201 VA 491

Record No. 5002

In the Supreme Court of Appeals of Virginia at Richmond

HARFORD MUTUAL INSURANCE COMPANY

v.

COMMONWEALTH OF VIRGINIA, ET AL.

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. 5002

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 3rd day of March, 1959.

HARFORD MUTUAL INSURANCE COMPANY, Appellant,

against

COMMONWEALTH OF VIRGINIA, ET AL., Appellees.

From the State Corporation Commission

Upon the petition of Harford Mutual Insurance Company an appeal of right is awarded it by one of the justices of the Supreme Court of Appeals on March 3, 1959, 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 Harford Mutual 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

VIRGINIA INSURANCE RATING BUREAU
AMERICAN BUILDING
Post Office Box 1198 Telephone MIlton 3-7471
RICHMOND 9, VIRGINIA

December 31, 1957.

Hon. T. Nelson Parker
Commissioner of Insurance
Bureau of Insurance
Richmond, Virginia

Dear Mr. Parker:

Re: Harford Mutual Insurance Company Request for Continuation of Deviation Fire and Allied Lines

We herewith respectfully transmit the request, dated December 6, 1957, of the Harford Mutual Insurance Co. for continuation of their presently approved deviation of 20% from rates for Fire and Allied Lines. Certain supporting data accompanied their request; and since our files indicate copy of their letter of December 6th as well as copy of their letter of December 18th, that correspondence is incorporated herein by reference.

This transmission is made at the request of and in behalf of this company, subject to its ability to justify to you its request.

With highest regards, we are

Yours very truly,

L. O. FREEMAN, JR.
Manager.

LOF:MM

CC: Harford Mutual Insurance Co.
Attention: Mr. William H. Marquess
CC: Messrs. Denny and Minor.

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* * * * *

THE HARFORD MUTUAL INSURANCE COMPANY
Fire and Casualty Insurance
Bel Air, Maryland

December 6, 1957.

State Corporation Commission
Bureau of Insurance
Thru Virginia Insurance Rating Bureau
P. O. Box 1198
Richmond 9, Virginia

Gentlemen:

Administrative Order No. 5798, February 7, 1957, of the State Corporation Commission approved for the Harford Mutual Insurance Company a deviation of 20% from the rates of your Bureau.

We hereby request that this deviation be approved and continued for one year. Data in support of this filing is attached.

Please be kind enough to file this request with the State Corporation Commission on our behalf.

Respectfully submitted,

WILLIAM H. MARQUESS.

WHM/mch
Encl.

CC: Bureau of Insurance
State Corporation Commission
Commonwealth of Virginia
Richmond 9, Virginia

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THE HARFORD MUTUAL INSURANCE COMPANY

Fire and Allied Lines—State of Virginia

	1952	1953	1954	1955	1956	Total
Direct Premiums Written (20% Deviated)	1,035,131.25	1,068,377.18	1,119,710.40	1,070,448.15	1,071,645.36	5,365,312.34
Loss Adjustment Expenses	33,524.23	44,296.30	45,364.28	46,078.55	34,648.45	203,911.81
Commission Expense	245,159.39	257,234.71	275,955.04	260,124.09	260,219.37	1,298,692.60
All Other Expenses	95,437.99	85,927.50	84,591.68	84,620.78	86,812.60	437,390.55
Total Expenses	374,121.61	387,458.51	405,911.00	390,823.42	381,680.42	1,939,994.96
Expense Ratio	36.14	36.27	36.25	36.51	35.62	36.16

THE HARFORD MUTUAL INSURANCE COMPANY

Fire and Allied Lines—State of Virginia

	1952	1953	1954	1955	1956	Total
Net Direct Premiums Written (20% Deviated)	656,353.90	697,853.86	612,131.37	652,911.74	627,978.18	3,247,229.05
Loss Adjustment Expenses	20,162.05	22,832.23	30,550.23	32,763.12	24,961.29	131,268.92
Commission Expense	84,179.02	99,762.30	60,233.95	82,671.12	71,660.82	398,507.21
All Other Expenses	95,437.99	85,927.50	84,591.68	84,620.78	86,812.60	437,390.55
Total Expenses	199,779.06	208,522.03	175,375.86	200,055.02	183,434.71	967,166.68
Expense Ratio	30.44	29.88	28.65	30.64	29.21	29.78

page 5 } VIRGINIA INSURANCE RATING BUREAU
Post Office Box 1198
Richmond 9, Virginia

CARBON COPY

December 12, 1957.

Mr. William J. Marquess
Harford Mutual Insurance Company
Bel Air, Maryland

Dear Mr. Marquess:

This will acknowledge receipt of your letter of December 6, 1957, filing for a continuation of your deviation granted under Administrative Order No. 5798.

Before submitting your request for deviation to our Committee for study and action, I have a question regarding the two exhibits which you sent us and photostatic copies of which are enclosed. Please notice that both exhibits are captioned in the exact same manner and yet figures shown on these exhibits for loss adjustment expense, commission expense, premiums written, and expense ratios vary to a substantial degree.

If you will give us additional information with respect to these exhibits, we shall be glad to refer your request for deviation to our Committee and inform you later of their action.

Yours very truly,

T. L. BONDURANT
Supervisor.

TLB:j

cc: Bureau of Insurance
State Corporation Commission
Richmond, Virginia

page 6 } THE HARFORD MUTUAL INSURANCE COMPANY
BEL AIR, MARYLAND

December 18, 1957.

COPY.

Mr. T. L. Bondurant, Supervisor
Virginia Insurance Rating Bureau
P. O. Box 1198
Richmond 9, Virginia

Dear Mr. Bondurant:

Thank you for your letter of December 12, concerning our deviation filing. With respect to the two exhibits which accompanied our letter, please note that the first item on one of them is labeled "Direct Premiums Written," while the other is labeled "Net Direct Premiums Written."

The first exhibit contains total direct premiums written in the State of Virginia and expenses incurred, without regard to reinsurance. The exhibit labeled "Net Direct Premiums Written" contains our Virginia business on a net basis after reinsurance ceded. In other words, premiums have been reduced by the amount of reinsurance ceded, loss adjustment expenses have been reduced by reinsurance recoveries and commission expense has been reduced by the amount of commission received on the reinsurance.

We made filing in this way in order to indicate to you just what the net effect might be on our final records after the deduction of reinsurance.

Sincerely yours,

WILLIAM H. MARQUESS.

WHM/mch

CC: Bureau of Insurance
State Corporation Commission
Richmond, Virginia

page 7 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 23, 1958.

APPLICATION OF

HARFORD MUTUAL 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. 13878.

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 the behalf of Harford Mutual Insurance Company an application for a uniform 20% 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. 13878, docketed and set for hearing at 10:00 A. M. on May 14 and 15, 1958 in the Courtroom of the State Corporation Commission, Blanton Building, Richmond, Virginia at which time and place all parties in interest will be heard with respect thereto; and

(2) That an attested copy hereof be sent to John J. Wicker, Jr., Mutual Building, Richmond, Virginia, counsel for the applicant, to Virginia Insurance Rating Bureau, Richmond, Virginia, to Claude D. Minor, counsel for Virginia Insurance Rating Bureau, 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 8 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

APPLICATION OF

HARFORD MUTUAL 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. 13878.

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

Appearances: John J. Wicker, Counsel for the Applicant.

Claude D. Minor, Collins Denny, Jr., Counsel for Virginia Insurance Rating Bureau.

William H. King, Virginia Association of Insurance Agents.

Aldene Flory, Counsel for Virginia Farm Bureau Mutual Insurance Company.

Norman S. Elliott, Counsel for the Commission.

Date of Hearing
May 14, 1958.

page 9 } Commissioner Dillon: Senator Wicker, will you proceed, sir.

Senator Wicker: If the Commission please this, as the Commission knows, is a hearing on the application of the Harford Mutual Insurance Company under Statute Section 258 in connection with deviations. It is not an application on behalf of a Company wishing to change its method of business. It is not like some applications that the Commission has had before it in the past where a Company that has been writing at manual rates seeks to write at a deviated rate. Rather it is an application of a Company that seeks merely the approval of continuing to write insurance business in Virginia on fire and allied lines on the same rate deviation basis that has been approved for many, many years, and under which, as the evidence will show, the Company has been able to operate successfully year in and year out for many years.

page 10 } As the Commission knows, in making fire insurance rates in accordance with the Code, you take into special consideration the business of the latest five year period, that is, for which capable statistics are available. This Company, we think, will well stand any reasonable test on that basis, but in addition, this Company will show a record on operating on a deviated basis on fire and allied lines in Virginia for thirty years, thirty years consecutively. Evidence will show that this Company was formed in 1842, one hundred and sixteen years ago, and has gone through a period of wars, inflation, depression, hurricane, tornadoes and all things straight through. Evidence will show that the Company came to Virginia in 1928 and

came on a deviation basis of twenty-five per cent below manual. That it continued for about eight years to write on that basis until 1936 and in 1936 some objection was raised to continuance, raised by the Virginia Insurance Rating Bureau, represented by its then counsel, J. Gordon Bohannon.

A hearing was held in Case 5992 in July 1936,
page 11 } and that was held in connection with the petition for a continuance of the deviation, which had been filed previously before, in part, and was approved at that time. After hearing and full consideration, the Commission entered an Order approving the continuance of the deviation.

Chairman Hooker: At twenty-five per cent?

Senator Wicker: Yes, sir. Twenty-five per cent. The record, as well as the evidence, will show that by letter of February 19th, 1947, eleven years later, the Company on its own initiative, decided that it would be in keeping with good business and more prudent business management to reduce that deviation to twenty per cent.

So, on its own motion, not on any objection by anyone, or request by anyone, in 1947 the Company came in and asked that its deviation basis be reduced from twenty-five per cent to twenty per cent, and that was done by Order entered, Administrative Order No. 1123 on March 14th, 1947.

So, to sum up, we show that from 1928 to 1936
page 12 } it operated at a twenty-five per cent deviation basis without objection, and in 1936, there was objection, but after full hearing, it was approved, and it continued to operate for eleven years, and on its own motion, it started operating on a twenty per cent deviation, and for the last eleven years, it has operated on this twenty per cent basis, charging eighty per cent of whatever the manual rate was, and now this request comes up on the filing, for approval of the present deviation.

Now the evidence will show further that this Company is rated by Best, which I don't mean as a pun, but I consider it the best authority on standing liability and stability of insurance companies, and this Company, while not being one of the largest, is given one of the highest ratings, "A" is excellent, but they are given "A plus," which is the highest rating, which it has enjoyed for many years.

The evidence will show that this Company has built up from a very small start to where it now has a
page 13 } surplus of two million seven hundred thousand dollars approximately, and that it does business in quite a large number of states; that it does a large business in Virginia, all over Virginia. We will put in an exhibit which will give the names and locations of a hundred and

twenty agents for the Company. It does business strictly on an agency basis, as it has all along, entirely through local Virginia agents.

The map and testimony will show that it has nearly fifty thousand policies in force in Virginia alone, representing probably approximately about seventy thousand policy holders, since some policies are issued for more than one person. Some persons may have more than one policy, but they have approximately seventy thousand policy holders all who have been buying at this 80% rate.

The evidence will show that this Company does not go in, except in very exceptional cases, for very large risks. Its average risk is about seven thousand dollars. It is one of the

page 14 } few, but one of the large companies, that freely writes unprotected farm property, and I think the evidence will show that the majority of the farm property is rural farm property and the majority of that is out of the fire protection area, and I don't need to tell the Commission that that is not easy insurance to get for the property owner.

The evidence will show that it has a standard policy but its own underwriting policy is not retaining, or rather they retain a maximum of fifteen thousand dollars on any one risk, and their policy is to retain from four thousand to fifteen thousand dollars on any one risk, depending on the type of risk. and anything beyond that is Re-insured, mostly with the Lloyds Organization, and recognized by the Code, and has been for years, and they will present a considerable different picture from the Memorandum form sent out by the Department of Insurance, which was on the total insurance, which did not take into consideration the reduced risk or exposure which comes about by Re-insurance.

page 15 } We propose to show that it is a mutual company, and, in considering whether this should be granted, the Code says the Commission shall consider and determine from the filing whether the deviation is justified and if it is found to be justified, it should grant it, and if it finds it is not justified or will produce rates that are inadequate or unfairly discriminatory, then the Commission should deny the application. The situation is no different than it has been for fifteen years so far as the Company is concerned.

The evidence will show that we have had an additional year since this Memorandum was prepared, and we thought it would be helpful to have some charts prepared which will be here later which will show graphically for the last decade, which includes Hurricane Hazel, when the losses were

terrific, that every year, after paying losses and expenses, there has been a comfortable margin for surplus, a margin that comes up to one and a half million dollars. We will show by evidence that, taking the most recent seven years into account, that on an eighty per cent basis, this
page 16 } Company has paid all expenses, which includes a very elaborate inspection service, and losses, and yet had a surplus left over every year without exception in Virginia, that surplus being more than enough money to be approximately one and a half million dollars—

Commissioner Catterall: Does the Company pay dividends to policy holders?

Senator Wicker: No, sir. Not on this type of insurance. It operates in Virginia on a deviation basis. It does operate quite a number of other types of insurance, automobile and other types of Liability and Physical Damage Insurance, and operates on manual basis, and pays dividends, and on that basis we will show that this Company came in at the request of another Virginia Company. It is a Maryland Company from Bel Air, Maryland. It came in at the request of the Loudoun County Mutual Insurance Company, one of the smaller Virginia companies, because there was so much need that Loudoun County Mutual could not accommo-
page 17 } date it, and they requested them to come in and they came in.

The exhibits will show that this Company has had in its thirty years of operation in Virginia, its grand total written insurance, disregarding Re-insurance, during its entire existence in Virginia, its fire business has aggregated in total direct premiums nearly thirteen million dollars, and has paid losses of approximately five and a half million dollars, and it has charged to Virginia policy holders on these policies three million three hundred and eighty-seven thousand dollars by its method of doing business and its deviation. The deviation now amounts to the difference between what this Company collects from Virginia policy holders today, and what it would collect if writing at manual, of approximately a quarter million dollars.

Chairman Hooker: You mean annually?

Senator Wicker: Yes. It has been indicated
page 18 } that, upon the formula applied to a group of stock companies who were asking for permission to begin to write at deviation where it had been writing *it* manual all the time, that applying that formula, it would justify a deviation of only 10% rather than 20%.

Our position may be summed up this way. That, first of all, we, being a mutual company, in determining whether a

deviation should be approved, that the same formula should not be applied to us as is, naturally, applied to a stock company, because the formula for a stock company includes 5% for profit, and while that is a perfectly legitimate and laudable feature for a stock company, a stock company that did not make a dividend to its stockholders, would cease to do business, but a mutual company, which does not have to pay a dividend to stockholders, its whole necessity is a way to take care of expected losses and expenses, and leave some little margin, not go right up to the edge perhaps,
page 19 } and the evidence will show that our Company can continue to do on an 80% collection basis—

Commissioner Catterall: What is the reason the Company prefers to write on the 80% basis rather than wait until the end of the year and see if they had a profit or not and pay out dividends of a quarter of a million dollars?

Senator Wicker: I think the witnesses for the Company can answer that more accurately than I can, but I can state that that is not unusual with some mutual companies like this Company, and it is largely because the people, the policy holders they serve expect, it is what they want and when they came into Virginia, the business they came in to write for the Loudoun Mutual Insurance Company was written at 25% deviation, and there would have been no use of their coming in to Virginia unless they had served on that basis on which the Loudoun County wanted them to serve. One farmer could not see any reason for paying a hundred dollars down with the hopes of getting twenty-five dollars back
page 20 } at the end of the year while the other one would have twenty-five dollars less to pay at the beginning of his policy year.

Commissioner Catterall: That is pychological rather than economical.

Senator Wicker: It is economical to this extent, if you are serving the rural class, 67% in rural farm property, if those people are accustomed to doing a certain way and then you go up and say we are going to collect more but will give you back so much at the end of the year it just doesn't work.

Commissioner Catterall: It is pychological to them but economical to the Company.

Chairman Hooker: It is economical to the policy holder.

Senator Wicker: It is economical to him. He hopes to get it back but he is deprived of the amount in the beginning.

Our second position is that we are not here taking any issue

to what the Commission has done with that other
page 21 } matter last Fall when several stock companies came
in and wanted to begin to deviate. We think we
are entitled to different treatment and to show that while it is justified, that 5% for profit, for a stock company, it should not be required for a mutual company if that company has demonstrated for a reasonable period of years, at least five, and in this case twenty, that it is not necessary.

And our next position is that our position should not be gauged, not solely by what we take in but, as the others say by this and that, and all relevant factors, and that the Commission should take a realistic view of our position, and this other factor is Re-insurance. Our Company is different from those that applied last Fall. Many companies buy from other companies, buy more insurance from other companies than they cede or transfer. Our Company is quite different. Our Company for the entire decade has re-insured approximately 40% to two-thirds of its business right away, and in
addition to its individual limits has taken Re-in-
page 22 } surance. That goes to the catastrophe but that
does not come into this, but on the Re-insurance
picture, which is realistic, the amount we take in from the customer or policy holder and transfer it to solvent Re-insurers, we think should be taken into consideration here because that does give a better picture by at least 6%, of our expenses and losses, and the reason for that is this: We pay approximately 25%, the evidence will show, to accredited agents as commissions to acquire insurance. When we transfer insurance to Lloyds, Lloyds pays us 43%. That repays us what we paid out for acquisition and gives us 17% more for the protection of our remaining policy holders that we are insurers on without Re-insurance.

Likewise, when a loss occurs, we don't have it adjusted by a Re-insurer; we go out and adjust and settle the loss, and the Re-insurer pays us for whatever portion of the loss he is covering and also reimburses us for loss adjustment
expenses, its portion of loss adjustment expenses.
page 23 } That, you can see, and the charts will show, that
that makes a better picture and it is more realistic.

What the Commission is concerned in is not what happens the moment the policy is signed, but what is the situation of the company to meet losses and pay taxes and add reasonably to reserves and surplus, and continue legitimately in business. You can do that only by recognizing the entire picture and not ignoring it.

Our final point is that I believe it is right, and I don't have confidence enough in it to recognize that it might be

wrong, but I believe it would not be entirely right to agree on the other point, but I do believe that the loss adjustment expense should be considered as part of the expense of operation. We have a chart prepared that illustrates that. I think the loss adjustment expense belongs with your losses because it is directly connected with the losses, and only when you have a loss do you have it. When the fire occurs the Company has to pay something. What does it page 24 } pay? It pays so much to the claimant and so much to the adjuster and investigator, so much to the appraiser and so much to lawyers, if they have to have lawyers, which, unfortunately, they don't have to have as often as I should wish that they did have to have, that is I mean the lawyers.

But all of that is not essential to our case. In our case, I believe we will show, and can show that for this thirty year period, including the latest seven years particularly, we can show that we have operated successfully on this basis and should be allowed to continue to do so and that it is justified by the interest of these fifty thousand policy holders in Virginia and justified by the interest of the Company itself, and justified by the fact that this Company's principal competitors are the Virginia mutual companies, who are under no supervision rate-wise at all, and who are writing at this 20% deviation and will continue to do so. So that is another matter of justification, and being a mutual com- page 25 } pany, eliminating the profit that should come in and on that Re-insurance matter, which we believe is another reason it should come in, is because it is recognized in the Code. For example, in the Code, the definition in the Insurance Code, it says that: "No specific company or companies doing a specific insurance business in Virginia may assume any risk which is greater than 10% of its policy holders' surplus," which in our case would be two hundred and seventy thousand dollars. That is kind of an academic thing as far as we are concerned because we are not bothered with that. But another thing the Code authorizes the Re-insurance of the whole or part of any risk and then it says, "This section of the Code provides for any portion of the risk that is re-insured should be re-insured in a solvent company," and that is the reason for the 10%, and that is a recognition of what the situation is, if you take Re-insurance into account. That being so, after taking Re-insurance into account, one of the important things is safety to the page 26 } policy holders and the company and on that, we think, the same principle is picked up by the Code.

I believe I have stated all the points upon which we intend to rely.

Commissioner Dillon: Mr. Denny, do you have an opening statement?

Mr. Denny: I am glad Mr. Wicker has opened so fully, both on the facts and the law, and I believe that is helpful in a case such as this and I shall follow the example set by him.

Before going into specific matters on which I had prepared myself specifically in this opening statement, I want to make comment on a few statements made by him in his opening statement. I think it will tend to clarity, and be of assistance to the Commission in separating the wheat from the chaff in this record.

Reference was made to the Loudoun County Mutual, and the necessity of this Company following substantially the plan used by the Loudoun County Mutual. The Loudoun County Mutual is an assessment mutual and not subject
page 27 } to rate regulatory laws, and there can be no analogy between the Loudoun County Mutual and the applicant in this case because one is subject to regulation and the other is not subject to regulation.

I begin by taking Mr. Wicker's conclusions. He finds three reasons why his application should be granted in his summary. He finds there is no objection to the decision given by this Commission last Fall, I think last October, upon the petition of the Insurance Company of North America case. He says that that is a correct decision but not applicable to him because he says he is a mutual company, whereas that company was a stock company. He says it is necessary that a provision be made for an underwriting profit to stock companies in the establishment of rates, but apparently, that is not necessary in mutual companies. In other words, Mr. Wicker draws a hard line of demarcation in this whole matter of regulation of rates between the stock companies and the mutual companies. His argument in support of
page 28 } that would be highly pertinent if we moved higher up the hill, and if the Legislature was in session, but I have had occasion to draw the Commission's attention heretofore to the fact that, while this Commission is vested with tremendous powers, and in fact vested with more power than any other agency known to the Laws of Virginia, there are nevertheless certain limits laid down for it and there are certain rules, not of procedure, but substance, that must be followed and it is not within the power of this Commission to say whether rates should be made for stock companies, one rate for stock companies and one rate for mutual companies.

Even though the Commission may have decided views on the subject that rates should be made on different *bases,* nevertheless it is beyond the authority of this Commission to determine the rates of a mutual company on any basis other than followed for a stock company.

I call attention only to one thing by way of example. The Legislature of Virginia has at times provided one law applicable to the stock companies and one to the mutual companies. Up until 1952, I think it was, counter-sig-
page 29 } nature was required when the policy was issued by a stock company and not required when issued by a mutual company, and today the counter-signature law is different from that and applies to both the stock company and a mutual company. I dare say that I could cite other instances in the Code where regulation of one character governs the mutual companies and regulation of another character governs the stock companies. Such, Gentlemen, is not the case in the making of rates and deviations therefrom. The same law applies to every company, no matter what its nature, which is subject to the rate regulatory control of this Commission. The Legislature has not seen fit to make a difference in rate regulation and in deviations between the stock companies, the mutual companies and reciprocals and whatever you have.

Commissioner Catterall: You are saying the same words apply to all?

Mr. Denny: Yes.

Commissioner Catterall: But maybe not the word "inadequate" applies to this Company.

Mr. Denny: No, sir, because the word "inade-
page 30 } quate" does not mean anything other than it applies to the rate. The word "inadequate" goes to the rate and you do not promulgate a rate for stock companies and for mutual companies and a rate for reciprocal companies. You promulgate a rate for a particular class of risk, which is applicable to all insurers save under the fact that you may have permitted a deviation to some. In other words, as said in the Epps' decision, you are looking at the business as a whole. You make no effort to assure that every company is going to make a profit. You set a rate at a figure which, in your opinion, and shown by the evidence, is reasonable, and on which a well operated company should make a profit. You know well that there are going to be some companies that will do much better than the norm and you also know that there will be other companies that will do much worse, and you therefore set a rate at a reasonable figure and the company through the Bureau, is permitted to apply

to you for a deviation from that rate and if that company meets such conditions you authorize the deviations
page 31 } but, Sir, the deviated rate that you may allow this Company A, might very well, indeed I can say certainly, be an inadequate base as a whole. Otherwise, every manual rate would be an excess rate or many of them would be because, in special instances, you have permitted deviations from them. So I repeat the word "inadequate" in the Code is not used in reference to the company but used for the business as a whole, and the rate established for the business as a whole, that rate must not be inadequate.

Commissioner Catterall: And in the deviation section we must look at the rate-making section, it says that does it not?

Mr. Denny: It does and we can look further. Let me call attention to Section 242 of the Insurance Code, the section related to the making of rates, it is Section 252, I beg your pardon. "Rates for the kinds of insurance to which this chapter applies shall be made in accordance with the following provisions." (There is not a thing about the kind of company that writes the insurance) "but shall be made after
page 32 } taking into consideration the past and prospective loss experience within and outside the State, to conflagration or catastrophe hazards, to a reasonable margin for underwriting profit and contingencies." In fixing the rate that applies to insurance, whether mutual or stock, you have got to fix it with reference, taking into consideration a reasonable margin for expenses and profit.

Commissioner Catterall: That is for two purposes; one is to insure the policy holder that the Company may not become insolvent, and the other is to encourage stockholders to invest in stock companies. Might not the "reasonable margin" refer to a different dollar mark in the two companies?

Mr. Denny: It would, sir, if you were authorized to set a different rate in accordance with the type of company that was writing the risk. We had a company here—I don't know whether Judge Catterall you were on the Commission or not, but we had the application of the General In-
page 33 } surance Company of Seattle, a company that wrote selected risks and had made a fine history doing so, and it was asking to make the deviation on the manner of writing business permitting it to write at a lower rate, and it is true that that Company could have cut its rates and made money because it did not see fit to write risks in general. It wanted its rates set on the manner in which it did business and you very properly said you could not grant it, and the fact that this Company does business in the mutual form, does not relieve it from the statutory regulation. There is not a

line in the whole chapter on rate regulation indicative of the fact that you should make a different rate for the mutuals than for the stock companies. In fact, that was dealt with in the Epes' decision affirmatively. It said that these rates applied to all companies so that, in effect, in order to concede in this argument that different principles and different rules governing deviations apply where a mutual company is concerned from those where a stock company is concerned, you have not only got to amend your whole course from
page 34 } the time of the Epes' decision, but you have to change your whole attitude towards rate-making.

Commissioner Catterall: You are contending that the regulation of 258, which says the Commission shall give consideration to all statistics and principles of rate-making, you are saying that it should not be under 252 but has to be the same rate, but don't allow that the different rate may be for different principles.

Mr. Denny: I contend that the Commission must give due consideration for underwriting profit and contingencies. That is one of the principles of rate-making.

Commissioner Catterall: But the "reasonable margin" might be different for one company than for another.

Mr. Denny: Only in event that our rate regulation should be different for one company than for another company. If you want to tear to pieces the whole standard of rate-making in Virginia and start making one set of rates for
page 35 } one company and another set for another company, but this statute contemplates the making of rates, not by the company, but according to the risk. Then you take into consideration to the extent of the deviation statute, the deviation asked for, and it makes no difference whether the company is stock or mutual. If these principles of rate-making set forth in 252 do not in their entirety apply to mutual companies, then the Bureau rates promulgated by you under Manual rates are improper, and you should have one manual for stock companies and one for mutuals, and one, perhaps, for reciprocals, and if you do that, you have no basis for it and it leads us right down the road to chaos.

I repeat, and I shall not go further in this opening statement on that, and I am obliged that you let me go as far as I have, that in making rates, this Commission is directed to make them for the business as a whole and the rates are to be made in accordance with the character of the risk.

Now there is an escape under certain conditions.
page 36 } If Company A, because of its situation finds those rates to be very onerous, it can come in and ask for rates above the Manual, and if it can meet the conditions,

whether the company is mutual, stock or reciprocal, then it is granted, and if Company B desires to write below the Manual rate, and can meet the conditions, this Commission can authorize it, but whether the company be mutual or stock is, under the statutes of Virginia, immaterial, so far as rate-making is concerned, and you can't find any provisions in our Statute to the contrary, and can't find any decision of this Commission where the matter has been given consideration to the contrary.

