party of the second part shall have permission to operate, is GREATER NEW YORK. 40

7th. It is agreed that said party of the second part shall thoroughly and ably canvass said above-named District; that said party of the first part may, at its option, employ other Agents in said District, and that said party of the second part shall have no claim for commissions or other remuneration on the business effected by such other Agent or Agents so employed.

8th. It is agreed that if in any case said party of the first part shall deem it proper in consequence of misrepresentations made, or misunderstandings had, at the time of the issue of a policy, to return the premiums thereon and cancel it, said party of the second part shall lose all right to commissions for premiums under said policy, and shall be bound to repay to said party of the first part, on demand, the amount of commissions received on premiums so returned. 10

9th. It is agreed that said party of the second part shall collect and promptly remit to said party of the first part all premiums on policies not issued through his instrumentality, renewal receipts for which may be furnished him from time to time by said party of the first part. 20

10th. It is agreed that the necessary expenses for medical examinations (except as provided in section 17th hereof), and for expressage on documents and other things sent by said party of the first part to said party of the second part, shall be paid by said party of the first part; that said party of the first part shall furnish to said party of the second part such a supply of blanks and circulars as it shall deem reasonable, to enable him to carry on business as said Agent, as aforesaid; and that said party of the first part shall be liable to pay no charge other than as herein stated, or as shall hereafter be allowed by special written permission of said party of the first part. 30

11th. It is agreed that said party of the first 40

part may offset against any claims for commissions under this agreement, any debt or debts due at any time by said party of the second part to said party of the first part.

12th. It is agreed that said party of the second part shall not enter the service of any life insurance company other than said party of the first part, or place any applications for insurance in any other life insurance company, without the consent in writing of said party of the first part, so long as there is any indebtedness of any nature whatever due to said party of the first part. 10 20

13th. It is agreed that the ledger account of said party of the first part shall be competent and conclusive evidence of the state of the accounts between the parties hereto. Said party of the first part agrees to furnish to said party of the second part a copy of said account (not oftener, however, than once a month), upon receipt of written request to that effect from said party of the second part, due allowance to be made for clerical delays. 20

14th. It is agreed that said party of the second part shall keep deposited with said party of the first part a Bond for the faithful performance of this agreement, and of all duties pertaining to said Agency, satisfactory to said party of the first part.

15th. It is agreed that when premiums on policies of insurance effected with said party of the first part by or through said party of the second part are collected otherwise than by said party of the second part, two per cent. of such premiums shall be deducted from the commission to be allowed herein, for expense of collection; that commissions on premiums on all classes of policies not named in section 20th shall be determined by said party of the first part; that in case any special Agents or other parties acting for said party of the first part shall secure any business conjointly with said party of the second part, the commissions herein 30 40

provided shall be divided equally between the parties to this agreement, unless specially agreed to the contrary in writing; that when policies that have been issued are changed, and an allowance made on the old policy which is applied to the payment of the new, no commission shall be allowed on the amount thus transferred from the old to the new policy; and that the commissions provided in section 20th shall not apply when the insured is over sixty years of age.

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16th. It is agreed that if said party of the second part shall sell or offer to sell directly or indirectly to any person or persons, policies for insurance to be issued by said party of the first part hereunder, at any reduction from the regular Table Rates as furnished to said party of the second part by said party of the first part, said sale or offer of sale shall work an immediate termination of this agreement and a forfeiture of all rights and interest hereunder to said party of the first part.

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17th. It is agreed that said party of the second part shall pay to said party of the first part the actual cost of medical examination for each policy issued to said party of the second part by said party of the first part in form as applied for, and subsequently returned by said party of the second part for cancelation.

18th. It is agreed that any rights of said party of the second part under this agreement shall not be sold or assigned by him without the consent of said party of the first part in writing, but that either party hereto may terminate this agreement upon thirty days' written notice.

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19th. It is expressly understood and agreed between the parties to this agreement, that the same shall be considered STRICTLY CONFIDENTIAL, and that under no circumstances shall said party of the second part mention or exhibit the terms thereof to any

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person or persons, under penalty of forfeiture of the same and of all benefits thereunder.

