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Record No. 4990

In the Supreme Court of Appeals of Virginia at Richmond

AMERICAN DRUGGISTS' INSURANCE COMPANY

v.

COMMONWEALTH OF VIRGINIA

FROM THE STATE CORPORATION COMMISSION

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4990

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 27th day of January, 1959.

AMERICAN DRUGGISTS' INSURANCE COMPANY, Appellant,

against

COMMONWEALTH OF VIRGINIA, Appellee.

From the State Corporation Commission

Upon the petition of American Druggists' Insurance Company an appeal of right is awarded it from an order entered by the State Corporation Commission on the 9th day of October, 1958, in a certain proceeding then therein depending entitled: Application of American Druggists' Insurance Company for a deviation from the rates for writing fire and allied lines approved for use by members of the Virginia Insurance Rating Bureau; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Corporation Commission in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

THE AMERICAN DRUGGISTS' INSURANCE COMPANY
American Building Cincinnati 2, Ohio

A. G. DORIN AGENCY
Virginia State Agents
704 INSURANCE BUILDING
10 SOUTH TENTH STREET
RICHMOND, VIRGINIA

April 30, 1958.

State Corporation Commission
Bureau of Insurance
Richmond 9, Virginia

Re: Uniform Deviation

Gentlemen:

This company has conducted business in Virginia for some 35 years and has operated throughout that time under an approved 25% downward deviation from the published fire and allied lines insurance rates of The Virginia Insurance Rating Bureau. The last approval of this deviation by the State Corporation Commission was by Administrative Order No. 5956, dated April 29, 1957.

Application for permission to continue or renew said deviation was made by letter dated March 7, 1958, addressed by said company to the State Corporation Commission and by letter dated March 25, 1958, from the Virginia Insurance Rating Bureau to the Bureau of Insurance. Certain statistical and other information was submitted with the above letters, in justification of the request for permission to continue the deviation.

Under date of March 31, 1958, the Bureau of Insurance, by letter signed by Mr. John T. Cover, Rate Analyst, advised said company that the State Corporation Commission was unable to approve the request of a 25% downward deviation from the published rates of the Virginia Insurance Rating Bureau.

This decision or order of the Commission was made without a hearing on the question.

Believing that said application to continue or renew the

25% downward deviation by The American Druggists' Insurance Company is fully justified and should be granted, said company hereby respectfully requests a hearing on the matter before the State Corporation Commission.

Pending such hearing and decision thereon said company respectfully requests that the Commission suspend or postpone the refusal to permit the deviation to continue, so that said company and its agents may continue to apply such deviation, as it has for the past great many years.

page 2 } Your courtesy and kindness in granting such a hearing and in permitting the continued use of the deviation pending a decision thereon, is appreciated.

We thank you now.

Yours truly,

THE AMERICAN DRUGGISTS' INSURANCE CO.
By DAVID P. PICKREL,
Secretary and General Counsel.

DPP:aaa

cc: Virginia Insurance Rating Bureau
P. O. Box 1198
Richmond 9, Virginia

page 3 }

* * * * *

AT RICHMOND, MAY 7, 1958.

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

For a deviation from the rates for writing fire and allied lines approved for use by members of the Virginia Insurance Rating Bureau.

CASE NO. 13894.

ON A FORMER DAY came Virginia Insurance Rating Bureau pursuant to the provisions of §38.1-258 of the Code, and filed at the request of and on behalf of American Druggists' Insurance Company an application for a uniform 25%

downward deviation from the rates approved by the Commission for use by members of the Virginia Insurance Rating Bureau for writing fire and allied lines.

AND IT APPEARING to the Commission that it will be necessary to hold a hearing with respect to said filing in accordance with the provisions of §38.1-258.

IT IS ORDERED:

(1) That a proceeding be instituted, assigned Case No. 13894, docketed and set for hearing at 10:00 A. M. on July 14, 1958 in the Courtroom of the State Corporation Commission, Blanton Building, Richmond, Virginia at which time and place the applicant and all parties in interest will be heard with respect to the application filed herein; and

(2) That an attested copy hereof be sent to David P. Pickrel, Secretary and General Counsel of the applicant, American Building, Cincinnati 2, Ohio, to Virginia Insurance Rating Bureau and Collins Denny, Jr., its counsel, Richmond, Virginia, to the Virginia Association of Insurance Agents, Richmond, Virginia and to the Bureau of Insurance.

A True Copy

Teste:

N. W. ATKINSON
Clerk of the State Corporation Commission.

page 4 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

For a deviation from the rates for writing fire and allied lines approved for use by members of the Virginia Insurance Rating Bureau.

CASE NO. 13894.

Present: Commissioners H. Lester Hooker (Chairman), Jesse W. Dillon, Ralph T. Catterall (Commissioner Dillon presiding).

David P. Pickrel.

Appearances: David Meade White, David P. Pickrel, Counsel, American Druggists' Insurance Co.
Claude D. Minor, Collins Denny, Counsel, Virginia Insurance Rating Bureau.
William H. King, Counsel, Virginia Association of Ins. Agts.
Norman S. Elliott, Counsel for the Commission.

Date of Hearing
September 9, 1958.

page 5 } Commissioner Dillon: You may proceed, Mr. White.
Mr. White: I will call Mr. Pickrel as my first witness.

DAVID P. PICKREL,
a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. White:
Q. Will you state your name and address, please.
A. I am David P. Pickrel of Cincinnati, Ohio. My office is at 1500 American Building.
Q. What is your position with the American Druggists' Insurance Company?
A. I am Secretary and General Counsel for the American Druggists' Company and also a member of its Board of Directors and Executive Committee.
Q. Would you state the facts surrounding the application of your Company for deviation?
A. The American Druggists' Insurance Company has been doing business in Virginia since 1932, and during
page 6 } all of that time have operated on a 25 per cent deviation on fire and allied lines. We have made application each year to make that deviation effective in the coming year. In the years previous to that it was not required. It has been granted every year and expired in February of this year and then we were notified by the Insurance Department that it was necessary to file certain data and they sent out their formulas outlining a required Loss Ratio of 52.5 per cent and Expense Ratio of 45.5 per cent and they provided us with forms for filing that application and we did compile those forms and file those with the

David P. Pickrel.

Bureau of Insurance in due time and had word from the Bureau of Insurance that the application would have to be declined, following which we requested this hearing which we are having today.

Q. Do your prepared exhibits reflect the financial condition of the American Druggists' Insurance Company?

A. Yes, I have four copies setting out the Company's assets and liabilities as of January 1, 1948.

Mr. Elliott: Do you mean 1948 or 1958?

A. 1958, certainly.

page 7 } Commissioner Dillon: That will be received as Exhibit No. 1.

Mr. Denny: Do you have copies for Counsel?

Mr. White: You can use the Court exhibit and we will furnish you one later.

Witness: At any rate this statement of assets and liabilities outlines those assets and liabilities as reported in our annual statement to all Insurance Departments as of January 1, 1958.

On the bottom of that sheet I have compiled the ratio of assets to liabilities of the American Druggists' Insurance Company as compared with the liabilities of some five or six other companies, to demonstrate that the American Druggists' Insurance Company is just about the strongest Insurance Company in the Country. Our ratio of total assets to liabilities is $5.63 to every $1.00 of business we have in liabilities, and I doubt if there is any other insurance company doing business in the United States with anything like that ratio of financial strength.

Commissioner Catterall: It is practically an investment trust.

page 8 } A. Yes. Would you like for me to go ahead?

Mr. White: Yes.

A. I would like to give the Commission a brief history of this Insurance Company because it is interesting and unusual, and definitely a Specialty Company.

The Company was formed by a couple of druggists that felt that druggists were discriminated against by other insurance companies because their risks were rated the same as

others, and they felt that they were experienced men, educated men, college men, and that they were a better risk than the average. They then formed this Insurance Company and started out wtih $150,000 of capital and surplus of $50,000, and they started writing insurance in 1906. They wrote at a deviation from the beginning, starting in Cincinnati, Ohio, where it has its Home Office, gradually expanding from State to State until it now does business in forty-one States.

It does its business based on the agency system in all forty-one States and deviates in all forty-one of the States
page 9 } and always has. It files that deviation every year in each of the States where annual filing is required, and has never failed to have that deviation approved. It has had its deviation questioned in a number of States and there have been hearings on it, and in some instances we have been forced to go to Court in order to continue, but we have been successful and are now doing business in all forty-one States. The reason we do not do business in all forty-eight States is that there are not enough drug stores in some of the smaller states for them to qualify.

I would like to call your attention to this financial statement showing assets of $3,651,000.00, which this Company has built up in fifty-one years insuring the property of druggists at a deviation in every one of those years and for the entire time.

Do you want me to go on?

Mr. White: I wish you would.

A. We have filed an application in Virginia each year and it has been approved each year. Our application was filed this year and our deviation declined because the Insurance Department felt that it was not justified.

page 10 } Briefly, the statutes in this Case are familiar to the Commission because they have heard them quoted in other cases. Section 38-1.258 is the Section which permits the insurer to apply to the Commission for permission to file and use a deviation and asks that it be accompanied by supporting information, and indicating that the Commission shall give consideration to all available statistics and the principles for rate-making as set out in the rating provisions of the Virginia Code.

This Section provides that the Commission shall permit a deviation and modification to be filed and used, if it is justified, and further provides that it shall deny the application

if it finds the deviation or modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

The only other statutory section involved is Section 38.1-252, which sets out the principles for the making of rates which provides that "Rates shall not be excessive, inadequate or unfairly discriminatory," and points out that "Due consideration shall be given to past and prospective loss experience within and outside this State, to conflagra-
page 11 } tion or catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this State."

Those Sections require that the Commission, in considering the application to continue this deviation that it should consider all the factors set forth in those statutory sections of the Virginia Insurance Laws.

We, therefore, have but one question here and that is—and that is whether this filing presents a deviation situation which should be approved, and basically, the only question there is whether the deviation is justified.

The statutes are rather meagre on giving information on what will justify a deviation, and the only test set out is one for a guide on the matter of refusal and that is whether the resulting premiums will be excessive, inadequate or unfairly discriminatory.

Another consideration which must be given consideration and which is of great importance, is the safety
page 12 } and soundness of the company applying for the deviation, and that is fully answered by the company's financial statement.

Mr. Denny: Simply for the sake of the record, I wish to object to the conclusions and argument on the Law being made by the witness and ask that that objection run through on any other argumentative legal conclusions given by the witness.