Now Mr. Wicker says that this method is not to be determined on the basis of direct premiums written, but it is to be determined by net premiums written; that is, direct premiums less any returned premiums for rate balance, and less any Re-insurance. There are two fallacies in that approach. The first is this—that you have not the slightest control over the matter of Re-insurance, the amount of the risk
page 37 } the company may re-insure nor what the company ceding the insurance may have to pay for the Re-insurance. The matter of Re-insurance is a private treaty, a matter of private treaty between the parties and you have nothing more to do with that than has the NAACP. To say, therefore, that there should enter into our rate regulation as a material part of that regulation a factor over which you have no control, is down right ridiculous.

Commissioner Catterall: We have no control over the agent's commission.

Mr. Denny: You have the control in this way—by saying you will allow so much for expense, and while you cannot tell the company that it must pay such and such percentage of commissions, you have a perfect right to say to them that in the fixing of rates we are going to continue such and such a percentage for expense.

Commissioner Catterall: The usual method for deviating down is agent's commission.

Mr. Denny: It could be, I grant you.

Commissioner Catterall: All the things used to
page 38 } justify downward his expense are not things that are regulated by the Commission.

Mr. Denny: In the actual dollar part but those are included in what you sav is "reasonable" 42.5% for expenses.

Chairman Hooker: That expense is established by evidence of the companies before this Commission.

Mr. Denny: Yes.

Chairman Hooker: And the insurance people came before us a few years ago and asked us to establish a definite amount for agent's commission and Mr. T. Justin Moore tried to get us to do that.

Mr. Denny: I don't recall it. It may have been done at some special case of insurance.

Mr. Elliott: As I recall, it was a question of automobile liability and damage insurance in which they sought to increase the factor allowed in the Commission formula from 25% for acquisition cost to 30% to take care of what they contemplated as increase to agents and the Commission told them that the 25% was sufficient and should be con-
page 39 } tinued.

Chairman Hooker: And we declined to take any position on the agent's commission.

Mr. Elliott: The Commission said that they had allowed so much for expenses in which was included so much for agent's commission and that they could pay 25%, 10% or whatever they wished to pay.

Chairman Hooker: And that was decided from the evidence put in by the companies.

Mr. Elliott: It was based upon the statistics the Commission passed on in the Epes' case.

Mr. Denny: I think that it is a simple premises that I had the privilege of representing before this Commission the Rosslyn Gas Company when it was being charged so much for gas by the Washington Gas Company for gas and the Commission said that they had nothing to do with it and that the Rosslyn Company set that and considered it was a proper rate.

Chairman Hooker: I think if you look back at that decision you will find that I wrote the opinion in which I
page 40 } stated that we thought the amount was excessive but if the stockholders wanted to pay it they could do so.

Mr. Denny: But you were not bound by that.

Chairman Hooker: It went into the Federal Courts and they get a Law through to the contrary, and I don't know what the Law would be today but we got Senator Hiram Johnson to pass a law that protected us and put the other side out of Court.

Mr. Denny: Let's take the other point as to why you can't deal with what Mr. Wicker calls "net premiums." The Commission will recall that five years ago in Case 11123, decided July 30th, 1953 where the Associated Factory Mutuals wanted a deviation. They wanted to be permitted to request their assured to pay a deposit that in many instances greatly exceeded the manual rates, and then at the end of the policy year they would pay back to that insured 92, 94 or 95%; so that the net cost of the insurance was about 10 to 15% of the

manual rate, and they showed to this Commission
page 41 } that they operated very profitably and made money
on that basis. They did not need to receive in the final analysis more than 7 to 8% of the manual rate, and they made a plausible argument but it fell. Why? Because of our statutes. Our statutes define the rate in Section 219 of the Insurance Law. "The term 'rate' or 'rates' wherever used in this chapter shall be deemed to mean rate of premium, policy fee, membership fee, or any other charge made by an insurer or in connection with a contract or policy of insurance of the kind to which this chapter applies." It says "made by the insurer" here. The rate, if you please, as defined by the statute, is a direct premium written and the whole of our rate regulation is a regulation of the rate as defined in our statute, and when Mr. Wicker asked you to consider his desire for rates on a basis otherwise than that, under the Law of Virginia, he is asking you to go out and make entirely new rules for rate regulation.

You gentlemen regulate rates and the Legisla-
page 42 } ture of Virginia has told you what the rate is. It
has told you so in Section 219 and when you regulate that rate, you have got to regulate it from the point of view as to what does the rate produce.

I pay no attention to Mr. Wicker's third point, for I think his apology for the advancing of it is a complete answer to it. In the Epes' opinion, in our whole history, loss expense has been a part of expenses and not of losses.

Now, if I may approach this thing from the point of view of the Bureau, and in order not to get myself confused as to what I am saying, I have reduced most of it to writing, and while there may be some repetition, I think it would be advisable to read it.

This case involves the application of The Harford Mutual Insurance Company for the right to use a deviation of 20% downward from the Virginia Insurance Rating Bureau's rates for fire and allied lines. The Virginia Insurance Rating
Bureau is here today to support the findings of the
page 43 } Commission's Bureau of Insurance that the ap-
plicant in this case has not justified such 20% downward deviation in fire and allied lines rates, but that the applicant is entitled to approval of only a 10% downward deviation, to which finding of the Bureau of Insurance apparently the applicant takes exception and as a consequence has requested this hearing.

As the Commission is well aware, the statute (Section 38.1-226) charges the Virginia Insurance Rating Bureau with the making or adopting of rates for insurance of the types to

which article 2 of chapter 6 of Title 38.1 of the Code relates, and states that such Bureau shall file with the Commission manual, minimum, class rates, rating schedules or rating plans, rules, by-laws, agreements and regulations relating to insurance on or with respect to property in Virginia and applicable to such risks. And there at that point I interpolate that that is just another example taken from our statute that rates are made for the property as a whole and not page 44 } the type of risks. The statute also provides that every insurer doing business in the State of Virginia and writing fire insurance and other types of property insurance, regardless of whether such insurer is stock, mutual, reciprocal, or inter-insurer, or other type or form of organization, shall be a member of the Rating Bureau and that the filing of rates by the Bureau shall be for and on behalf of every such member, and if the Commission needs another example that our statute says that the rates are made on the character of the risk and not the character of the insurer, there you have it because it is on this factor that the Bureau files rates on behalf of all of its members. We can't file rates on behalf of this group or that group. The filing of rates applies to every member, stock, mutual or reciprocal, but another example to add to what I have said before, is that regulation for mutuals and not for others, finds not one scintilla of evidence in our statute.

As the Commission also knows, under the law (Section 38.1-258) it is provided that every member of the page 45 } Virginia Insurance Rating Bureau shall adhere to the filings made on its behalf by the Bureau except that as to fire and other types of property insurance any insurer may make written application through the Rating Bureau to the Commission for permission to file and use a uniform deviation from Bureau rates. And may I add at that point that every member shall adhere to the filings except as deviations may be permitted, and Harford Mutual is a member, the Insurance Company of North America was a member and every mutual is a member. Again a direct negation of the first point established by Mr. Wicker.

Senator Wicker: I must have been misunderstood for I never have taken the position, nor will I ever will, that in the establishment of general rates, that there should be any difference in the Commission's judgment in regard to stock companies, mutual companies or any other. I only mentioned that, in the Commission's consideration of any amount, the Commission might consider that the mutual re- page 46 } quires no profit, and I don't want to be misunderstood, and if Mr. Denny has misunderstood me, I

hope nobody else has.

Mr. Denny: My contention is that the same formula, when applied to stock companies should be applied to mutual companies, and there is no reason to have in the formula for mutual companies any provision for underwriting profit, I say that that contention is invalid and unnecessary and is a contention that you should have a different form of formula. If the same formula does not apply, and if there is no need or requirement of underwriting profit in a rate to be required by a mutual company, then the regulation is different, according to my thinking. Any such application for a deviation must be accompanied by supporting data on which the application relies, and in considering the application the Commission shall give consideration to all available statistics and the principles of rate making as provided for in Article 4, Chapter 6, Title 38.1 of the Code.

Because the Virginia Insurance Rating Bureau, page 47 } as indicated, is charged with the responsibility of filing with the Commission rates to be used by its members whether stock, mutual or reciprocal, and the Commission will understand when I refer to mutuals, I am not referring to County Mutuals which are not regulated, with respect to fire and allied lines of insurance, it is our feeling that said Bureau has both a moral and legal obligation to present to the Commission its reasons in any case where it feels that the applicant for a deviation downward from its rates has failed to justify such application or request. It is because of that feeling that the Virginia Insurance Rating Bureau is here today in opposition to The Harford Mutual Insurance Company's request for permission to file and use a 20% downward deviation in Bureau rates with respect to fire and allied lines insurance in Virginia.

The Virginia Insurance Rating Bureau has made a careful study of the data filed by the applicant in this case in support of its application, and we have reached the same conclusion that was reached by the Commission's own Bureau page 48 } of Insurance; that is, on the basis of the statistics and other data supplied by the applicant, it is entitled to a 10% downward—deviation but it is not entitled to the 20% downward deviation as requested, and at that point I want to point out this fact that, from the exhibits filed by this Company it will show that 20 to 25% of its business is done in the State of Virginia. When we say it is entitled to a 10% data deviation, we make that statement on the basis of its Virginia experience, and we think in this case, with the volume of its writings in Virginia that that is perhaps proper, but if they asked for a deviation on the basis of their National

experience, they are not entitled even to that 10%. There National experience would entitle them to practically no deviation. It is our belief that the evidence which will be presented in this hearing will show that the analysis made by your Bureau of Insurance and the Virginia Insurance Rating Bureau is correct.

We admit, of course, that the Harford Mutual page 49 } Insurance Company is a mutual company, that it is a corporation without capital stock, and that it carries on its business of writing insurance on the mutual plan. We need have no evidence on that so far as we are concerned. So far as rates are concerned, however, it is not pre-empted under the law since there is no provision in the laws of Virginia whereby a mutual company is to be treated differently from a stock company or any other type of insurer where rates are concerned. As I have developed in my opening remarks, under the law the rates filed by the Virginia Insurance Rating Bureau and approved by the Commission are for the use of all the members of that Bureau regardless of whether those members from an organizational standpoint are stock companies or are mutual companies or are reciprocals or are any other type of insurer. Since this is so, it is axiomatic that the applicant in this case occupies a position no different from that which would be occupied by the Insurance Company of North America, for example, page 50 } if that company were the applicant. As this is true, the application before the Commission must stand or fall on the applicant's ability to show that its expenses alone are sufficiently low to justify the deviation requested since on October 4, 1957, the Commission in the Case of the North America Companies, and after, as you will recall, a very protracted hearing, very properly and wisely held that the basis for any downward deviation is to rest on the expense factors alone of the applicant without regard to the applicant's past experience or prospective experience with respect to losses. That decision of the Commission was in keeping with the regulatory pattern for the making of fire insurance rates which has existed in Virginia for approximately thirty years.

We anticipate, as has been indicated by Mr. Wicker, that a crucial question to be considered by the Commission in this case is whether or not the Commission, in considering an application for a downward deviation, must give page 51 } consideration to a reasonable margin for underwriting profit and contingencies which our statute requires it to consider when it makes or approves rates. That statutory provision is set forth in Section 38.1-252 which

is the section that denominates the principles which must be considered in rate making. Section 38.1-258 of the Code deals with deviations that may be permitted in the writing of business which falls within the jurisdiction of the Virginia Insurance Rating Bureau and specifies that, in considering a deviation request, this Commission "shall give consideration"—and I emphasize those three words which are taken directly from the statute—to the principles of rate making otherwise provided in Article 4, Title 38.1, which article contains Section 38.1-252 wherein the principles of rate making are set forth.

It is a fundamental contention of the Virginia Insurance Rating Bureau that no matter what other considerations must be kept in mind by this Commission in considering an application for a deviation, no matter what may be page 52 } the breadth of its discretion, this Commission has no discretion whatsoever concerning the requirement that it give consideration to those factors laid down by the Legislature in Sections 38.1-252 and 38.1-258, and if that statement be not correct, then this Commission does not have staked out for it by the Legislature any limits whatsoever as to what it should do in rate-making. It is our contention that as a matter of law the Commission in making rates, amid other things, must give consideration to underwriting profit. and any rate established without such consideration is illegal and is not promulgated in accordance with the statute of the State of Virginia. We do not mean by this that it is the function of the Commission to see or to attempt to see that every insurance company doing business in the State must make a profit, but under the law in the establishment or making of rates, by the Commission it is necessary or rather it is required, to include in such rate a factor or loading applicable to a reasonable margin for underwriting page 53 } profit and contingency, otherwise the rate is not made or established in accordance with law, as laid down by the Legislature and governs the Commission.

It is our further contention that, since the Commission by statute is required in considering a deviation to give effect to the statutory principles which govern rate making, this Commission is not vested with discretionary power to determine whether it will ignore the subject of underwriting profit in the consideration of a deviation, but it is required by law to give consideration to the matter of underwriting profit in every deviation hearing; and, should it approve a proposed deviation and ignore a proper factor for underwriting profit, its action would be without justification or authority under the statutes of Virginia. The Commission has said that,

in fact, I think it has said that more than once and I read from the unanimous opinion of the Commission in the General Insurance Company of America case and First National Insurance Company which was heard and decided by
page 54 } the Commission on May 11th, 1950 in Case No. 9604, and I am reading from the opinion of the Commission:

"It has been the practice of this Commission over a period of many years in establishing fire insurance rates in this State to consider the underwriting profits of the companies over the most recent five-year period for which statistics are available. Under this practice any factor which materially affects either the premium income or the expenses of the companies necessarily affects their underwriting profits and results in a change in rates. This demonstrates the wisdom and necessity for the provisoins of Section 38-213, which require the Commission to give consideration to all available statistics and the principles of rate making set forth in Section 38-208 before approving a deviation. No statistics to justify this deviation have been filed in this case. The Commission can see that there will be an
page 55 } immediate reduction in premium income, but, in the absence of the information which the applicants were requested to place in the record, the Commission cannot tell what effect this reduction will have on the underwriting profits of the applicants or whether the rates to be charged will be adequate."

Chairman Hooker: They did not have any statistics in.

Mr. Denny: I know that but the Commission could not tell ahead about that.

Chairman Hooker: If they don't put any statistics on, no.

Mr. Denny: But the Commission said that they had to have statistics to determine whether the rates are adequate.

Senator Wicker: Wasn't that a stock company?

Mr. Denny: Yes.

Mr. Denny: I know if they have no statistics, the case goes out but let's see what the Commission says. In analyzing the statistics and data filed by the applicant in this case,
page 56 } the Bureau of Insurance has very properly applied the formula with respect to the making of fire insurance rates, which formula has been in existence in Virginia for approximately thirty years and which was reaffirmed without any doubt or question by the Commission in the Case of the North America Companies decided October 4, 1957.

That formula, as the Commission is aware, recognizes a reasonable margin for underwriting profit and contingencies and embodies a factor of 5% for such a purpose. In applying the formula with respect to the application now before the Commission, the Bureau of Insurance found, as we have already stated, that the applicant can justify a downward deviation of 10% in Virginia Insurance Rating Bureau rates heretofore approved by the Commission but cannot justify its request for a 20% downward deviation from such rates. That finding we are in accord with fully.

It has been indicated that The Harford Mutual Insurance Company has been writing fire and allied lines insurance in the State of Virginia for several years at deviated
page 57 } rates which were 20% below the rates filed by the Virginia Insurance Rating Bureau and approved by the Commission. No doubt the fact that such practice—the use of 20% downward deviated rates—was permitted by the Commission through its Bureau of Insurance will be and has been strongly emphasized by the applicant in this hearing as a reason why its present application should be approved. We believe it will be shown that such approval in the past arose from a misinterpretation of the application of the rate formula and that the reasons for such a mistake were fully clarified and obviated by the decision of the Commission in the Case of the North America Companies decided October 4, 1957. It is obvious of course that, while the making of a mistake may be justified, once the mistake is known to exist, its continuation cannot be justified. Moreover, we believe the evidence which we shall produce in this case will show conclusively that at no time during the period from 1952 through 1956 was applicant entitled to per-
page 58 } mission to use a 20% downward deviation in rates with respect to its writings in the State of Virginia.

Under the formula previously referred to with respect to the making of fire insurance rates, which has been in effect in Virginia since the Epes opinion (Case No. 3602) handed down by this Commission in 1929, the percentage allocation of the premium dollar is as follows: For losses and conflagration, 52.5; for expenses, 42.5; and for profit, 5.0. Those factors, of course, are applicable to the manual rate dollar. The Commission has never permitted deviations because of better loss experience than that to be expected. Loss experience of the business as a whole is the point to be considered. To permit a company because of fortunate loss experience in one, in two, in three, four or five years to deviate on the assumption that it might be able to hold its

losses to such favorable experience in future years would be to invite disaster. Hence, the factor as to losses is and must be a constant for the rate and must make provision page 59 } for anticipated losses. Whether at any particular time an individual company has a more favorable loss experience than anticipated by the rate formula in an accident that cannot be and never has been considered pertinent to the determination of a deviation request.

I might say right here, in connection with this Company that its figures will show in 1954 that it had Nationwide tremendous losses, so that its underwriting profit in 1954 was a loss of one million three hundred thousand dollars as to losses.

Just as provision for anticipated losses is necessary to protect the solvency of the companies and to assure payment of losses to policy holders, so provision for anticipated profit is necessary if, in effect, the insurance business is to continue. In the Epes opinion previously referred to the Commission recognized that it was not enough that the owners of the business might enjoy such profit as might be derived from the investment of capital, surplus, and unpage 60 } divided profits, or from speculating with those funds. It recognized that sound regulation of the insurance business requires that provision be made for anticipated underwriting profit for all companies, and, as we have previously shown, that salutary principle has now been written into our statute. Under the formula of the Epes opinion, which formula was restated and reaffirmed by this Commission in the Case of the North America Companies, it is provided that five cents out of each manual premium dollar shall be for the profit factor and no insurer is to be permitted, when seeking competitive advantage through the use of deviated rates, to disregard the need for profit.

Under the formula which originated with the Epes opinion and which was restated and reaffirmed by the Commission in the Case of the North America Companies, 42.5 cents out of each manual rate dollar is allocated as to the expense factor for all insurers. In Case No. 12880, which involved a deviation request by the Allstate Insurance Company, page 61 } the Commission stated that it had a policy as to the granting of deviations and under such policy percentage downward deviations are permitted only in the event one thing can be shown; namely, that the applicant has, and we quote, "lower expense ratios than those established for all companies." That was your unanimous decision just about a year ago. We agree fully with that policy, that to the extent an insurer can show that its expense of

doing business is less than the ratio allowed in the formula as to all insurers its deviation request should be permitted, provided other requirements be met.

It is a simple mathematical fact that when an insurer is granted permission to file and use a 20% downward deviation from established rates, the deviated rate dollar used by that insurer consists of only eighty cents as compared with the established manual rate dollar of one hundred cents. This means, of course, that a greater per cent of this eighty cents dollar must be set aside for the payment of losses page 62 } and to take care of conflagrations and catastrophies than the mere 52.5 per cent, as provided in the established rate formula. Thus, it becomes necessary to convert the loss and catastrophe factor from that allowed under the manual rate dollar of one hundred cents to that which must be allowed under the deviated rate dollar of eighty cents. This conversion is accomplished by dividing 52.5 by 80 which produces a factor of 65.6. When the factor of 5.0 for profit and contingencies is added to the converted factor of 65.6, we have a combined factor of 70.6. When 70.6 is subtracted from one hundred cents, it leaves only 29.4 cents, or a ratio of 29.4 per cent of the deviated rate dollar for expenses. It is necessary that the expense ratio of an applicant be not in excess of 29.4% to justify a request for a 20% downward deviation from manual or established rates.

We believe that the evidence in this case will show the Commission without question that the expense ratio of The Harford Mutual Insurance Company is substantially in excess of 29.4% and further that such evidence will show that, while the Applicant is entitled to file and use a 10% page 63 } downward deviation in rates, it is not entitled to file and use any greater percentage deviation. And we believe that on the basis of such evidence the Commission should and will deny the pending application.

Now, I think it certainly appears to me at the present moment that this case is going to develop, not into a factual contest, but is going to develop into a legal contest. I do not anticipate, indeed we know, from the very figures filed by The Harford Mutual, that if it must make provision for the profit factor, and if this Commission is not empowered to allow it to deviate by eliminating the profit factor, then I think, by its own figures, it is not permitted to deviate from the figures presented by its own filing. Then I think the Commission has to decide whether it was correct or not in the North America Case. If you can permit a company to deviate only on its own expense, and if as the Commission has decided

every time it has been presented to it, if you are going to adhere to that, which we contend is a requirement
page 64 } of the statute, then, under the figures it has filed, it is not entitled because you take the deviation will eliminate the 5% profit factor. If we are right on the Law, and if the Commission was right last Fall, and if the Commission was right when it decided the All States Case, and if the Commission has been right every time it has decided one of these applications, then you have to so decide this.

11:40 A. M. Commissioner Dillon: The Commission will recess for ten minutes.

11:50 A. M. The Commission resumes its session.

Commissioner Dillon: Mr. King, do you have an opening statement?

Mr. King: Yes, sir, mine will be extremely brief. The Virginia Association of Insurance Agents coincides completely with what Mr. Denny has had to say, and I would like to read one thing, which has been omitted, and I have in my hands an attested copy of the Commission's Order
page 65 } in Case No. 13556, the Application of The Insurance Company of North America. This is dated on the 4th day of October, 1957 and it says this:

"After hearing the arguments of counsel upon said motion and having considered all of the evidence herein the Commission is of the opinion that said motion should be sustained and this proceeding dismissed for the following reasons:

"(1) the formula established by the Commission for the regulation of the rates charged for fire insurance by all companies doing business in this State is as follows:

"Losses	50.25%
"Conflagration or Catastrophe Allowance	2.25%
"Expenses	42.50%
"Underwriting Profit	5.00%
Total	100.00%"

Now I say merely this that if the Commission
page 66 } still means what it said on October 4th, I am informed the evidence will show that this Company is entitled to 10%. If it does not mean what it said on October 4th I think they have to show what the deviation losses will

be in October of 1958 that they will be the same in October of 1958 as they were, and I think that is the simple question involved.

Commissioner Dillon: Mr. Elliott, do you have any statement you wish to make?

Mr. Elliott: Yes. I think that what I say may be of some help to the Commission for, as I understand this application, it is for a 20% deviation or nothing. It is not an application that, if we can't have 20% let us have 10% and I would like to have a clarification on that. If it is an application for a 20% deviation, and if the Company accepts, as Senator Wicker says it does, the formula of October 4th, 1957, I don't think it is necessary for this Commission to get into the question as to whether a mutual needs a profit or not, because, whenever you accept that formula, then this Case on a

page 67 } 20% deviation must fall. The figures filed by the Company Nationwise show a total premium of twenty-three million nine hundred and thirty-six thousand nine hundred and fifty-seven dollars. Applying this formula and applying 52.5% of the one hundred cent dollar to this premium deviated dollar of twenty-three million dollars, you come up with losses, according to the formula, of eight million two hundred thirty-four thousand three hundred and thirteen dollars Country-wide. According to their own evidence and actual expense, not arithmetic expense, and not provided in the formula, but the actual expenses of nine million two hundred and eighty-eight thousand one hundred and twenty-seven dollars. Mind you that there is left in the premium income after application of the formula to the losses only eight million dollars to pay actual expenses of nine million dollars, leaving a deficit before you get to or think about profit of one million and fifty-three thousand dollars. Now you say "that the Company shows a profit."

Yes, they show a profit in that same exhibit of one

page 68 } million one hundred and forty-four thousand dollars. Where does that profit come from? That profit comes from the fact that the actual losses of the Company are two million one hundred and eighty-eight thousand dollars above that required to be set aside by the formula; so that two million one hundred and eighty-eight thousand dollars, when you deduct the actual overage of expense, leaves the one million one hundred and forty-four thousand dollars of which they show as a profit. Where does that come from? That does not come from any savings in expense but comes only from the fact that their loss ratio was less than that provided by the formula so that in accordance with their own figures, the Company must be allowed to deviate because of

losses, and that has never been permitted in my experience here.

The other point, and which is novel here, is that you should take into consideration only the premiums and expenses less Re-insurance. As to that, I say to the Commission, if that is the theory on which we are operating, then we have got to start all over again. The
page 69 } premiums and losses upon which the rates are made and to which this basic formula is applied, are the premiums and losses of the companies and not what happens when you re-insure business with other companies. Naturally, Re-insurance companies are in business to make a profit. If they don't make a profit, that is no concern of this Commission, and neither do we regulate it, so that if we get off under that, we have to re-establish the formula so that you deviate from exactly the same basis on which your rate is constructed. In other words, you can't have a rate formula based on one set of losses and deviate from another set of losses, which have no relationship to the rate at all.

Those are the matters that arise to my mind in this case, and I simply point them out to be considered as this evidence unfolds.

Commissioner Dillon: Are you ready to proceed with your evidence?

Senator Wicker: Yes. Mr. Elliott asked the question whether we want 20% or nothing. We think we are
page 70 } entitled to 20%, and that the evidence will show it, and we are not here looking at this Commission and saying "If for any reasons, after considering the whole case you don't think the 20% is justified, but only 19%, we want nothing." Certainly that woulld be ridiculous for us to say any such thing. We are trustees for our policy holders. We don't want to be placed in such a position. We are making application for 20% and we hope the Commission will grant it, but we don't want to be in the position of saying that if the Commission says it should be 19% that we will only take the 20% or nothing, and that is the only thing I want to make clear on that matter.

I do want to say on the Re-insurance matter that this is not involving any change in the basic formula for general rate-making. I have participated in these cases for twenty years representing the Mutual Rating Bureau, and we have never asked for anv deviation from general rate-making and that is what Mr. King read, that is the general formula on basic rates, and if you want to re-establish something
page 71 } different, it is another matter but on Re-insurance I wish to invite the Commission's attention, that of

counsel and all-that this is not making rates for buying Re-insurance in your formula of rate-making, but on the matter of rate-making, reinsurance is recognized as diminishing or exceeding your exposure, and Virginia forms on Page A of your Annual Report the Virginia form and at Page 10 also, you will find the place for Re-insurance and it is formally recognized, and you use this annual statement, of course, the Insurance Department does, to determine whether the Company is solvent, and on Page 8 where they get to losses in here there are losses paid on direct business or Re-insurance assumed, and then a column for Re-insurance recovered and then they are based on net changes, one plus two minus three and on Page 10 in the Underwriting Exhibit where your expenses are set forth, there again both in the matter of loss adjustment and claim adjustment, and both in the acquisition cost, the commission paid agents for Re-insurance, page 72 } is put down as a separate item in each case to be deducted or added to determine what is claimed to be "net service" and that determines the expense of the Company on annual basis, and since it was stated we would have to revamp the whole thing, I disregard anything in regard to the general formula but simply say these things should be taken into consideration.

Mr. Welch, will you please come around and be sworn.

page 73 } WALTER WELCH,

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

DIRECT EXAMINATION.

By Senator Wicker:

Q. You are Mr. Walter Welch, President of The Harford Mutual Insurance Company?

A. Yes, sir.

Q. That Company was formed, I believe, in 1842?

A. Correct, sir.

Q. And entered business in Virginia back in 1928?

A. Yes.

Q. State the circumstances, if you know them, under which they came into Virginia.

A. I had been in Virginia twenty-five years. Four or five years previous to my employment, it was entered here and licensed and it was my understanding that we came here more or less to help the old Loudoun Insurance Company which is

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an assessment company in this State, principally because under their charter they were not allowed to buy re-
page 74 } insurance, and were more or less limited in writing insurance, and they prevailed on our Company to come in and for a number of years the only agents we had were the Loudoun Company agents. After I came with the Company I commenced developing an agency plan, and we have built that plan so that we have twenty to twenty-five agents and they have a number of solicitors working out of their office, and we are now represented State-wide throughout the State of Virginia.