20th. It is agreed that said party of the second part shall be allowed, under this agreement, the following compensation only, unless otherwise expressly stipulated in writing, namely: a commission on the original cash premiums for the first year of insurance, and, subject to conditions given in paragraph **C** of this section, upon the second year's premiums, which shall, during his continuance as said Agent of said party of the first part, be obtained, collected, paid to and received by said party of the first part on policies of insurance effected with said party of the first part (written with 15, 20, 25 or 30 Year Accumulation periods), by or through said party of the second part, which commission shall be at and after the following rates:

A. On the original cash premiums for the first year of insurance (on regular Accumulation and on Adjustable Accumulation business) —

- A. Ordinary Life 40%
- B. Twenty-Payment Life 40%
- C. Fifteen-Payment Life 35%
- D. Ten-Payment Life 30%
- E. Endowments, paid by 20 or more annual premiums 40%
- F. Endowments, paid by 15 annual premiums 30%
- G. Guaranteed Interest Bonds, more than 10 annual premiums..... 30%
- H. Endowments or Guaranteed Interest Bonds paid by 10 annual premiums 25%

B. It is agreed that in addition to the foregoing compensation, said party of the first part will allow said party of the second part an additional first-year commission on policies procured on plans of insurance designated for amounts of \$2,000 or over (payable on regular Accumulation business only, and ex-

cluding all Adjustable Accumulation policies), as follows:

On policies of \$2,000, the said extra commission to be	5%	
On policies of \$3,000, the said extra commission to be	10%	
On policies of \$4,000, the said extra commission to be	15%	
On policies of \$5,000, or over, the said extra commission to be	20%	10

C. It is agreed that if the total volume of new insurance written and examined during any twelve calendar months of the continuance of this agreement ending on the tenth day of January, upon which policies are issued, delivered, and upon which one full year's premiums are duly paid to and received by said first party in cash in due course, during such twelve months, or within sixty days thereafter (policies upon which less than one full year's premiums are duly paid as above, to count *pro rata*), amounts to \$25,000. or more, said party of the second part shall be entitled to a commission on such premiums of the business so procured during such twelve months period, upon forms of policies designated herein as Classes A, B, C, D, E, F, G and H, with 15, 20, 25 or 30 year Accumulation or Adjustable Accumulation periods, as shall renew for the second year of insurance, subject to all the terms and conditions of this agreement, as follows: 20 30

If \$25,000. is secured as above, the commission to be 5% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions.

If \$35,000. is secured as above, the commission to be 10% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

If \$45,000. is secured as above, the commission to be 15% on the renewal premiums paid on said busi- 40

ness for the second year of insurance, subject to foregoing conditions, in lieu of above.

If \$50,000. is secured as above, the commission to be 20% on the renewal premiums paid on said business for the second year of insurance, subject to foregoing conditions, in lieu of above.

21st. It is agreed that this agreement shall take effect on the tenth day of January, 1901, if duly signed by said party of the second part, and in facsimile by the President, a Vice-President or the Superintendent of Agencies of said party of the first part, and is further countersigned, on behalf of said party of the first part, by its Contract Registrar at the Home Office of said party of the first part, and by one of its Agency Directors or Managers. 10

IN WITNESS WHEREOF, the parties to this agreement have hereby subscribed the same and affixed their seals the day and year first above written. 20

NEW-YORK LIFE INSURANCE COMPANY,
By

D. P. KINGSLEY,
3rd Vice-President.
[SEAL.]

(Signed) ALBERT G. NEGLEY, JR.
[SEAL.]

Countersigned by 30 30

(Signed) LEE B. DURSTINE,
Supervisor.

(Signed) H. B. HALL,
Contract Registrar.

Exhibit P2.

“NYLIC”:

A System of Benefits for *Persistent* and *Producing*
Agents.

[COMPANY'S MONOGRAM.]

Devised and Practiced by the

NEW-YORK LIFE

Insurance Company.

JOHN A. McCALL, President.

January, 1899.

2432. May, 1901. Copyright, 1899, by the New-
York Life Insurance Co.

NYLIC.

The name is derived from combining the initials
of the several words which make up our corporate
title,—NEW-YORK LIFE INSURANCE Co.

Nylic is a body of men drawn from the ranks of
those who create the business of the NEW-YORK LIFE
INSURANCE COMPANY, and are a potent factor in
making the Company what it is.

It has been established in order to give perma-
nency and character to the work of the soliciting
agent. The effect of this will be primarily to bene-
fit the agent himself, but the benefits actually re-
sulting from its establishment will, in the end,
largely inure to the policy-holders of the Company.

HOW IT WILL BENEFIT THE POLICY-HOLDERS.

Nylic will benefit the policy-holders of the NEW-
YORK LIFE INSURANCE COMPANY because it will
directly, and we believe effectually, stop what may
be called “waste” in the creation of our business.
How to solve this problem of waste is about the

greatest social and economic question of the hour. It is scarcely an exaggeration to say that, if the waste in any given line of human enterprise could be entirely eliminated, the profits of that enterprise would be doubled, or, to put it the other way, the cost of creating the products of the enterprise would be very largely reduced. We call it "waste," because there seems to be no better term to apply to it. The use of the word does not imply that earnest and intelligent efforts have not been made by all honest life insurance companies to improve, in every possible way, the methods of getting business, but rather that, while these efforts have been made, no very effective remedy has heretofore been discovered.