Commissioner Dillon: He is an expert so we will overrule that.

Mr. Denny: It will be understood that that objection runs through?

Commissioner Dillon: Yes.

David P. Pickrel.

A. (Cont.) Now, we would like to discuss the Commission's formula and the application submitted by the American Druggists' Insurance Company in relation to that formula.

The Commission's formula shows that there should be as a guide for the making of rates in Virginia an arrangement which would work out to 52.5 per cent for Loss Ratios and 45.5 per cent for Expense Ratio and 5 per cent for Profit.

page 13 } Commissioner Catterall: Does it not say 5 per cent for Profit and Contingencies?

Mr. Elliott: It says underwriting Profit and Contingencies.

A. (Cont.) The Company filed its record as requested by the Bureau of Insurance. Those figures showed that the Company had for 1957 in Virginia a Loss Ratio of 22.9 per cent and an Expense Ratio of 36.1 per cent, leaving a Profit in 1957 in Virginia of 41 per cent.

On a five-year average in Virginia the Company's Loss Ratio was 43.2 per cent, its Expense Ratio 35.4 per cent and its Profit was 21.4 per cent.

Countrywide for 1957 the Company had a Loss Ratio of 27.5 per cent and an Expense Ratio of 40.7 per cent and a Profit of 31.8 per cent.

Countrywide on a five-year average it had a Loss Ratio of 33.5 per cent, an Expense Ratio of 38.2 per cent and a Profit of 28.3 per cent.

Now, we want to point out to you that those figures or those profits were made with the deviated premium. None of these were written at full premium proposed in the page 14 } Bureau rates, but in spite of that, the Company made this profit.

We filed those figures with the Bureau of Insurance and they said "They won't do." They applied the formulas to our figures, they kept the same ratios we showed, but for the purposes that we wanted to deviate 25 per cent that they would take the 52.5 per cent Loss Ratio shown in the formula and divide it by 75 per cent, which is the remaining after our 25 per cent deviation, and they came up with 70, and they said that they would set up for us a fictitious 70 per cent Loss Ratio, and they then applied the rest of the formula, and naturally, along that line we could not deviate. They set up this 70 per cent, and instead of our actual of 33-½ per cent Nationwide, they said it had to be 42.5 per cent in Virginia with the 5 per cent profit.

David P. Pickrel.

We say, naturally, we could not justify that if we had 70 per cent Loss Ratio, and we would not even ask for it and would not want it. No company would. However, the formula which we say is misapplied because we say, if you assume that our Loss Ratios were actually 52.5 per cent, as set out in the formula, and then apply our actual Expense Ratios, then our deviation would still be justified.

page 15 } Under such an arrangement, assuming we have a Loss Ratio of 52.5 per cent, we would have a Virginia profit for 1957 of 11.4 per cent, or a Virginia profit on a five-year average of 12.1 per cent; a Countrywise profit for 1957 of 6.8 per cent or a Country-wide profit of 9.3 per cent on a five-year average.

Commissioner Catterall: You mean if you deviated 25 per cent?

A. Yes, sir, with a 52.5 per cent Loss Ratio if we had that.

Mr. White:

Q. In other words, if you applied that percentage to your actual premiums that you received you would have that?

A. Yes, with the actual expenses if we had used 52.5 per cent as an assumed Loss Ratio.

Q. And even under those circumstances, you feel it justifies the deviation if you apply the actual formula of the Commission of 52.5 per cent?

A. Yes, that is the point. I would like to submit again the figures submitted with our application. They are

page 16 } set out on this exhibit as they were on the original application except they are a little neater, and we have added another column converting our deviated premiums to full manual rates to show what the experience would be if we had no deviation. I have four copies, plus another copy from which that is used as to what this is.

Commissioner Dillon: That will be received as Exhibit No. 2.

A. (Cont.) This exhibit shows our direct premiums written for each year for the past five years, plus a total of the five years, plus a percentage average for the five years, broken down in expenses as requested by the Insurance Department and as filed in the Insurance Department with our applica-

tion. The only new thing on this exhibit is the right-hand column showing what those figures would be if our premiums were not deviated and our policies were written at full manual rate. That is what it would be if we did not apply the deviation in Virginia and had never deviated before. By converting those figures to full manual rate, it would increase the premium and we would keep the same loss

page 17 } figure and that would mean some adjustment in the expense figure. This would give the result if those deviations had never been used in those five years Countrywide and in Virginia. It is interesting to see what this does to our Loss Expense and our profit yearly.

It would reduce the Loss Ratio in Virginia on a five-year average from 43.2 per cent to 32.4 per cent, and would reduce the Loss Ratio converted on a five year average from 33.5 per cent to 24.9 per cent.

It would increase the profit made by the Company Countrywide on a five year average from 28.3 per cent to 41.5 per cent.

It would increase the profit in Virginia on a five-year average from 21.4 per cent to 36.4 per cent.

It would also decrease the Expense Ratio Countrywide on a five-year average basis from 38.2 per cent to 33.6 per cent, which is a total of the items shown as a combination with the Commission, of the acquisition expenses, general expenses, taxes, licenses and fees and would decrease the expense in Virginia from 35.4 per cent to 31.2 per cent.

That would be the effect if we had not operated

page 18 } on a deviation and had made the application in Virginia originally without having a deviation anywhere else.

There is another feature that deserves important consideration and that is the so-called "conflagration allowance" that is figured in the Commission's formula and that is 2.5 per cent. I believe some states use 3 per cent. This Company submits that it has no conflagration hazards because its insurance writings are primarily drug stores. We are a conservative Company with a conservative underwriting practice. In the best cities of Virginia we will write no policy higher than $35,000 and in towns with no fire protection, our largest policies are $20,000. We re-insure all of those policies so that the net retentive would be a policy of $12,500.00, and only $500 in unprotected areas all of—

Commissioner Catterall: Is it $500 or $5,000?

David P. Pickrel.

A. Did I say $500? It should be $5,000; I beg your pardon so that these are the maximum amounts we will write only on one risk or in an area of 150 feet of that one risk so it is difficult to assume a conflagration destroying com-
page 19 } pletely more than one or two drug stores in any of our cities. It never has happened. We, therefore, say that the conflagration allowance in the rating does not apply to us because we have no conflagration hazard.

Another point we wish to make is Re-insurance, which is an important one which has not been shown, but now and then touched on in the filing so far. The Re-insurance with us is a very important matter and it must be considered. We re-insure on a Nationwide average about 43 per cent of our average premiums. Our Re-insurance is all placed with the Merchants Fire Assurance Company of New York, which Corporation is an old and conservative direct writing Company which also writes Re-insurance.

Mr. Elliott: What is the name of the Company?

A. Merchants Fire Assurance Company of New York. It is one of the Rockefeller Companies. When we reinsure we get back part of the premium and that commission is sufficient to off-set the total commission allowed to our agents Countrywide.

In addition to getting back the commission on
page 20 } this Re-insurance, we also get a credit on our Re-insurance Reserve, as set out in the Financial Statement, which is also the same as the Reserve for Unearned Premiums.

We also get back a portion of the losses, and, of course, we do pay out a portion of the premium.

Now, because Re-insurance is so important, I have prepared an exhibit setting out the effect the same figures with the same area as shown on Exhibit 2 would have, except these figures are calculated and shown as Re-insurance. In other words, these are the net premiums written. I have four copies of that which I would like to introduce as Exhibit 3.

Commissioner Dillon: That will be received as Exhibit 3.

A. (Cont.) The arrangement of these figures is the same as that on Exhibit 2 except Re-insurance is taken into account both Countrywide and Virginia. This Exhibit 3 also has a

column in the extreme right converting those figures to full manual rate to designate what they would be if we had not deviated from it either Countrywide or in Virginia.

page 21 } We would point out that, in filing our application for deviation, in most of the states they prefer to receive the net figures and that is because Re-insurance is such a substantial factor in the matter. Actually, in reporting the insurance results to the stockholders, Re-insurance has to be reconsidered because you don't know what your final items are until you consider Re-insurance. Our Re-insurance amounted to 43 per cent of our premiums, which is an important factor for the Commission to consider, that is, that we get that 43 per cent from Re-insurance.

Looking at Exhibit 3, you will note the commission figure shown, both in Virginia and Countrywide is a minus figure, and that is because of the Re-insurance coming back in the commission figures. That is why it has such an important effect on the figures.

There is no doubt about the fact that the Company's figures after Re-insurance, are more thorough and more accurate, and does create the final profit on that return figure. So we feel the Net after Re-insurance is the one that should be considered.

Then let's look at what those figures do to our

page 22 } Loss Ratio, Expense Ratio and Profit. The actual ratios which these would be before being resolved into manual rates, shown in the next to the last column, show an Expense Ratio Countrywide as a Total of the Loss Adjustment Expense, Commissions, Other Acquisition Expenses, General Expenses, Taxes, Licenses and Fees of 29.2 per cent; a Loss Ratio of 33.1 per cent and a Profit of 37.7 per cent.

In Virginia on a five-year average Expense of 26.4 per cent the Loss Ratio was 41.5 per cent and a profit of 32.1 per cent.

Now those figures, after reflection, come practically to the point of filling the formula, including the superficial, or whatever you may call it, 70 per cent Loss Ratio, although it would not permit a full 5 per cent Profit. However, if you would consider those ratios after Re-insurance, and after converting to full manual rate, which is the last column on this Exhibit 3, you will there find the total of all Expense items Countrywide to be 23.3 per cent. The Loss Ratio of 25.4 per cent and a Profit of 51.3 per cent.

David P. Pickrel.

In Virginia alone when converted to manual
page 23 } rates on a five-year average, the total Expense is
19.9 per cent, the Loss Ratio is 31.1 per cent and the Profit is 49.0 per cent. This does permit a 70 per cent Loss Ratio with a Profit larger than the 5 per cent set out in the formula and actually the effect is, with the 70 per cent Loss Ratio, on those figures the Profit would be 6.7 per cent Nationwide and 10.1 per cent in Virginia, even if we had a 70 per cent Loss Ratio.

We, therefore, feel that the net figures, after Re-insurance, converted to manual rates as though no deviation had been made, today justify the 25 per cent deviation and fit the formula even with the fictitious or artificial 70 per cent Loss Ratio.

Commissioner Catterall: If you re-insure all of your business and get commissions in excess of those you pay, would you not get larger profits?