Q. In what lines do the Companies do business?

A. We now hold what is known as a "multiple charter," but our business is fire and allied lines in this application.

Q. And that is what you are asking for in the continuation of this deviation?

A. We are asking only for the deviation on our fire and allied lines.

Q. Has your Company ever done business on anything but a deviated basis on fire and allied lines?

A. No, sir.

Q. Will you state what was the original devia-
page 75 } tion?

A. We were set up before the Virginia Insurance Rating Bureau was organized and we came in and filed our own rates and we set them up in accordance with the Loudoun Company's agents' rates, and later on the Virginia Insurance Rating Bureau was established, and all companies outside of the State were required to clear through that rating organization, and we were put on notice that we would have to have our rates filed and checked there.

Q. And you did that in 1936?

A. Yes.

Q. Do you recall the hearing when Mr. Archibald Robertson represented the Company and my good friend, Mr. J. Gordon Bohannan, represented the Rating Bureau?

A. Yes, I was working as a special agent at that time.

Q. And that was the time when the Company's right to a deviation was questioned and was heard and determined by the State Corporation Commission first?

A. Yes.

page 76 } Q. That was in 1936?

A. Yes.

Q. And the 20% deviation was approved then?

A. Yes.

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Q. Now as to the 25% deviation.

A. The 25% deviation was granted originally, I'm not sure that I was connected with the Company when the original 25% was granted, but the original 25% was granted by the Bureau and we operated under that 25%.

Q. And in 1936 the 25% deviation was upheld and determined by the Commission and then in 1947 what happened there?

A. We had a hearing before the State Corporation Commission in 1936 and the deviation of 25% was granted, and the next hearing was in 1946, when the Commission heard us again and upheld our deviation of 20%.

Q. And that was at whose request that it was made from 25 to 20%?

A. That was at the request of the Company.

page 77 } Q. Why?

A. Because the rates had been reduced, and we felt it was not wise to continue at the 25% at that time.

Q. And there was no objection by the Bureau? You were not haled in by the Bureau and the deviation reduced?

A. No, sir, we did it at our own request.

Q. You have been operating now in Virginia for thirty years?

A. Yes, sir, we have been licensed and doing business here.

Q. I have here a statement marked "The Harford Mutual Insurance Company Virginia Premiums and Losses 1928—1957," and this was prepared from the Company's books and reflects the total losses and premiums?

A. Yes, sir.

Senator Wicker: I ask that that be received as Exhibit No. 1.

Commissioner Dillon: It will be received as Exhibit No. 1.

Senator Wicker: That was received as Exhibit No. 1.

page 78 } Senator Wicker:

Q. That begins with the year 1928?

A. Yes.

Q. And ends with the year 1957?

A. Yes.

Q. And that is on the total basis and does not reflect Reinsurance in any way or the other?

A. No, sir, it does not.

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Q. It shows for total fire and allied premiums written, the gross premium is what figure?

A. Twelve million six hundred and eighty thousand six hundred and fifty-two dollars and seventeen cents.

Q. And on the same business the losses amounted to what total?

A. Five million four hundred and fifty-seven thousand seven hundred and twenty-three dollars and fifty-seven cents.

Q. That figured a thirty year loss ratio average of what?

A. 43.03%.

Q. On your premium savings to Virginia policy holders that amounted to how much?

page 79 } A. Three million three hundred eighty-two thousand seven hundred sixty-five dollars and eighty-two cents.

Q. How do you get at that figure? Is that the difference between the amount you charge your Virginia policy holders on your deviated basis and the amount they would have had to have paid if charged the full 100% manual?

A. Yes.

Q. And that is three million three hundred and eighty-two thousand seven hundred sixty-five dollars and eighty-two cents?

A. Yes.

Chairman Hooker: That is the amount on the 80% deviated dollar on the insurance written by your Company rather than the 100 cents dollar?

A. No, the savings would be on the 100 cents premium. These figures are the net premiums written.

Senator Wicker:

Q. Without taking into account Re-Insurance?

A. Yes.

page 80 } Q. But you collected twelve million six hundred eighty thousand six hundred and fifty-two dollars and seventeen cents from Virginia policy holders for fire insurance in that thirty year period?

A. That is correct.

Q. And that was at your deviated rate, part of it in the years was at 25% and in the later eleven years it was at 20%?

A. That is correct.

Q. Instead of that being written at 75%, that is 25%

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deviation first and 20% later. If you had written that business at manual rates, what would have been the additional amount you would have collected from the Virginia policy holders?

A. Three million three hundred eighty-two thousand seven hundred sixty-five dollars and eighty-two cents.

Q. In other words, that amount of three million three hundred eighty-two thousand seven hundred sixty-five dollars and eighty-two cents makes that the amount saved to your policy holders by reason of your writing at the deviation?

A. That is correct.

page 81 } Senator Wicker: Does that answer the Commission's question?

Chairman Hooker: Yes.

Senator Wicker:

Q. I hand you now exhibit headed "The Harford Mutual Insurance Company Licensed Virginia Agencies 5-15-58," and ask if that correctly reflects and gives the location of your agents in Virginia?

A. Yes. This is a correct list of our agents in Virginia.

Senator Wicker: I would like to have that received as Exhibit No. 2.

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

Senator Wicker:

Q. Without going to the trouble to read all the names there, are there not a total of one hundred and fifteen agents on that list?

A. Yes, sir.

Q. And while some of them are an agency and somebody has an agent or a number of individuals working for them—

A. Solicitors or sub-agents.

page 82 } Q. They are located in practically every part of Virginia?

A. We cover practically every part of Virginia.

Q. Here is one, "Clifton Mutual Insurance Agency." That is located at Abingdon. Does that have any special territory?

A. None of our agents are restricted to any given territory but they usually operate in the territory convenient to them.

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Q. Most of them confine themselves to their own territory, city or town?

A. Yes, but they are permitted to write State-wide.

Senator Wicker: We are offering now Exhibit 3 which is a map of Virginia showing the location of the Company's agents or agencies by underlining the location in red, and the number of agents or agencies at each location is shown right opposite it. Where it does not show the number at the location, there is one agency. For instance, Bristol 2, Temperenceville 1 and Richmond 20. I would like to have page 83 } that marked as Exhibit 3.

Commissioner Dillon: It will be received as Exhibit 3.

Senator Wicker: We introduced that to show that our Company is in business every where in Virginia.

Senator Wicker:

Q. Does your Company operate in Virginia on any thing other than the agency system?

A. No. We do business strictly through local agents.

Q. Has that always been the practice?

A. Yes, sir, it has been our practice ever since we began operating in the State.

Q. How many states are you in?

A. Twenty-six, I believe, we have a license pending at the present time and we hold a license in twenty-six states.

Q. Can you recall those off hand, if not, I can furnish that.

Mr. Denny: If you can tell us the correct number of states we are perfectly willing to let it go at that.

page 84 } Senator Wicker:

Q. I thought it would be well to give the names of the states as well. Suppose you go ahead and state all you can recall.

A. We are licensed in Maryland.

Q. That is your Home State, is it not?

A. Yes, our Home State. Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, Tennessee, Texas, Oklahoma, Missouri, Ohio, Michigan, Idaho, Montana, Nebraska, Minnesota, Utah, Arizona and the District of Columbia. That is about all I can

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recall and we were recently licensed in Kentucky. We have a license pending in Nevada.

Q. I believe you mentioned Colorado and Arizona.

A. I did not mention Colorado but Arizona but it is also licensed in Colorado.

Mr. Denny: So far as we are concerned, if any of them are omitted, he may supply them for the record.

Senator Wicker: Thank you, sir.

Senator Wicker:

Q. With your agents scattered all over the State, page 85 } tell the Commission what type of business your Company serves, how does the deviation work, for example take the rural farm for instance, small property and industrial properties?

A. This Company has always operated to serve the small writer. We have catered to the small business and the majority of our business is unprotected. That is because our Company started as an assessment mutual and originally wrote in the County of Harford, Maryland and then we extended our business into Baltimore and we carried it in because we write a large percentage of unprotected business.

Q. What do you mean by "unprotected business"?

A. That is business outside of the fire protected area, outside the fire protected area of fire companies. We find, and I am guessing, but out of our total spread of business, we have a very high percentage of unprotected business and I think possibly better than 2.5 million dollars of the farm business in our writings are lines for homes which have been more or less held down. We don't go in for large commercial risks. We do write some of them but restrict our page 86 } writings. For many years our rate was much smaller than the others and, as the result, we have one of the largest spreads of any company writing the business we are writing.

Q. That spread is quite a factor in holding your losses down, is it not?

A. That is quite a large part of it. We make every effort to not have our business concentrated and to not subject our losses to large losses as they would be if they got into large commercial lines. Our business is restricted to lines where you have an average of seven thousand dollars and our business is practically the same in Virginia as it is Countrywide.

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Q. What about the people who manage your Company, I don't mean their names?

A. We have a Board of Directors of seven directors and an Executive Committee of four which is a very old committee. The average age of our directors on our Board is a hundred and fifty years, the combined ages of service on our Board. As I say, we have seven directors and all of the directors have been with the Company many years, and our Board page 87 } meets regularly once a month and our Executive Committee meets once a month and it is what is known as a "Working Board of Directors," and they take an active interest in the Company.

Among our directors we have two bank directors.

Mr. Denny: If the Commission please, I don't want a precedent started in this case. If we start this precedent, then every time we have one of these deviations, or one of these deviation cases are concerned, we will go into matters like this. In this hearing, so far, this witness has testified to two material facts. He has given us the deviation in the past and the direct losses during the years, and not a thing else has he testified to that has any material bearing on this case at all.

Commissioner Dillon: The Commission is, of course, interested in expediting the hearing but we don't want to keep any evidence out, and don't want to put in any that is not relevant.

Mr. Denny: It is interesting to know that they have certain directors and that they meet once a month or twice a month, but not relevant to this case.

Senator *Wicket:* It won't take much longer to page 88 } put this in but every time I put something in like this, it reminds me of my friend Mr. Gay in cases when we would be against each other and every time I began to talk about something that hurt Mr. Gay's client, he got up and started talking about the time and that is what has happened here, I have been talking about things that hurt Mr. Denny and Mr. Denny referred to the statute stating that we should give consideration to relevant factors and certainly a relevant factor of how long a company has been going and whether the directors are scattered far and wide and have no interest in the company is certainly a relevant factor here.

Commissioner Catterall: What is the relevancy of the factor that Mary Louise Shivers runs an agency in Arlington?

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Senator Wicker: Nothing at all except, in giving the names we realize that in a case the Commission had there was some question as to the number of agents given that that was one factor that should be brought out so we felt that page 89 } we should give the spread and type of business that we are giving and what type of people have been affected by this deviation and will be affected by the deviation and by that we want to show that it is just not somebody taken out of the air.

Chairman Hooker: I got the inference from Mr. Denny that they did not question your case at all except on the Law, that he admitted all the facts.

Mr. Denny: If we can dispense with the stuff that is going in, I can concede that it is a well-managed Company and through the years it has done business in a legitimate way as we conceded in the North America Company.

Chairman Hooker: I did not mean to get you up to make a speech but I wanted to see if I quoted you correctly.

Mr. Denny: It is a question of mixing law and facts.

Commissioner Dillon: I think we would probably save time if we permitted Senator Wicker to proceed page 90} and ask him to expedite it as much as possible.

Senator Wicker: It certainly will. I am nothing like as big a lawyer as Mr. Denny, but my time is very valuable also and I want to put in what is relevant, but if it is not relevant, you know enough to disregard it.

Mr. Denny: He need not introduce proof of that.

Senator Wicker:

Q. Is this a booklet that gives a historical treatise on your Company and what it has done?

A. Yes, sir.

Q. It says "Welcome to the new home of your mutual friend"?

A. Yes.

Q. That was gotten out after you had operated for a hundred years?

A. No, this was introduced after we had operated over a hundred years.

Commissioner Dillon: Have you any objection to that being admitted, Mr. Denny?

Mr. Denny: I haven't the slightest idea what it page 91 } is but during the recess I will try to take a look at it.

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Commissioner Dillon: You will trust us to say that it is relevant?

Mr. Denny: Yes, without making a speech I will try to see whether it is relevant.

Note: Book tentatively marked Exhibit No. 4.

Senator Wicker:

Q. What is the approximate savings to policy holders in this fire insurance business amount to in a year?

A. Approximately three hundred thousand dollars.

Q. You had better take a look at your Memorandum.

A. The savings amounted to about two hundred and fifty thousand dollars per year.

Q. In other words, your premium the last year 1957, your total direct premium in Virginia was about one million dollars?

A. Right at one million dollars—nine hundred and some thousand dollars.

page 92 } Q. And if you operated at manual you would have to collect approximately one-fourth of that million dollars more; is that correct?

A. That is correct.

Q. Did you state to the Commission the per cent of your property coverage?

A. I did not give the exact percentage, but according to our figures, as near as we can gather, it is 61% for residential property and 67% represents unprotected rural and farm property.

Commissioner Dillon: Part of that 67% includes part of the 61%?

A. Yes, sir, that is correct.

Senator Wicker:

Q. What is your maximum policy retention?

A. Under our policy our requirement is four thousand minimum and maximum at fifteen thousand dollars.

Q. What does that mean?

A. Depending on the class of business as to what is in the line, under the regular line, the unprotected is four

page 93 } thousand dollars and well protected brick property is fifteen thousand dollars and on that we have Re-insurance. We have automatic Re-insurance that takes up

to ten times our net line of anything we write. In other words, if we were writing a fifty thousand dollar policy on a mercantile where our net line was ten thousand dollars, we would have Re-insurance for the other forty thousand dollars.

Q. On that Re-insurance do you have to have it each time or does that follow automatically?

A. It is put on under our treaty, it is automatically assumed by our Re-insurer, and any insurance we can keep we keep religiously and that is kept by the Company as its retention and the rest is carried by the Re-insurer automatically.

To give an example, take a farm at twenty thousand dollars, the farm building and barns, etc. That particular risk would be in accordance with exposure. If the dwelling and barn were most of the exposure, it would be Re-insured with a net line on each building.

page 94 } Now the same procedure is followed in towns and cities where our business might become, for instance, where we had too much business in one block, we make every effort to spread it and Re-insure it so that the Company would not be subject to more than the four thousand or fifteen thousand dollars net retained line.

Q. Do I understand from you that, depending on the class of property, the property where you think is the least risk, the Company may end up with fifteen thousand dollars which is its maximum liability?

A. Yes, depending on the class.

Q. Depending on the class of risks, it works down to the maximum you would retain whether four thousand or fifteen thousand dollars?

A. Yes, sir.

Q. That is on your individual writings. How about catastrophe?

A. The Company uses the catastrophe cover which is based on a certain limit of the retained lines of the Company which is two hundred thousand dollars. There is a catastrophe cover that is based on the percentage up to 90% of the losses

page 95 } up to one and a half million dollars on any one occurrence.

Q. And that is not on any one year but any one occurrence?

A. Yes.

Q. If a big fire broke out somewhere and your Company was faced with a loss on that you have this other basis of operating presumably on catastrophe by fire?

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A. Or wind.
Q. Or wind, etc?
A. We would be covered by the catastrophe.
Q. How much could you lose?
A. We have to stand two hundred thousand dollars and then the Company stands all of that up to one and a half million of that.
Q. The Re-insurance Company stands 90% of the losses above that two hundred thousand dollars?
A. Yes, up to one and a half million dollars.
Q. They stand that?
A. Yes.
Q. Now do you have any inspection, any relationship between your expenses and losses. It has been mentioned here and will come out later as to your actual losses
page 96 } as allowed by law, I don't mean by dollars and cents, but how about your losses compared to the average of your expenses, the average period, the average considerable period?
A. Over the past ten years the record of our underwriting has been a little better than most companies up to the last two or three years when we had a series of windstorms, our figures have been running 10 to 15% profit.
Q. You mean that, after paying losses you still have 10 to 15% which you can add to your surplus?
A. Yes, our surplus has increased in the past ten years two million and a half dollars.
Q. Now in regard to your inspection expense, does that have any bearing on your losses?
A. We believe that, because of this extensive inspection service, it is responsible for our having this low ratio of losses.
Q. Is that expensive?
A. Yes. The inspection service is independent of our Company, but it is a mutually owned operation that
page 97 } is owned by another company, but the actual inspection runs up to four or five dollars on each risk that is inspected, regardless of the size of the premium we receive for each risk.
Q. And if you cut that inspection out, that will reduce your expenses considerably?
A. It would have a bearing on reducing our risks and at the same time we feel it would have a bearing on our loss ratio.
Q. From the standpoint of deviation, you can justify your

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expense and justify a bigger deviation since it does not consider losses?

A. Yes, sir.

Q. But you prefer to do it the other way?

A. Yes.

Q. Since this only covers fire and allied lines, what other kinds of business does your Company do?

A. We do Inland Marine and Automobile Insurance Physical Damage, and some casualty lines of automobile risks.

Commissioner Catterall: Exhibit 1 just covers fire?

A. Sir?

page 98 } Q. This exhibit does not include any of the others you mentioned?

A. No, it is only fire?

Senator Wicker:

Q. Let me ask you about why does the Company prefer to operate on a deviation basis here in fire and allied lines in Virginia rather than increasing the rates 25%, saying you would have to increase them 25% if you went to manual, so as to charge manual rates, and then later on return it in dividend?

A. In the first place it is much cheaper to operate the Home Office on the plain deviation; then to, in the experience of a hundred years, we have never operated any other way than on the deviation way. The mechanical end of it is cheaper that way and our policy holders are used to getting this in advance, and to switch over to another plan would no doubt disturb a lot of our policy holders and we might lose a good many of them.

Commissioner Catterall: How many policy holders do you have in Virginia?

A. Approximately fifty thousand. A great many

page 99 } of those are written in a different way so I would say seventy-five thousand to a hundred thousand.

Q. But on the average the saving per policy is five dollars per year?

A. It is 20% of what the premium is.

Q. You said it was two hundred and fifty thousand dollars so the annual saving on the 20% basis would be five dollars and two dollars and a half on the 10% basis?

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A. Yes.

Senator Wicker:

Q. You operate in some lines in some places on the full dividend basis?

A. In some places we do.

Q. And on some lines?

A. Yes.

Q. But in Virginia, I want to get it clear why you write on a deviated basis?

A. We came in on a deviated basis to conform with the company we were associating ourselves with, and that local company is still writing business on a deviated plan, even though it is an assessment company and has quite page 100 } large coverage in this State and they deviate pretty much the same as our Company and on pretty much the same level, which is the deviated rate, so, if our deviation is reduced 10%, it means that the agent must go back and collect an additional premium, and the local company remains the same and it is pretty hard for the agent to explain why we have to charge more than the other company.

Commissioner Catterall: Is the other company an assessment company?

A. Yes, but they ignore that, or so they told me, being under the assessment plan. Under their charter they are an assessment company but their going rate is 20 to 25% of the manual rate.

Senator Wicker:

Q. They have a pretty old company?

A. It is well over a hundred years old.

Q. The assessment factor, they don't exercise it, they charge 75 to 80% on the hundred dollars and that is the way it goes?

A. That is the way they operate.

Q. On the basis of this Re-insurance, how does that operate in connection with—how soon do you get your page 101 } money?

A. We actually deduct it from the money going in. We don't have to wait on the money. Our commission is taken out and the balance is remitted to the insurer. We pay

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our losses out of the Re-insurer's money and remit the net to the Re-insurer.

Q. You make accounting quarterly and you have the Re-insurer's money, and you pay it, if you have a loss you pay it and deduct it from the Re-insurer's money in your hands?

A. Yes.

Q. Do you pay them on the earned premium or Re-insurance basis. I think it is an earned premium.

A. I am not an accountant.

Q. May be I should ask the secretary that.

A. Yes.

Q. You are the president. What is your investment income?

A. Our investments are handled by an independent firm, Moody and Company of New York, and they are
page 102 } conservatively made and handled by our Executive Committee. On the advice of Moody and Company our average income from investments is approximately 3.15%.

Q. What does that mean in dollars per year, could you give us any idea or would the Secretary and Treasurer have to give us a better answer?

A. He could better answer it than I could but approximately two hundred and fifty thousand dollars a year.

Q. And that is not reflected in any of the data called for by the Bureau of Insurance?

A. No, sir.

Q. Mr. Denny said something about in 1954 some stupendous loss he mentioned.

A. That was the year that Hurricane Hazel struck and in fact we had thirteen thousand losses as a result of Hurricane Hazel. These losses were spread over four or five states, and that particular year we were forced to collect under our catastrophe cover. I might add we paid in losses
page 103 } over two million dollars which are catastrophe losses and our Co-insurer and Catastrophe Insurer paid approximately seven million one hundred and fifty thousand dollars of that storm loss.

Q. The whole bulk of this loss in 1954 actually was paid by the Re-insurer?

A. Yes, that particular year.

Q. It was paid to your policy holders but paid by the Re-insurer?

A. Yes.

Walter Welch.

Senator Wicker: I believe I have a number of exhibits but they had better go in through the Secretary and Treasurer.

Q. Among other things as to your service in Virginia, do you write Hail Insurance on farms?
A. We write Hail Insurance on tobacco farms in Virginia.
Q. Is that generally written? There are a few mutual companies writing fire insurance in Virginia?
A. It is not considered fire insurance but something different.

Senator Wicker: I meant Hail Insurance.

page 104 } 12:55 P. M. Commissioner Dillon: We will recess for lunch until 2:00 o'clock.

2:00 P. M. The Commission resumes its session.

CROSS EXAMINATION.

By Mr. Denny:
Q. Mr. Welch, Mr. Wicker and you dwelt at great length on Re-insurance, the fact that your Company re-insures with other companies. Is it not a fact that it is universally true in the insurance business that the companies, whether stock or mutual, do re-insure part of their risks with other companies or groups of companies?
A. That is correct.
Q. There is nothing peculiar to a mutual in the Re-insurance?
A. Nothing except the assessment companies are prohibited by charter from re-insuring.
Q. You dwelt at great length on catastrophe coverage on Re-insurance, your provisions being that if one occurrence involves more than two hundred thousand dollars,
page 105 } then the people with whom you reinsure cover the loss up to one and a half million dollars.
That is typical of all companies, stock, mutual and other companies?
A. I think the majority of them do.

Mr. Denny: I have no further questions.
Commissioner Dillon: Any further questions by anyone?
Mr. King: I have none.

Mr. Elliott: I have none.

Witness stood aside.

page 106 } WILLIAM H. MARQUESS,
a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Senator Wicker:

Q. State your name and position with the Harford Mutual Insurance Company.

A. I am William H. Marquess, Vice-President and Secretary of the Harford Mutual.

Q. Vice-President and Secretary?

A. That is correct.

Q. Mr. Marquess, on this question of Re-insurance, some companies take out Re-insurance, that is they take part of their risks and turn it over to another Company, a Re-insurer, and that is called "ceding"?

A. Yes.

Q. Some buy and take over risks that another company has written and that is called "assuming"?

A. That is correct.

Q. With some companies the amount of insurance you assume greatly exceeds the amount they turn over to
page 107 } other companies, so that Re-insurance increases their total exposure; is that correct?

A. That is correct.

Q. What is the situation with reference to Harford Mutual along that line, what has it been through the years?

A. The amount of Re-insurance which we cede to reduce the exposure far exceeds the amount which we assume.

Commissioner Dillon: Is that peculiar to your mutual company or true for all mutual companies?

A. It is not peculiar to our Company, no, sir. I don't know that it is true of all. I think our Company is a heavier Re-insurer than the average.

Q. You don't know what per cent the average is?

A. No, I never had occasion to figure it out. I have compared us with other specific companies, one by one, and in

most cases find we cede more of our risks than those with which we compared them.

page 108 } Senator Wicker:

Q. What are your arrangements on Re-insurance? Take the past seven years, we have some exhibits on that, 1951 through 1957. I don't mean the exact dollar amount, but approximately what proportion of your risks has been re-insured as to direct premiums written to your net premiums written?

Mr. Denny: Did I understand you to say what portion of your rate?

Senator Wicker: No. The risks; the only portion you can see is by looking at the premiums.

A. In the last seven years, looking specifically at our Virginia figures, approximately 40% of our fire insurance business has been re-insured.

Q. Most of that is with whom?

A. Most of that is with Lloyds of London.

Senator Wicker: Is there any question as to whether it is necessary that we put on evidence that Lloyds of London is a solvent Company?

Mr. Minor: It is not a company.

Senator Wicker: Is there any question about it under the Virginia law it is recognized.

page 109 } Mr. Denny: I am not raising any question as to the solvency of it, I think it is immaterial.

Senator Wicker: I will read Section 38.1-1 in which the first sentence in it is "Definitions," and it starts on Page 85 of this volume, and in giving the definitions over on Page 86, Sub-section 4, it specifically defines "Company" means and includes any association aggregate of *individulas,* business company, corporation, individual, joint stock company, Lloyds organization * * *."

Mr. Minor: That is the definition.

Senator Wicker: That is the Virginia definition and I am talking about the Virginia Insurance Law.

Senator Wicker:

Q. What are your arrangements, in other words, when you turn over a thousand dollars of premiums that went to Lloyds, what do you get back?

William H. Marquess.

A. Our average return on the commission is about 43% coming back to us.

Q. In addition to the 43%, Lloyds pays to you
page 110} to purchase that business; is that correct?

A. That is correct.

Q. When the loss occurs and you have a loss adjustment expense, is anything paid in addition to that 43% that you can charge against Lloyds?

A. We charge against Lloyds the portion of the loss re-insured with them, and at the same time the same proportion of our adjustment expense. If the loss was 50% re-insured, we recover 50% of the paid Re-insurance and 50% of the loss adjustment.

Q. That is in addition to the 43%?

A. Yes.

Q. Is that 43% substantially larger than the average commission you pay to acquire the business?

A. Yes, very much larger. Our average in Virginia is slightly under 25% and the recovery is about 43%.

Q. Plus the other things, the final adjustment in case of loss?

A. Yes.

Q. Now the actual physical transfer of the
page 111} Company, say that the first of the month, the beginning of the quarter you cede, transfer or reinsure one hundred thousand dollars in premiums, the Lord knows how much it would be in risks, but the risk is represented by a hundred thousand dollars of premium, and you re-insure that. Now you settle, I think it has been testified, quarterly?

A. Yes.

Q. Who has that money between the first of the quarter and the end of the quarter?

A. We have it. Actually we are not required to settle until sixty days after the quarter, so we have part of that money for at least five months.

Q. During which time you have the money and the investments on it?

A. That is correct, and in addition to that, at all times we withhold from the insurer the amount of unearned premium that amounts to in excess of one million dollars that we are holding in our possession that is re-invested.

Q. That will be credited to the insurer but in the meantime you have invested for your own account?

page 112} A. Yes, for our account.

William H. Marquess.

Q. In the event you have a loss, you charge it on your statement, and you don't have to bill them to get your check?

A. That is correct. At the end of the quarter the statement shows the premiums due the Re-insurer minus the commission due us, minus the losses paid due us and the liability for the loss adjustment due us, and that is the difference, and if we owe him we pay that balance and if he owes us he pays that balance to us.

Q. Now, Mr. Marquess, you have submitted data when you applied for this continuation of your existing deviation, you supplied some data at that time?

A. Yes.

Q. And subsequently you were called upon by the Bureau of Insurance to fill out a form?

A. Yes.

Q. And you sent that in?

A. Yes.

Q. And that form in there was for the years 1952 through 1956?

page 113 } A. The forms specified the latest five years and at the time we made the filing those were the latest five years. That was done in the latter part of 1957.

Q. That was when the data was furnished?

A. Yes.

Q. Since that time has the data become available for the year 1957?

A. Yes.

Q. And that is submitted in your Annual Statement for the year ending December 31st, 1957 that has been filed?

A. Yes, sir, that is correct.

Q. Has a memorandum sketch or chart as an exhibit been prepared reflecting the Virginia experience of Harford Mutual, not only for the latest five years but for 1951, the five years available when your application was made, but the year before the 1951 and the subsequent year 1957?