The first problem that faces the management of the agency department in a great, growing and successful company, is how to secure, educate and keep agents of the right character and capacity. An inspection of the books of any company of our class will reveal an astonishing condition as to the length of service of the average agent. It is not an exaggeration to say that too many agents are migratory, shifting and uncertain in their company-connections. Certain unfortunate and unprofitable consequences follow from this. The uncertainty of his relations with any company fosters a spirit of irresponsibility, and, having no fear of punishment or hope of reward to prevent him from changing his allegiance as often as he sees fit, or as often as he thinks he can make a dollar more, the agent frequently does not hesitate over what he says to the public, knowing that next month or next year he may be working not only for another company but in another field. The direct result of this is, that the men whom he insures speedily allow their policies to lapse, and become enemies of life insurance itself. The public charges up against our business the misdeeds of men whose evil tendencies the current organization of most life insurance companies has done little to correct.

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The policy-holder's interest in all this is very easily discovered. Business that lapses in this way is unprofitable and always must be so, and business done in this way brings disrepute upon the profession, makes it more difficult to secure the services of desirable men, opens the door to the most reprehensible, expensive and dangerous forms of competition, and in the end results not only in the moral loss which we have been outlining, but frequently in a financial loss, in which persistent policy-holders are deeply interested. This waste assumes very serious form to the policy-holder when he considers the amount of energy and time and direct expense which is necessary in order to keep the ranks of an active agency department up to the proper standard. If a company has in its employ several thousand agents, an inspection of its books will show that their average term of service is only a few years. The amount of energy which must be constantly expended to supply new material to take the place of the men who disappear, is very great. There is a certain amount of expense connected with every new contract made, and a further expense when that contract is terminated. Any measure, therefore, which has for its object permanency of service on the part of the agent, must tend to reduce expenses, and at the same time elevate the business of life insurance. It is believed that these purposes will be directly subserved by Nylie.

HOW IT WILL BENEFIT THE AGENT.

“A rolling stone gathers no moss,” and the agent who is perpetually shifting into the business and out of the business, from one company to another, upon the slightest pretext, rarely if ever accumulates either money or position. On the other hand, the agent who persists—working year after year in the interests of one company—soon becomes identified in the public mind with that company. He gives the company character and the company gives him char-

acter, and the necessary consequence is that the business which he does is of a kind that is profitable at once to the policy-holder and to himself. If you will review the records of any life insurance company on this point, you will find that the men who ultimately acquire a competency and an established and desirable position in the community in which they live, are the men who persistently and quietly keep at their work in one company. They may not make a great noise about it, and their names may never appear in the daily press, but, after a lapse of time, almost without exception, you will find that these are the men who have really made a success.

Any plan, therefore, which shows a man who is about to enter upon the business of life insurance that his best interests all lie in persistent and continuous service—any plan which meets the almost dangerous independence which necessarily goes with the solicitor's work, with penalties for irresponsibility and with inducements towards steadiness of application and regularity of effort,—must greatly benefit the profession. We believe that in Nylic we have discovered the right system.

In addition, Nylic will be at once profitable both to the agent and the policy-holder, in that it must be one of the most powerful agencies in the destruction of the rebate evil. At the present time, and we believe to a very large degree, as a direct result of our efforts, nearly all American life insurance companies are pledged in writing to the most radical measures against it. The rule laid down by the NEW-YORK LIFE is, that any agent found indulging in the practice shall be summarily dismissed. Dismissal will, of necessity, forfeit all rights in Nylic. Rebating, then, becomes at once an enemy of the agent as well as of the policy-holder. Practicing it in any way will involve danger of such a very serious character that no agent who has the slightest regard for his own interests will indulge in it himself, or will allow any competing agent to do so.

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NYLIC.

CONDITIONS OF MEMBERSHIP.

Nylic is composed of five classes, as follows:

First.—Freshmen.

Second.—First Degree.

Third.—Second Degree.

Fourth.—Third Degree.

Fifth.—Senior Nylics. 10

FRESHMEN NYLICS.

Any agent of the NEW-YORK LIFE INSURANCE COMPANY, in good and regular standing, shall, upon signing a certificate that he will, so long as he remains a member of Nylic, devote all his time, talents and energies to the Company's service in soliciting personally for business, becomes a Freshman Nylic as of January 1, preceding the date of his contract, or on any January 1st thereafter, as he may elect, if he complies with the conditions laid down herein. 20

The period of service required of Freshmen Nylics is five years, and during that period each Nylic must annually produce not less than \$50,000 of new insurance written in accordance with rules on page 28 hereof, on other lives than his own, and, in the regular course of business, pay one full annual premium thereon; he shall give his entire time to the business of life insurance in the service of the NEW-YORK LIFE (except as provided for occasional producers on page 27 hereof). 30

AFTER TWO NYLIC YEARS' SERVICE.