A. No, because there are certain direct expenses that you can't avoid, which includes fees and things of that kind, because I think more companies would re-insure 100 per cent and sit back and not worry about business.

Q. That is what complexes me. Half of your
page 24 } business is insurance, and half getting insurance
for other insurance companies.

A. It does not work that way. Our business is getting insurance and we protect ourselves by getting Re-insurance with the idea or with the known fact that, if there is a loss, the Re-insurance is there; that is the reason we have done that.

Chairman Hooker: Is this the first time this 5 per cent profit has been required?

A. It has been mentioned to us on occasion, but there has never been a question raised about that.

Q. Was it in the formula before?

A. I believe it was.

Q. I understood you to say that you deviated all the time and this was the first time it had been questioned.

A. This is the first time it was turned down because we did not show it with the Loss Ratio of 70 per cent.

David P. Pickrel.

Commissioner Catterall: How much deviation would they let you have?

Mr. Elliott: 15 per cent.

page 25 } A. (Cont.) We say that there is nothing wrong with the formula but any company that has improved on that formula, and has fully justified the deviation, should have a right to use it.

Commissioner Dillon: That is by Re-insurance.

A. If we improve on that formula, particularly as to the 5 per cent profit, when they say 5 per cent, and we make 20 per cent profit, it certainly seems we have justified the deviation.

Commissioner Catterall: Why don't you write a Participating Policy and give it back to the drug stores that way?

A. That has been suggested but we would much prefer not to do that from the selling standpoint with the druggists.

Commissioner Dillon: With this record you would not have to deviate.

page 26 } A. It is not just that, sir. By operating through one agent, and you could not have more than that one, and he has to sell insurance, throughout the State there is competition, even with the Mutual Company with the return of a dividend or part of the premium at the end of the period. A deviation now at the beginning makes it easier to sell the insurance and makes everything easier because the buyer would rather have his 25 per cent now than hope to get it later at the end of the period. That is the reason we prefer deviation to a dividend. We say that any company making greater than a 5 per cent profit, or making any profit at all that is satisfactory to the company, has justified the deviation it has been using because the matter of profit that the company makes is directly the concern of that company, of that Company's Board of Directors and should not be the concern of supervising officials, unless the safety of the company or soundness of the company is involved.

We have another point that we would like to make, and that is a legal point and that is the fact of the precedent set

by the prior approval by the Commission, which we have received since 1922. Ever since it has been required, our deviation has been approved when in prior years it was not nearly as justified as it is now.

Further, it is a rather well accepted rule of law that prior construction of a statutory enactment prior to the time of the enactment by State Officials is a proper guide for present and future attacks.

page 27 } Commissioner Catterall: Are you a lawyer?

A. Yes, sir.

Q. I just wanted to be sure that you are the right kind of an "expert."

A. I refuse to admit that I am an "expert." We also state that other states have approved this every year, but because it has been so clear, many states do not require it to be filed annually, and let it go on until it is questioned by the Insurance Department.

And the other question is the competition, and that is whether competitive price competition is desirable. That is a question that is debatable. We feel we want to compete price-wise in the territory at the lowest safe condition in the cost. We feel that competition in prices with the presently justifiable regulation of insurance, is the proper American way of doing business. Certainly, such price competition has never been harmful to the American Druggists' Insurance Company. Prices in competition in other lines is certainly desirable within limitations, and our deviation is regulated and must be justified each year.

There are some other factors in this thing that page 28 } I think will be very interesting to you, and these came out in the hearings that have started regarding the proposed investigation of the insurance industry by the Anti-trust and Monopoly Subcommittee of the Senate Judiciary Committee. I have here a re-print of an article appearing in the March 29, 1958 Issue of the United States Investor, and I think this will be interesting to you on this whole business. Would you like to have these numerous articles to go into your record?

Commissioner Dillon: Just file them.

A. This is very brief and I will read it.

"Considerable publicity has appeared recently regarding a

proposed investigation of the insurance industry by the Anti-trust and Monopoly Subcommittee of the Senate Judiciary Committee. Donald P. McHugh, Counsel for the Subcommittee, outlined its possible scope recently in a speech in New York. Senator Kefauver (D. Tenn.) is Chairman of the Sub-committee, but Senator O'Mahoney's name is generally linked with insurance in any talk of an investigation."

And then in the Bulletin of the Investor this is stated:

page 29 } "The Chinese have a saying that an unlucky word dropped from the tongue cannot be brought back again by a coach and six horses. Truly, that's a very sage remark and unless all signs fail, certain segments of the property insurance industry, as well as certain insurance commissioners, are going to have its dreadful meaning driven home to them in no uncertain manner before the current investigation of insurance practices is completed by the Senate Subcommittee under the vigorous leadership of Senator O'Mahoney.

"To get right down to the nub of the problem at hand, we are distressed no end because of the recent 'vain babblings' which have been heard about the very touchy question of uniformity of rates and forms in the fire and casualty business. For, on more than one occasion we have warned both the insurance fraternity and the state regulatory authorities in these columns that any and all practices smacking of conditions which brought on the S. E. U. A. decision—whether it be lack of free, open and reasonable competition
page 30 } arising out of the use of state rating laws to stiffle competition or the tendency to interefere with the free flow of commerce between the states—will be subject to the closet scrutiny.

"But now—in face of these repeated warnings—we find ill-timed legislative proposals in at least two states (New York and Kentucky) bringing this age-old issue squarely to the fore—and in such a manner that uniformity of rates and forms is sure to receive 'preferred treatment' by the Federal investigators. It couldn't be otherwise when you stop to think that the primary objective of the investigation is to ascertain whether the states have justified by their actions (or lack of action) in the last ten years the confidence which Congress reposed in them through the passage of Public Law. As we said in our issue of February 22, if there have been any shortcomings, then the state regulatory authorities and the industry had better be prepared to show that such short-

comings are greatly outweighed by regulatory laws and administrative practices fully reflecting the spirit of
page 31 } that act.

"WENDELL BERGE'S COMMENT ON UNIFORMITY

"Lest there be any doubt about just what this spirit is, we again call attention to these extracts from a letter written to us by the late Wendell Berge, Assistant Attorney General, soon after the passage of Public Law 15. Referring to this question of uniformity of rates and action in concert under this law, he said:

" 'Now, however, we come to a consideration of the implications of regulation within the meaning of Public Law 15. Assured that concerted action in some phases of the insurance business is vital to continued efficient operation, Congress has left to the states the determination of what aspects of that business shall be subjected to state authority and regulated in the public interest. It has declared that after January 1, 1948, the anti-trust laws shall apply to the business of insurance 'to the extent that such business is not regulated by state law.' Conversely, these acts will not apply to the extent that the business is so regulated * * *

" 'Thus, where the states do authorize concerted
page 32 } action among insurance companies, it is incumbent upon them to provide adequate supervision and checks upon the grant to prevent injury to the public by any abuse of the authority so granted. In other words, the checks and balances must offset the dangers inherent in the privilege extended, and must in some measure compensate for the loss of benefits otherwise accruing to the public from competition among those allowed to act in concert. Where practices regarded as inimical to the public when engaged in by other businessmen are to be permitted in some parts of the insurance business, they require the utmost scrutiny and safeguards. Under no circumstances should a system of private controls be perpetuated under a cloak of state protection.

"COMPETITIVE RATES ARE IN PUBLIC INTEREST

"But the grant of the privilege to act in concert, with the requirement that certain compensatory obligations be ac-

cepted, need not mean that all must act in concert, nor that the opportunity for competition be wholly eradi-
page 33 } cated. As was said by one of the Congressional Committees approving the bill which became Public Law 15:

'Nothing in this bill is to be so construed as indicating it to be the intent or desire of Congress to require or encourage the several states to enact legislation that would make it compulsory for any insurance company to become a member of rating bureaus or charge uniform rates. It is the opinion of Congress that competitive rates on a sound financial basis are in the public interest.'

"So, the grant of the privilege to act in concert need not mean compulsion upon all to act in concert. Nor need it mean a heavy burden of restriction upon those who wish to act independently and thus have no conflict with the anti-trust laws in their mode of operation. Those who wish to act independently should be enabled to do so without being unduly confined by considerations applied to check those acting in concert. And even those who accept the alleged benefits of concerted action should not be deprived of their right to deviate from bureau rates within reasonable and
page 34 } justifiable limits."

That is what was said in that case.

Another very brief statement was a statement made by Joseph A. Navarre of Michigan:

"Joseph A. Navarre of Michigan, president of National Association of Insurance Commissioners, told the spring insurance conference of American Management Association at New York that while investigations are welcome and necessary from time to time in both state and federal government, the one thing that seems to spark them in insurance matters is increased rates.

"This is natural enough, for when rates climb, the question of legitimate profit arises and legislators want to know if the public is being gouged, and if so, what can be done about it. Unfortunately we have come to attach a stigma to investigations," he declared.

"He said he did not entertain the belief that the states have achieved perfection in regulation. 'There are a few

page 35 } states which have not modernized their insurance laws and some where free competition as to rates, rules and forms has not yet eventuated, but these facts do not mean that state regulation has been a failure. A system of regulation which has been working by and large most satisfactorily should not be swept away merely because of isolated instances of less than 100% performance,' he asserted.

"PRESSURES NOT ELIMINATED

"He said pressures for enforced uniformity were by no means eliminated by the passage of public law 15. Mistakes have been made, as they must be in such a complicated field. The important thing is that where mistakes were made, other states could observe their effect and profit thereby."

The next one is a statement by Victor R. Hansen, Assistant U. S. Attorney-General in charge of the Anti-trust Division, made in a talk before the American Management Association Conference in New York.

"In his talk on 'Anti-trust and Insurance' at the American Management Association Insurance Conference at New York,

page 36 } Victor R. Hansen, Assistant U. S. Attorney-General in charge of the anti-trust division, emphasized recent attempts in several states, either by proposed legislation or by state regulation, to require complete uniformity in rates and policy forms.