A. Yes, sir, we have such a chart, 1951 through 1957.

Q. And you prepared two, one showing the

page 114 } Virginia experience for those seven years and one disregarding Re-insurance just as if there was no Re-insurance?

A. Yes.

Q. And the other recognizing the Re-insurance?

A. That is correct.

Q. They have been prepared, I believe, on the chart round-

William H. Marquess.

ing out the figures showing it to the nearest thousand dollars?

A. Yes, sir.

Q. If there is any discrepancy there it is a negligible amount, there may be a figure here where you have a thousand dollars and the figure might be five hundred and some dollars?

A. Yes.

Q. And if lower than five hundred dollars you took the lower five hundred dollar figure?

A. Yes.

Q. I believe the year 1951, the extra year you put on before the five year period that was available and 1957, I believe that neither one of those years were quite as good as the intervening five, but you included them anyway?

page 115 } A. Yes, sir, I think that is a fair statement.

Senator Wicker: We now offer as Exhibit No. 5 this chart showing the Virginia experience 1951 to 1957, of the Harford Mutual Insurance Company.

Commissioner Dillon: That will be received as Exhibit No. 5.

Senator Wicker:

Q. Now the top six columns reading across are for the years one column per year, correct 1951 through 1957?

A. The left-hand column.

Q. Seven years reflected horizontally?

A. Yes.

Q. And the seven years combined at the bottom?

A. Yes.

Q. The premiums you have on here is that your total direct premium?

A. It is the total direct Virginia fire and allied lines premiums.

Q. Without Re-insurance, without any Re-in-

page 116 } surance at all whatever?

A. Yes.

Q. They are shown by slant lines and the losses there you have combined the losses and loss adjustment expenses and that is shown by *xes,* and taxes and other expenses are shown by dots, and you have a wide space on the right-hand side showing surplus. I just want you to read into the record what does that exhibit show as to the Company's results on Virginia experience in those years. By "results," I mean

final results after making an allowance for losses incurred and expenses incurred and everything.

A. It shows that the Company has increased its surplus and that the total for the seven years is one million two hundred and forty-four thousand dollars, and the premiums shown in here are at the 80% deviated rate.

Q. In other words, when you have total premiums paid for the seven year total premiums of seven million two hundred seventy-nine thousand dollars, that was the actual amount charged or collected from Virginia policies cover-
page 117 } ing fire and allied lines for that seven year period?

A. Yes, sir.

Q. That was, since this was subsequent to 1947, that was on the 80% deviation manual rate?

A. Yes.

Q. And the others on losses and loss expense are the actual losses and actual taxes, etc?

A. Yes, sir.

Q. Just as in this case they are the actual premiums collected?

A. Yes.

Q. When you say "losses" for the total of the seven year period, you have got down at the bottom left-hand corner three million five hundred eighty-eight thousand dollars. That is without Re-insurance?

A. Yes, sir.

Q. So that the amount the Company actually sustained in losses and loss expense is considerably less than shown on another exhibit about to be introduced?

A. Yes, that is correct.

Q. And the surplus is calculated in proportion
page 118 } to the premium on business without regard to the Re-insurance?

A. That is correct.

Q. Now I hand you another exhibit that looks somewhat similar but has at the top "Harford Mutual Insurance Company"—I have marked it Exhibit 6—"Virginia experience 1951-1957 (Recognizing Re-insurance)." We ask that this be admitted as Exhibit 6.

Commissioner Dillon: It will be received as Exhibit No. 6.

William H. Marquess.

Senator Wicker:

Q. Now, this exhibit uses the same general arrangement as the previous exhibit, does it not?

A. Yes, that is right.

Q. And in this exhibit we use the slant marks for premiums in the same place and for the same losses and same loss experience, taxes and other expenses and the same markings for surplus, and this entails indentically the same business?

A. Yes, sir.

page 119 } Q. It indicates the entire business of the Company on fire and allied lines in Virginia for those seven years?

A. Yes.

Q. But it shows the exact situation or what it was, recognizing that you are re-insured?

A. Yes, sir.

Q. Take, for example, in 1951 you show at the top of Exhibit 5 premiums of nine hundred and sixteen thousand dollars. In 1951 on Exhibit 6 you show premiums of six hundred and forty-nine thousand dollars. Is the difference between those two figures, does that represent the amount of those two premiums, the difference representing the transferring of the risks that were re-insured?

A. The premiums re-insured.

Q. That you transferred over, and on which you received the commission already testified to?

A. Yes.

page 120 } Q. The commission you received, I do not believe that is reflected in your premium figure. It is reflected in the amount of your expense, reducing the amount of your expense?

A. The amount of commission received serves to reduce commission expense while in the form of the convention annual statement.

Commissioner Dillon: You paid premiums of six hundred forty-nine thousand dollars for ceding?

A. No, sir, that was what was paid back after the ceding was made.

Q. And the difference between this figure and the nine hundred and sixteen thousand dollars is what you paid?

A. Yes.

Q. And you get back 43%?

A. 43% of the amount ceded.

William H. Marquess.

Q. 62.5%?
A. Yes.

Senator Wicker:
Q. What is the difference between the nine hundred sixteen thousand dollar premiums on Exhibit 5, disregarding Re-insurance, and the six hundred forty-nine thousand dollars, what is the difference?

A. Two hundred and sixty-seven thousand dol-
page 121 } lars.

Q. That means that two hundred and sixty-seven thousand dollars was transferred over?
A. Yes.
Q. And the 43% you received was received on that two hundred and sixty-seven thousand dollars?
A. Yes.
Q. And, in addition, the losses that were on that portion you received from that Re-insurance an amount equivalent to their share of the loss adjustment expense?
A. Yes, the losses and loss adjustment expense was reduced from four hundred fourteen thousand in 1951 to a net figure of two hundred and ninety-six thousand dollars and the two hundred ninety-six thousand dollars is the figure that actually affects the Company's Annual Statement.

Chairman Hooker: Do you have to pay one-half of that or pay the whole two hundred ninety-six thousand dollars?

A. We paid the entire two hundred and ninety-six thousand dollars left.
page 122 } Q. And the adjustment was between two hundred ninety-six thousand dollars and four hundred and fourteen thousand dollars?
A. Yes, sir, that was the amount we recovered.
Q. Leaving one hundred and eighteen thousand surplus?
A. Yes, sir.
Q. And on the commission received it would be a hundred and fourteen thousand dollars?
A. I have not multiplied it out.

Senator Wicker: Multiply it out and it will serve as an illustration.

A. I think the Judge is a better multiplier than I am.

Senator Wicker:

Q. The one hundred fourteen thousand eight hundred and ten dollars or one hundred and fifteen thousand dollars would be the 43%?

A. Yes.

Mr. Denny: 43% of what?

A. Of the amount ceded for adjustment.

page 123 } Chairman Hooker: According to that I get a figure of two hundred and sixty-seven thousand dollars.

Senator Wicker: Two hundred ninety-six thousand dollars in one and a hundred and fourteen thousand in another and you add the hundred and eighteen thousand to a hundred and fifteen thousand and that is two hundred and thirty-three thousand that the Company got back.

A. That is correct.

Commissioner Hooker: In the year 1951?

A. Yes, sir.

Senator Wicker:

Q. And of that two hundred and sixty-seven thousand dollars which you transferred or re-insured, the Company had paid or become liable for commissions to its local agent of approximately one-fourth or 25%?

A. Yes.

Q. That 25% of two hundred and sixty-seven thousand dollars would be around about sixty-five thousand dollars or a little more. So that the net the Company had had page 124 } when it started to re-insure was about two hundred thousand dollars which represented two hundred and sixty-seven thousand dollars it had at first, it has gotten back two hundred and thirty-three thousand dollars. Is that somewhat illustrated or the advantage to the Company of this Re-insurance on which the primary advantage is to the assured that your Company won't be faced with this big loss at any one time?

A. I think the primary benefit of Re-insurance is leveling the Company from peaks and valleys in which they could

reach a loss from one occurrence and also the reduction in the net loss adjustment expense.

Q. We have an illustration here that illustrates that rather graphically, have you not?

A. Yes.

Mr. Denny: I had a couple of questions on that 43% business, would you like for me to ask them now?

Commissioner Dillon: Hadn't you rather wait until he gets through?

Senator Wicker: I think it would be more
page 125 } orderly to do it that way.

Senator Wicker: We have an exhibit headed "Harford Mutual Insurance Company Virginia Experience—1951-1957 (Figures in nearest thousands)." The top part of that exhibit reflects in graph form the experience of the seven years disregarding Re-insurance, and the bottom part reflects your situation recognizing Re-insurance. The draftsman who transferred that to this paper did a beautiful artistic job but mispelled the word "disregarding" and also in the handling of the losses and expenses. May we introduce that?

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

Senator Wicker: The top part of it reflects the situation in graphic form shown by your records in Exhibits 5 and 6, for example, the top part reflects the situation on Exhibit 5?

A. That is correct, before Re-insurance.

Q. It shows that in 1951 the straight line premiums of nine hundred thousand dollars—that line just above the nine hun-
dred thousand dollars and in the next year 1952,
page 126 } it crosses the 1952 line at a little above the one
million dollar mark, which shows as one million and thirty-five thousand dollars?

A. Yes, sir.

Q. And in 1953 it shows one million and sixty-eight thousand dollars and in 1954 it follows right along, and it looks like the highest peak is one million one hundred and twenty-thousand dollars, and it dips down into 1950 and comes back up in 1956 and dips down as sharply in 1957 as it had risen in 1952?

A. Yes, sir.

Q. Looking underneath in the dash and zero marks, they reflect your losses and expenses, the total, everything that

shows the valleys and peaks with some radical variations?

A. Yes, sir, particularly in 1954.

Q. Which was the Hurricane Hazel year?

A. Yes.

Q. And even on that it shows that after all losses were paid, there still remained a comfortable balance on hand of the premium?

A. Yes, sir. As far as I know, we have never
page 127 } had a year when we did not have some surplus left
on our Virginia business.

Q. Let's get that in fully. I would like to have you state it again.

A. There has never been a year as far as I know, when we did not have some surplus left on our Virginia business.

Q. And that is true whether you take it with Re-insurance or without Re-insurance?

A. Yes, sir, during my experience with the Company.

Q. Looking at the bottom of the chart, that reflects the same business years and same business, but it is different amounts and vastly different line marks, vastly different as to its variations or peaks of up and downs?

A. Yes, sir.

Q. Recognizing the Re-insurance?

A. Yes.

Q. That, for example, following the year 1951, instead of showing premiums of nine hundred and fifty thousand dollars it shows premiums of six hundred and fifty-thousand dollars?

A. Six hundred and forty-nine thousand dollars
page 128 } it was.

Q. That was the amount of premiums you had left unceded and unsold?

A. "Retained" we say.

Q. And the figure below shows the losses and loss expense a little under five hundred thousand dollars?

A. That is a combination of losses of two hundred and ninety-six thousand dollars and expenses of two hundred and fifty-five thousand dollars which is a total of five hundred and fifty-five thousand dollars.

Q. The same thing follows through here that in every year there is a substantial cushion or margin or difference in balance, call it what you will, between the total retained premium and the total losses and expenses incurred by the Company?

A. Yes, sir.

Q. Which remarkable difference ties in with your testimony

in regard to the other premiums as to the stability of Re-insurance?

A. The margin of surplus is remarkably con-
page 129 } sistent throughout the entire seven years in the section which recognizes our Re-insurance.

Commissioner Catterall: Why is your paid on the surplus for 1954 shown on Exhibit 6 a figure larger than the total surplus on Exhibit 5?

A. 1954 shows our surplus as ninety-seven thousand dollars on Exhibit 6 and as sixty-two thousand dollars on Exhibit 5. Is that what you have reference to?

Q. Yes.

A. Simply because we recovered more from the Re-insurer than we paid him. The Re-insurer lost money.

Q. That means you re-insured more than one-half of your premium?

A. No, it does not mean we re-insured over half but it means our recovery from our Re-insurer that year was greater than the premium we paid him.

Senator Wicker:

Q. That was a heavy loss year?

A. Yes, sir, that was 1954. That was the Hurricane Hazel year. If the Re-insurer loses money we make
page 130 } money.

Q. Now, Mr. Marquess, what effect—wait just a minute—I notice in some of the states your Company is doing business on a deviation basis, and in some states on a manual dividend basis; is that right?

A. Yes, sir, that is right.

Q. Why the difference?

A. Well, the difference depends on a lot of things. When we go into a new state and enter a new territory, we talk to some agents there first. We talk to some other companies already doing business there, and we look up the experience of a lot of companies doing business there and find out how they are doing business and try to establish a rate for losses which would be ample and not excessive, and ask the Insurance Department of that state that the rate be approved, and, upon obtaining the approval, start doing business, and in some states there are various reasons why we don't deviate and why we pay a dividend. I can think of one state where the Agents Association is opposed to deviations. They

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like dividends. There are other states that are
page 131 } very reluctant to grant deviation authority to com-
panies. It depends on individual states and the
agents that represent us.

Senator Wicker:

Q. And the customers in the state?

A. Many times it is the customers in the State who are more accustomed to a dividend type of operation and they prefer that, and after all, we want to pass them to the customers if we can.

Q. What is the situation in Virginia as to your doing your fire insurance business in Virginia, continuing on that same basis or to go on the manual basis and pay the dividend?

A. You mean which we would prefer?

Q. No. What the policy holders would prefer.

A. We think the record speaks for itself; that our policy holders like the 20% deviation. We are one of the largest writers of fire insurance in this State. I can't tell the exact place in which we come, but as to agency companies, we are first or second in our volume of premiums, and the main
reason for that is the deviation we have used
page 132 } over the years.

Q. What effect would it have on policy holders, first, if you may take for example the Insurance Department suggested on its analysis, they only had 1952 to 1956, and since we added the year afterwards, we thought we would add the year before, and on their analysis they stated that approval would be granted on a 10% deviation. What effect today would that have on your policy holders?

A. Assuming we kept all our policy holders, it would cost them a hundred and twenty-five thousand dollars for the very same thing they are getting now.

Q. What amount does the deviation save them per year?

A. You mean per policy?

Q. Yes.

A. That is one point that I wanted to clear up. The point was made that we have fifty thousand policy holders and that the total saving was two hundred and fifty thousand dollars. That does not mean that it was five dollars per year. We don't consider the five dollars per year because
we don't just sell them for one year, some of them
page 133 } are for three years and some are five year policies.
We probably sell thirty thousand a year and the

savings would be between nine dollars or ten dollars under our present operation as opposed to manual rates.

Q. Nine dollars per year?

A. No, sir, per policy. It may be a three year policy or a five year policy—whenever the policy is sold.

Commissioner Dillon: You sold ninety thousand and you contemplate you are going to sell thirty thousand every year.

Commissioner Catterall: And on each of those policies he would save nine dollars if the policies ran three years.

Senator Wicker: He would only save three dollars on that policy but to the policy holders in Virginia the difference between two hundred and fifty thousand dollars, that is nine dollars per policy. It amounts to the same thing to the policy holder in Virginia, to the ones who get it each year.

Chairman Hooker: When you renew that three year policy what happens?

page 134 } A. The premium is the same as it was the first time; he makes his saving again.

Q. Nine dollars again?

A. Yes, sir.

Commissioner Catterall: Nine dollars every three years.

Chairman Hooker: If he wrote it every year he would save nine dollars every time he wrote it?

Senator Wicker: Yes. I made reference to it in my opening statement but do you submit your annual report to the Bureau of Insurance?

A. That is correct.

Q. When you submit your annual report and that annual report is submitted to every department with which you do business, is it not?

A. Yes.

Q. And is that not used in determining your solvency whether your business is such that your license is to be renewed?

A. Yes, sir.

Q. Will you point out, please, how that report recognizes the very thing that I have talked about that we
page 135 } must recognize here, that is, Re-insurance in the amount of losses and loss adjustments?

A. This statement has one page devoted to expenses and

there is a line for the direct commission expense, and subtracted from that is the commission received on the Re-insurance weighted to arrive at a net Re-insurance figure, and that is carried into the underwriting and investment income. The same is true on loss adjustment expense, the loss adjustment expense for the minimum, the Re-insurance recovery on account of loss adjustment which gives us a net loss adjustment expenses, and it is the net loss adjustment expenses that bring up the surplus or deficit of the Company. The exact same thing is true on paid losses. The claim itself in Re-insurance recoveries are reflected on what we pay and the net referred to is the net incurred losses and that is what goes into the surplus or deficit for the year.

Q. Is that an extra copy or do you have to take it back with you?

A. No, sir, that is an extra copy.

Q. That is an extra copy of the latest one

page 136 } filed, 1957?

A. Yes.

Senator Wicker: We would like to have this marked as Exhibit 8 and this one as Exhibit No. 9. I will ask Mr. Marquess for him to mark out the circle in red. Now if the Commission please, here is a statement prepared from your records, Mr. Marquess, you have a copy of it which we are offering as Exhibit 8 which has been previously marked "Harford Mutual Insurance Company Virginia Experience 1951-1957 (Figures in nearest thousands) Recognizing Re-insurance" and runs out with the figures as shown on Exhibit No. 9 and it has five explanatory notes below. Was that prepared under your direction?

A. Yes.

Senator Wicker: We offer that as Exhibit 8.

Q. Now Mr. Marquess, am I correct in assuming that, as to the upper part, the typewritten figures, running along here that they are the same or maybe with a difference of a dollar

or so reflected in the thousands, that they are the

page 137 } same as shown on Exhibit 6?

A. Yes, that is correct.

Q. And they show that for the seven year period that your total net premiums, by that I mean total unre-insured, your total retained was four million five hundred thousand dollars?

William H. Marquess.

A. Yes.

Q. And your losses two million and eighty-six thousand dollars?

A. Yes.

Q. And your loss adjustment expenses one hundred and sixty-six thousand dollars?

A. Yes.

Q. And your commissions six hundred and seventeen thousand dollars?

A. Yes.

Q. And all other expenses six hundred and forty-five thousand dollars?

A. Yes.

Q. And your surplus nine hundred and ninety-eight thousand dollars?

A. Yes.

Q. That differs with Exhibit 6 by about two
page 138 } dollars, but we won't quarrel over the two dollars.

A. Yes.

Q. Now coming to the bottom. Item 1 indicates that the actual retained premiums after Re-insurance was four million five hundred and twelve thousand dollars. That again is calculated at the deviated rate?

A. Yes, 80% of manual.

Q. 80% of manual?

A. Yes, and in Item 2 we comment that these same premiums, had they been written at manual rates would have amounted to five million six hundred and forty thousand dollars.

Q. Stop right there, please. In other words, if you had been writing at manual you would have collected in this short period of seven years, you would have collected from Virginia policy holders five million six hundred and forty thousand dollars on this re-insured basis instead of four million five hundred and twelve thousand dollars they actually paid?

A. That is correct.

Q. Now the next item, Item 3.

page 139 } A. The formula, as I understand it, that has been used in determining whether we should have a deviation is, that the basic rates indicate that the amount required in Virginia for losses is 52.5% of manual premium. Had we been writing at manual premium we would have had five million six hundred and forty thousand dollars. Now, 52.5% of that figure, the required figure for losses would have

been two million nine hundred sixty-one thousand dollars.

Q. This is the amount under the formula, whether writing at manual or deviation, that the formula says you should have for losses?

A. Yes, sir, that is 52.5% of the manual premium.

Q. Now, your next Item No. 4.

A. Our actual premiums, as I've said before, were slightly over four and a half million dollars. Subtracting our actual expenses, that is, commission, losses, etc. from the actual premiums received, we have a balance left of three million and eighty-four thousand dollars as against the requirement of two million nine hundred and sixty-one thou-
page 140 } sand dollars for losses. In other words, we contend that we met the formula right here after deductions of our actual expenses, we had more than enough left to pay the losses of 52.5%. That is the theoretical loss. Actually, our losses were considerably less than the 52.5%, less so much so that we had a surplus balance of nearly one million dollars for the seven year period.

Q. For instance, a comparison I guess to illustrate that a little further, the formula of 52.5% of manual premium rate would indicate two million nine hundred and sixty-one thousand dollars for losses in the seven year period and your actual experience was two million and eighty-six thousand dollars, nearly nine hundred thousand dollars less than the formula would indicate your theoretical losses were, your actual losses were that much less.

A. Yes.

Q. And even with the 52.5% provided for on that you have a hundred and twenty-three thousand dollars left over?

A. Yes, sir.

3:05 P. M. Commissioner Dillon: The Com-
page 141 } mission will recess for five minutes.

3:10 P. M. The Commission resumes its session.

Q. Mr. Marquess, one further thing towards justifying your Company's application to be allowed to continue on the same basis that it has been on for the last eleven years, 20% deviation; has your deviated basis over the thirty years proven insufficient in any way?

A. No, sir, not in any way at all. I think the figures that have been presented in the various exhibits show fairly conclusively that the Company has been over the entire thirty

year period able to pay its losses, its expenses, and have something left over for addition to surplus. The financial strength of the Company has greatly increased during the thirty year period, and particularly during the last eleven years while operating on the 80% deviation basis. We feel that that is proof that we are able to write fire insurance at 80% of the rates without injuring the financial status of the Company any way whatsoever and enables us to
page 142 } provide the policy holder with the insurance at the most reasonable cost, which was the reason for founding the Company in 1892.

CROSS EXAMINATION.

By Mr. Denny:

Q. Early in the testimony which you and Mr. Wicker have given to us—

Senator Wicker: Aided and abetted by the testimony of Mr. Denny.

Q. —it was testified that Lloyds pays 43% to purchase the business. I want to be sure that I understand that. I assume business at manual rates would be one million dollars and underwriting it at 20% deviation so that you would actually receive in premiums written eight hundred thousand dollars, would you not?

A. Yes, sir.

Q. When you said Lloyds pays 43% to purchase the business, do you mean that when you re-insure with Lloyds 57% of that eight hundred thousand dollars ultimately goes to Lloyds and you keep 43%?

A. No, sir.

page 143 } Q. What do you mean?

A. What goes to Lloyds in the end is what is left over, if anything, after deducting the payment of the loss adjustment expense and the 43% commission.

Q. Let's see if I can get this straight. Of the eight hundred thousand dollars premiums written—

A. Written or ceded?

Q. Eight hundred thousand dollars would be one million dollars written at manual rate or eight hundred thousand dollars on your deviated rate, and you credit Lloyds with how much of that eight hundred thousand dollars?

A. You can't say. It depends on each individual risk.

William H. Marquess.

Your example was that we have eight hundred thousand dollars in written premiums.

Q. Yes, sir.

A. The business is re-insured, policy by policy. Here's a policy on your home say for forty thousand dollars. We decide that we will retain ten thousand dollars of it, then thirty thousand goes into the Re-insurance, then 75% of whatever you paid us goes to the Re-insurer.

page 144 } Q. 75% of what goes to Lloyds?

A. 75% of the premium you pay. You pay us a premium on forty thousand dollars of insurance. Let's say your premium is a hundred dollars and we decide we will re-insure your policy 75%. Your premium to us is a hundred dollars and we re-insure that policy for 75% and the Re-insurance premium is seventy-five dollars and we get 43% of that back in the way of commissions, plus three-fourths of any loss you sustain.

Commissioner Catterall: Let's assume that it is only one policy, that is easier for me to follow.

Mr. Denny:

Q. Let me state it. Here is a policy for forty thousand dollars and the premium on which is one hundred dollars, which is your premium after deviation?

A. Yes.

Q. And you decide you want to keep ten thousand dollars yourself and want to re-insure thirty thousand of that risk?

A. Yes.

page 145 } Q. You then, in effect, I don't mean you actually issue a check, but you actually pay to Lloyds 75% of the premium, which would be seventy-five dollars and they pay back to you 43% of the seventy-five dollars?

A. Yes, sir.

Q. Then, if there is any loss on the policy, you come in on the loss adjustment expense, but if there would be no loss, it ends up with your getting out of the premium the original twenty-five dollars you kept and 43% of the other seventy-five dollars?

A. Yes, assuming no losses.

Q. And Lloyds gets 57% of the seventy-five dollars?

A. Yes.

Q. Do you have an automatic Re-insurance treaty with Lloyds?

A. I am not sure what you mean by that. We have a treaty

under which we are obligated to reinsure any one premium over fifteen thousand dollars.

Senator Wicker:

Q. You mean any one risk?

page 146 } A. Yes, sir. Any one risk and on which we may insure anything over four thousand dollars. It is called "an obligatory treaty."

Commissioner Catterall: That keeps you from selecting the risks?

A. Yes, sir. We establish in our office a guide to go by. This building, or any public building insurable we would retain fifteen thousand dollars and re-insure the rest of it. Each of our underwriters has a guide on his desk as to how much we would retain out of the various classes of risks and that amount depends, not only on the occupancy of the building, but also the construction, and whether it is under the protection of a fire department.

Mr. Denny: May I ask the privilege that Mr. Minor be allowed to ask one or two questions?

Commissioner Dillon: Certainly.

CROSS EXAMINATION.

By Mr. Minor:

Q. You have an operational treaty with Lloyds

page 147 } of London?

A. Yes, sir.

Q. Do you have any other operational treaty with any other insurer or Re-insurer?

A. We have two "obligatory treaties"; one is called "the first obligatory treaty" and the other "second treaty." We use the second only when there is a large risk involved, so as to spread it.

Q. Who has the second treaty?

A. The second is with Lloyds.

Q. Who has the first one?

A. Approximately two-thirds with Lloyds and the other one-third with our own affiliate, the Maryland National Insurance Company.

Q. And you call that the "first obligatory treaty"?

A. Yes.

William H. Marquess.

Q. And what is the minimum under your first obligatory treaty?

A. The minimum is four thousand dollars.

Q. If you write a risk for fifteen thousand dollars you have to hold four thousand dollars?

A. Yes.

Q. And what is your maximum?

page 148 } A. Fifteen thousand dollars.

Q. Does your treaty require you to cede anything over fifteen thousand dollars to it?

A. We cede anything over fifteen thousand to one or both of these.

Q. You have a choice?

A. The first surplus treaty has the first preference.

Q. Suppose you had a fireproof building on which you had three hundred thousand dollars insurance. Would you carry net fifteen thousand dollars on that risk?

A. Yes, we would carry net fifteen thousand dollars and spread the re-insurance half and half between the two treaties.

Q. And in that way Lloyds would get one-half of the excess of two hundred and eighty thousand dollars through the second surplus treaty and two-thirds of the half of two hundred and eighty thousand dollars through the first surplus treaty?

A. Yes, sir.

Q. Getting back to the question Mr. Denny

page 149 } asked you about what you paid Lloyds, what you say you paid Lloyds applies in both treaties?

A. Yes.

Q. Do you have bookkeeping entries as to the amount ceded and the amount of commissions?

A. Yes.

Q. In other words, if you cede them two hundred thousand dollars in premiums, you then can credit them with three hundred thousand dollars on your books?

A. Yes.

Q. And automatically charge them with forty-three per cent?

A. Yes.

Q. And you have a difference of 57% of this amount?

A. Yes.

Q. And if there are any losses on that amount of business ceded, you charge them with the amount of money that represents, plus loss adjustment expenses?

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A. Yes.

Q. How often do you settle that account?

A. Every ninety days.

page 150 } Q. In other words, if, at the end of ninety days there is a balance due you from Lloyds, you send them a check?

A. We got a check from them.

Q. If there is a balance due Lloyds you send them a check?

A. Yes.

Q. And if anything is due you they send you a check?

A. Yes, bearing in mind that we always retain in hand the Unearned Premium Reserve.

Q. Explain that "Unearned Premium Reserve" to the Commission.

A. Let's bear in mind the policy is unearned—let's say with a hundred dollar premium, it is considered on the one year policies written in 1958, they are lumped into one pot, and on the average they were written July 1st. In other words, at the end of the year the average policy has run for six months and has six months left to run, so the Unearned Premium Reserve is fifty dollars. This figure applies to three year and five year policies, but the principle is

page 151 } the same.