Freshmen Nylics shall receive monthly from the NEW-YORK LIFE INSURANCE COMPANY a sum of money, as follows:

For his 3d year of continuous membership in Nylic, the monthly income shall be equal to 25 cents per thousand on the amount of business procured and paid for, as above, during his *first* Nylic year, 40

after deducting from same the amount of said year's business which has lapsed, been canceled, or otherwise terminated up to December 31st of his second Nylic year.

For his 4th year of continuous membership in Nylic, the monthly income shall be equal to 25 cents per thousand on the amount of business procured and paid for, as above, during his *second* Nylic year, after deducting from same the amount of said year's business which has lapsed, been canceled, or otherwise terminated up to December 31st of his third Nylic year.

For his 5th year of continuous membership in Nylic the monthly income shall be equal to 25 cents per thousand on the amount of business procured and paid for, as above, during his *third* Nylic year, after deducting from same the amount of said year's business which has lapsed, been canceled, or otherwise terminated up to December 31st of his fourth Nylic year.

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ILLUSTRATION OF MONTHLY INCOME TO FRESHMEN NYLICS.

AFTER TWO YEARS' SERVICE.

Amounts assumed, for illustration, to have been written during years of Freshman period stated.	Amounts assumed, for illustration, to have terminated on or before Dec. 31st, of years stated. Dec. 31st.	Net amounts on which to base income of 25 cents per thousand.	Monthly income for year of service stated below (for illustration).
1st Year, \$100,000	2d Year, \$10,000	\$90,000	3d Yr. \$22.50 per mo.
2d " 122,000	3d " 12,000	110,000	4th " 27.50 "
3d " 140,000	4th " 20,000	120,000	5th " 30.00 "

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NYLICS OF THE FIRST DEGREE.

Any agent who completes the period of service required of Freshmen Nylics shall thereupon become a Nylic of the First Degree.

Nylics of the first degree shall receive monthly from the New-York Life Insurance Company a sum of money, as follows:

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For his 6th year of continuous membership in the Nylic the monthly income shall be equal to \$0.50 per thousand on the average between the amount of business procured and paid for, as above, during his first Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his fifth Nylic year.

For his 7th year of continuous membership in the Nylic the monthly income shall be equal to \$0.50 per thousand on the average between the amount of business procured and paid for, as above, during his second Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his sixth Nylic year.

For his 8th year of continuous membership in the Nylic the monthly income shall be equal to \$0.50 per thousand on the average between the amount of business procured and paid for, as above, during his third Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his seventh Nylic year.

For his 9th year of continuous membership in the Nylic the monthly income shall be equal to \$0.50 per thousand on the average between the amount of business procured and paid for, as above, during his fourth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his eighth Nylic year.

For his 10th year of continuous membership in the Nylic the monthly income shall be equal to \$0.50 per thousand on the average between the amount of business procured and paid for, as above, during his fifth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his ninth Nylic year.

Provided, always, such agent continues to comply with all rules and conditions laid down herein or given him from time to time by the Company.

ILLUSTRATION OF MONTHLY INCOME TO FIRST DEGREE NYLICS.

Amounts assumed, for illustration, to have been written during Freshman Degree period of agent.	Amounts assumed, for illustration, to be in force on Dec. 31st, 5 years later. Dec. 31st.	Average between amounts written and amounts in force 5 years later.	Monthly income for year of service stated below (for il- lustration).
1st Year, \$100,000	5th Year, \$80,000	\$90,000	6th Yr. \$45.00 per mo.
2d " 122,000	6th " 110,000	116,000	7th " 58.00 "
3d " 140,000	7th " 108,000	124,000	8th " 62.00 "
4th " 150,000	8th " 120,000	135,000	9th " 67.50 "
5th " 150,000	9th " 130,000	140,000	10th " 70.00 "

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NYLICS OF THE SECOND DEGREE.

Any agent who shall receive monthly payments during the entire period of service required of Nylics of the First Degree, shall thereupon become a Nylic of the Second Degree.

Nylics of the Second Degree shall receive monthly from the New-York Life Insurance Company a sum of money as follows:

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For his 11th year of continuous membership in the Nylic the monthly income shall be equal to \$1.00 per thousand on the average between the amount of business procured and paid for as above during his sixth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his tenth Nylic year.

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For his 12th year of continuous membership in the Nylic the monthly income shall be equal to \$1.00 per thousand on the average between the amount of business procured and paid for as above during his seventh Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his eleventh Nylic year.

For his 13th year of continuous membership in the Nylic the monthly income shall be equal to \$1.00 per thousand on the average between the amount of business procured and paid for as above during

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his eighth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his twelfth Nylic year.