"Mr. Hansen said: 'I do not wish to express any opinion as to the merits or validity of any specific state action. However, to the extent that the state imposes strict conformity upon the insurance industry and eliminates or greatly restricts the area for independent action in rates and methods of operation, the underlying purpose of the McCarran act—which is to preserve and protect healthy competition in the insurance industry—becomes undermined." * * * "He referred to a recent writer who described the antagonism of some rating bureaus toward attempts of their members or subscribers to deviate from the established rates and to pass on to the insuring public the results of economies in operation. 'If carried too far, such conduct may be regarded as coercive, and thus interdicted by the anti-trust laws. Examples

page 37 } of unreasonable interference with the right of an insurer to act independently in the matter of rates and rating practices might include harassing litigation, collective pressure upon lenders not to accept the policies of deviating companies, and collective attempts to deny the insurer access to statistical and rating services generally available to other insurers.' "

I have a number of similar quotations, some of them arising out of the actual hearing having to do with the fact that the hearing officers are very mindful of the need for competition in rates and prices on insurance. We think that, because our deviation has been declined, competition has been stifled here, even though we are a small Company and the insurance we write for druggists is not great, but certainly the benefit to the public cannot be denied.

Commissioner Catterall: Do you think the druggisst will go to another company if you only deviate 15 per cent?

A. They will be worried if they cannot insure at the 25 per cent in their Company.

Mr. Elliott: What do you mean by "their company"?

page 38 } A. The stock is held by druggists. We have restricted it to druggists, all of our stockholders are druggists or members of druggists' families.

Commissioner Catterall: So you feel that there will be real competition if you can't have the 25 per cent?

A. We think there is no question about it and think that the 25 per cent deviation has been fully justified and our application has fully complied with the Virginia Law, and to deprive us of it, would deprive us of our rights in due course of law and we think that by these rates we would produce rates that are not excessive and not unreasonable. Because the Company has written at a 25 per cent deviation in the past, and since we have had a profit from writing at that deviation, it would seem to us a ridiculous situation to have to go to our policy-holders and say that we have to increase our rates even though we have made a profit. It just does not make good sense.

David P. Pickrel.

We think the matter of profit is to be decided by
page 39 } our Board of Directors and we don't think it is
within the province of the Insurance Department nor the State Corporation Commission to see that we make a profit, so long as the soundness of our Company is not bothered, and that is our case and we hope the deviation will be continued.

11:20 A. M. Commissioner Dillon: The Commission will recess for ten minutes.

11:30 A. M. The Commission resumes its session.

Commissioner Dillon: You have completed your direct examination of this witness, have you not, Mr. White?
Mr. White: Yes.
Commissioner Dillon: You may proceed, Mr. Denny.

CROSS EXAMINATION.

By Mr. Denny:
Q. You insure only drug stores?
A. No, we insure only the property of druggists. We insure primarily drug stores, but will insure the druggists's
dwelling or any investment he may have, if it is a
page 40 } good risk.
Q. So you may insure anything, even his farm?
A. No, we don't insure any farms.
Q. So your insurance is primarily drug stores?
A. Mercantile druggists.
Q. How do you define a "drug store"?
A. It is defined by the Board of Pharmacy.
Q. As one that sells drugs in the store?
A. In most states the Board of Pharmacy requires that a druggist be on hand at all times.
Q. So that a loose illustration would be a store where drugs are sold or there is a druggist on hand?
A. Yes.
Q. So that the drug store may be a drug store and may also be a department store that has a registered druggist that sells drugs?
A. No. I say a drug store that has primarily a druggist and the medicines in the drug store where there may be some other things in the drug store but that would be his primary business.

David P. Pickrel.

Q. Are you familiar with the Peoples Drug Store in Richmond?

A. No, I am not familiar with that but I know that it is a chain drug store and for the most part we do not
page 41 } insure chains.

Q. Did I understand you to say that your stock is owned primarily by druggists or the druggists' families?

A. It is incorrect to say all of it is. Originally it was all owned by the druggists. As they have died it has gone to the families and investments by other insurance companies, but we have made a sincere effort to keep it in the hands of the retail druggists.

Q. How many retail druggists do you have?

A. We have 1,000 stockholders and approximately 75 or 80 per cent are druggists.

Q. Roughly how many druggists do you have immediately insured?

A. We insure approximately one-half of the retail drug stores of the Country.

Q. Now do you include in that chains, when you say approximately one-half?

A. Those small chains that we insure are included.

Q. What do you mean by "small chains"?

A. We do not insure people like Peoples Drug Store, Katzs and people of that kind.

page 42 } Q. Bearing that in mind then, what part of the drug stores do you insure?

A. About one-half.

Q. Taking into account the National chains?

A. Yes.

Q. I notice that you were quite critical of a number of practices in Virginia. You mentioned the fact, as I understood it, that you did not think a company should be called on to file for a deviation each year.

Mr. White: I did not understand him to testify to that. I understood him to say that some state did not require him to do that.

Mr. Denny:

Q. Do you mean to be critical of the requirement that you have to file each year?

A. No, I am not critical and am perfectly willing to do it and we do it and have done it for twenty-five years or more.

Q. Do you think that is a proper requirement?

David P. Pickrel.

A. Yes, I think deviations should be based on something that is reasonable, and based on the fact as to the soundness of the company.

page 43 } Q. I did not mean by my question the supervision of deviations, but do you think it proper for companies to deviate, if there are companies that want to deviate, that they should make their deviation filing each year?

A. Yes, I think it is perfectly proper.

Q. Do you approve of setting rates on the experience of all companies?

A. Yes, I think on the matter of the practice of practicability, it has to be done that way.

Q. Do you approve of the requirement that in the fixing of a rate there shall be a reasonable provision for underwriting profit and contingencies, or should it be left entirely to the Company?

A. I think it should be left entirely to the Company provided the safeness and soundness of the Company may not be affected. If the Company is satisfied with the amount of Losses or Profit in a State it should be left to them.

Q. I am not talking about deviations, but the establishment of rates generally. Do you approve of taking into consideration and providing in the fixing of rates a provision for profit?

page 44 } A. Certainly.

Q. Then you do not think that that should be left solely to the Company, whether the Company wants to make a profit or not?

A. No, not solely.

Q. Then you have no objection to our formula that there should be a 5 per cent allowance for profit and contingencies?

A. I have no objection to that in your formula for a guidance for the establishment of rates generally.

Q. Do you have an objection to the provision of 5 per cent for underwriting profit and contingencies in deviation matters?

A. Yes, there may be some objection there because it may be a matter of the company's decision, whether they want to make a 5 per cent profit or one per cent profit, but Countrywide they should be allowed to write at rates that make a profit.

Q. And, therefore, our statute should be written at a point that should not include the rate-making profit?

David P. Pickrel.

A. No, I would not say that. I would not criti-
page 45 } cize the lawmakers of Virginia. It would be presumptuous of me to do so.

Q. I understood you to say that a provision for profit and contingencies should be taken into consideration.

A. You said 5 per cent. I said it could be 5 per cent or 1 per cent and that is a question that should be left to the Company.

Q. You think in deviations it should be left to the Company whether there will be any provision for underwriting profit?

A. Yes.

Q. You, of course, are aware of the fact, because you have testified to it that in our Section 252 they have provided that in rate-making there should be made a provision for underwriting profit and contingencies and it also provides that in making rates in pursuance of this article, that profit should be considered. Is it your view that we should alter the provisions under the deviation section that that should be left to the company?

A. No, I don't think the deviation section needs to be changed.

Q. Do you think the deviation section requires
page 46 } that reasonable consideration should be given to underwriting profit and contingencies?

A. No, it does not necessarily require it.

Q. You said in a City of First Class your maximum policy was $40,000?

A. $35,000.

Q. And your net retention is $5,000?

A. Yes.

Q. Your gross premiums in Virginia in 1955 were $11,300?

A. That is correct.

Q. So that one fire in a place like the City of Richmond where you had retained your maximum retention, it could cost you the total of your gross premiums?

A. That could happen.

Q. In 1953 your gross writings in Virginia were $13,694. your Losses incurred in Virginia that year were $14,508. Have you any idea how many fires that represented approximately?

A. No, I don't know, but I know that that substantial loss that year came out of two major fires, one in Norfolk and one

David P. Pickrel.

in Newport News.

page 47 } Q. Then, substantially, two fires even with the retention of $5,000.00, gave you a Loss Ratio of 106 per cent?

A. Those two fires with a few more.

Q. And the next year you had in Virginia a Loss Ratio of 8.6 per cent?

A. That is true.

Q. And in 1955 you had a Loss Ratio of 39.1 per cent. 1956 it was 36.1 per cent and 1957—22.9 per cent. Do you contend before this Commission, sir, that where rates generally are set on Loss Ratios on business as a whole, you ought to be permitted to deviate in the event your Loss Ratios are less than those for the business as a whole?

A. The fact that our Loss Ratio is less than the business as a whole is a fact that should be considered.

Q. In other words, you ought to be able to deviate because of a saving in Losses?

A. Yes, partially for that reason.

Q. Even though the basic rates are set on the experience as a whole?

A. Yes.

page 48 } Q. The Commission has always taken Expense into consideration in deviations. Now, if Losses are to be taken into consideration also in deviations, and if a company is to be permitted to deviate in part because of the savings in Losses, then all factors should be considered and have a separate rate for each company?

A. No.

Q. Isn't that what it adds up to?

A. No. I think your basic rates have to be established on experience of all companies, and those who can justify the deviation should be allowed to justify it, otherwise, you will have uniformity in rates and I do not think that would be good for competition.

Q. And do you think Losses as a whole are as susceptible as a whole as Expenses?

A. Not to the same extent.

Q. In other words, we recognize the Losses on your experience, and although you have been lucky in your Losses, even though you have no control over your Losses, you think you should be permitted to deviate on your favorable Loss Experience?

A. I do think so.

David P. Pickrel.

Q. Even though you have, along with your
page 49 } Losses rates that go over 100 per cent?
A. Yes.

Q. Does that not mean having a separate rate for each company each year?

A. Because a great number of the companies do not desire to have a different rate, they are based on the rates of the industry generally.

Q. Your position is that separate rates should be charged each year for each company that requests separate rates?

A. If they can justify it and the statute permits it.

Q. This cross examination brings out the fact that your experience in Virginia is not credible. You could not run a company on the experience you have in Virginia?

A. No, not on a premium of $15,000 a year.

Q. It could be wiped out overnight?

A. It could be, but it is credible while we insure one-half of the drug stores in Virginia, there are more than ten insurance companies or five insurance companies or twenty insurance companies that insure the other half, so we insure more than the others.

page 50 } Q. Have you any idea how many drug stores you had insured in the year that the Losses given under that exceedingly high Loss Ratio existed?