Q. On that basis you charge Lloyds with fifty dollars on an Unearned Premium Reserve?

A. Well, sir, that may be technically correct, however, we don't figure the Unearned Premium Reserve on each policy and don't make the calculation of the Unearned Premium Reserve except at the end of the three months period.

Q. But at the end of the three months on the illustration you gave, you charged Lloyds with fifty dollars?

A. Yes.

Q. And you have already charged them with 43%, and then this fifty dollars, and under that it leaves only 7% for Lloyds to pay losses with: isn't that correct?

A. I did not follow all of your figures. Say the first year if we only wrote one policy Lloyds would receive practically nothing. At the end of the second year they would begin to earn some premium.

Q. At the beginning of your testimony you said your Company is holding approximately one million dollars on unearned premiums under these treaties.

page 152 } A. It is carried on the statement No. 9 as "Funds held by a company under Re-insurance

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Treaties." That is the capitalization on the liability side first and shows up in the assets.

Q. That 43% commission that you get under the treaties for Re-insurance, that is credited, is it not, against your commissions paid to agents?

A. Yes, sir.

Q. And has the effect of reducing the amount shown in your net figures as to the cost of commissions to agents; is that correct?

A. Yes.

Commissioner Catterall: You treat it as if Lloyds had been the agent for getting that business for them?

A. Yes, sir, that is a way of looking at it. They have paid us enough commission to more than re-imburse the agent and to more than recover the acquisition expense we have, so, in effect, they have paid acquisition costs and there is enough left over that we have some addition to surplus. If we re-insured 100% of our business on the basis we are

page 153 } now using, we would still have an addition to surplus every year.

Mr. Minor: Mr. Marquess, on your charts Exhibits 5 and 6, and I believe it is true on perhaps Exhibit 7, you have included with the losses, have you not, the amount of Loss Adjustment Expense?

A. Yes, sir, that is correct.

Q. Do you normally in making your filings with the various departments in the State with which you do business, include Loss Adjustment Expenses as part of the losses?

A. Now, Mr. Minor, is it not?

Q. Yes.

A. What filings are you referring to?

Q. The annual statement.

A. The losses are built up separately and Loss Adjustment Expenses are built up separately, and I'm not sure, without looking at it that there is a place where they are added together.

Q. Is it a fact from the standpoint of your own bookkeeping, you consider Loss Adjustment Expense as a part of operations?

A. In my own mind, I consider it as a part of

page 154 } losses. In our general ledger we have a column for Losses and a column for Loss Adjustment

Expense and following that one Operating Expenses.

Q. While you have included Loss Adjustment Expenses and Losses in Exhibits 5 and 6 and also 7, the facts are that Losses and Loss Adjustment Expenses, so far as the normal operation of Loss Adjustment Expenses are concerned, they are two separate items although tied together theoretically?

A. Yes, sir, I think everybody keeps a separate account just as you keep a separate account for taxes and a separate account for printing and stationery and things of that kind.

Q. And you state that in some states you are doing business on a deviated basis?

A. Yes.

Q. And in some states you are on manual rates?

A. Yes.

Q. And in those states where you are on manual rates you pay dividends?

A. Yes, sir, on fire and allied lines, you are speaking of?

Q. Yes?

page 155 } A. Yes.

Q. Is there any state where you do not pay dividends or write on deviated rates?

A. No, sir, not at all.

Q. In other words, all of your business is written on deviated rates or you pay dividends?

A. Yes, sir, I think 80% is written at deviated rates and 20% on the dividend basis.

Q. Did I understand you in your direct testimony to state that one principal reason you had such a volume in Virginia is the fact that you had a license to write at the deviated rate?

A. Yes, sir, I don't think there is any question about that.

Q. So, in effect, your deviated rate has been in effect a competitive measure?

A. Yes, sir.

Mr. Minor: That is all I have.

CROSS EXAMINATION.

By Mr. Denny:

Q. Take Exhibit 8, Item 1 reads "Above Premiums—$4,-512,000. were at 80% of manual Rates (20% de-

page 156 } viation)." Are you familiar with the fact that in Chapter 6 of Title 38 of our Code, which

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Chapter is entitled "Regulation of Rates" our statute specifies in Section 219 "Rate or rates defined."—"The term 'rate' or 'rates' wherever used in this Chapter" (that is the Chapter on Rate Regulation) "shall be deemed to mean rate of premium, policy fee, membership fee or any other charge made by an insurer for or in connection with a contract or policy of insurance of the kind to which this Chapter *apples.*" I ask you whether, bearing in mind the statutory definition of "rate" whether or not it is accurate to say that the four million five hundred and twelve thousand dollars is 80% of manual rates is that 80% of the contract, 80% of the charge for the policy of insurance made by the contract of insurance.

Senator Wicker: I object to that as entirely a legal question which should not be asked this witness.

Mr. Denny: I am asking him if 80% of the contract of insurance whether that is 80% of the contract of insurance and I will ask it over.

page 157 } Q. Is this four million five hundred and twelve thousand dollars eighty per cent of the charge made by your Company?

A. No, sir. That is the charge made by our Company, and as the thing states, that is 80% of manual rates. In footnote 1 it states "80% of manual rates."

Q. Is that all you receive from the policy holder?

A. That is all we have left I will say.

Q. Is that all you receive from your policyholder?

A. No, sir. Originally we received more, as brought out by our exhibits.

Q. So this is not 80% of the rates established by manual?

A. Yes, sir, I say it is. Let's go back to the policy on your house.

Q. The Virginia manual sets up a rate of a hundred dollars on my house.

A. They set a rate of so much per hundred, sir.

page 158 } Q. They set up a rate of a dollar per hundred and you deviate 20%. Is the figure 20% on that deviation of twenty per cent?

A. When you take into effect the fact that we re-insure thirty thousand dollars, the answer is "yes."

Q. I am not asking you that. I will state it this way, and ask you is the full 80 per cent reflected in your rate?

William H. Marquess.

A. I have the feeling that you are trying to trap me, sir.

Q. I am asking you if this is the entire premium received from them?

A. We received more than that and we ceded some of it.

Q. The manual rate is a hundred dollars, and you deviate 20%, so you received 80% of it. Is the whole 80 per cent reflected in premium here on Exhibit 8, or have you reduced the eighty per cent rate by what has been paid to your Reinsurer?

A. I don't think that is fairly stated. We reduced our exposure to ten thousand dollars, and this is 80 per cent on the amount we have left.

Q. I am not going to allow you to restate my
page 159 } question.

Senator Wicker: I don't think I should sit idly by and allow a learned lawyer to badger my witness. He made that perfectly clear and I think in order to make it clear Mr. Marquess is entitled to make any answer he thinks proper.

Mr. Denny:

Q. Let's turn to Exhibit 1, and also put Exhibit 8 in front of you.

A. All right, sir.

Q. Your premiums written for fire and allied lines in Virginia in 1951 were nine hundred and fifteen thousand, seven hundred seventy-two dollars and thirty cents according to Exhibit 1?

A. Yes, sir, that is right.

Q. And that was the amount the respective policy holders paid you, was it not?

A. Yes, sir.

Q. And that is 20% off manual?

A. You said 20% off manual?

Q. Yes.

A. Yes.

Q. On Exhibit 8 you show only six hundred
page 160 } forty-nine thousand dollars of premiums that the Virginia policy holders actually paid to you; is that correct?

A. Yes, sir.

Q. And for 1952 the Virginia policy holders actually paid you for their contracts of insurance which you actually issued

to them (holding simply the one hundred thousand dollars), one million thirty-five thousand dollars?

A. Yes, sir.

Q. And on Exhibit 8 you show only six hundred and fifty-seven thousand dollars of those payments made to you?

A. Yes, sir. If you want me to admit that there is a difference between the two you are correct.

Q. And in 1953 they paid you one million and sixty-eight thousand dollars and you deal only with six hundred and ninety-eight thousand dollars on Exhibit 8?

A. Yes.

Q. And you can follow through each of the other four years in exactly the same way?

page 161 } A. Yes.

Q. Now let's turn to the last Note on your Exhibit 8. You say, according to Exhibit 8, "Thus," dealing only with a part of the premiums, you say "Thus, the actual experience of Harford Mutual for past seven years (1951-57)—including "Hurricane Hazel" year (1954)—proves conclusively that its 20% deviation is fully justified. Payment of all expenses left a balance of $123,000 above the 52.5% of 100% Manual Rates required for losses by SCC. The actual losses were so much less than the SCC formula requires that, after paying both losses and expenses, the surplus balance approximated a million dollars." You are aware that in our formula we require 5% for underwriting profits. Do you make the statement that you are justified in making the 20% deviation in that you have made any provision for a 5% profit?

A. No, sir. In the first place, we don't consider profit or loss in addition to or deductions from surplus.

Q. If you had made provision for the 5% for the underwriting profit, which the Commission has held

page 162 } should be made, you would have then had to make provision for four million five hundred thousand dollars?

A. Yes, sir.

Q. It is two hundred twenty-five thousand and six hundred dollars if I have multiplied correctly, four and a half million dollars by 5%.

A. I agree with you.

Q. So that in order to comply with what the Commission says must be complied with, you would have fallen short of what you need by the difference between this two hundred twenty-five thousand six hundred dollars and this balance of

one hundred twenty-three thousand dollars; am I correct?

Senator Wicker: Of course on that question "we have fallen short" that is one of the nubs of the thing that is before the Commission. You said that the Commission said "it must be included." This Commission has never said of this Company or any other mutual company that 5% must be included in calculating the deviation. It has said in a proceeding to a stock company or stock companies, in page 163 } which case we were not parties, but you were, but it has never said that in any case of any mutual company of which we were parties that there must be included this 5% for profit and in this case you were referring to, it was dealing with a lot of companies instead of a Re-insurance company. The Company bought a lot of business in addition to that which it wrote.

Mr. Denny: I don't agree with Mr. Wicker. The Commission said in its order of October 4th in Case No. 13556 "that the formula established by the Commission for the regulation of the rates charged for fire insurance by all companies doing business in this State is as follows." That is the formula adopted in 1929—

Senator Wicker: And you have not asked him but have based your question on a different set of principles.

Mr. Denny: May I ask the Commission that they protect me from these interruptions?

Commissioner Dillon: You may go ahead and ask the question of the witness.

Mr. Denny: The next time I get up I hope the page 164 } Commission will protect me against these unnecessary interruptions.

Commissioner Dillon: We will protect you.

Mr. Denny:

Q. When you gave consideration to the 5% which the Commission says should be applied to all companies, had you given consideration to that, then even under Exhibit 8, is it not a fact that you would not have had a surplus of one hundred and twenty-three thousand, but a deficit of over a hundred and two thousand six hundred dollars?

Senator Wicker: I object to the form of the question because of the implications put in it and what the Commission says it should have. If Mr. Denny wants to put in the order of the Commission as to the 5%, it is all right but when he

says it that way it assumes something that is not correct.

Commissioner Catterall: Before we adjourn could I ask one question. Would it be much trouble to bring in a restatement of the rate showing the adjustment for

page 165 } the last five years?

A. Just leaving out 1951 and 1952?

Commissioner Catterall: Yes, just the last five years.

Mr. Minor: If he is going to make that change, would it not be helpful to the Commission that he prepare another Exhibit 8 on the gross premiums written as well as the net premiums, so the Commission could have the comparison before it?

Senator Wicker: We will take it and remake it as suggested by the Commission but you can make the comparison.

Mr. Minor: We don't have the gross premiums and they could make it at the same time.

Senator Wicker: We are very glad to do anything we can do overnight. We could not possibly do that overnight; that would be a pretty involved calculation and we could not do that down here. We would be re-calculating and including the recalculations of the last five years.

Commissioner Dillon: Will you overnight, Mr. Denny, rephrase your question, please?

page 166 } Mr. Denny: I understood the Commission ruled on the fact that I was permitted to ask that question.

Senator Wicker: You are assuming that it applies to mutual companies.

Commissioner Dillon: We are not ruling on that question.

Mr. Denny: Is the objection to my question sustained?

Commissioner Dillon: Yes, sir, the way it is phrased.

The Commission will recess until 10:00 o'clock tomorrow.

page 167 } May 15, 1958.

The Commission resumes the hearing of this Case No. 13878.

Commissioner Dillon: Mr. Denny, I believe the witness was yours?

William H. Marquess.

Senator Wicker: May I ask that the exhibit we were asked to prepare over night, the exhibit that was covering seven years that it be prepared to cover five years, may we put that in?

Commissioner Dillon: We will receive it as Exhibit 10.

Senator Wicker:

Q. Now, Mr. Marquess, about this Exhibit 10 we have just put in, this Exhibit No. 10 prepared since yesterday afternoon and is similar to Exhibit No. 8 except that it does not include either 1951 or the year 1952 which Exhibit 8 did include; is that correct?

A. That is correct. The Exhibit 10 includes the five more recent years.

Q. And it is made up the same way—it is the Virginia experience of the Company. I notice it says "Harford County Mutual Insurance Company." It is probably on Exhibit 8 too, but I would like to have the word "County" struck from that.

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Commissioner Dillon: How about in Exhibit 8?

Senator Wicker: Yes, it should be done that way too.

Commissioner Dillon: The Harford Mutual Insurance Company is correct?

Senator Wicker: Yes, it is now Harford Mutual Insurance Company.

Senator Wicker:

Q. Has that been made up on the same principles as Exhibit 8 was made up on?

A. Yes, exactly.

Q. This shows on the summary a total of retained premiums, that is the total premiums the Company collected or charged in Virginia on fire and allied lines in the latest five years, and which it did not sell or transfer by Re-insurance; is that correct?

A. Yes, sir.

Q. And that totals how much?

A. Retained premiums three million two hundred thousand dollars.

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Q. And the actual losses were how much?

A. One million four hundred and eighty-five thousand dollars.

Q. And they are the losses reported on those retained premiums?

A. Yes.

William H. Marquess.

Commissioner Catterall: And the Losses exclude the Loss Adjustment Expense?

A. Yes, sir.

Senator Wicker: The Loss Adjustment Expense aggregated for that five years how much?

A. One hundred and twenty-eight thousand dollars?
Q. Your acquisition expenses amounted to how much?
A. Three hundred and ninety-six thousand dollars.
Q. And all other expense of the Company aggregated four hundred fifty two thousand dollars, did it not?
A. Yes, sir.
Q. That "All Other Expenses" incidentally, does that include pro-rata share of the joint expenses?
page 170 } A. That is correct. It includes all expenses directly allocable to Virginia such as taxes paid in the State and then an allocation of such expenses as printing and stationery and general office overhead allocated to Virginia.
Q. And operating salaries and operating costs?
A. Yes, sir.

Commissioner Catterall: Is that allocated on a pro-rata share of the premiums?

A. The salaries, generally speaking.
Q. And when you pro-rate on the premiums, is it the gross premiums or what you have left after Re-insurance?
A. Judge, it is generally pro-rated on the combination of the two when you speak of "salaries" because the Home Office has work to do in connection with the ceding of the insurance, so that is taken into consideration in making the allocation. In other words, it takes an underwriting clerk a particular time to place Re-insurance on a Virginia policy, and the allocation is made for that time.

Senator Wicker: What Judge Catterall is get-
page 171 } ting at is, in your pro-rata expenses that it would retain the same proportion of three million two hundred thousand dollars of your general expenses and all other expenses, that those retained premiums would bear to your premiums in other lines, your income from other lines of insurance, and in addition, you allocate or charge in here

expenses you incurred chargeable to the Re-insurance operation?

A. Yes, sir, I think that is pretty fairly stated.

Q. Your total after paying on this five years your Losses and Loss Adjustment Expense and commissions and all other expenses you had left over surplus of how much?

A. Seven hundred and forty-five thousand dollars added to surplus.

Q. And in every one of the five years this exhibit shows there was a substantial surplus, in every one of the five years?

A. That is correct.

page 172 } Q. Now the premiums shown up here of three million two hundred and six thousand dollars they were at 80% of the manual rates?

A. Yes, sir.

Q. And if translated to manual rates, if you charged instead the full manual rates rather than what you have charged, that would have been how much?

A. That is shown in Footnote No. 2, the manual rate would have been four million and eight thousand dollars.

Q. Taking that figure of four million and eight thousand dollars, if you had been writing at manual and would have been required to charge 52.5% for losses?

A. Yes.

Q. Which would have amounted to how much?

A. Two million one hundred and four thousand dollars.

Q. When you take your total of actual expenses, loss expenses, etc?

A. The total of the actual expenses, Loss Adjustment Expenses, other expenses, etc., was nine hundred and sixty-seven thousand dollars.

page 173 } Q. When you take those from your actual premiums, you were left with a balance for losses of how much?

A. Two million two hundred and thirty thousand dollars.

Q. With that amount of two million two hundred and thirty thousand dollars, compare that please with the amount required under the formula amount required for losses on the full premium at 100% premium.

A. When we take this two million two hundred and thirty thousand dollars, we had left after actual expenses and compare it against the 52.5% required by the Virginia formula.

Q. That is 52.5% of the manual rate?

William H. Marquess.

A. Yes, we have left over after allowing for the 52.5% losses—

Q. Theoretical loss formula losses?

A. Yes, sir, one hundred and twenty-six thousand dollars.

Q. Incidentally, while these figures in your computation in here do not include any specific allowance for

page 174 } profit?

A. No, sir, these are actual results.

Q. Now, as a matter of fact, what does that hundred and twenty-six thousand dollars left amount to percentage-wise?

A. The percentage of the premium is a fraction under 4%, the actual amount is 3.9% of the premium.

Q. Almost 4% there?

A. Yes.

Q. Disregarding the amount theoretically required of 52.5% for losses, translated into actual experience, you turned over to your surplus what amount?

A. Three quarters of a million dollars.

Q. In that five years?

A. Yes.

Q. As compared to the seven year exhibit, this is slightly better or slightly worse?

A. Yes, the average addition to surplus for the last five years has been slightly better than for the last seven years.

CROSS EXAMINATION.

By Mr. Denny:

Q. In the third line of your Note 5 on your

page 175 } Exhibit 10 you said "Payment of all expenses left a balance of $126,000 above the 52½% of 100% Manual Rates required for Losses by SCC." Would you still tell us what the figure would have been if that Note had been "Payment of all expenses left a balance above 52.5% and profit at 5%, of the 100 per cent Manual rates required for losses and profit by SCC."

Commissioner Catterall: You mean 57% instead of 52.5%?

Mr. Denny: Yes.

Senator Wicker: I object to that 5% because it is not required of a mutual company and is not required by the State Corporation Commission.

Mr. Denny: I submit Mr. Wicker has laid the way open for the question by asking the witness about the 52% of Losses

in the SCC formula, whether 52.5% for Losses applies to mutuals. He seems to think mutuals are in a different category.

Senator Wicker: I asked him only about the page 176 } Losses.

Commissioner Dillon: The Commission ruled yesterday that you were entitled to ask that question and we will rule it again.

Mr. Denny:

Q. Will you state what would have been the figure if you had made provision for 57.5% of the rates?

A. You want me to multiply it?

Q. Yes, sir, I want to know whether you would have a deficit or a benefit.

A. If I follow you correctly, you want me to multiply 57½ by four million eight hundred thousand dollars.

Q. I don't know. I want you to do what you did in this exhibit. You said that "payment of all expenses left a balance of a hundred and twenty-six thousand dollars above the 52½% of 100% Manual Rates." I want you to tell us what it would have been if you had used 57.5% rather than the 52.5%?

A. I will multiply 57½% by the theoretical Manual Rate of four million and eight thousand dollars and I get an answer

page 177 } of two million three hundred and four thousand thousand six hundred dollars rounding it off it would be three million three hundred and five thousand dollars, and that represents 57½% of the Manual Rate, if I multiplied it correctly. Subtracting that theoretical two million three hundred and five thousand dollars from the actual premiums received of three million two hundred and six thousand dollars, I get a balance of nine hundred and one thousand dollars.

Q. Subtracting two million two hundred and five thousand dollars?

A. Subtracting two million three hundred and five thousand dollars.

Q. I may have misunderstood one figure. Your 57½% of four million eight thousand was what?

A. Two million three hundred and five thousand dollars.

Q. And you subtract that from what?

A. I subtracted it from the actual premiums received of three million two hundred and six thousand and I got nine hundred and one thousand dollars.

William H. Marquess.

page 178 } Q. Would that be a balance or a deficit after payment of all expenses, leaving a balance of nine hundred and one thousand dollars after 57½% of the rates, would there be a balance or a deficit?

A. I think we are going about this a little differently than we should.

Q. You said that payment of all expenses left a balance of a hundred and twenty-six thousand dollars after 52½% of 100% Manual Rates had been provided for?

A. Yes.

Q. Now making provision for 57½%, tell me what balance you would have?

A. Losses 57½%.

Q. Losses or anything else you want to call it. I don't think you could have computed the 57½% and come up with nine hundred and one thousand dollars and one hundred and twenty-six thousand dollars.

A. No, sir, this nine hundred and one thousand dollars if you had that for *osses* in there, you would have the actual loss of nine hundred and seventy-six thousand dollars.

Q. Let me see how you arrived at the balance of a hundred and twenty-six thousand dollars.

page 179 } Senator Wicker:

Q. Would it not be a simple thing to say that the difference between nine hundred and one thousand dollars and nine hundred and seventy-six thousand dollars would be seventy-five thousand dollars?

A. Figured the same way, instead of a balance of a hundred and twenty-six thousand dollars, your method would produce a deficit or minus deficit of seventy-five thousand dollars.

Mr. Denny:

Q. In other words, if you made provision for 57.5% instead of 52.5% you would have a deficit of seventy-five thousand dollars instead of a profit of a hundred and twenty-six thousand dollars?

A. Yes, sir.

Q. Are the losses shown on your Exhibit 1 losses paid?

A. Yes, sir.

Q. Doesn't that differ in some degree with the Losses lumped together, with the Losses shown on Exhibit 5, which are, as I understand it, Losses incurred?

William H. Marquess.

page 180 } Senator Wicker: I object to that. When you talk about Exhibit 5, that is the one that says "Disregarding Re-insurance."

Mr. Denny: Are you reciting an objection to the question?

Senator Wicker: Yes. You are asking the witness to compare two exhibits that are prepared on two entirely different bases.

Mr. Denny: That is a statement for the witness to make.

Commissioner Dillon: Go ahead and answer.

Witness: Repeat the question, please?

Mr. Denny:

Q. Don't the Losses on Exhibit 1, which are lumped together with Loss Expense differ from Exhibit 5, which are Losses incurred?

A. Did you mention particularly 1951?

Q. No.

A. That difference, at any rate, Exhibit 5 includes Loss Adjustment Expenses and Losses combined, and they are incurred and Losses on Exhibit 1 are on a paid page 181 } basis.

Q. In other words, Exhibit 1 are Losses Paid and Exhibit 5 are the Losses included with Loss Adjustment Expenses, which are the Losses incurred?

A. Yes.

Q. Is Exhibit No. 5 and Exhibit 1 also prepared on the gross basis without taking into consideration any Re-insurance premiums?

A. No. 5 and No. 1?

Q. Yes.

A. Yes, sir.

Q. For the year 1956 on Exhibit No. 5, do you have that before you?

A. Yes.

Q. You show there premiums of one million and seventy-two thousand dollars?

A. Yes, sir.

Q. And you show Losses and Loss Adjustment Expenses of four hundred and ninety-three thousand dollars, taxes and other expenses of three hundred and forty-nine thousand dollars, and a surplus of two hundred and twenty-two thousand dollars?

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A. Yes.

page 182 } Q. If you add the four hundred and ninety-three thousand dollars and three hundred and forty-nine thousand dollars and surplus of two hundred and twenty-two thousand dollars, you get a total of one million and sixty-four thousand dollars, which is eight thousand dollars less than your premiums. What became of that eight thousand dollars? It is not a part of Losses and Loss Adjustment Expenses and not a part of taxes.

A. I don't know.

Q. Will you do the calculation?

A. You are referring to 1956?

Q. Yes, surplus two hundred and twenty-two thousand, taxes and other expenses three hundred and forty-nine thousand, Losses and Loss Adjustment Expenses four hundred ninety-three thousand?

A. Yes, sir. I agree with you. It looks like we have an eight thousand dollar error somewhere.

Q. Does it have any other errors in it?

A. None that I know of.

page 183 } Q. Now turn, if you please, to your Exhibit No. 8 and your Exhibit No. 10, and specifically, this one that you put in this morning, No. 10, and we will take, by way of example, the year 1953 when you show premiums of six hundred and ninety-eight thousand dollars.

A. Yes, sir.

Q. As I understand, that figure is the premium arrived at after using our Manual Rate less 20%, less what you paid for Re-insurance?

A. Yes, sir.

Q. In your commissions of a hundred thousand dollars which you have credited there, you arrived at that figure by deducting from the amount paid by you to agents, the 43% you received from Lloyds?

A. Yes, sir, that is correct.

Q. So that that 43% goes to reduce what you show here as your commission expense?

A. It reduced what we paid to agents to arrive at what we show here.

page 184 } Q. So what you actually paid agents was substantially larger than a hundred thousand dollars and the amount by which it exceeded one hundred thousand dollars was the amount you got from Lloyds?

A. Yes.

Q. And in like manner your twenty-three thousand dollars

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Loss Adjustment Expenses, with reference to that item, you actually paid out in Loss Adjustment Expenses an amount considerably in excess of twenty-three thousand dollars. Then you deduct from the amount actually paid out by you that amount which Lloyds, in turn, paid to you for Loss Adjustment Expenses?

A. Yes, sir. That is right.

Q. Hence all of these figures and adjustments of similar type were made to arrive at your three hundred and seven thousand dollars of Losses?

A. Yes, sir.

Q. And adjustments of similar type were made to arrive at your eighty-six thousand dollars of All Other Expense?

A. No, sir, they are Actual, and no deductions are made from them and no Re-insurance is applied against them.

page 185 } Q. Then it is a fact that on Exhibit 8 and Exhibit 10 premiums for all years, and the Losses and Loss Adjustment Expense and the dollars for commission for all years and the totals, are not actual figures but are figures arrived at after an adjustment of the figures by the matters which we have been talking about.

A. I submit that these are Actual and these are the actual results the Company would have if the Company was writing only fire and allied lines in Virginia and only writing in Virginia, these would have been the results. I maintain these are actual results.

Commissioner Catterall: You treated it as if you and Lloyds were partners, each drawing so much out of the partnership result.

A. Judge, I don't believe I would state it quite that way. We treated it as though on—No, sir, that isn't exactly what I mean. We treated it as though we had sold a part of our business to Lloyds and they might have a good loss ratio on what they had and we have a bad one and we might have a better loss ratio than the Re-insurer had. It would be possible for one to increase the surplus and the

page 186 } other to have a loss. I don't believe, sir, it would be exactly like you say—we are partners—because if the Re-insurance is ceded them they have the Re-insurance problem and if he loses money then we are sorry but we don't have anything to do with it. It is not our worry.

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Commissioner Catterall: You spread the income and expenses and then come to the parting of the ways?

A. Yes, sir, however, the expenses are not spread in the same proportion as the income.

Commissioner Catterall: I think I understand it.

A. In other words, sir, we are, I believe, our average is about 40% of the income is Re-insured. That does not mean a 40% recovery of the Loss. It might run 60% or 20% more. It does not mean 40% of expenses. We get more than 40% of the expenses which we try to bring out on this exhibit.

Chairman Hooker: On your Exhibit 10 you page 187 } have "All Other Expenses" four hundred and fifty-two thousand dollars. That is all chargeable to Harford Mutual Insurance Company?

A. Yes, sir.

Mr. Denny:

Q. You have stated, sir, as I understand it, that the premium figure shown on your Exhibit 10 for the year 1957 of six hundred and fifteen thousand dollars appears in your annual statement. Will you show me where that appears in your annual statement, that rounded figure of six hundred and fifteen thousand dollars?