For his 14th year of continuous membership in the Nylic the monthly income shall be equal to \$1.00 per thousand on the average between the amount of business procured and paid for as above during his ninth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his thirteenth Nylic year.

For his 15th year of continuous membership in the Nylic the monthly income shall be equal to \$1.00 per thousand on the average between the amount of business procured and paid for as above during his tenth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his fourteenth Nylic year.

ILLUSTRATION OF MONTHLY INCOME TO SECOND DEGREE NYLICS.

Amounts assumed, for illustration, to have been written during First Degree period of agent.	Amounts assumed, for illustration, to be in force on Dec. 31st, 5 years later. Dec. 31st.	Average between amounts written and amounts in force 5 years later.	Monthly income for year of service stated below (for illustration).
6th Year, \$100,000	10th Year, \$80,000	\$90,000	11th Year, \$90.00 per mo.
7th " 122,000	11th " 110,000	116,000	12th " 116.00 "
8th " 140,000	12th " 108,000	124,000	13th " 124.00 "
9th " 150,000	13th " 120,000	135,000	14th " 135.00 "
10th " 150,000	14th " 130,000	140,000	15th " 140.00 "

NYLICS OF THE THIRD DEGREE.

Any agent who shall receive monthly payments during the entire period of service required of Nylics of the Second Degree, shall thereupon become a Nylic of the Third Degree.

Nylics of the Third Degree shall receive monthly from the New-York Life Insurance Company a sum of money as follows:

For his 16th year of continuous membership in the Nylic the monthly income shall be equal to \$1.50 per thousand on the average between the amount of business procured and paid for as above during his eleventh Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his fifteenth Nylic year.

For his 17th year of continuous membership in the Nylic the monthly income shall be equal to \$1.50 per thousand on the average between the amount of business procured and paid for as above during his twelfth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his sixteenth Nylic year. 10

For his 18th year of continuous membership in the Nylic the monthly income shall be equal to \$1.50 per thousand on the average between the amount of business procured and paid for as above during his thirteenth Nylic year; and the amount of said business which is in force on December 31st of his seventeenth Nylic year. 20

For his 19th year of continuous membership in the Nylic the monthly income shall be equal to \$1.50 per thousand on the average between the amount of business procured and paid for as above during his fourteenth Nylic year, and the amount of said business which is in force on the Company's books on December 31st of his eighteenth Nylic year.

For his 20th year of continuous membership in the Nylic the monthly income shall be equal to \$1.50 per thousand on the average between the amount of business procured and paid for as above during his fifteenth Nylic year, and the amount of said business which is in force on December 31st of his nineteenth Nylic year. 30

ILLUSTRATION OF MONTHLY INCOME TO THIRD DEGREE NYLICS.

Amounts assumed, for illustration, to have been written during Second De- gree period of agent.	Amounts assumed, for illustration, to be in force on Dec. 31st, 5 years later. Dec. 31st.	Average between amounts written and amounts in force 5 years later.	Monthly income for year of service stated below (for il- lustration).
11th Year, \$100,000	15th Year, \$80,000	\$90,000	16th Yr. \$135.00 per mo.
12th " 122,000	16th " 110,000	116,000	17th " 174.00 "
13th " 140,000	17th " 108,000	124,000	18th " 186.00 "
14th " 150,000	18th " 120,000	135,000	19th " 202.50 "
15th " 150,000	19th " 130,000	140,000	20th " 210.00 "

SENIOR NYLICS.

Senior Nylics shall receive so long as they live, provided only they shall not enter the service of any other life insurance company, monthly payments as follows:

The basis of business for incomes for the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th and 20th years of continuous Nylic membership will be added together and divided by 15. The sum thus obtained will then be averaged with the amount of new business written and placed under the conditions provided above during that year of service as a Third Degree Nylic in which his production was smallest. His monthly income as a Senior Nylic shall be \$0.75 per thousand on the average, or amount, thus obtained.

Illustration of Monthly Income to
SENIOR NYLICS.

Basis of Income
for the Year
Stated.

Amounts assumed to be procured during 3d Degree Period.	
6th . . .	\$90,000
7th . . .	116,000

8th	124,000		
9th	135,000		
10th	140,000		
11th	90,000		
12th	116,000		
13th	124,000		
14th	135,000		
15th	140,000		
16th	90,000	\$124,000	
17th	116,000	135,000	10
18th	124,000	116,000	
19th	135,000	90,000	
20th	140,000	140,000	

Total of sums used as bases for income
from 6th to 20th years.....\$1,815,000

Divided by . 15)1,815,000(= \$120,600

31	
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100	20

Smallest year of 3d degree..... 90,000

Total \$210,600

Average . . . = \$105,300

75c. per \$1,000 = \$78.97 monthly income for life.