A. I would judge 300.

Q. On that basis would it be reasonable to say that if 1 per cent of your insureds have fires in Virginia it would give you a 100 per cent Loss Ratio?

A. We could acquire that 100 per cent Loss Ratio if one of our companies had a fire of sufficient size and other companies could be affected the same way.

Q. You have stated that you re-insure approximately 43 per cent of your premiums written?

A. Countrywide.

Q. And that what you receive from *ceding* your Re-insurance more than cares for the commissions you pay your agents?

A. Yes.

Q. Do you do this on approximately a 40 per cent basis?

A. No.

Q. What is that?

A. That is difficult to say but I can tell you our
page 51 } Re-insurance, or commissions on Re-insurance is 43 per cent commission plus 50 per cent.

Q. Of course on this matter of Re-insurance you get such

David P. Pickrel.

figures as that because, as I understand it, your Company pays, for instance, all Taxes, all Bureau Fees, Premium Fees and things of that kind and the Re-insurance company does not pay any of it?

A. That is right.

Q. So that the Re-insurance Company pays a portion of the Loss Adjustment Expense?

A. Yes.

Q. But does not pay commissions as such?

A. No, not to agents.

Q. Nor other Acquisition Costs as such?

A. No.

Q. Nor your General Expenses as such?

A. No.

Q. Nor does it pay anything on your Licenses and Fees?

A. No.

Q. So when it pays 43½ per cent that is paid to cover all of your Expenses of a kind it does not pick up?

A. Yes.

page 52 } Q. And since you have gone into in your testimony so many legal matters, I will ask you—you are subject to no regulation on your Re-insurance Contract; is that correct?

A. That is not exactly true because our Re-insurance Contract has to be filed and approved by the New York Insurance Commissioner. It is a New York Company.

Q. Do they pass on the financial arrangements of it?

A. They have passed on it.

Q. Are they authorized to require you to fulfil any financial provisions of it?

A. I'm not able to answer that. They have never required us to do it.

Q. Isn't it just a matter of Information?

A. Yes.

Q. There is a difference between a matter of information and a matter of investigation?

A. Yes.

Q. And, insofar as the State of Virginia is concerned, the Corporation Commission of Virginia has nothing to do with what the provisions of your Re-insurance Con-

page 53 } tract may be?

A. I don't suppose they do.

Q. You know they have nothing to do with that.

A. I know they have no regulation on that.

Q. You are at liberty to re-insure as you see fit?

David P. Pickrel.

A. Yes, although I am not sure whether Virginia has an enactment in regard to that, but there is another statement of 100 per cent Re-insurance without approval of the Commission, that is not in consideration here.

Q. You, of course, admit that you are not entitled to this 25 per cent deviation if your Expense factor is alone to be considered?

A. No, I don't admit that.

Q. You don't admit that?

A. I pointed out that, with a deviated premium, our Total Expense was 34.8 per cent. If we take that expense to 60 per cent, we earned a Profit of 21 per cent with a 43 per cent Loss Ratio.

Q. You recognize, of course, that the Virginia formula in setting Losses at 52.5 per cent, means 52.5 per

page 54 } cent of the manual premium?

A. Yes.

Q. And if you do not receive the full manual premium, you need a larger per cent of the reduced premium to pay the Losses which are contemplated by the Virginia formula?

A. No, I don't because my actual experience is—

Q. I did not say "your experience," but the Virginia formula.

A. I don't follow you.

Q. You admit that the Virginia formula is contemplated at 52.5 per cnt of the premium collected from manual rates?

A. Yes, or any other rates.

Q. You understand that that is applied to the premium received from manual rates?

A. Yes.

Q. And if a company charges rates less than manual, then you realize that, to derive the number of dollars necessary to get the Losses contemplated by the formula, you would need a larger portion than the 52.5 per cent of the rate received?

page 55 } A. It would depend upon what you contemplate your Losses to be at the lesser premium dollar.

Commissioner Catterall: This is all rather confusing. Assuming the manual rate is $100.00, ask the question along with that assumption.

Mr. Denny:

Q. If you assume the manual rate is $100 and the formula assumes 52.5 per cent for Losses, that is $52.50, is is not?

David P. Pickrel.

A. Yes.

Q. If you deviate 10 per cent and receive, instead of $100.00, $90.00, then, in order to provide for the Losses contemplated by the formula, you would need more than 52.5 per cent of the $90.00?

Commissioner Catterall: You would still need $52.50?

A. No.

Mr. Denny:

Q. In order to provide $52.50 for Losses, you would have to provide for more than 52.5 per cent of the premium you received, namely $90.00?

A. That is assuming that your Losses are still going to be $52.50.

page 56 } Q. As you understand our formula, does it not contemplate Losses of $52.50 on each hundred dollars of premiums derived from manual rates?

A. I think that is the way the Bureau of Insurance has said the company would apply it in order to arrive at this 70 per cent Loss Ratio on the final Losses.

Q. Wherein do you think the Insurance Department is wrong in the light of the decision of the Aetna Insurance Company case several years ago?

A. I am not familiar with that case.

Q. So you don't know whether the Bureau of Insurance has applied the formula in the manner heretofore required by the Commission?

A. No, I don't know.

Q. But, if they have applied it in conformity with the formula provided by the Commission, and approved by the Supreme Court of Appeals of Virginia, then your objection is to the formula and not to the way it is applied?

A. I do object to the way the Commission has applied the formula to our situation.

page 57 } Q. I hand you what purports to be a photostatic copy of a letter dated March 31st from the Bureau of Insurance and ask you if that is a letter you received from them?

A. Yes.

Mr. Denny: I would like to file this as Exhibit No. 4.

Commissioner Dillon: That will be received as Exhibit No. 4.

David P. Pickrel.

Mr. Denny: I will read that letter to the Commission, if I may. It is addressed to Mr. Pickrel and it is from Mr. Cover, the Rate Analyst for the Bureau of Insurance—

"Dear Mr. Pickrel:

"We have applied your company's expense ratios, submitted in your letter of March 7, 1958, to the Virginia expense formula and regret to advise we are unable to approve your request of a 25% downward deviation from the published rates to the Virginia Insurance Rating Bureau.

"The reason for our action is most clearly explained in the application of the formula set forth as follows for both Countrywide and Virginia Expenses.

page 58 } A. Countrywide Expenses

1. Losses Incurred & Conflagration Allowance	70.0%*
2. Other Expenses Incurred, Including Loss Adjustment Expense	13.5
3. Commissions Incurred, Including Other Acquisition Expense	20.9
4. Taxes, Licenses & Fees	3.8
5. Profit & Other Contingencies	5.0
	113.2%

*Conversion of Loss factor (52.5+75)

B. Virginia Expenses

1. Losses Incurred & Conflagration Allowance	70.0%*
2. Other Expenses Incurred, Including Loss Adjustment Expense	14.3
3. Commissions Incurred, Including Other Acquisition Expense	17.9
4. Taxes, Licenses & Fees	3.2
5. Profit & Other Contingencies	5.0
	110.4%

"Using a 15% deviation in the Virginia statutory formula and your Virginia expenses, we can approve a
page 59 } deviation in that amount for your use in Virginia. Our calculations are as follows:

David P. Pickrel.

1. Losses Incurred and Conflagration Allowance	61.8%*
2. Other Expenses Incurred, Including Loss Adjustment Expense	14.3
3. Commissions Incurred	15.9
4. Taxes, Licenses & Fees	3.0
5. Profit & Other Contingencies	5.0
	100.0%

*Conversion of loss factor (52.5+.85)

"You will note a reduction in your expense ratios of loss adjustment expenses, other acquisition costs and general expenses from a total of 16.3% to 14.3%. This is brought about by a reduction in the amount of the percentage 85% bears to 75%. A deviation of 25% according to the provisions of the Virginia expense formula results in 75% of the premium dollar being available for all expenses, including losses. In like manner with your ratios being based on this deviation, a 15% deviation would allow 85% for expenses and
page 60 } losses.

"We sincerely hope this is clear. If not, we will welcome any questions you may have. Please advise us if you want us to issue an administrative order approving the 15% deviation.

"Very truly yours,

JOHN T. COVER
Rate Analyst."

Q. Do you think that drug stores should be taken out of the mercantile class and placed in a separate category?

A. No, I don't think that would be practical.

Q. Why do you think that?

A. Because if you did that, you would have to *to* it for other merchants under that theory.

Q. Under your theory are we not charging a rate too great for drug stores?

A. That was the reason this Company was formed.

Q. Why do you not think you should be put in a different classification?

A. Because, as I stated, we would have to make mercantile

stores in each classification then have individual
page 61 } rates.

Q. If you are making individual rates on the total experience of that Company for losses, don't it come to the fact that you are making individual rates for drug stores?

A. It might be.

Q. Then let's go back to my question.

A. What was your question?

Note: Question read as follows:

"Why do you not think they should be put in a different classification?"

A. It might be that they can't make rates on drug stores on an individual drug store classification but that was before the Southeastern States case and that was because we could not get—

Q. I am not talking about rates you may make but rates set by the State Corporation Commission when you advocate as you have advocated that all factors should be taken into consideration when a company applies for a deviation, including that company's view of its Board of Directors on what profit it needs. In other words, that a deviation might be allowed out of Expenses, Losses, or all combined, and you have said very frankly that that would amount to,
page 62 } in reality, fixing rates for each company that might desire to deviate, and you approve of that, and I ask you if that does not add up in your case to fixing a separate rate for drug stores because that is primarily what you write?

A. No, it does not, because we use the rates that have been fixed by the Bureau for drug stores or any other risks. The fact that we select our risk data better and can make a rate of 28 per cent should work in our favor.

Commissioner Catterall: You would not want a drug store rate set at 75 per cent of the commercial?

A. No, sir, I don't think we would like that.

Q. Then, you would not like that because other companies could write it at that?

A. Yes.

David P. Pickrel.

Commissioner Dillon: Would that be a deviation?

A. We have a state like that, Washington State.

Mr. Denny:

Q. Why would you not like that?

A. It would cut the profit of the Company. Com-
page 63 } panies don't like that, agents don't like it and
Uncle Sam don't like it.

Q. It is not a question of the public but a question of what would be your competitive position?

A. Our competitive position is a most sacred interest.

Q. Do you think it would be in the public interest to cut the rates, the mercantile rates, on drug stores?

A. I could not answer that as from our standpoint, we made a profit of 25 per cent.

Q. If you insure one-half of the drug stores in America, you ought to be an authority on drug stores. If you insure one-half of the drug stores of America, you should know that—and do you think it would be in public interest for the Virginia Insurance Rating Bureau to reduce the manual rates on drug stores?