A. Mr. Denny, what I was trying to say was that it would appear in our annual statement if we did not have any other lines except fire and allied lines. There is no place in that statement for just fire and allied lines business. That figure of six hundred and fifteen thousand dollars is included on Page 6, Column 4, Items 1, 2 and 3 which are fire and extended coverages and other allied lines, net premiums written Country-wide. In other words, a Country-wide exhibit, rather than the Virginia exhibit would contain the page 188 } total of those three items.

Q. You refer to the tabulation at the top of the page entitled "Part Two" and at the bottom of the page entitled "Part 2-A"?

A. Yes.

Q. This Column 4 is, after Re-insurance assumed. Is there any Re-insurance assumed in your premiums of six hundred and fifteen thousand dollars shown on Exhibit 10?

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A. No, sir. It did not take into consideration Re-insurance assumed.

Q. If you had stated your Exhibit 10 on the basis that your annual statement is prepared and just referred to, your Exhibit 10 would be different?

A. No, sir. I said if we were not writing any business except fire and allied lines business in Virginia and were not writing in any other state, and writing any other lines of business than this fire, it would be the Column 4 and that would assume that that was more.

Q. And Column 1 calls for Gross Premiums less Return Premiums on the direct business of the fire ex-
page 189 } tended coverage and other allied lines, and if you had comparable figures with those for Exhibit 10, then you would have shown the premiums actually received by you after application of the manual less 20%?

A. Column 1?

Q. Yes.

A. Yes, that is correct. May I state that none of these exhibits take into consideration any Re-insurance assumed from any other company. It is our direct Virginia experience taken through our agents on which we are the carrier taking into consideration the Re-insurance ceded.

Q. You take into consideration the Re-insurance you cede, but do not take into consideration the Re-insurance you assume?

A. That is correct because we are applying for a 20% deviation on our direct business, and when we assume Re-insurance, we normally assume it at the same rate level at which it was written by the primary insurance carrier, that is the reason Re-insurance assumed is left out.

Q. If, on the exhibits you filed in this case,
page 190 } you ask that there be given consideration on Re-insurance ceded, should you not also show for Re-insurance assumed and let the whole picture come in?

A. I think not because we are not applying for a deviation on Re-insurance assumed.

Q. Would you be entitled to your deviation if you did not consider Re-insurance?

Senator Wicker: That is a question there again between Law and Fact. If he wants to reframe that on the question of fact so well and good but he is asking the witness to pass on the law and fact.

Mr. Denny: We are here in a Legislative proceeding in which the Ordinary Rules of Evidence do not apply. The

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witness has said they are entitled to this 20% deviation for which they applied and said so on a number of occasions. He has expressed his opinion on the law. I asked him if he will be entitled to the deviation he requested if he left Re-insurance out of the factor.

Commissioner Dillon: I think he is entitled to
page 191 } answer that question and give his opinion.

A. My answer to that question is that I believe, that over a five year period the Company has written premiums net of three million six hundred thousand dollars and gross of something more than that and on a net basis has increased its surplus over seven hundred and forty thousand dollars, operating on a 20% deviation, that those facts right there speak for themselves, and you ask, if in my opinion we were entitled to a deviation and I will say I believe we are.

Q. In order to avail yourself of those deviations, would you not have to encroach on the 52.5% which you said was set up by the Commission for Losses, would you not have to deviate from that?

Commissioner Catterall: The witness has agreed that he does not agree with the State Corporation Commission and you asked for his opinion and you have it right there.

Mr. Denny: I think the witness understood that my question was predicated on the Ruling of the State
page 192 } Corporation Commission, and whether or not he could comply with it. With what we all admit is the Ruling of the Commission if he left Re-insurance out of the question. I will reframe my question and I don't think I impugned on the Ruling of the Commission awhile ago in asking my question.

Q. You say that the Commission requires 52.5% of the 100% Manual Rates for Losses?

A. Let me explain this that I am not aware of the fact that the Commission has stated that 52.5% has to be used by the Harford Mutual in justifying its deviation.

Q. What do you mean by your language in your exhibit?

A. We used 52.5% in the event that the Commission so decides that the 52.5% should be charged to Harford Mutual.

Q. Then the word "required" should not be couched in the past but should be in the future?

A. I won't get into an argument with you on the question of English or Grammar.

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Mr. Denny:

Q. In event the Commission should require
page 193 } that 52.5% should be required for all Losses, I
ask you, if you stated your situation without regard to Re-insurance, whether, after payment of expenses, you would have 52.5% of your manual premiums left?

A. No, sir, we would not have that.

Q. In other words, on the basis of the 52.5%, if they permitted you to deviate 20%, you would not have 52.5% of your manual rates as set up for Losses if Losses should aggregate that amount.

Senator Wicker: If you modify that question whether Re-insurance is taken into effect.

Mr. Denny: All right.

Senator Wicker: All of these questions are without Re-insurance.

A. Will you state the question again?

Mr. Denny:

Q. I will state it again. If you write Re-insurance out of the picture and operate on a 20% deviation, would you have left, after paying expenses, 52.5% of the premiums figured on the Manual Rates for Losses?

A. I think I have answered that in the negative.
page 194 } Q. And you would not?
A. No, sir.

Q. Would you tell us the name of the company that takes one-third of the Harford Mutual Insurance Company's Re-insurance?

A. The figure is thirty-five per cent and the name is the Maryland National Insurance Company.

Q. Is that a stock company?

A. Yes.

Q. Do you know who owns the stock of the Maryland National Insurance Company?

A. I know where a good portion of it is owned.

Q. Where is it owned?

A. A portion of it is owned by the Harford Mutual.

Q. How much?

A. 18%.

Q. Is the balance of it owned or controlled by the people

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associated with the Harford Mutual Insurance
page 195 } Company?

A. If you mean 51% control, no.

Q. What do you mean by "control"?

A. The Harford Mutual does not own or control 50%.

Q. Do you know the amount that the stockholders of the Harford Mutual own?

A. I do not.

Q. Do you know approximately?

A. Mr. Denny, I would guess approximately 35%. May I ask Mr. Welch that question?

Mr. Welch: I would say 30 to 35%.

Mr. Denny:

Q. Who are the other substantial stockholders?

A. The other largest stockholders are Mr. Morris Kaufman and the Investment Brokerage Firm located in Baltimore, Alexander Brown and Son, the oldest investment company in the State.

Q. What is the amount of the capital stock?

A. Five hundred and sixty thousand dollars
page 196 } stock issued.

Q. What is the surplus?

A. The surplus at the end of 1957 over and above capital stock was approximately three hundred and twenty thousand or three hundred and thirty thousand dollars.

Q. Under the laws of what state is that Company incorporated?

A. Under the Laws of Maryland.

Q. Who is its President?

A. Mr. Walter Welch.

Q. The same gentlemen who is President of Harford Mutual?

A. Yes.

Q. Are you an official of that Company?

A. Yes, I am secretary and treasurer.

Q. Is that Company admitted to do business or licensed to do business in Virginia?

A. No, sir. I beg your pardon. Did you say "admitted to do business"?

Q. Yes.

A. It is a fact that it is admitted to do business.

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Q. Is it a fact that the Maryland National
page 197 } does no direct business in Virginia but is created
to handle the business of the Harford Mutual?

A. No, sir, that is not correct. The Maryland National is doing business in three or four states.

Q. Do you know what its gross premiums were without looking it up?

A. The Maryland National has only in the past six months begun to write any direct business. In those six months I guess we have written twenty to thirty thousand dollars of direct business. We are in the process of getting the Company in the business of writing the business on a direct basis.

Q. In other words six months ago if I had asked you if it was writing direct business, the answer would have been in the negative?

A. The first business we did was in December and if you asked me in November the answer would have been negative.

Q. May I ask you if the treaty you have with Lloyds of London is simply a private contract between your Company and that Corporation?

A. Yes, that is correct.

page 198 } Q. Under that agreement or treaty can you and
Lloyds cancel it at any time subject to so many days, weeks or months notice as may be specified in the agreement?

A. There are two ways in which a Re-insurance Treaty can be cancelled.

Q. I am speaking of this particular Re-insurance Treaty.

A. This *particulary* Re-insurance Treaty, one is that the Re-insurer refuses to accept any more business but allows the business on the books to expire, and the other is that the entire portfolio is cancelled and turned back to the insurer. I don't remember the provisions of cancellation of the treaty, but I am sure that on ninety days notice our treaty may be cancelled in one or the other of those ways.

Q. You don't know how many days?

A. I believe it is ninety days.

Q. It is a fact, is it not, that neither the State of Maryland nor the State of Virginia have any supervision over this
treaty you have with Lloyds of London, or over
page 199 } the treaty you have with Maryland National?

Senator Wicker: Now I have no objection to that particular question but I object to the relevancy of all of these

questions for this reason: As to what supervision or control this Commission has over the treaty and how it can be cancelled, the Insurance Code of Virginia in one place says flatly that the State shall not have any control over Re-insurance. That is Code Section 38.1-378, which says that the provisions of Article 3, the Rating Section, has no control, and there is only one exception when they have any control. The provisions of this Article 3 as to Fire Insurance policy experience and forms, etc., as to what the contract can be, by approval of risks and forms, etc. It is Section 221. I am sorry I made a mistake; it is Section 38.1-221 and it says:

"The provisions of this chapter do not apply to:" (and this is Chapter 6), which includes—
Article 1—General Provisions of Insurance;
Article 2 as to the Bureau;
Article 3 as to the Rate Filings and
page 200 } Article 4 as to the making of rates;
Article 5 as to Advisory Organizations and
Article 6 as to Hearings.

"The provisions of this chapter do not apply to:

"(1) Reinsurance, other than joint Re-insurance to the extent stated in Section 38.1-224"

And by reference to Section 38.1-224, the exception is not applicable here because it says:

"Every group, association or other organization of insurers which engages in joint underwriting as to a kind of insurance to which this chapter applies shall be subject to regulation with respect thereto as provided in this chapter."

It is not as to regulation of contracts. The contracts are all private contracts but Section 38.1-26 of the Code, Page 92, expressly authorizes the Re-insurance and says:

"Exception as otherwise provided in this title,"

(and there is no exception provided in this title),

"any insurance company licensed to transact in-
page 201 } surance in this State may, by policy, treaty or
other agreement, cede to or accept from any in-

surance company Re-insurance upon the whole or any part of any risk, with or without contingent liability or participation, and, if a mutual company, with or without membership therein."

The only exception is that a company is not allowed to re-insure all, or substantially all of its risk. The company is not allowed to do that without approval of the State Corporation Commission to re-insure all, or substantially all of its risks, and Lloyds is included in this Code as a definition of an insurance company. " 'Insurance company' means and includes any company engaged in the business of making contracts of insurance, and includes any fidelity and surety company" and it states Lloyds in that chapter.

Now the Code in Section 38.1-32 "Limitation of risks generally" states "Except as otherwise provided in this title, no insurance company transacting business in this State shall expose itself to any loss on any one risk or
page 202 } hazard in an amount exceeding ten per centum of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in a solvent company shall be deducted in determining the limitation of risk prescribed in this section."

Under that, a company could if it wanted to, obviously, for a million dollar risk, its surplus to policy holders could be two hundred thousand dollars. It could re-insure nine hundred thousand dollars and have only one hundred thousand dollars.

Now in things of that kind it is rather the measure of exposure, and that is the safety of the public involved of course, and in view of that, I don't think it is relevant to go into the question of the details of Re-insurance contracts or treaties which Mr. Denny indicated by his statement is a private contract.

It is true that every insurance contract is a private contract. There is no requirement that requires a re-insurance company not to discriminate. A Re-insurance
page 203 } company can pay Harford Mutual 43% for its business because it believes Harford is a well run Company with a long service of operation and with a Board of Directors with the experience and wisdom that this Board of Directors has and with the wonderful record on deviations that it has and they could take a company I would organize, say Mr. Denny and I, we would make a good combination, and they could exceed the risks taken in some years, but they

could say "we could only give you 20% or 25%" and a Re-insurance company can charge what they please. It could discriminate, whereas, the Harford Mutual could not discriminate, so I don't think it is relevant.

Mr. Denny: The objection to my question was based on relevancy, and I will not be so unkind as to put my finger on it but the Commission will recall that it was told that whenever Mr. Denny was hurt he makes an objection and says it is irrelevant so we come back to the question and say that Mr. Wicker is hurt and so he says it is irrelevant, it hurts him.

It is a fact that the State of Virginia and the
page 204 } State of Maryland have no jurisdiction over it.

Mr. Wicker says it is irrelevant for me to inquire into Re-insurance. I admit gladly that Re-insurance is irrelevant to this inquiry and every word should be stricken out in regard to Re-insurance, but every word of his testimony has been built on it, and now he says that we should not go into that, and yet every word he says is based on the provision of Re-insurance.

As to the Sections he refers to, I will take them briefly. Section 32 refers to relationship—

Commissioner Dillon: The Commission feels, Mr. Denny, that the argument of the legal question should be reserved for counsel and not the witness, and therefore, I ask you to proceed on another line of questioning.

Mr. Denny: I will limit my questions to Maryland, whose law is not in evidence.

Q. Is it not a fact that the State of Maryland has no supervision or regulation over the treaty that your Company has with the Harford National?

page 205 } Commissioner Catterall: Are you an expert on Maryland law?

A. No, sir, but I would like to answer that from the practical standpoint and not as a question of law.

Commissioner Dillon: You may answer.

A. I state that there is supervision by Maryland over this particular insurance treaty because both companies have periodic examinations by the State of Maryland and in every one of those examinations they go over every Re-insurance

contract with a fine tooth comb, and if they felt that there was anything out of line or out of ordinary detrimental to either company I am quite sure it would be called to our attention and we would correct it. As a matter of fact the treaty with Lloyds was gone over by a Maryland examiner and no adverse comments were made either verbally or in writing, and the treaty with the Maryland National was made after the association with Lloyds and was patterned after the Lloyds treaty and I submit that Maryland has made no criticism of it whatever.

page 206 } Mr. Denny:

Q. Do you desire the privilege to answer from a practical point of view whether Virginia has legal supervision over it?

A. What is that, Sir?

Q. You stated to the Commission, in connection with Maryland that you would like the privilege of answering the question in regard to Maryland's supervision from a practical point of view; do you want to answer it from a practical point of view in regard to Virginia, do you or don't you?

A. I will answer it this way. There was a representative from the Virginia Insurance Department participating in the last examination of the Harford Mutual so this gentleman from the Virginia Insurance Bureau, which he represented, had an opportunity to bring out any defects or flaws in the Re-insurance contracts and he did not do so. So, apparently, the contract met with the views of all who looked at it.

Q. From a practical point of view the supervision which Maryland has prevents Lloyds of London from cancelling the contract if it desires?

page 207 } A. From a practical point of view.

Q. From a practical point of view?

A. I am not an attorney and won't argue the law.

Q. If you can't answer the question say so, but from the same standpoint you were arguing Maryland's supervision, can you tell us whether the Maryland supervision prevents Lloyds from cancelling the contract if Lloyds so desires?

A. I have no knowledge on that point.

Q. Do you have with you a copy of your Re-insurance contract?

A. No, sir, I do not.

Q. Will you file those with the record as your Exhibit 11?

William H. Marquess.

Senator Wicker: I object to anything being filed here like that because it becomes a public record and open to all competitors without the assignment of any reason to do so, and I don't think this Company should be called upon to file that since it has already been stated that the insurance
page 208 } representatives have looked at it, both the Maryland and Virginia representatives, and you can't require the filing of a record that becomes a public record.

Commissioner Dillon: The Commission will take that under consideration.

Mr. Denny: I also want to say that the contract of Re-insurance, what occurs to that contract of Re-insurance, is the whole basis of what he asks for in this deviation.

Commissioner Dillon: The Commission will take that under consideration and not rule on it at this time.

Commissioner Catterall: You said in your opening statement that they were entitled to 10% so what you are saying deals with the 20% deviation?

Mr. Denny: Yes, sir, Mr. Elliott said he wanted to know whether it was 20% or nothing and Mr. Wicker says "Give us what the application says" and if they want to amend the application to a 10% deviation, we have no objection to that.
We think that they are entitled to that but since
page 209 } the additional 10% is asked on the basis of what they say is their experience after taking into consideration Re-insurance, the whole question of Re-insurance rests on this contract. They ask you to rely on that and pay no attention to gross premiums and gross expenses but to rely on the Re-insurance. Now, what is it? Their Re-insurance is just as strong as the Re-insurance contract is strong. Suppose Lloyds cancels the Re-insurance contract and they are not able to make as much? Some parts of their case virtually is the same as the Factory Mutual when they stated that they were asking to pay a large dividend. These people ask you for a deviation, not on the basis of the mutual company there, but on the basis of this result because of this Re-insurance. It goes to the very guts of this case.

11:25 A. M. Commissioner Dillon: The Commission will recess for ten minutes.

11:35 A. M. The Commission resumes its session.

page 210 } Senator Wicker: When we recessed Mr. Denny had completed his statement that was to be reserved as a legal argument.

Commissioner Dillon: We are ready to rule on the question technically. We technically rule that the present contract of Re-insurance is not germane to this case, and if we find out later that it is, we will permit you to re-open it and cross examine on it.

Senator Wicker: You mean the matter of the Re-insurance contract but not the result of the deviation there?

Commissioner Dillon: We are talking about the Re-insurance contract.

Senator Wicker: We are not concerned with the future. We are not here representing that they will in the future insure at 20% deviation or 50% deviation.

Commissioner Dillon: The ruling is that we are not going to require you to file as an exhibit a copy of the Re-insurance contract with Lloyds, and if we do feel it is necessary later on in the case, we will re-open the case and give you an opportunity to cross examine.

page 211 }

Senator Wicker: That will be a re-opening by the Commission on its own motion and it will not be necessary for me to so move.

Mr. Denny: In order for the record to be entirely clear, and I might protect myself, I desire to state my objection to the ruling.

Commissioner Catterall: You understand under the Constitution of Virginia that you don't have to make any objection. You have the appeal whether you except to it or not.

Mr. Denny: I have an appeal as a matter of right but the Court of Appeals has never held that the exceptions and grounds for an objection do not have to be stated to the Commission. If they have so held, I don't know the case. Whether the Court will so hold I do not know but I do have a right to give the reasons for my objection.

Commissioner Catterall: I think I can convince you of that if you will come around to my office at lunch time.

page 212 } Commissioner Dillon: The Commission would like to request that the questions in the future be confined to questions of fact rather than legal matters, for the witness is not competent to answer legal matters.

Mr. Denny: I think that request is aimed at me, and I will cooperate with that because I am the only one that has

asked a question of law. I do ask the privilege of having treated as an exhibit, and I will furnish a copy for the Commission, the Order of the Commission of October 4th, 1957 in the Application of the Insurance Company of North America and Philadelphia Fire and Marine Insurance Company in Case No. 13556. I will furnish a copy of that for the record and ask that a place be reserved for it at this time.

Commissioner Dillon: We will reserve Exhibit No. 11 for it.

Note: Exhibit No. 11 later filed with the Reporter and put in the record—

Mr. Denny: I am not quite certain whether under the Ruling of the Commission I have any further
page 213 } questions.

Commissioner Dillon: Are you through with your cross examination of the witness?

Mr. Denny: I am through, but others may want to ask him questions, but all of this relates to his cross examination.

Commissioner Dillon: All right.

Mr. Denny: I think here the Commission has handed down a formal written opinion in its official reports and that that automatically can be taken cognizance of both here and in the Court of Appeals, but if, perchance I am mistaken, I ask that there be included in this case, a copy of the opinion in Case 3102 handed down by the Commission, known as the "Epps Decision" in the case of Aetna Insurance Company.

Commissioner Dillon: I don't believe we are going to admit an opinion of the Commission as an exhibit in the record. You may file the Virginia report if you wish.

Mr. Denny: There are two others I wish to offer, but I wish this record to show that they were offered. One is the opinion handed down by the Commission on May 11th,
page 214 } 1950 on the Application of General Insurance Company of America and the First National Insurance Company for deviation and the next one is the opinion of the Commission handed down in Case No. 12880 last year in the matter of Allstate Insurance Company which was heard in 1956. I understand the same ruling applies.

Commissioner Dillon: The same ruling applies.

Commissioner Dillon: Mr. Flory, do you have any questions?

Mr. Flory: No.

William H. Marquess.

Commissioner Dillon: Mr. King, do you have any questions?

Mr. King: Yes, a few.

Commissioner Dillon: You may proceed.

CROSS EXAMINATION.

By Mr. King:

Q. Will you get before you your Exhibit 5 and your Exhibit 1, and I am asking these questions to clarify some things that seemed a little difficult, possibly because I am incapable of understanding, but I want you to clear me up on page 215 } the point. Just as an example lets look at Exhibit 5 and the year 1954, "the Hurricane Hazel year," and there you show the premiums as one million one hundred and twenty thousand dollars. That all has nothing to do with Re-insurance in your Exhibit 5. It shows that you received premiums of one million one hundred and twenty thousand dollars, and looking at Exhibit 1 the same figure appears. That is rounding it out to the nearest thousand?

A. Yes.

Q. Now lets look at the Losses. The Losses paid were roughly five hundred and ten thousand dollars on Exhibit 1.

A. In 1954?

Q. Yes.

A. Yes.

Q. Why is it in your Exhibit 5 it shows the Losses were six hundred and ninety-five thousand dollars?

A. Exhibit 5 is the Losses incurred, which takes into consideration the "reserve for outstanding unpaid page 216 } Losses at the end of the year." Exhibit 1 is strictly Losses paid. You will recall that Hurricane Hazel was on the 15th of October. A great many claims arising from that occurrence were not settled at the end of the year, therefore, the loss reserves were considerably higher at the end of the year than normally.

Q. Let's look at Exhibit 5, the premiums shown are the same practically as Exhibit 1 but the Losses in Exhibit 5 have little relationship, assuming they have been incurred, on Exhibit 5 are those shown to be incurred, and those paid shown by Exhibit 1?

A. Yes, sir, that is the same answer, the Losses incurred which is what we show on Exhibit 5 on the formula for determining Losses incurred and Losses paid during the period,

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plus Losses outstanding at the end of the period, minus Losses outstanding at the beginning of the period.

Q. Why is it, starting at the beginning of the year 1953 and ending with the year 1957 that the Losses shown at the beginning of the period are materially higher than those shown on Exhibit 1. Do you ever catch up with

page 217 } yourself?

A. That is another thing on Exhibit 5, the Losses and Loss Adjustment Expenses are included and Exhibit 1 the Loss Adjustment Expense is not included.

Q. Look at your Exhibit 10 and that does recognize Re-insurance. That third vertical column "Loss Adjustment Expense" those are the expenses actually incurred by your Company?

A. On Exhibit 10?

Q. Yes.

A. Yes, taking into consideration Re-insurance.

Q. Roughly, how does that run, the part attributed to Re-insurance, does that run the same in the attributable to Harford Mutual?

A. I don't understand your question.

Q. Take the third column 1953 figure, Loss Adjustment Expenses $23,000.00. Let's suppose you did not recognize Re-insurance. What would that figure be?

A. I don't think we have that figure here, Mr. King.

Q. In other words, you have not put in the

page 218 } the record anywhere what your Loss Adjustment Expenses are for any of those five years, 1953 through 1957?

A. I don't believe we have as a separate figure.

Q. Can you give us an estimate of what greater percentage there would be of Loss Adjustment Expense if you did not recognize Re-insurance?

A. I could not make an estimate of it, no, sir.

Chairman Hooker: Does that not show on the Commission's Report?

A. Yes, sir, if that is admissible.

Senator Wicker: I have in my file what was filed back in 1956, but it does not have 1957.

Mr. King: Could the witness read 1953?

A. Loss Adjustment Expense was $44,000.00 1953 and on

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Exhibit No. 10 the corresponding figure is $23,000.00.

Q. Give us 1954, 1955 and 1956.

A. 1954 the Direct Loss Adjustment Expense was $45,000.00; after Re-insurance it is $31,000.00.

page 219 } 1955 the Direct Loss Adjustment Expense was $46,000.00. After Re-insurance it was $33,000.00.

1956 the Direct Loss Adjustment Expense was $35,000.00; after Re-insurance it was $25,000.00.

Q. And you do not have with you the 1957 figure?

A. No, sir, I don't believe we have it with us anywhere.

Senator Wicker: Just the net.

Mr. King:

Q. As I understand it, the Harford Mutual with respect to Fire and Allied Lines, pays no dividend to its members?

A. That is correct.

Q. And operates absolutely on a deviation basis?

A. Yes, sir, and has done so for thirty years.

Commissioner Dillon: Mr. Elliott, do you have any questions?

CROSS EXAMINATION.

By Mr. Elliott:

Q. Mr. Marquess, I show you a statement entitled "Name of Company—The Harford Mutual Insurance

page 220 } Company—Countrywide Fire and Allied Lines Expenses (Except Auto Physical Damage and Inland Marine)—Calendar Years 1952 to 1956" and below the same for Virginia. I will ask you if you made up that statement?

A. Yes, sir, that was made up in our office.

Q. And made up under your supervision and direction?

A. Yes.

Q. And you submitted that to the Bureau of Insurance in support of your deviation?

A. Yes, sir.

Mr. Elliott: I ask that that be received as Exhibit No. 12.

Commissioner Dillon: It will be received as Exhibit No. 12.

Witness: Mr. Elliott, may I make a statement in connection

with that? The format of that report was given us by the Virginia Bureau of Insurance to fill it out. We did not make it of our own volition. We made our filing and they replied by saying "Here is a form, fill it out."

page 221 } Q. But you have made out similar statements before, have you not?

A. No, sir, not just like that one. This is the first year a statement in that form has been required.

Q. At any rate, so far as you know, Exhibit 12 represents an accurate statement of your Virginia business at the bottom of this sheet for the years 1952 to 1956, according to the books of your Company?

A. Yes.

Q. I will ask you to refer to that statement and say for the purpose of the record for the period 1952—1956 inclusive, your Loss Adjustment Expenses in Virginia, what they were for that period.

A. This is based on direct business prior to Re-insurance and the amount is $203,911.00.

Q. What percentage was that of your direct premiums written for that five year period?

A. 3.8 per cent.

page 222 } Q. Will you state how much were your commissions during that period on your Virginia business?

A. $1,298,692.00.

Q. What percentage was that of your direct premiums written?

A. 24.2 per cent.

Q. What were your Other Acquisition Expenses for your Virginia business for that period?

A. $46,622.00.

Q. What percentage was that of your direct premiums written?

A. .9 per cent.

Q. What were your general expenses for Virginia for that five year period?

A. $240,180.00.

Q. What relationship did that bear to your direct premiums written?

A. 4.5 per cent.

Q. What were your taxes, licenses and fees?

A. $160,958.00.

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Q. What relationship did that bear to your direct written premiums?

A. Let me say this at this point. As I recall it, we were instructed by the Virginia Bureau of Insurance to
page 223 } use 3 per cent for taxes, therefore, on all of these figures for taxes we have used exactly 3 per cent. Those are not the actual figures of the Harford Mutual Insurance Company.

Q. What are the actual figures of the Harford Mutual?

A. I don't know, Mr. Elliott, whether we have those here or not, taxes, licenses and fees before Re-insurance, I don't think we have them.

Q. What were your taxes, licenses and fees Countrywide; what percentage of your total premiums were the taxes, licenses and fees?

A. 2.7 per cent.

Q. So there is a difference of three-tenths of one per cent in this figure for Virginia and Country-wide?

A. Yes. The three per cent was preprinted on the form for taxes right along with various other things.

Q. Now, as I understand it, Mr. Marquess, the direct premiums written shown in Exhibit 12 amount to $5,365,311.00. They are the premiums actually received by the Company from Virginia policy holders?

page 224 } A. Yes, sir.

Q. And that was written at a deviated rate of 20 per cent?

A. Yes, sir.

Q. Now, I believe, in order to get at the issue in this case rather sharply as I understand your testimony, from the figures presented by Exhibit 12, if the Commission applies 52½ per cent permissible loss ratio to the one hundred cents dollars, then you concede that the figures shown on Exhibit 12 do not justify a 20% deviation; or am I wrong?