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PHYSICAL INCAPACITY.

Any agent who is a Nylie of the first, second or third degree, becoming physically incapacitated for work of any kind, shall, having established the fact of such total disability to the Company's satisfaction, receive monthly an amount equal to the average monthly payments he has received from the beginning of the "degree of which he is a member at the time of such disability." The said monthly payments to be continued to him during the continu-

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ance of the disability (satisfactory proof of the continuance thereof to be furnished the Company from time to time, on demand), not, however, to exceed a period of five years in all; and at the end of such period, all further payments to such agent on account of Nylic shall cease. If such agent should recover from such disability and resume work as agent for the Company, the Company shall, at its option, make such adjustment of his position in the Nylic as shall, in its judgment, seem fair and right. 10

FORFEITURE OF MEMBERSHIP.

Any Nylic who shall leave the Company's service for any cause except permanent physical disability, or who shall pay for less than \$50,000 of new insurance in accordance with rules on page 28 hereof, in any calendar year, under the conditions provided, shall cease to be a Nylic, and shall forfeit all claim to time credit or to any further payments from the Company on account of Nylic. 20

DRAWING NYLICS CAN HAVE NO OTHER BUSINESS.

Every Nylic receiving a monthly income must have, either direct with the Company or with one of the Company's recognized representatives, a contract under which he shall devote his entire time, talents and energies to the service of the New-York Life Insurance Company in soliciting personally for business. 30

The discontinuance of such contract will terminate his membership in Nylic and all benefits thereunder.

HOW OCCASIONAL CONTRIBUTORS OR AGENTS HAVING BUSINESS OTHER THAN LIFE INSURANCE MAY QUALIFY AS NYLICS.

Any occasional producer who has a written contract but who does not devote his entire time to the Company's service, but does give all the insurance 40

he writes to the New-York Life, shall be required, in order to be considered a Nylic and maintain Nylic membership, to procure annually under all the terms and conditions herein provided, \$60,000 of new insurance, in accordance with the rules on page 28 hereof, and if he shall fulfil these requirements each year, he may become a Drawing Nylic under regular Nylic rules whenever he enters into the regular form of contract required by the Company, and thenceforth, so long as he receives the benefits of Nylic, devotes his entire time, talents and energies to the Company's service in soliciting personally for business and complies with the conditions thereafter required, provided he does so prior to his becoming a Second Degree Nylic. 10

GENERAL RULES.

I.—Every Nylic (except as provided on page 27 for certain Freshmen Nylics) must devote his entire time, talents and energies to the service of the New-York Life Insurance Company in soliciting personally for business. 20

II.—The termination of an agent's contract and agency, for any cause, terminates all his rights in Nylic.

III.—An agent may forfeit his rights in Nylic and not thereby forfeit his contract. 30

IV.—No agent can continue to be a Nylic of the First, Second or Third Degree, who, in addition to devoting his entire time, talents and energies to the Company, does not produce annually, on other lives than his own, at least \$50,000 of insurance (Term and 7-Y. E. insurance excepted), upon which one full year's premium in due course of business is paid.

Term and 7-Y. E. insurance shall not count in any way in the Nylic. 40

V.—Business written by the collection of a quarterly or semi-annual premium will ultimately be counted, provided sufficient subsequent premiums thereon are collected to cover one year's insurance. Any business which lapses before this has been done will not be considered.

VI.—*Strictly personal business* only will be counted in determining a Nylic's record. If a commission, brokerage, or bonus of any kind, is paid to any one for services rendered in procuring business, such business is, in so far, *not* personal business and will be reduced in the proportion that the amount so paid bears to the agent's commission. Thus, if the agent pays out one-third of his commission in this way, the business thus procured will only count for two-thirds of its face value. 10

VII.—No salaried employee can become a Nylic.

VIII.—No agency, director, manager, nor general agent in control of territory or having sub-agents, can be a Nylic. 20

IX.—Any Nylic who takes exception at any time to the ruling of the Agency Department on any question which seems to affect his interests as a Nylic, shall have the right to appeal to the President of the Company, and the President's decision shall be final.

X.—The Company will, for a period of six months, pay to the estate of any Nylic in good and regular standing, in the First, Second or Third Degree, or to the estate of any Senior Nylic, upon his decease, whatever monthly income on account of Nylic the deceased may have been enjoying at the time of his death. 30

XI.—The Company reserves the right to modify or change any of the conditions of Nylic as herein expressed by later editions of this publication at any time. 40

XII.—This publication is issued subject to all the regular rules of the Company that govern the conduct of its business with its agents.

Exhibit P-3.