A. I imagine it would, although I don't know. It would not be in the interest of my Company and the druggists would be less interested.

Q. I did not open myself up for your answer as to whether in the interest of your Company and you will note that I asked
you if you thought it would be in the public interest
page 64 } and you know what the public interest is.

Chairman Hooker: He said he thought it was to some extent.

A. It would be to some extent, but that is subject to qualification and has to be.

Mr. Denny:

Q. What is the qualification?

A. You could say that the reduction of all insurance rates would be in the public interest until you reduce them to the point that the Insurance Industry loses money and then it would not be in the public interest.

David P. Pickrel.

CROSS EXAMINATION.

By Mr. Elliott:

Q. Mr. Pickrel, turning to your Exhibit 3, the last column "If converted to Manual rates." Then I take it the Loss Ratio on drug stores at manual rates was 25.4 per cent throughout the Country for the half of the drug stores of the Country you insure; is that correct?

A. That is not quite correct. That is merely saying our experience would have been 25 per cent better had page 65 } we written the same premiums on manual rates.

Q. That is what I asked you. If you had written one-half of the drug stores in the last five years at manual rates, if the Loss Ratio would not have been 25 per cent?

A. It would have been.

Q. And that as against the Loss Ratio in Virginia of 52.5 per cent?

A. That is your statement.

Q. You don't know what the permissible is in Virginia?

A. It is set out in some places in my information at 52.5 per cent and some places 70 per cent.

Mr. Elliott: It depends on how much you are deviating.

Mr. White: I would like to inquire of the Commission if there has been the introduction of this letter?

Commissioner Catterall: The Commission could not answer; you could ask Counsel.

Mr. Elliott: There are certain letters in the file which have been written back and forth, and also an official page 66 } statement of the statistics, and it might be well for all concerned that the correspondence in the file be received as Exhibit 4.

Commissioner Dillon: We will receive all the correspondence with Mr. Pickrel as Exhibit No. 4.

RE-DIRECT EXAMINATION.

By Mr. White:

Q. A great emphasis has been placed on these statutes. Do the statutes in Virginia in any place set forth the formula to be required by any one or to be required of you?

A. In no place I am familiar with.

Q. And in your consideration of the requirements set forth in the statute, the American Druggists' Insurance Company

entitled to deviate on its own experience and is it to the best interests of the public?

A. That is right and I think we have shown that we have made a substantial profit even with the deviation itself which should justify the deviation.

Q. And for the past five years on the Virginia experience alone, I would like for you to give me the percentage of profit the American Druggists' Insurance Company has enjoyed.

page 67 } A. On net premiums after Re-insurance the percentage of profit on a five-year average is 32.1 per cent on Virginia alone.

Q. And Nationwide it was 37.7 per cent?

A. Yes.

Q. Do you have a brief that you would like to file with the Commission?

A. Yes, I have six copies of it.

Mr. Elliott: This is not an exhibit.

Mr. Denny: We feel that Counsel for the Virginia Rating Bureau and other Counsel should be given an opportunity to reply to this brief.

Commissioner Dillon: We will give you an opportunity to reply.

CROSS EXAMINATION.

By Mr. King:

Q. Do you charge as premiums in other states in which you do business the same premiums you charge in Virginia?

A. No, we charge a premium that is calculated on the published rates in those states, less our deviation.

page 68 } Q. Do you have a 25 per cent deviation in every state?

A. No.

Q. How does that figure?

A. We have a 20 per cent deviation in some states and one state we have it as high as 35 per cent. That one is Washington.

Q. In how many states do you have the 20 per cent deviation?

A. I would say that only 20 per cent would be half of them and 25 per cent in half.

Q. Do you have a deviation of less than 20 per cent in any one state?

A. Not on fire and allied lines.

David P. Pickrel.

Q. What I am interested in particularly is not so much the percentage deviation but the actual dollar received per risk.
A. Our deviation on fire and allied lines is 20 per cent in half of our states and 25 per cent in the other half and 35 per cent in one.
Q. Have you had to have that increased?
A. No, but the trend has been steady because of the Loss Experience to the Company.
Q. So you have been perfectly satisfied with your
page 69 } deviation?
A. No, but the Loss Experience to the group is such that we have allowed it to remain.
Q. You are speaking of the states themselves?
A. Yes.
Q. And although in 1953 you only had two major losses which caused 106 per cent Loss Ratio, you are willing to take the risk on the 25 per cent deviation?
A. Yes.

Chairman Hooker: In those states where you have 20 per cent deviation, was that what you asked for?

A. What we asked for, yes, and it was suggested that we deviate any other percentage than that.

Witness stood aside.

Commissioner Dillon: How long do you want to reply to his brief?
Mr. Denny: Ten days or two weeks—say October 1st.
Commissioner Dillon: We will give you until October 1st.
Mr. White: We would like a week to reply to
page 70 } that brief.
Commissioner Dillon: We will give you until October 7th. Are you going to put on any evidence, Mr. Denny?
Mr. Denny: No, sir.
Commissioner Dillon: All right. The Commission will take this case under advisement.

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* * * * *

At Richmond, November 10, 1958.

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

CASE NO. 13894.

For a deviation from the rates for writing fire and allies lines approved for use by members of the Virginia Insurance Rating Bureau.

THIS DAY came again the parties by their respective counsel, and presented a stipulation signed by counsel for each of the parties herein.

IT IS, THEREFORE, ORDERED:

(1) That said stipulation be made a part of the record and the transcript of the record in this proceeding be considered as corrected in accordance with said stipulation; and

(2) That an attested copy hereof be sent to counsel of record for each of the parties herein.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of the State Corporation Commission.

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* * * * *

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

CASE NO. 13894.

For a Deviation from the Rates for Writing Fire and Allied Lines Approved for Use by Members of The Virginia Insurance Rating Bureau.

STIPULATION.

It is hereby stipulated by all interested parties that the following corrections should be made to the record in the above-styled matter:

1. On page 3 of the record, the answer to the last question on the page should read as follows:

"A. The American Druggists' Insurance Company has been doing business in Virginia since 1922, and during all of that time, have operated on twenty-five per cent deviation on fire and allied lines. We have made application each year to make the deviation effective in the coming year. In the years previous to that, it was not required. It has been granted every year and expired in February of this year and then we were notified by the Insurance Department that it was necessary to file certain data and they sent out their formulas outlining the required loss ratio of 52.5% and Expense Ratio of 47.5 per cent including an allowance of five per cent for Profit and Contingencies and they provided us with forms for filing that application and we did page 73} compile those forms and file those with the Bureau of Insurance in due time and had word from the Bureau of Insurance that the application would have to be declined, following which we requested this hearing which we are having today."

2. On page 5 of the record, the answer made by "Witness:" should read:

"Witness: At any rate this statement of assets and liabilities outlines those assets and liabilities as reported in our annual statement to all Insurance Departments as of January 1, 1958.

"On the bottom of that sheet I have compiled the ratio of assets to liabilities of the American Druggists' Insurance Company as compared with the liabilities of some five or six other companies, to demonstrate that the American Druggists' Insurance Company is just about the strongest Insurance Company in the Country. Our ratio of total assets to liabilities is $5.63 to every $1.00 we have in liabilities, and I doubt if there is any other insurance company doing business in the United States with anything like that ratio of financial strength."

3. On page 6 of the record, the second paragraph of the answer should read as follows:

"The Company was formed by a group of druggists who felt that druggists were discriminated against by other insurance companies because their risks were rated the same as others, and they felt that they were experienced men, educated men, college men, and that they were a better risk than the average. They formed this insurance company and started out with $150,000.00 of capital and surplus page 74 } of $50,000.00 and they started writing insurance in 1906. They wrote at a deviation from the beginning, starting in Cincinnati, Ohio, where it has its Home Office, gradually expanding from State to State until it now does business in forty-one States."

4. On page 10 of the record, the second paragraph of the last answer should be:

"The Commission's formula shows that there should be, as a guide for the making of rates in Virginia, an arrangement which would work out to 52.5 per cent for Loss Ratios and 42.5 per cent for Expense Ratio and 5 per cent for Profit."

5. On page 12 of the record, the first paragraph of the Answer should be:

"We filed those figures with the Bureau of Insurance and they said: 'They won't do.' They applied the formulas to our figures, and they kept the same expense ratios we showed, but for the purposes that we wanted to deviate 25 per cent, they would take the 52.5 per cent Loss Ratio shown in the formula and divide it by 75 per cent, which is the remaining after our 25 per cent deviation, and they came up with the 70 per cent, and they said that they would set up for us a fictitious 70 per cent Loss Ratio, and they then applied the rest of the formula, and naturally, along that line we could not deviate. They set up this 70 per cent, instead of our actual 33-½ per cent Nationwide, they said it had to be 42.5 per cent expense in Virginia with the 5 per cent profit."

6. On page 15 of the record, the second full sentence should be:

"It is interesting to see what this does to our Loss Ratio, Expense Ratio and our profit yearly."

page 75 } 7. On page 15 of the record, the fourth paragraph should read:

"It would also decrease the Expense Ratio Countrywide on a five-year average basis from 38.2 per cent to 33.6 per cent, which is a total of the items shown as a combination of the Commission, of the acquisition expenses, general expenses, taxes, licenses and fees and would decrease the expense in Virginia from 35.4 per cent to 31.2 per cent."

8. On page 16 of the record, the first full paragraph should read as follows:

"There is another feature that deserves important consideration and that is the so-called 'conflagration allowance' that is figured into the Commission's formula and that is 2.5 per cent. I believe some states use 3 per cent. This Company submits that it has no conflagration hazard because its insurance writings are primarily drug stores. We are a conservative Company with a conservative underwriting practice. In the best cities of Virginia we will write no policy higher than $35,000.00 and in towns with no fire protection, our largest policies are $20,000.00. We re-insure all of these policies so that the net retention would be a policy of $12,500.00, and only $5,000.00 in unprotected areas."

9. On page 17 of the record, the first two lines should read as follows:

"Conflagration destroying completely more than one or two drug stores in any of your cities."