Senator Wicker: If the Commission please, I think that again brings in something like Mr. Denny's questions were trying to do. It is simply a matter of mathematical calculation to say that any figure amounts to such and such. As to whether they were entitled to it, it is a different matter.

Chairman Hooker: My recollection is that the witness answered that to Mr. Denny affirmatively; I recall his answering it to Mr. Denny affirmatively.

page 225 } Mr. Denny: I understood that on his testimony to me that on that basis it was not justified.

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Senator Wicker: I don't believe you will find that is correct. You will find that this is on a different formula.

Mr. Elliott: What do you mean?

Senator Wicker: Four years. I don't believe the witness said that. He justified the mathematical calculation. I don't believe he justified it because that takes into consideration many things.

Mr. Denny: I think Mr. Wicker is wrong, but since we have a difference of opinion and I think Mr. Wicker's recollection is wrong but I think we should have him to answer it.

Commissioner Dillon: Let him go ahead and answer it.

A. I object to the word "justified" as it was used yesterday. In my own humble opinion the deviation is justified on several grounds. If the Commission rules otherwise, then that is another matter. Mathematically, I think page 226 } the figures would indicate what they have said.

Mr. Elliott:

Q. Senator Wicker made an objection that if we took the latest five years beginning with 1952 and so I will say that if you take the latest five years beginning in 1953 would the result be different, and if you take the latest five years beginning in 1952, as a matter of fact you have not submitted any 1957 figures until this case started, have you?

A. That is correct. May I state that the time for renewal of our deviation was in December. The deviation was approved until sometime in February 1958 and we were asked to submit the figures sixty days ahead, which was in December, put in the figures up to that time, and so we have used 1952 through 1956 as being the latest five years.

Q. If you use the latest figures, 1953 through 1957, rather than the figures shown on the Exhibit 12, does it not make a worse picture for your Company under the theory of allowing 52.5 per cent for Losses on the one hundred cent manual dollar?

A. I don't know that it does. I have not prepage 227 } pared Exhibit 12 using 1957 figures. My off-hand guess would be that it might present a better picture.

Q. Let us go into that. Will you tell us what your 1957 direct written premiums were?

A. Rounding out the thousands?

Q. Yes, it was $998,000.00, was it not?

A. Yes.

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Q. And your expenses were how much approximately, $390,000.00 expenses actually paid, were they not? May I ask where you got that figure?

Senator Wicker: Probably from Exhibit 5.

A. I have Exhibit 5 and taxes and other expenses were $352,000.00.

Commissioner Catterall: That is without the loss adjustment factor.

Mr. Elliott: Well, in order to get the record straight, so that there can't be any question about it, in view of what Senator Wicker has said I request that you supply for 1957 the same figures for Virginia shown on Exhibit 12, the same to be marked as "Exhibit 12-a."

page 228 } A. You are asking for Virginia only and not Country-wide?

Q. I am asking for Virginia only, and since we are considering five years, it probably would be better to restate the lower portion of Exhibit 12 relating to Virginia for the years 1953 through 1957. Will you do that?

A. Yes, sir. It will take me a day or so.

Mr. Elliott: That can be filed later. I am not asking for it now.

Commissioner Dillon: Exhibit 12-A will be reserved for it.

Mr. Elliott:

Q. Since we don't have 1957 figures here, I necessarily must deal with the figures submitted through the year 1956 and I submit that they are the proper figures because they are the figures at the time the deviation was applied for. It shows expenses, and these other figures became available between the time of the filing and the hearing. I can't prepare

page 229 } a case on what comes in after the filing and we cannot prepare any Ratio of Losses on premiums after 1957, which can be vital, so, it is necessary for us to proceed on the basis of the figures submitted today—

Senator Wicker: Don't you have copies of the exhibits that include 1957?

Mr. Elliott: Yes, but I can't break down anything with

those because they have Loss Adjustment figures included with these Losses, and I can't deal with those figures on the basis we deal with them, you can't unscramble them.

Mr. Elliott:

Q. Mr. Marquess, you stated that you furnished Exhibit 12 pursuant to the request of the Commission, or the Bureau of Insurance of the Commission, and I hand you a letter dated February 21st, 1958 bearing the initials of Mr. Courtenay Harris, and ask if you received that letter?

A. Yes, sir.

Mr. Elliott: May this letter be received in evidence as Exhibit 13?

Commissioner Dillon: It will be received as page 230 } Exhibit No. 13.

Mr. Elliott:

Q. Following that letter I believe you sent Exhibit No. 12 to the Commission?

A. I believe that is right.

Q. And after the Bureau of Insurance received Exhibit 12 they wrote to you, I believe, in accordance with the letter of February 26th, 1958; is that not correct?

A. Yes, sir.

Mr. Elliott: May that letter be received as Exhibit No. 14?

Commissioner Dillon: It will be received as Exhibit No. 14.

Mr. Elliott:

Q. Now, to complete your correspondence with the Bureau of Insurance, I believe the Bureau of Insurance wrote you on March 21st, in which they pointed out that the deviation could not be allowed under the formula as they understood it; is that correct, sir?

A. Yes, sir.

page 231 } Mr. Elliott: May that letter be received as Exhibit No. 15?

Commissioner Dillon: It may be received.

Mr. Elliott:

Q. Did you, after corresponding with the Bureau of In-

surance, apply the formula therein stated in that correspondence to the figures of the Company?

A. Mr. Elliott, I don't know that I went any further than was pointed out here in the letter of February 26th. I believe the Bureau of Insurance applied the formula to the figures of the Company.

Q. Now, let's get back to another matter. I don't believe that it was stated in the record when you negotiated this contract of Re-insurance with Lloyds. How long has that been in effect?

A. I think since 1949. You understand of course that there are occasions when the various syndicates of Lloyds seek that an amendment to the old contract be prepared, but we, ourselves, have been operating under the same con-
page 232 } tract for at least nine years.

Q. That word you used of "syndicates," what does that mean?

A. They are various groups of underwriters at Lloyds, you and I might be one group and Mr. Wicker and Mr. Denny another group and on a particular Re-insurance contract that we cover our group might be Group A and subscribers to 6 per cent of the contract and the group who subscribes to 4 per cent and various groups are brought in until the entire amount of the contract is subscribed for by these groups of underwriters. That is Lloyds way of doing business. I'm probably not putting it very well.

Q. I take it in this Re-insurance contract that the amount you would retain and the amount you would sell is a matter of *negotation?*

A. Yes, sir, negotiations take place before the agreement takes place by both parties.

Q. And they are not the same with your contract as with some other parties?

A. That is correct.

page 233 } Q. The retentions are different and the cessions are different and you think your co-commission may be different; is that not correct?

A. Yes.

Q. How often do you review this Re-insurance contract?

A. We may have occasion to refer to it or look upon it every few months.

Q. I mean from the standpoint of changes.

A. If, by "review" you mean read all the way through to the end with the idea of changing anything, I can't remember when I have done that. We like the contract and are satisfied

with it and know basically what it gives and we don't go through it hunting for changes.

Q. Have the retentions and required cessions remained the same since this was entered *inot?*

A. No, sir. As I recall when the contract was entered into back in 1949 the schedule of net retentions ranged from $4,000.00 to $10,000.00. The cessions would be some-

page 234 } where along that line and somewhere along the line it was changed so we had the privilege of retaining $15,000.00 instead of $10,000.00.

Q. Have the commissions paid to your Company changed from the time during which this contract was negotiated?

A. For the first two years the commission was 40 per cent and then, based on the good loss ratio that Lloyds enjoyed under this contract, the commission was raised to 42½ per cent. That was the first surplus treaty and we mentioned the second surplus treaty on which the commission has been 45 per cent. This has been in effect since the inception of the contract. That has never changed. Our average comes to 43 per cent, one at 42½ per cent and the other at 45 per cent, and it averages out 43 per cent as we have entered it in the same way.

Q. Is the retention the same with your affiliated company as with Lloyds?

A. Yes, sir, exactly.

Q. This contract of Re-insurance has been a very favorable contract for Lloyds?

page 235 } A. Yes, sir, I would say it has been a very good contract for Lloyds and for us.

Q. Looking at your Exhibits 5 and 6, I notice that your Exhibit 6 says that, after recognizing Re-insurance you increased surplus, which I take is "profit" so far as mutuals are concerned? Over $1,000,000.00?

A. You are talking about Exhibit 6?

Q. Yes.

A. Yes, sir.

Q. Exhibit 5 is a statement for the same period without any Re-insurance; is that correct?

A. Yes.

Q. So that, if there had been no Re-insurance your profits for the total of the seven year period would have been $244,000 more than they would have been with the contract.

A. Mr. Elliott, first of all we don't consider these "profits."

William H. Marquess.

If you will substitute "additions to surplus" in place of the word "profit" I will say yes.

Q. So that looking at these two exhibits there were only two years, namely 1954 and 1957 when this Re-insurance contract resulted in an increase in surplus to your Company; is that correct?

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A. Yes, sir, based on just these figures here now. Mind you, if we had not had this Re-insurance contract, which it seems to me you are trying to get at, our Company would not have been able to write, or we would have felt we could not contract for a lot of risks we wrote. We would have felt we could not have written a $30,000.00 or $40,000.00 risk. We would have been forced to decline those, therefore our premiums would have been less than they show on Exhibit 5, and I daresay, they would have been so much less that the addition to surplus would be less than that shown on Exhibit 6.

Q. However that might have been, you have shown to the Commission here your actual operation with and without Re-insurance, and I ask you if it is not a fact that these two exhibits demonstrate that, without Re-insurance, your surplus in 1951 would have been $36,000.00 than it would have been with the Re-insurance; 1952 $130,000.00 more; 1953-$153,000.00 more; 1954-$35,000.00 less; 1955-$44,000.00 more; 1956-$84,000.00 more; 1957-$72,000.00 less. Isn't that what those exhibits say?

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A. No, sir. You said that if we had not shown the Re-insurance. We would not have undertaken it if we had not had Re-insurance. We could not contemplate it.

Chairman Hooker: If it had not been for Re-insurance Hurricane Hazel would have put you out of business?

A. It would not have put us out of business but it would have hurt us. We would have had $2,000,000.00 in losses if we had not had Re-insurance and it would have hurt us a great deal.

Mr. Elliott:

Q. I ask you if Exhibit 12 isn't a statement of what took place without Re-insurance?

A. It is a statement of what took place and then eliminating Re-insurance. I can't say it is a statement of what took place had there been no Re-insurance.

Q. How much were your losses in Virginia in 1954, the year

of Hazel? According to Exhibit 12 it was $649,000.00; isn't that right?

page 238 } A. Losses in Virginia, according to Exhibit 12?

Q. Yes.

A. Yes, $649,000.00.

Q. And in that year you had a premium income in Virginia of $1,120,000; isn't that correct?

A. Yes, sir.

Q. When you look at your Exhibit 6, which is your Virginia experience recognizing Re-insurance, will you please tell us what the loss ratio was after giving effect to Re-insurance, what was the loss ratio shown for the seven year period on that exhibit?

A. Do you want me to divide it out?

Q. Can you give it to me approximately?

A. The Losses here include Loss Adjustment Expenses, so I can say the Losses and Loss Adjustment Ratio combined is close to 50 per cent. The calculation is $4,511,000.00 divided into $2,253,000.00.

Q. Referring to Exhibit 12, your loss ratio for the five year period 1952 to 1956, shown on your exhibit is 45.1 per cent for Virginia; is that right?

page 239 } A. Yes, that is the pure Loss ratio and does not include the Loss Adjustment Expenses which the other one does.

Q. I understand that. I don't have the figures to break this one down. Could you give us a comparable exhibit to number 12?

A. Yes, sir. Loss Adjustment Expense in Virginia is shown as 3.8.

Q. So you would add it together?

A. Yes, and that would give us 48.9 per cent.

Q. So the Loss Ratio with, or without Re-insurance one on seven years and one on five years, was approximately the same?

A. Yes, sir.

Q. So that the effect of their insurance agreement, as I understand it, is to take these commissions which the Re-insuring company pays you, and to apply those commissions as against expenses and they operate to reduce the expense side of the dollar, that is the effect of it in this case?

A. Yes, sir.

Commissioner Dillon: Any other questions?

page 240 } Mr. Denny: I have some as the result of Mr. Elliott's questions.

William H. Marquess.

Mr. Denny:

Q. This filing was made to us by letter dated December 6th, 1956?

A. Yes, that sounds right.

Q. And attached to that were two exhibits of the Harford Fire and Allied Lines?

A. Yes.

Q. And the first one was 10 per cent and the next one 20 per cent deviation?

A. Yes.

Mr. Denny: May I ask that the original filing of December 6th, 1957, together with Exhibits referred to be received in this case. I believe they have to be so indicated.

Commissioner Dillon: They will be received as Exhibit 16.

Mr. Denny:

Q. I believe you answered Mr. Elliott when he asked you if you did not always follow the data shown at the bottom of this Exhibit 12, that you had never before filed data such as that kind?

page 241 } A. I don't know what my specific words were. I said we had never filled out this form before.

Q. Referring to your original filing and the bottom portion of your Exhibit 12, I ask you whether your original filing does not show your direct premiums written, 1952 to 1956 exactly as shown for Virginia in Exhibit 12?

A. Yes.

Q. And I will ask you whether the exhibits attached to your filing, which are a part of your filing, do not show for the five years in question the exact figures for Loss Adjustment Expenses that are shown in the Virginia portion of Exhibit 12?

A. Yes.

Q. And the exact figures for commissions that are shown for the Virginia portion of Exhibit 12?

A. Yes.

Q. Now your original filing lumped together "All Other Expenses," Does that mean "Other Acquisition Expenses," "General Expenses," "Taxes," "Licenses," and "Fees"?

A. Yes, sir, that is right. The form filed with the letter of December 6th was of our own design. It is simple

page 242 } and we had not been given any particular form to use in the past by the Bureau of Insurance, so

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we used that one. It is similar to one we used in Maryland and we used those.

Q. Take the year 1952 on Exhibit 12 Virginia, you show "Other Acquisition Expenses of $12,228.00; "General Expenses" of $54,226.00; "Taxes, Licenses and Fees" of $31,-054.00; is that correct?

A. Yes.

Q. Assuming my addition to be correct, I have added those three figures and the total is $97,508.00. However, in the exhibit attached to your filing, you show expenses of $95,-000.00, a difference of $2,000.00. How do you account for that?

A. I have already testified that on Exhibit 12 the Bureau of Insurance instructed us to use 3 per cent for Taxes, Licenses and Fees. So the 3 per cent is not actual.

Q. If the difference in the figures I mentioned is $2,070.00, then the Taxes, Licenses and Fees paid by you, actually paid by you, were $2,070.00 less than the $34,074.00 shown on Exhibit 12?

A. Yes.

page 243 } Q. Now, in the exhibit prepared by you, and included in your filing you show the ratio between the direct premium written and the total expense; did you not?

A. Yes, sir. We are talking about Exhibit 16?

Q. No, I am talking about the exhibit filed with your filing of December 6th, 1957.

A. Where are we, on direct premiums written or net premiums?

Q. Direct premiums written you show the Expense Ratio there?

A. Yes.

Q. And the Expense Ratio for 1952 was 36.14 per cent; 1953 it was 36.27 per cent; 1954 it was 36.25 per cent; 1956 it was 35.62 per cent or an average for the five years of 36.16 per cent?

A. Yes.

Q. That ran very constant during those five years, did it not?

A. Yes, sir.

Mr. Denny: That is all.

Commissioner Dillon: All right, Senator

page 244 } Wicker.

William H. Marquess.

RE-DIRECT EXAMINATION.

By Senator Wicker:

Q. When you were questioned by these last questions from Mr. Denny, they were all dealing with that part of some exhibit that showed the theoretical situation as to what you would have paid if you had written yourself all the insurance you had written.

Mr. Denny: I object to the word "theoretical." It is on the basis of his own exhibit.

Senator Wicker:

Q. I will reframe my question. The expenses are all based on taking Re-insurance and the other disregarding Re-insurance as if it did not exist?

A. Yes, sir.

Q. You understand that the last questions were taking into account Re-insurance as if it did not exist?

A. Yes, sir.

Q. First of all, would your Company—you have a policy of not retaining any risk any greater than a given

page 245 } amount?

A. If we had had no Re-insurance?

Q. No. Just your rentention.

A. Our retention, the top amount was $15,000.00.

Q. Does that mean the top amount your Company would insure without Re-insurance—that that is the top amount?

A. I think it is a fair statement to make that we would have had to hold the line at $15,000.00 if we had no Re-insurance, and hold it at $4,000.00 on frame buildings if we had had no Re-insurance.

Q. The records show that you had Re-insurance for forty per cent of the total of your direct writings?

A. Yes.

Q. Another way of saying that is that forty per cent of the business you wrote would not have been written if you did not get Re-insurance?

A. Yes, sir, I believe that would follow.

Q. So the figures you had to submit on the form prepared by the Virginia Bureau of Insurance, and the way they asked that on Exhibit 12, in preparing your application,

page 246 } sir, those were based on what I call, and what was objected to, "theotretical premiums," based on premiums you would not have taken the forty per cent of them

had it not been for your ability to re-insure all of that forty per cent?

A. I think that is right. We don't know what might happen if we had not had Re-insurance. If we had not had this Re-insurance, maybe we would not have felt that we could pay as high a commission to the agent as we do with Re-insurance. It is hard to say what we would have paid.

Q. But, without Re-insurance, your General Office Expense, you, yourself, and stenographers and the like, that would not have been reduced much, but your premium income would have been reduced?

A. Yes.

Mr. Denny: I object to that; that is virtually cross examination of his own witness.

Commissioner Dillon: We will sustain your objection.

Senator Wicker:

Q. You said you might insure Mr. Denny's resi-
page 247 } dence for $50,000.00. That is a right good example.

A. I think the figure was $40,000.00 and that is higher than our average risk, but Mr. Denny is an able and prosperous attorney.

Mr. Denny: I hope the Commission will take judicial knowledge of that fact.

Senator Wicker: It is a well known fact.

Senator Wicker:

Q. Without Re-insurance, would you insure a regular risk of $40,000.00?

Mr. Denny: I make the same objection.

Commissioner Dillon: The witness testified that it was hard to say what he would have done, so I think the point is well taken.

Senator Wicker: When he said that that was in regard to one thing. He did state that the volume of experience would have been less, be forty per cent less, and to illustrate why it would be less was the indication that forty per cent of what they did write was beyond the amount that the Board of Directors had set for their risks.

page 248 } Commissioner Dillon: He testified as to that.

William H. Marquess.

Senator Wicker:

Q. You were asked about the Loss Ratio. Mr. Elliott asked you about that in your Exhibit 6?

A. Yes.

Q. Referring to Exhibit 6, when questioned by Mr. Elliott, using the figures on Exhibit No. 6 for the seven year total, you will agree that the amount of Losses shown on that exhibit would be approximately fifty per cent of the amount of the premium?

A. Losses, plus Loss Adjustment Expense.

Q. If you projected your premium there, which is figured at eighty per cent of the manual rate, you would add one-fourth to that $4,511,000.00?

A. Yes, sir.

Q. And if you add one-fourth to that premium what would you get?

A. $5,635,000.00.

Q. By reference to Exhibit 8, you see on Exhibit 8 that $166,000.00 where the Loss Adjustment Expense shows for those seven years?

A. Yes.

page 249 } Q. And also if they are deducted from the combined total of $2,253,000.00 of Losses and Loss Adjustment Expense, you get a Net Total Loss of $2,086,000.00?

A. Yes, sir.

Q. Will you please state for the record what percentage the Loss Ratio shown there is of your actual Losses of $2,086,000.00, what percentage of that is that in regard to the manual value of $5,639,000.00?

A. I get thirty-seven per cent.

Q. Thirty-seven per cent?

A. Yes.

Q. Exhibit 7, breaking it down and Exhibit 6 broken down, and the figures separated, Losses and Loss Adjustment Expenses separated as in Exhibit 8, your "Loss Ratio," so called, instead of being approximately fifty per cent is thirty-seven per cent?

A. Yes.

1:00 P. M. Commissioner Dillon: The Commission will recess until 2:00 o'clock.

page 250 } 2:00 P. M. The Commission resumes its session.

William H. Marquess.

Senator Wicker:

Q. Mr. Marquess, when Mr. Elliott was examining you he referred to your Exhibit 5 and Exhibit 6. Exhibit 5 was on the basis of disregarding Re-insurance, that is, the Gross Premiums written, as though you had written them all without Re-insurance, and retained them all without Re-insurance and it had gone through without any relation to Re-insurance. Exhibit 6, however, reflects what actually occurred, that is, your retained premiums, the Loss you had to bear that others do not bear for you. He pointed out that, on Exhibit 6, your actual experience, which includes Re-insurance, that in the seven years 1951 to 1957 you added surplus, after paying all expenses and all losses and loss expenses, everything you had left, was about $1,000,000.00 out of Net Premiums of $2,253,000.00, taking into consideration Re-insurance?

A. Yes.

Q. Whereas on Exhibit 5, disregarding Re-
page 251 } insurance, it indicated a surplus of one and a quarter million dollars?

A. Yes, sir.

Q. And you were asked on that basis if it did not look as if the Company would have been better off if you had not had Re-insurance. You answered that as to what the other things were. I want to know, if, during the period, what was the direct factor of what you actually had left over, what proportion was that of the actual premiums you retained?

A. That is Exhibit 6?

Q. Yes.

A. The balance remaining for surplus is slightly more than twenty-two per cent of the Net Premiums written.

Q. Disregarding Re-insurance, of the total amount, if you had been able to write all that insurance, it would indicate that you would have a surplus of one and a quarter million dollars. What proportion would that be of that total premium volume if you had that premium volume?

A. That would be slightly less than seventeen per cent as compared to the slightly more than twenty-two
page 252 } per cent on the actual basis.

Q. So on the actual basis on which you did Re-insurance, the safety cushion was proportionately or substantially greater?

A. Yes, sir. I think that is a fair statement.

Q. You said, I believe, that you started out with $4,000.00 and $10,000.00 but in the last few years your risk limits, as

determined by kept premium, has been $4,000.00 to $15,000.00?

A. Yes.

Q. How do you determine that, what makes the difference between the $4,000.00 retained of the risks that you write and the $15,000.00 that you retain?

A. On a high class risk like a brick or stone protected building, a dwelling or office building, that has fire protection, we would retain $15,000.00, and on the frame building it would be such, the retained figures are in between the $4,000.00 and the $15,000.00.

Mr. Denny: I submit that this is repetition.

Senator Wicker: I am bringing out a different point.

page 253 } Senator Wicker:

Q. What do you lose, if a risk is offered to the Company, for example, a $20,000.00 risk, on which your Board of Directors has fixed a $10,000.00 risk limit, if you had no Re-insurance? If you lost that insurance, you would lose the $10,000.00 that would go to Re-insurance, and would you lose the other $10,000.00 also?

A. Yes, if a policyholder only wants $20,000.00 of insurance, he would like to have it in one policy, and if the agent wants to write it for $20,000.00, and neither the agent nor the policyholder wants to write it in our Company for $10,000.00 and for another company for $10,000.00, and we lose a certain portion in good will on the part of the agents in doing that.

Q. Some point was raised here earlier in the proceeding that we had not asked about, and that was whether your Re-insurance was automatic, as I gather it, which I think it is relevant for the Commission to know. First, is your Re-insurance proportionate, that is to say, if your Re-insurance nets you roughly on the whole about forty per

page 254 } cent of your total, the grand total of premium volume originally written, does that mean your Re-insurance is forty per cent approximately of every risk?

A. No, sir, it might be ninety per cent on one risk.

Commissioner Catterall: Wasn't your testimony on yesterday correct in regard to this?

A. Yes.

Senator Wicker: I did not recall it was covered.

William H. Marquess.

Senator Wicker:

Q. You were examined by Mr. King and he gave the figures of Total Loss Adjustment Expense to fill in on the nets; to the amount of Loss Adjustment Expense, is that the same, or even in the same percentage or proportion per $1,000.00 of Losses or is the Loss Adjustment Expense sometimes greater in one case than in another case, even though the amount of premium or dollar risk of premium involved is different?

A. The loss adjustments will vary from loss to loss, both upon the amount of premium and the amount of loss. You may spend a considerable amount investigating a loss and find you have no liabliity, so there is no loss, but there page 255 } is a Loss Adjustment Expense, but if you found that the building burned to the ground, you are not going to spend any money investigating that. You are going to pay your losses.

Q. Are your two Re-insurers, the Lloyd Organization and the Maryland National, are each of them solvent?

Mr. Denny: He has testified to that a number of times.

Senator Wicker: I did not ask him if those two Re-insurers were solvent but if his own Company was solvent.

Senator Wicker:

Q. Isn't it generally attested to by the fact that they are licensed in these states; that they are solvent?

A. The solvency of the Maryland National is attested to by the fact that it holds licenses in several states including this one and the Lloyds Organization is considered a solvent corporation throughout the industry.

Senator Wicker:

Q. In your Exhibit 8 which shows the Loss Exhibit Expense separately, Commissions separately and All Other page 256 } Expenses separately, and at the bottom of that exhibit for those years, the seven years 1951 to 1957, there is the total statement of those expenses. Now you were asked, if there was five per cent added, or something else added, what the effect would be, and you were also asked by someone else if you did not get a credit for the amount you received from your Re-insurers for commissions, what the effect would be. I ask you what the effect would be, if you paid your agents no commission at all?

A. The effect would be a saving of twenty-five per cent out

of Acquisition Costs, making it very simple to meet the formula with a plenty of margin.

Q. But if you paid your agents nothing at all, you would do no business at all; that is true?

A. Yes.

Q. Is the same thing true, to a proportionate extent, if you had done business without Re-insurance?

A. I am not sure I follow you. Try me again.

page 257 } Q. Would the same thing be true if you had undertaken to do business without Re-insurance, would the same thing take place, would your premium volume be reduced?

Mr. Elliott: I object to that. He said he did not know if he had not had Re-insurance what it would be.

A. I think at that time we were talking about premium volume, Mr. Elliott. I was. I don't know how far it would go down, and if the operations of the offices would be *carred* on as they are now, and it is impossible to say how much business we would lose if we had no Re-insurance.

Senator Wicker:

Q. You do say you would have substantial losses?

Mr. Denny: The witness said it would be impossible to to say.

Senator Wicker: I think everybody wants to be fair. I don't think we want to leap on one expression. It might be the same if they were to lose the Re-insurance, and I thnik I am entitled to ask his opinion as to whether they would have

page 258 } written a premium volume reasonably as large as the premium volume they have written with the Re-insurance.

Commissioner Dillon: He just said that it would affect the volume but did not know how much.

Mr. Denny: I can imagine no more conclusive statement than the categorical declaration of ignorance of this point.

Witness: May I defend myself? I am confident, if we had no Re-insurance, we would lose forty per cent of our business, because we re-insure that much. How much more than forty per cent I don't know. It would be somewhere between forty per cent and a hundred per cent. I don't think it would be a hundred per cent, but I think it would be more than forty

per cent. Whether you consider that "substantial" or not, I don't know and I would not like to name a figure.

Senator Wicker: As I have said, the Commission had a hearing in 1932 and handed down their opinion in an order in July 1936 approving this Company writing at a deviation at twenty-five per cent. I have a certified copy of page 259 } the order which I would like to offer as Exhibit No. 17.

Commissioner Dillon: That will be received as Exhibit No. 17.

Senator Wicker: I invite attention of the Commission and of counsel to the fact that the order does not specifically mention a figure but refers to the petition and exhibits in the case and I have the file in that case which is Ended File of Case No. 3811 and the bottom part is 5992 which will show in there several pertinent things.

Mr. Denny: Are you offering the file in evidence?

Senator Wicker: Being the Commission's record, I don't know that it needs to be offered in evidence. I want to bring it to the attention of the Commission because on the face of the order it does not say the amount of the percentage. It might be five per cent or two per cent but it refers to the expense and says it is justified and should be had. In the folder I call attention of the Commission to the page 260 } fact—

Mr. Denny: I object to anything in the folder.