This is to certify, that Mr. A. G. Negley, Jr., of New York City, having fulfilled the necessary preliminary requirements, is declared a "Nylic" by the New-York Life Insurance Company. 10

In witness whereof, the President, 2d Vice-President, and Secretary have affixed their signatures hereto, at the Home Office of the Company in the City of New York, this fourth day of April, 1902.

YK

JOHN A. McCALL, 20
President.

GEO. W. PERKINS,
2d Vice-President.

CHAS. C. WHITNEY,
Secretary.

[SEAL.]

Exhibit P-4.

J. E. R.

JULY 12, 1904. 30

ALBERT G. NEGLEY, JR.,
Park Row Branch.

Dear Sir.—This is to notify you that your agreement with this Company, bearing date of January 10th, 1901, is hereby terminated.

Yours truly,

(S.) E. R. PERKINS, 40
Second Vice-President.

Exhibit D-1.

NEW-YORK LIFE INSURANCE COMPANY,
346 & 348 Broadway, New York.

John A. McCall, President.

The Great International Life Insurance Company.

Park Row Branch Office,
Suite 1917, Park Row Building.
Tel. Call, 3438 Cortlandt.

Albert G. Negley, Jr.,
Gen'l Agent.

NEW YORK, August 14th/03.

My dear Ferd.

Your valued favor of 6th Inst was duly rec'd upon my return to my Office today after an absence of 10 days in Eastern Pa on a hunt for business. It keeps me hustling day & night to keep in the procession. It is the same old *Story*, with you always so poor, & can't afford it. You count ahead to far, by about *60 years*. As I told you repeatedly, "*Ferdinand*" that I would always look out for interests & I don't think I have ever broken my word to you or any member of the family and by the terms of these policies, you have Loan, Paid up & Extended Insurance values, after the 2nd year, so my *Dear Boy*, you can't loose. It is a case where you *Win* if you loose. Now it is impossible for me to transfer this \$6000. to any one else besides you & Frank needs the protection for your *Dear Beloved* Sisters, as in their *Case*, it will be much *more* of a task for them to get work in their old age than you or Frank and as you & Frank are their *sole* protectors, you should provide well for them in case of your *Death*, which may come any time, although I hope we may all

live to a ripe old age, and can spin yarns of the days gone by, of the *Continual Round* of Pleasure, of the Noss Jollities & their many Travels, I often look back with a great deal of pleasure, the many pleasant times I have had with the *Bunch*. Now this will only Cost you \$100 & if you *feel* so *Cussed* poor next year, I will pay it for you as I am greatly interested in the Welfare of the *Girls*, so sign the Enclosed Note for \$100.00 due Dec. 1st/03 & if at that time you want a little extension I will grant same. I am out at Plainfield, N. J. & hope to be in my new *home* by Oct 1st when I would be glad to have you and *Bunch* come out to see *us*. I wrote one of the largest amounts of business for the year Closing June 30th of my life & retained my membership in my *Club*. We leave New York on Sept. 13th accompanied by our family's for a trip to Colorado Spring's to attend a Convention, will be gone about 11 days. As soon as you return to New York, come down to see me, & I want to arrange for you all to come out to Plainfield to see us. Sign & return to me the enclosed Note and I am certain you will never regret it.

Very kindest regards to all especially *Maggie* Much Face. Awaiting an early reply, I remain,
Truly your Friend,

A. G. NEGLEY, JR.

Ex. D-2.

NEW-YORK LIFE INSURANCE COMPANY,

346 & 348 Broadway, New York.

John A. McCall, President.

The Great International Life Insurance Company.

Park Row, Branch Office,

Suite 1917, Park Row Building.

Telephone No., 3438 Cortlandt.

PLAINFIELD, N. J., Nov. 20/03.

My Dear Ferd.—As I paid for these additional policies of \$3,000 each on your life & your brother's, to make up my allotted am't for year closing June 30/03, I send them to you, as they are valueless to me & may be of benefit to your estates, & I would advise you pay the 2nd and subsequent premiums, as it is the best of Estates for your Dear Sisters. My very kindest regards to all the family. I am somewhat of a wreck, after all I have passed through in the past 2½ months, and will probably go away for a few months.

Very truly,

A. G. NEGLEY, JR.

Ex. D-3.

PLAINFIELD, N. J., Nov. 1st, 1903. 20

Mr. H. BLOOMER.

Dear Sir.—If I understood your note correctly (dated Oct. 31/03) The Noss Note of \$382.00 had been paid. I am awfully afraid Noss will be angry, & if he calls about it, say I have been absent from the office since Oct. 20th, as my wife is very sick & say you have not sent any mail to me. Do not open my desk in his presence as he would see his own letter. Mr. A. W. Perrin, of the N. Y. Herald, promises to send me at least \$20.00 to-morrow. In case he should forget it, get after him. He is to send me \$5.00 or \$10.00 a week & possibly more until he pays me \$260.00 due me. Place these amts. to my credit. Fred T. Holden will call or send \$21.34 on or before Nov. 4th. You can give him receipt for same & place same to my credit. My wife is no better & I will not be at the office for a few days. Let me know if Noss Notes was paid in full.