10. On page 18 of the record, the second full paragraph should read as follows:

"Now, because Re-insurance is so important, we page 76 } have prepared an exhibit setting out the effect the same figures with the same arrangement as shown on Exhibit 2 would have, except these figures are calculated and shown after Re-insurance. In other words, these are net premiums written. I have four copies of that which I would like to introduce as Exhibit 3."

The next paragraph on the same page should read as follows:

"The arrangement of these figures is the same as that on Exhibit 2 except Re-insurance is taken into account both Countrywide and Virginia. This Exhibit 3 also has a column in the extreme right converting those figures to full manual rate to indicate what they would be if we had to deviate from it either Countrywide or in Virginia."

11. On page 19 of the record, the first paragraph should read as follows:

"We would point out that, in filing our application for deviation, in most states they prefer to receive the net figures and that is because Re-Insurance is such a substantial factor in the matter. Actually, in reporting the insurance results to the stockholders, Re-insurance has to be considered because you don't know what your final results are until you consider Re-insurance. Our Re-insurance amounted to 43 per cent of our premiums, which is an important factor for the Commission to consider, that is, that we get that 43 per cent from Re-insurance."

The third paragraph on page 19 should read as follows:

"There is no doubt about the fact that the Company's figures after Re-insurance, are more thorough and more accurate, and does create the final profit or the actual return figure. So we feel the Net after Re-insurance is the one that should be considered."

page 77 } 12. On page 20 of the record, the second line should read as follows:

"ratios which these would produce before being resolved into * * *"

13. On page 22 of the record, the answer sixteen lines from the top of the page should read as follows:

"A. This is the first time it was turned down because we did not justify it with a Loss Ratio of 70 per cent."

14. On page 23 of the record, the last answer on that page should read as follows:

"It is not just that, sir. By operating through one agent, and you could not have more than that one, and he has to sell insurance throughout the State, there is competition, even with the Mutual Companies who return a dividend or part of the premium at the end of the period. * * *"

15. On page 24 of the record, the first full paragraph should read as follows:

"We have another point that we would like to make, and that is a legal point and that is the fact of the precedent set by the prior approval by the Commission, which we have received since 1922. Ever since it has been required, our deviation has been approved, when in some prior years it was not nearly as justified as it is now.

"Further, it is a rather well accepted rule of law that prior construction of a statutory enactment, at and prior to the time of the enactment, by State Officials, is a proper guide for present and future construction."

16. On page 25 of the record, the second paragraph of the second answer should read as follows:

"And the other question is the competition, and page 78 } that is whether competitive price competition is desirable. That is a question that is not debatable. We feel we want to compete price-wise in the territory at the lowest safe condition in the cost. We feel that competition in prices with the presently justifiable regulation of insurance is the proper American way of doing business. Certainly, such price competition has never been harmful to the American Druggists' Insurance Company. Price competition in other lines is certainly desirable within limitations, and our deviation is regulated and must be justified each year."

17. On page 36 of the record, the second answer should read as follows:

"We think there is no question about it and think that the 25 per cent deviation has been fully justified and our application has fully complied with the Virginia law, and to deprive

us of it, would deprive us of our rights without due process of law and we think that by these rates we would produce rates that are not excessive and not unreasonable."

18. On page 37 of the record, the second sentence of the last answer should read as follows:

"We insure primarily drug stores, but will insure the druggist's dwelling or any investment property he may have, if it is a good risk."

19. On page 38 of the record, the next to the last answer on that page should read as follows:

"No. I say a drug store that has primarily a druggist and the medicines in the drug store. There may be some other things in the drug store, but that would be his primary business."

page 79 } 20. On page 44 of the record, the second question should read as follows:

"Q. And your smallest net retention is $5,000.00?
"A. Yes."

The last answer on that page should read as follows:

"No, I don't know, but I know that the substantial loss that year came out of two major fires, one in Norfolk and one in Newport News."

21. On page 47 of the record, the last answer on that page should read as follows:

"It could be, but it is credible. While we insure one-half of the drug stores in Virginia, there are more than ten insurance companies or five insurance companies or twenty insurance companies that insure the other half, so we insure more than all the others."

22. On page 48 of the record, the second answer should read as follows:

"We could acquire that 100 per cent loss ratio if one of our

risks had a fire of sufficient size and other companies could be affected the same way."

23. On page 49 of the record, the first line of the answer should read as follows:

"* * * 42.5 per cent commission plus 50 per cent contingent."

The last question on that page should read:

"So when it pays 42½ per cent that is paid to cover all of your Expenses of a kind it does not pick up?"

24. On page 51 of the record, the third answer should read as follows:

"Yes, although I am not sure whether Virginia page 80 } has an enactment in regard to that, but there is a restriction on 100% of Re-insurance without approval of the Commission, that is not in consideration here."

And the fifth answer on that page should read:

"I pointed out that, with a deviated premium, our Total Expense was 34.8 per cent. If we take that expense to 36 per cent, we have earned a profit of 21 per cent with a 43 per cent Loss Ratio."

25. On page 60 of the record, the last sentence of the first answer should read:

"The fact that we select our risk data better and can make a profit of 28 per cent should work in our favor."

26. On page 64 of the record, the second question should read:

"And in your consideration of the requirements set forth in the statute, is the American Druggists' Insurance Company entitled to deviate on its own experience and is it to the best interests of the public?"

27. On page 66 of the record, the third answer should read:

David P. Pickrel.

"I would say that only 20 per cent would be in half of them and 25 per cent in half."

28. On page 67 of the record, the fourth answer should read:

"What we asked for, yes, and it never was suggested that we deviate in any other percentage than that."

DAVID MEADE WHITE,
Counsel for American Druggists' Insurance Company.

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CLAUDE D. MINOR
COLLINS DENNY, JR.
Counsel for Virginia Insurance Rating Bureau.

WILLIAM H. KING,
Counsel for Virginia Association of Insurance Agents.

NORMAN S. ELLIOTT,
Counsel for the Commission.

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* * * * *

At Richmond, October 9, 1958.

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

CASE NO. 13894.

THIS PROCEEDING was heard by the Commission on September 9, 1958 and taken under advisement. The applicant was represented by David Meade White and David P. Pickrel, its counsel, the Virginia Insurance Rating Bureau by Collins Denny, Jr. and Claude D. Minor, its counsel, the Virginia Association of Insurance Agents by William H. King, its counsel, and the Commission by its counsel.

David P. Pickrel.

NOW ON THIS DAY a majority of the Commission, Chairman Hooker dissenting, for reasons stated in a memorandum this day filed in Case No. 13878 and made a part of this order is of the opinion that the application herein for the deviation applied for should be dismissed for the reason that the deviation filed by the applicant has not been justified under the provisions of §38.1-258 of the Code. Chairman Hooker for reasons stated in a separate memorandum also filed in Case No. 13878 and made a part hereof would approve the deviation for the reason that it has been justified by the evidence herein.

IT IS, THEREFORE, ORDERED:

(1) That the application of American Druggists' Insurance Company for the deviation applied for in this proceeding from the rates for writing fire and allied lines approved for use by members of the Virginia Insurance Rating Bureau be denied and this proceeding dismissed, with leave, however, to the applicant to file such deviation as it may be advised it can justify under the previous order of this Commission in Case No. 13556;

(2) There appearing nothing further to be done herein this proceeding be dismissed and dropped from the docket and the file placed in the file for ended causes; and

(3) That an attested copy hereof together with the two memorandums referred to herein be sent to one of each of counsel for the parties herein and to the Bureau of Insurance.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of the State Corporation Commission.

page 83 } HOOKER, *Chairman,* Dissents:

I am unable to concur with the view of the majority in this case substantially for the same reasons stated in Case No. 13878 (Harford Mutual Insurance Co.)

If appeal should be taken, I reserve the right to write a memorandum expressing more fully my views.

page 84 } MEMORANDUM:

Harford Mutual seeks permission to deviate 20% from the manual rates.

In the making of insurance rates, uniform rates for all companies are based on the statistics applicable to all companies as a group. In this respect the making of insurance rates differs from the making of the rates of electric, gas, water and telephone companies and resembles the making of rates for railroad and trucking companies.

When a uniform rate schedule is thus constructed for a group of business enterprises, the more efficiently managed members of the group will naturally make more money than the marginal members. In fact, when rates are so made it is possible that some members of the group will be forced out of business because rates that are ample for most members of the group will be inadequate to support the least efficient members.

The insurance rates so fixed are published in a manual and are therefore called the manual rates. The manual rates apply equally to stock and mutual companies. There is not one manual rate for stock companies and a lower manual rate for mutual companies on the theory that mutual companies do not need to make profits. If a stock company makes a profit, the profit belongs to the stockholders (except so far as it is paid to participating policyholders), and if a mutual company makes a profit, the profit belongs to the policyholders. The directors decide whether to pay over all or part of the profits to the stockholders or to the policy-
page 85 } holders. Since the directors are elected by the stockholders or the policyholders, the decision to pay or not to pay dividends is made by persons chosen by and representing the stockholders or policyholders.

In making the manual rates the first thing to consider is the permissible loss ratio, which is computed on the basis of all available statistics. The loss ratio is used to make a prediction for the future based on the experience of the past. In actual practice, of course, some companies experience a lower loss ratio than others, either because of good fortune or because of caution in the selection of risks. For purposes of making rates, however, the loss ratio for all companies is treated as the expected loss ratio of each company. The fact that a particular applicant for a deviation has had a better than average loss ratio has never been allowed as a ground for permitting a deviation.

The basis for allowing a deviation is that the applicant has lower expenses than the average company. There are

various ways of reducing expenses. The applicant says that it has in fact reduced its expenses by making reinsurance agreements. The Commission has no jurisdiction over reinsurance agreements. A company may reinsure some of its risks with other companies and itself act as a reinsurer for other companies. The fact that risks are reinsured does not influence in any way the making of manual rates. In passing on deviations from manual rates the statute requires us to consider the principles of rate making applicable to the fixing of manual rates. A company may make or lose money page 86 } as a result of entering into reinsurance contracts. These profits and losses should not enter into the rate making formula. Rate making deals with the premiums collected by the companies from the public, and not with transactions entered into by a company apart from its relations with the public. For example, the income from investments and the profits or losses from the purchase and sale of securities do not enter into the rate making formula.

In the rate making formula there is an allowance of five per cent of the manual rate for profit and contingencies. Mutual companies say they do not need or want a profit. Stock companies that have had an unusually favorable loss ratio and realize that they cannot claim a deviation based on their loss ratio assert that they desire to deviate out of the five per cent for profit and contingencies.