Senator Wicker: I will offer it as it is.

Commissioner Dillon: We will take judicial notice of it but can't permit you to offer in evidence our own records.

Senator Wicker: Judge Catterall asked about why we gave the names of all the agents and this file shows that I offered the number before which was fifty when Judge Fletcher, Judge Hooker and Judge Ozlin were on the Bench, and they requested that the names be filed and they were filed, and there was a complete objection to the deviation, showing that it was not a *pro forma* objection but was offered very vigorously but not in as good language, perhaps, as Mr. Denny has presented here, and it will also show that there were numerous exhibits on which the decision hinged, one of which was similar to our Exhibit 8 and Exhibits 6, 8 and 10.

Mr. Denny: Before we come to your next exhibit, I wish

to move that Mr. Wicker's alleged summary as to
page 261 } what may be in Ended Jacket No. 3811 of the
original case No. 5992 may be stricken from the
record.

Senator Wicker: The Commission may take judicial notice of its own records. I do not wish to offer this in this record as a summary of the Commission's decision.

Commissioner Dillon: He has not testified to those facts.

Senator Wicker: Our friend, Mr. Denny, puts in the objection but I have not testified to the facts.

Mr. Denny: Now that it has been pointed out by Mr. Wicker and the Commission agrees, I now withdraw my objection.

Senator Wicker: I did not offer it as evidence. I now offer this and this was brought up from the Clerk's office and purports to be a copy of Administrative Order No. 1133 which is the approved modification from twenty-five per cent to twenty per cent in deviation heretofore granted the Harford County Mutual Insurance Company, which is the same Com-
pany now before the Commission whose corporate
page 262 } is now Harford Mutual Insurance Company.
Commissioner Dillon: That will be received as
Exhibit 18.

Mr. Denny: Does the applicant rest its case?

Senator Wicker: Yes, sir, temporarily at least.

Mr. Denny: If you have something more to put on before we proceed, I would like to hear it now.

Senator Wicker: I know of no further evidence at this juncture. If any necessity comes up for our putting on anything further I suppose you will want me to put it on. We have nothing to hide.

Mr. Denny: I never understood that when you rest your case you will be allowed to put on further evidence.

Commissioner Dillon: Let's proceed now and see what comes up later.

Mr. Denny: I ask to place in the record the Grounds of
my objection to evidence and in order to make the
page 263 } record clear. Judge Catterall said he thought he
could show me where the Supreme Court had held
it was not necessary and he gave me at the luncheon recess the citation with which I was familiar that before the Commission it was not necessary to note an objection. Whether that is the same as a ruling that you did not have to state the reasons for your objection, I am not willing to run that risk. I ask, therefore, to be allowed to state my Grounds

of Objection to the ruling of the Commission in order to complete the record.

Senator Wicker: Would a concession on my part be satisfactory?

Mr. Denny: I do not understand that you concede anything involved in the Court of Appeals. I do not want to run the chance of anything that was violative of Rules of the Court of Appeals.

Senator Wicker: All right.

Mr. Denny: My grounds are these:

page 264 } The Commission has allowed the applicant to file a number of exhibits on the grounds solely of their relationship to Re-insurance, and after taking all Re-insurance into consideration. The bases of the Re-insurance of this applicant are these two contracts. Without those two contracts the applicant has no Re-insurance. Those contracts are not such contracts that, under the Law of Virginia would come under the supervision and regulation of this Commission. I think it became very apparent from testimony of this witness that they are not subject to the Insurance Department of Maryland.

Since the basis on the position of the applicant for this deviation includes taking into consideration Re-insurance, we are entitled to have in this record the basis of its right to have Re-insurance, namely, the contract and the basis of the Re-insurance cannot be known unless we have that contract and know the privileges of cancellation on that contract.

I am obliged to you for giving me the opportunity to state my Grounds of Objection.

page 265 } Senator Wicker: I think I should have a right to state into the record that we have not founded our case on Re-insurance; we have founded our case on the actual five years or more involved here in the State and including and recognizing Re-insurance, and have not founded our case in any way on continuation of Re-insurance in the future. That may or may not continue.

If the granting of our case was dependent upon our Re-insurance in the future, then the question of whether we had a valid contract might then come in as to the past, but as to the future when we have testified to the actual result here in Virginia and show that that is the basis of our case. Consequently, we say that the contents of the contract are not only irrelevant because it is a private contract, the contents of which should not be divulged to other parties because of the

private nature and we feel that our past speaks for itself.

Mr. Denny: I care to make no remarks about that. This is the first time I have ever heard a statement of that kind, but I would like to make a motion. My motion is this: I move that there be stricken from this testimony page 266 } all testimony or exhibits that relate to results after taking the insurance in consideration. My motion is based on two grounds, first, the Commission has ruled that the Re-insurance contract is not admissible and if the contract be inadmissible, results brought about by this contract are not admissible.

Secondly, under the statutes and the rulings of this Commission, you have always viewed a deviation from the point of view of gross premiums written, gross expenses, and never, so far as I can find, in your whole existence allowed a deviation on results after Re-insurance, after taking Re-insurance into consideration.

I qualify that last statement by the fact that I am not familiar with every one of your Administrative Orders, I may not be familiar with every one of your written opinions but I have tried to familiarize myself with all that related to the Virginia Insurance Rating Bureau and I have found no written opinion relating to a deviation where it page 267 } is indicated that results after Re-insurance have the slightest importance. I know of no Administrative Order where deviations were allowed on the basis of results after taking Re-insurance into consideration.

My motion, therefore, is on the double ground—

(1) That you have admitted this evidence and decline to admit the Grounds on which this Re-insurance is based, namely, the contracts.

(2) On the uniform ruling of this Commission from its very beginning, as stated in this letter of February 26, 1956 from the Bureau of Insurance, you allowed deviations only on the basis of the Loss Expense.

Senator Wicker: Does the Commission care to hear from me as to that? I am prepared to go ahead very thoroughly on that point.

Commissioner Dillon: We will take that motion under advisement.

Senator Wicker: So that you will have a few words on our

side, I will state four facts. Mr. Denny says that
page 268 } he knows of no ruling in all the years where you
have granted the deviation on the basis of Re-insurance, and I can challenge him on the other side of granting a deviation or refusing a deviation and saying that it is not recognized.

Mr. Denny: My answer is this. I know of no case, indeed this is the only case I know of in the whole history of Virginia, where it has been stated that Re-insurance is of any importance in a deviation.

Senator Wicker: I will invite the Commission's attention and invite Mr. Denny's attention to this Case 5992 of this very Company when its precedessor counsel for the Virginia Insurance Rating Bureau strongly objected to the granting of the deviation, and when it was granted, it was granted on the basis of the exhibits, and you will find exhibits of the type very closely paralleling the ones we have introduced in this case, that is reflecting the Re-insurance. So that if Mr. Denny wants to find a record granting a deviation with Re-
insurance considered he has only to look at this
page 269 } case.

Commissioner Dillon: We are going to take that motion under advisement.

Mr. Denny: We do have some evidence.

Commissioner Dillon: We will take your motion under advisement and you can proceed to put on your evidence.

Witness stood aside.

page 270 } JOHN T. COVER,
a witness introduced on behalf of Virginia Insurance Rating Bureau, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Denny:

Q. State your name, age and occupation.

A. My name is John T. Cover, age forty-four years. I am Rate Analyst for the Bureau of Insurance.

Q. Of the State Corporation Commission?

A. Yes.

Q. How long have you occupied that position?

A. Since December 15th, 1957.

Q. Mr. Cover, did you verify certain figures that I handed

you in the form of an exhibit, and under the title of "Application of Virginia Rating Formula to Business Written by The Harford Mutual Insurance Company in State of Virginia for Years 1952-1956"?

A. Did you ask me if I verified it?

Q. Did you verify it, or are you familiar with those figures?

A. Yes, sir, I am.

Mr. Denny: I should like to file that as Exhibit
page 271 } No. 19.

Commissioner Dillon: Exhibit No. 19 will be received.

Mr. Denny:

Q. Now, Mr. Cover, the top line shows the Direct Premiums Written in the years 1952, 1953, 1954, 1955 and 1956. I wish to hand you a copy of Exhibit 12, which has been filed in this case, and which is the exhibit The Harford Mutual Insurance Company sent to the Commission. I will ask you if the direct premiums written in the years 1952, 1953, 1954, 1955 and 1956 on Exhibit 19 are the same as shown on Exhibit 12?

A. Yes, sir.

Q. I will ask you whether the Bureau of Insurance, in determining that a company be entitled to a twenty per cent deviation from Manual rates, has considered that it must make available for losses 65.6 per cent of the deviated premium, which would be the same as 52.5 per cent of the one hundred cent premium; is that correct, sir?

A. Yes, sir.

Q. The second line then shows the amount under the formula which should be allocated for losses where
page 272 } the business is written on a twenty per cent deviation; is that correct?

A. That is correct, sir.

Q. The third line is simply a subtraction and shows the amount then left for Expense; is that correct?

A. That is correct.

Q. And the fourth line Expenses Actually Paid, $376,191 in the year 1952, are, I believe, the sum total of the expense items shown on Exhibit 12, namely Loss Adjustment Expenses, Acquisition expenses, other expenses, taxes, licenses and fees: are they not?

A. They are.

Q. The next line then shows the Deficit from the operation

John T. Cover.

of Virginia business, after making provision for losses which will be incurred as the result of those actual expenses; does it not?

A. That is right.

Q. The next line shows an allowance of five per cent of the premiums?

A. That is right.

Q. And the next line "Formula Total Deficit" shows the total deficit that would be experienced in each of these years in the five year period on writings on a twenty per

page 273 } cent deviation basis, and making provision, according to the formula, for losses, and making provision for five per cent profit?

A. Yes, sir.

Q. And is the correct amount in each of the years, 1952, 1953, 1954, 1955 and 1956, even without any five per cent for profit, is there a deficit in the required for losses, even without any five per cent?

A. That is correct.

Q. Have you had available to you for study a similar statement on Countrywide basis?

A. Yes, sir, I have.

Mr. Denny: I would like to offer this as Exhibit No. 20.

Commissioner Dillon: It will be received as Exhibit No. 20.

Mr. Denny:

Q. Looking at the exhibit the Direct Premiums Written Countrywide are taken from the Direct Premuims Countrywide, as shown on Exhibit No. 12?

A. Yes.

Q. And you have made the same adjustment because of the twenty per cent deviation?

page 274 } A. Yes, that is correct.

Q. And you show the amount left for expenses?

A. Yes.

Q. And the expenses actually paid on your Exhibit 20 are the total of the five expense items shown on Exhibit No. 12?

A. That is correct.

Q. Leaving in every year, as I look at Exhibit 20, a deficit outside of any consideration for profit?

A. Yes.

John T. Cover.

Q. And, of course, a very large deficit after the five per cent consideration for profit is made; is that correct?

A. That is correct.

Q. Thank you, sir. Have you had available to you an exhibit entitled "Calculations Showing Results of Writings for years 1952-1956 of The Harford Mutual Insurance Company under the Virginia Formula for Varying Per cent Deviations"?

A. I have.

Mr. Denny: I would like to offer that as Exhibit No. 21.

Commissioner Dillon: It will be received as Exhibit No. 21.

page 275 } Mr. Denny:

Q. Turning to your Exhibit No. 21, Mr. Cover, as first shown here, what would be the situation using a ten per cent deviation—you show Direct Premiums Written in Virginia of $5,365,311—that is the exact figure of those Direct Premiums Written in Virginia, shown by Exhibit 12, which was furnished you by the Company?

A. That is correct.

Q. Now, the Virginia Permissible losses of 58.3 per cent of the premiums, in other words, the 52.5 per cent of the hundred cents dollar, were the same amount as the 58.3 per cent of the ninety cent dollar?

A. Of the ninety cent dollar.

Q. So that under our formula if Direct Premiums are $5,365,311, you must make available for losses $3,127,976; is that correct?

A. That is correct.

Q. That leaves available for expenses $2,237,335; does it not?

A. It does.

Q. Now the actual expenses in Virginia, $1,-
page 276 } 950.363, are the expenses as shown on Exhibit 12, which was furnished by the Company to you; is that correct?

A. That is correct.

Q. That would leave a profit of $286,972, or a percentage of profit of 5.3 per cent; is that correct?

A. That is correct.

Q. Now have you computed, or have you here computed,

on the same basis what would be the result on a fifteen per cent deviation and a twenty per cent deviation?

A. Yes, sir. It is figured below the ten per cent deviation.

Q. And on the fifteen per cent deviation there would be available for profit 1.85 per cent?

A. Yes, sir.

Q. And on the twenty per cent deviation, the one for which this Applicant is asking, there is nothing for profit, but a two per cent loss; is that correct?

A. Yes, sir.

Q. Have you also a similar exhibit prepared
page 277 } on a Countrywide basis?

A. Yes, sir.

Mr. Denny: I should like to offer that as Exhibit No. 22.

Commissioner Dillon: It will be received as Exhibit No. 22.

Mr. Denny:

Q. Now, Mr. Cover, on a Countrywide basis on a ten per cent deviation, the percentage of profit would be 2.9 per cent of premiums?

A. Yes, sir, on a ten per cent deviation.

Q. On a fifteen per cent deviation, there would be no profit but a loss of six tenths of one per cent of premiums?

A. That is correct.

Q. And on a twenty per cent deviation on Countrywide basis the loss would be 4.4 per cent of premiums?

A. That is correct.

Mr. Denny: Thank you, Mr. Cover.

Commissioner Dillon: Any cross examination, Senator Wicker?

Senator Wicker: Yes, sir.

page 278 } CROSS EXAMINATION.

By Senator Wicker:

Q. On these calculations and these exhibits you have just put in and testified to, it is true that in each one of them you have shown in one place or another a consideration of five per cent for profit?

A. That is correct.

Q. It is also true that the figures on which Exhibits 19, 20, 21 and 22 are based are on the basis of the gross business

in this line in Virginia and Countrywide written by Harford Mutual, completely ignoring re-insurance, sale or transfer of any risk?

A. Yes, sir, that is my understanding.

Q. And likewise those exhibits do not take into account any of the monies received by Harford Mutual through re-insurance either for Losses or Loss Adjustment Expense, or Commission, that is correct, of course?

A. Yes, sir.

page 279 } Commissioner Dillon: Do you have any questions, Mr. King.

Mr. King: I have no questions.

Commissioner Dillon: Mr. Elloitt?

Mr. Elliott: I have no questions.

Mr. Denny: I think we have come to the usual hour that the Commission recesses. Whether I will put on any further evidence is to be determined by something I want to find out, so if the Commission will recess now, I will be able to tell when we return.

Commissioner Dillon: Mr. Cover, you may stand aside.

Witness stood aside.

Commissioner Dillon: 3 P. M. The Commission will recess for five minutes.

3:10 P. M. The Commission resumes its session.

Mr. Denny: The Virginia Insurance Rating Bureau rests.

Mr. Elliott: I would like to put Mr. Harris on the stand for one or two questions.

Commissioner Dillon: Come around Mr. Harris.

page 280 } COURTENAY W. HARRIS,

a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Elliott:

Q. State your name please.

A. Courtenay W. Harris.

Q. And in what capacity are you employed by the Commission?

Courtenay W. Harris.

A. I am Deputy Commissioner of Insurance.

Q. In what section or office of the Commission?

A. I am Chief of the Rate Regulatory Section of the Casualty and Surety, property casualty and surety.

Q. Does that include Fire and Allied Lines?

A. Yes, sir.

Q. Have you been handling the rates for these lines for some years?

A. Since 1937.

Q. Is it part of your duty to receive and review figures submitted by companies writing fire and allied
page 281 } lines where such companies seek a deviation from the fire insurance rates established by the Commission from time to time?

A. Yes, it is.

Q. And was the application for the deviation in this case handled under your supervision and direction?

A. It was.

Q. I wish you would state to the Commission whether in your consideration of the applications for deviation, you have ever taken into consideration the underwriting results of applicants in Virginia or Countrywide after considering reinsurance?

A. I have not in recent years. We may have in past years when we had no formula.

Chairman Hooker: Has the question ever been presented to you?

A. I don't know. I can't recall.

Chairman Hooker: It has never been presented to the Commission.

Mr. Elliott:

Q. In passing upon the deviation applied for in this case in the letters which are Exhibits 12, 14 and 15, written to the Company either by you or Mr. Cover, under
page 282 } your direction or supervision, did you give consideration only to the figures shown in Exhibit No. 12?

A. That is correct.

Q. And is that the normal and usual manner in which these deviations are handled?

A. That is correct.

Courtenay W. Harris.

CROSS EXAMINATION.

By Senator Wicker:

Q. How long have you been in charge of deviations, Mr. Harris?

A. Since 1937.

Q. So you came one year after the contested case referred to here?

A. I came in October 1937.

Q. That was over a year after the hearing in that matter on the deviation?

A. I was not here at that time.

Q. Mr. Marquess testified that this Exhibit 12 that they sent in came, I believe, from the Bureau attached to a letter with the request to fill it out, but that the format, including all the heads and headings, particularly the word

page 283 } "Profits" was set out on the form. That is correct, is it not?

A. No. We tried to avoid using a fixed form as long as we could, but we found that companies were lumping certain things together that should be separated, and I finally came to the conclusion that they should be separated. We particularly wanted to get the commission separated.

Q. Mr. Marquess was correct in stating that the form was made out by you and they only supplied the figures?

A. That is correct.

Q. He also stated that he thought that the taxes were already in there at the three per cent?

A. Yes, sir. That was the figure in the North America opinion, and the rate of premium tax, or property tax, is two and three quarters per cent, and the assessment of two tenths of one per cent for the Bureau of Insurance, to which is added the charge for license; so we felt three per cent is very good to have the figure fixed at that.

Q. I just wanted to verify why it was put in.

A. I put it in after the North America case.

page 284 } Q. The main thing it was put in by the Bureau and sent to the Harford Mutual Insurance Company?

A. I put it in and sent it out.

Q. In considering whether the Company was entitled to a deviation, and if so how much, I believe one of your letters stated that no consideration had been given in the past, and none would be given in the future, to losses?

A. That is correct.

Courtenay W. Harris.

Q. And that it was based solely on expense experience?
A. Yes, sir.
Q. What about the situation of a company applying for a deviation where its expense conformed fully to the so called formula, amplified; in other words, the expenses were way below the expense allowance set forth in this letter sent out, even if you added five per cent for profit, it was way below, but they had tremendously heavy losses, so that on their total business year in and year out in the preceding five years, their losses and expenses exceeded their total premium; what would you do?
page 285 } A. It would give the Company an underwriting loss?
Q. Yes. When I talk about losses I am talking about underwriting losses.
A. That has happened.
Q. It is happening today?
A. I could not say offhand. I know one large automobile writer whose losses ran eighty to eighty-five per cent, which for a five year period ran a five per cent loss, but they rectified that, but I think that is one reason for holding deviations to Expense.
Q. My question is what you would do in an application for a deviation of a company that met this formula fully, the formula they are referring to, the formula applied in the stock company case of the North America, that formula providing 52.5 per cent for losses and conflagration?

Mr. Denny: I submit the proper question is "Have you had an instance or application for deviation" and not what would be the ruling of the Commission on a case never before it.
Senator Wicker: I want to ask him what he
page 286 } would do.
Commissioner Dillon: Restate your question.

Senator Wicker:
Q. Mr. Harris, you state that you have passed on these deviation applications for a number of years, and that your decision was based on, as stated in the letters introduced by Mr. Elliott or Mr. Denny that were sent out to the Company, that no consideration would be given to losses. I am asking you where the expenses are well within the formula sent out in your letter, within and below, even including the five per cent "profit," so called, but it came to your attention that the losses were so great that when they were compared with

expenses, they were greater than the premium, would you consider or not consider losses?

A. The granting of a deviation is not a statutory matter. It lies within the discretion of the Commission to deny a deviation whether the expenses are below or above the formula. If any company applies for a deviation and it looks like the company is operating in the red, the matter would be taken up with the Commission. I have not had

page 287 } anything to arise like that, but it would certainly be taken up.

Q. The Commission is not hidebound to what you have testified to along that line?

Mr. Denny: I object to that. Are we testifying as to the thoughts of the Commission?

Commissioner Dillon: Your objection is sustained.

Mr. Denny: My objection is sustained?

Commissioner Dillon: Yes.

Senator Wicker:

Q. What has been the practice? Has it been the practice to consider anything but expenses, do they consider other relevant factors mentioned in the statute?

A. My theory of granting deviations is this: that a deviation is a departure from something that exists. The Commission has established a method of computing rates that is on losses incurred and expenses incurred and commissions and other expenses incurred, including taxes and profit, and my feeling is that the deviation should be on the same basis.

Q. Your conception is that an insurer that

page 288 } has no Re-insurance and has its risks all concentrated in one place and may suffer heavy losses thereby, should not be regarded any differently from a company with a low retention limit and no concentration and with adequate Re-insurance, that both of them should be treated the same way under your conception?

A. Will you read the question please, Mrs. Wootton?

Note: Question read as follows:

Q. Your conception is that an insurer that has no Re-insurance and has its risks all concentrated in one place and may suffer heavy losses thereby, should not be regarded any differently from a company with a low retention limit and no concentration and with adequate Re-insurance, that both of

them should be treated the same way under your conception?

A. The company without Re-insurance may be on a sounder basis than the company that has Re-insurance, depending on the underwriting policy of the individual company.

Q. How do you determine underwriting policy? Isn't that judged a good deal by losses?

page 289 } A. Not necessarily.

Q. It is done mostly by judging losses?

A. And the underwriting policy of the company.

Q. And you can't, in judging whether a company is good or bad, you just can't regard just the losses?

A. No.

Q. But, assuming the underwriting was the same, of equal quality and they had equal value of insurance, each company having equal volume of insurance, and one company has its risks concentrated with no Re-insurance whatsoever and a high individual risk, and the other company has its risks spread far and wide with no concentration and with very low retention of risks, and with adequate Re-insurance, do you consider those companies would be on a par?

Mr. Denny:

Q. I thought I understood you to say that, so far as you could recall we had never had an instance where a company had a very high loss ratio but a low expense ratio, the final results being underwriting loss had applied for a

page 290 } deviation; is that correct?

A. That is correct.

Mr. Wicker:

Q. How about Harford Mutual, they have applied here year in and year out ever since they have been in Virginia?

A. As I understood, Mr. Denny was asking about the company having continued underwriting losses. On the matter of Re-insurance, that can affect expense both ways. Your Company is exceptional in that it only cedes Re-insurance. There are companies that have almost as much Re-insurance as their direct business and in that case instead of being a credit to their commission, it runs it up, and if your Company had as much business as it has ceded, it would be a different matter, so if you get into the question of Re-insurance, I don't know where we would go in that matter.

Q. And as in the matter of the case mentioned by Mr.

Courtenay W. Harris.

Denny, the Insurance Company of North America, they take on about twenty per cent more risks than their direct writing?

A. I checked them this morning. They had page 291 } direct commissions of $28,000,000.00. They paid for Re-insurance they bought $18,000,000.00. You receive for Re-insurance that you ceded $4,000,000.00, so you have exactly the opposite of that Company.

By Mr. Elliott:

Q. Along that line, are there also instances where the operation from Re-insurance completely washes out all commissions and practically all expense?

A. I know of one company, yes, sir, as a matter of fact, I used to work for them.

Q. What company was that?

A. The Merchants and Businessmen's Insurance Company of Harrisonburg, Virginia.

Witness stood aside.

Commissioner Dillon: Is that all?

Mr. Elliott: I have no further evidence.

Commissioner Dillon: The Commission will take this case under advisement.

Senator Wicker: Does the Commission wish to hear argument?

Commissioner Dillon: Not unless you all want page 292 } to argue it.

Mr. Denny: I think the case was very fully argued in the opening statements.

Commissioner Dillon: We don't care to have arguments.

The case is taken under advisement.

page 293 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 9, 1958.

APPLICATION OF

HARFORD MUTUAL 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. 13878.

THIS PROCEEDING was heard by the Commission on May 14, 1958 and taken under advisement. The applicant was represented by John J. Wicker, Jr., 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, the Virginia Farm Bureau Mutual Insurance Company by Alden Flory, and the Commission by its counsel.

NOW ON THIS DAY a majority of the Commission, Chairman Hooker dissenting, for reasons stated in a memorandum attached to this order and made a part hereof 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 filed herewith 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 Harford Mutual 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 as to be justified by it;

(2) There appearing nothing further to be done
page 294 } 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 295 } 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 policyholders.

page 296 } 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 as a result of
page 297 } 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 298 } 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 299 } 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 300 } 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 page 301 } only. This is contrary to the long well-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 non profit.

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 302 } 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	210,372.69	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%
Premiums Savings to Virginia Policyholders $3,382,765.82

page 303 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 18, 1958.

APPLICATION OF

HARFORD MUTUAL 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. 13878.

Harford Mutual 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	Virginia premiums and losses.
2	Virginia agencies.
3	Map. Virginia agencies.
4	Brief history of Harford Mutual.
5	Virginia experience, 1951-1957, disregarding reinsurance.
6	Virginia experience, 1951-1957, recognizing reinsurance.
7	Graphs. Virginia experience, 1951-1957, disregarding and recognizing reinsurance.
8	Virginia Experience, 1951-1957, recognizing reinsurance.
9	Annual Statement, The Harford Mutual Ins. Co., 1957.
10	Virginia experience, 1953-1957, recognizing reinsurance.
11	Order of the State Corporation Commission dated Oct. 4, 1957, in Case No. 13556.
12	Countrywide fire and allied lines expenses, 1952-1956.
12A	Virginia fire and allied lines expenses, 1953-1957.

13	Letter, February 21, 1958.
14	Letter, February 26, 1958.
15	Letter, March 21, 1958.
16	Letter, December 6, 1957, and incidental letters.

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17	Order of the State Corporation Commission, dated July 29, 1936, in Case No. 5992.
18	Administrative Order No. 1133 of the State Corporation Commission, dated March 14, 1947.
19	Application of Virginia rating formula to business written in Virginia, 1952-1956.
20	Application of Virginia rating formula to business written countrywide, 1952-1956.
21	Results of writings in Virginia for years 1952-1956 for varying percentage deviations.
22	Results of writings Countrywide for years 1952-1956 for varying percentage deviations.

A True Copy.

Teste:

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

page 305 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

CERTIFICATE.

Pursuant to an order entered herein on December 18, 1958, the original exhibits listed therein are hereby certified to the Supreme Court of Appeals of Virginia, to be returned by the Clerk thereof to this Commission with the mandate of that Court.

It is further certified to the Supreme Court of Appeals of Virginia that the foregoing transcript of the record in this proceeding, with the original exhibits, contains all of the facts upon which the action appealed from was based, together with all of the evidence introduced before or considered by this Commission.

Witness the signature of H. Lester Hooker, Chairman of the State Corporation Commission, under its seal and attested by its Clerk this 19th day of December, 1958, at Richmond, Virginia.

H. LESTER HOOKER
Chairman.

Attest:

N. W. ATKINSON
Seal Clerk.

CERTIFICATE.

I, N. W. Atkinson, Clerk of the State Corporation Commission, certify that within sixty days after the final order in this case Harford Mutual Insurance Company, by John J. Wicker, Jr., Counsel, Mutual Building, Richmond 19, Virginia, filed with me a notice of appeal therein which had been delivered to Collins Denny, Jr., and Claude Minor, Travelers Building, Richmond 19, Virginia, William H. King, Mutual Building, Richmond 19, Virginia, Alden E. Flory, 212 West Grace Street, Richmond, Virginia, opposing counsel, to Counsel for the State Corporation Commission, and to the Attorney General of Virginia, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

Subscribed at Richmond, Virginia, December 19, 1958.

N. W. ATKINSON
Clerk.

* * * * *

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
JUL 8 1959
RECEIVED
RICHMOND, VIRGINIA