Yours, &c.,

NEGLEY. 40

Ex. D-4.

Received Apr. 2, 1902. Home Office.

4/1, 1902.

TO THE NEW-YORK LIFE INSURANCE COMPANY.

Re Nylic.

Gentlemen.—In compliance with the requirements set forth in the rules and instructions contained in the edition of May, 1901, Form 2432, which are fully understood by me, I hereby request membership in NYLIC.

I have devoted my entire time, talents and energies to personally soliciting business for the Company since January 10, 1902, and desire my Freshman Nylic Degree to date from January 1, 1901.

Although the entire record for the current year is not yet completed, as I have paid for sufficient business to meet the requirements as to amount, you will please furnish me with a certificate of membership in the NYLIC and an emblem of the Freshman Degree.

Yours truly,

A. G. NEGLEY, JR.

Cert. & Button sent 4/4/02.

I have consulted the records and find that Mr. A. G. Negley, Jr., has paid for an amount in excess of the Nylic requirements for the year 1901, and in accordance with Nylic terms.

A. H. W. LACY,
Cashier.
Park Row Branch.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

ALBERT G. NEGLEY, JUNIOR,
Defendant in Error,

vs.

NEW-YORK LIFE INSURANCE COM-
PANY,
Complainant in Error.

In Error.

**Assignment
of Errors.**

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Afterwards, that is to say on the third Tuesday of June, in the year one thousand nine hundred and seven, in the Court of Errors and Appeals, in the last resort in all causes of the State of New Jersey, comes the said New-York Life Insurance Company, by its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said Bill of Exceptions, as also in the giving of verdict and judgment aforesaid, there is manifest error, in this, to wit: That by the record aforesaid it appears that the judgment in form aforesaid so given for the said Albert G. Negley, Junior, against the said New-York Life Insurance Company, where, by the law of the land judgment ought to have been given for the said New-York Life Insurance Company against said Albert G. Negley, Junior.

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There is also error in that the said Justice, before whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, admitted in evidence the testimony of the plaintiff, giving the plaintiff's estimate of the probable income he would receive from Nylic in the year nineteen hundred and six.

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There is also error in that the said Justice, before

whom, &c., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, admitted in evidence the testimony of the plaintiff, giving the plaintiff's estimate of the probable income he would receive from Nylie in the year nineteen hundred and seven.

There is also error in that the said Justice, before whom, &c., at and upon the aforesaid trial, admitted the testimony of the plaintiff to prove commissions to which he claimed to be entitled on policies of insurance renewed in the year nineteen hundred and three, which testimony was not the best evidence of the fact. 10

There is also error in that the said Justice, upon the said trial of said issue, admitted evidence to prove the amount of Nylie compensations claimed to be probably payable to the plaintiff in the year nineteen hundred and five.

There is also error in that the said Justice, upon the said trial of said issue, admitted evidence to prove the amount of Nylie compensations claimed to be probably payable to the plaintiff in the year nineteen hundred and six. 20

There is also error in that the said Justice, at the aforesaid trial of the said issue so joined between the parties aforesaid, refused to grant judgment of non-suit against the plaintiff.

Therefore, the said New-York Life Insurance Company prays that the judgment aforesaid, by reason of the aforesaid errors, and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled, and held for nothing, and that the said New-York Life Insurance Company may be restored to all things it has lost on occasion of the said judgment, &c. 30

FRANCIS C. LOWTHORP,
Attorney for and of Counsel with
Plaintiff in Error.

Filed June 7, 1907.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ALBERT G. NEGLEY, JR.,
Defendant in Error,

vs.

NEW-YORK LIFE INSURANCE COM-
PANY,
Plaintiff in Error.

In Error.

**Joinder in
Error.**

And afterwards, to wit: on the sixth day of June,
nineteen hundred and seven, the said Albert G. Neg-
ley, Jr., by Raymond, Van Blarcom & Anthony, his
attorneys, comes into court and says that there is
no error either in the record and proceeding afore-
said or in giving the judgment aforesaid, and he
prays here that the Court here may proceed to ex-
amine as well the record and proceedings aforesaid
as the matters aforesaid assigned for error, and that
the judgment aforesaid, in manner aforesaid, may
in all things be affirmed, etc.

RAYMOND, VAN BLARCOM & ANTHONY,
Attorneys for and of Counsel with
Defendant in Error.

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