That five per cent item in the formula is to provide not only for profit but also for contingencies. Rates are made for the future and are based on past experience. The predictions for the future may turn out to be erroneous. It has happened in some lines of insurance, and may happen in any line of insurance, that future losses were so much greater than past losses that many insurance companies have lost millions of dollars. That contingency is a recognized risk of the business and has to be provided for in the formula. The statutory requirement for fixing rates is that they must not be too high or too low. It is extremely important that they be high enough to keep the companies solvent. The failure of an insurance company hurts the public as much as page 87 } the failure of a bank (especially when it is remembered that bank deposits are insured by the F. D. I. C.). Even if a company wants to forego profits it cannot avoid the need for providing for contingencies. Manual rates are the same for stock and non-stock companies. The statute providing for the allowance of deviations applies equally to both. The same principles of rate making apply to both. It is true that in the past some companies have been allowed to deviate out of profits as well as out of expenses.

However, in Case No. 13556—Application of Insurance Company of North America—the full Commission considered this matter and unanimously concluded that deviations could only be approved when justified by lower expenses. In that case the Commission denied approval of a deviation which was based on a proposal to deviate out of profits. We have re-examined the reasons which led to the decision in that case, and we are convinced they were and are sound. We conclude that stock and mutual companies should be treated alike. There is no basis for the applicant's argument that the Commission, by so deciding, deprives the policyholders of large sums of money. If the applicant's board of directors, elected by and representing the policyholders, thinks they ought to have the money, all it has to do is declare a dividend. The decision in this case is merely, that, in order to make certain that insurance companies are able to meet their policy obligations, the premium rates must be so fixed as probably to yield a five per cent margin for contingencies, or, as it is called in the statute, profit and contingencies. The question involved is merely whether the company should distribute the profits after it has earned them or before it has earned them.

page 88 } In view of the uncertainties of the insurance business it is safer to wait and see whether there are any profits before giving the policyholders the benefit of expected profits.

page 89 } HOOKER, *Chairman,* Dissents:

I am unable to concur in the decision of the majority in this case, for the reason that the evidence shows that this Company wrote insurance at 25% less than manual rates from 1928 to 1936. In 1936 after a formal hearing that was contested by the Virginia Insurance Rating Bureau (Case No. 5992), the Commission found the deviation justified and approved its continuation. In 1947 following a general rate reduction the Commission approved a deviation of 20%. This reduction was requested by the Company because other rates had been reduced. Except for this general rate reduction the 25% deviation of the Company would have been continued. This Company has been authorized by the Commission since 1947, a period of 11 years, to deviate 20% below manual rates. The evidence, in my opinion, plainly shows that the present 20% deviation should be continued. I attach a copy of Exhibit No. 1 to substantiate this statement. An examination of this Exhibit points out so clearly the financial progress, year by year, since 1928 to 1958 made by this Company. This evidence establishes such a sound financial record that

one cannot avoid being impressed with its efficient management and sound business judgment in the administration of the responsibilities imposed by law on this Company. In order for the majority to reach their conclusion to deny the requested deviation, they had to exclude from consideration the profits of the Company, and for the first time include expenses only. This is contrary to the long well-
page 90 } established administrative policy of the Commission. It is not in accord with what this Commission has heretofore permitted, in passing on deviations for mutual companies, and such a change is adverse to the best interest of the public. Case No. 13556 referred to in the memorandum of the majority involved a stock company and not a mutual company. Stock companies pay dividends; mutual companies are nonprofit.

Another item that was not given consideration by the majority is the savings the Company has made by making reinsurance agreements. I do not agree with this theory. It is the obligation of the management of the Company to operate it in the most efficient manner possible. It is not only an obligation of the Company's officers and directors, but also their duty to effectuate every possible economy consistent with good business practices. That this Company has been well managed and economically operated has not been attacked, and in my opinion, could not successfully be attacked. Exhibit No. 1, hereto attached and referred to, conclusively establishes that fact. There are approximately 70,000 policyholders of this Company who are entitled to have their policies written at 20% below manual rates.

The law provides that the Commission should approve a deviation if it is justified. I believe the deviation applied for is justified and that any other rate would be excessive and unlawful. The Virginia policyholders of this Company will be paying excessive rates as a result of the majority's action and this is contrary to the law and against the best public interest.

page 91 } EXHIBIT NO. 1.

THE HARFORD MUTUAL INSURANCE COMPANY

VIRGINIA PREMIUMS AND LOSSES

1928-1957

	PREMIUMS WRITTEN	LOSSES PAID
1928	2,973.81	NONE
1929	13,452.82	10,999.12
1930	22,400.28	10,389.06
1931	25,386.31	7,007.11
1932	26,185.13	26,446.65
1933	29,523.45	5,128.20
1934	42,782.82	7,313.83
1935	66,369.28	12,412.72
1936	96,380.52	36,530.61
1937	114,414.72	57,519.37
1938	113,418.53	42,133.24
1939	129,519.60	82,655.71
1940	147,625.53	59,730.14
1941	169,949.52	69,916.77
1942	210,732.69	101,449.28
1943	224,587.56	100,857.38
1944	277,337.83	108,300.70
1945	354,647.32	133,022.96
1946	483,905.72	214,862.23
1947	615,358.11	182,313.72
1948	674,414.33	269,043.65
1949	748,926.34	334,288.81
1950	811,758.47	283,150.07
1951	915,772.30	384,571.78
1952	1,035,131.25	378,834.39
1953	1,068,377.18	483,747.42
1954	1,119,710.40	509,757.50
1955	1,070,448.15	585,836.95
1956	1,071,645.36	492,425.79
1957	997,876.84	467,078.41
	12,680,652.17	5,457,723.57

30 Year Loss Ratio	43.03%
Premium Savings to Virginia Policyholders	$3,382.765.82

page 92 } CASE NO. 13894.

HOOKER, Chairman, dissents:

The American Druggists' Insurance Company has been doing business in Virginia since 1932 and during all of this time has been authorized by the Commission to operate on a 25% deviation from manual rates on fire and allied lines. Each year application to deviate 25% was made and each year such deviation was granted until this year when it was declined by the Bureau of Insurance because of a change in the formula prohibiting for the first time deviation from profits. But for this arbitrary prohibition the requested deviation would have been, as heretofore, granted without prejudice. (In Case No. 13556—The Insurance Company of North America—the Commission denied approval to deviate out of profits. Soon after this decision I reached the conclusion that the Commission erred in that decision and I am glad of an opportunity to so state. I have always corrected any error that I may have made as soon as possible. If there had been an appeal in Case No. 13556, I would have written a memorandum stating that in my opinion the Commission erred in not permitting deviation from profits.)

The evidence in this case shows that this company has been most successful in its operations in Virginia and nationwide. Its five-year average in Virginia has been 32.1% and nationwide 37.7% (R., p. 65). Section 38.1-252 governing
page 93 } making of rates states:

"Rates for the kinds of insurance to which this chapter applies shall be made in accordance with the following provisions:

(1) Rates shall not be excessive, inadequate or unfairly discriminatory."

It also states:

"(3) Due consideration shall be given to past and prospective loss experience within and outside this State, to conflagration or catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this State, and to all relevant factors within and outside this State; and in the case of fire insurance rates

consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available;"

It is noted that the statute requires that past and prospective loss experience within and outside the State for a period of not less than the most recent five years shall be given consideration in the prescribing of rates. It is obvious from a reading of the statutory requirements that the experience of this company justifies the deviation requested. This company writes insurance on a specialized business which does not involve a very great hazard and in addition to the hazard involved reinsurance provided by the company absolves it from the possibility of any great loss.

page 94 } With the record that this company has made during the period required by the statute with a consistent dividend of more than 32% in Virginia and in excess of 35% nationwide it can hardly be questioned that if the deviation requested is not approved that the rates charged to its policyholders will be excessive and unlawful.

If the Bureau of Insurance has the legal authority to prescribe a formula that will prohibit a company making the profits that this company is making from the deviation requested, it could prescribe a formula that would prohibit a company from deviating that was making more than 50% profit. I do not believe the General Assembly of Virginia ever intended to give the Bureau of Insurance or this Commission any such arbitrary authority.

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* * * * *

AT RICHMOND, NOVEMBER 12, 1958.

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

CASE NO. 13894.

For a deviation from the rates for writing fire and allied lines approved for use by members of the Virginia Insurance Rating Bureau.

THIS DAY came again the applicant by its counsel and

came also the Virginia Insurance Rating Bureau by Claude D. Minor, its counsel, and the Commission by its counsel, pursuant to a notice served by counsel for the applicant stating that it would request a writ of *supersedeas* to the order of the Commission entered on October 9, 1958 until the final decision of the Supreme Court of Appeals in this case.

UPON CONSIDERATION of which the Commission is of the opinion that it may not grant a *supersedeas* to said order, but may treat the application herein as an application to suspend the order of the Commission of October 9, 1958 pending the final decision of the Supreme Court of Appeals of Virginia. The Commission further is of the opinion that a suspending bond is not necessary herein.

IT IS, THEREFORE, ORDERED:

(1) That the order of the Commission of October 9, 1958 be suspended until the final action of the Supreme Court of Appeals of Virginia upon the appeal taken by the applicant herein, or until the further order of the Commission; and

(2) That an attested copy hereof be sent to each of counsel of record.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of the State Corporation Commission.

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* * * * *

November 18, 1958.

APPLICATION OF

AMERICAN DRUGGISTS' INSURANCE COMPANY

CASE NO. 13894.

For a deviation from the rates for writing fire and allied lines approved for use by members of the Virginia Insurance Rating Bureau.

The American Druggists' Insurance Company having filed due notice of appeal in this case,

IT IS ORDERED that the original exhibits filed with the evidence, numbered and described as follows, be certified and forwarded to the Clerk of the Supreme Court of Appeals of Virginia, to be returned by him to this Commission with the mandate of that Court:

Exhibit No.	Description
1.	American Druggists' Insurance Company, Assets and Liabilities, Jan. 1, 1958.
2.	Same, Country Wide Fire and Allied Lines Expenses, 1953 to 1957.
3.	Same, Country Wide Experience, After Reinsurance, Fire and Allied Lines, 1953 to 1957.
4.	Correspondence between the Bureau of Insurance and The American Druggists' Insurance Company.

END.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of the State Corporation Commission.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
JUN 9 1959
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RICHMOND, VIRGINIA