

INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

HEARINGS

BEFORE THE

TEMPORARY NATIONAL ECONOMIC COMMITTEE

CONGRESS OF THE UNITED STATES

SEVENTY-SIXTH CONGRESS

FIRST SESSION

PURSUANT TO

Public Resolution No. 113

(Seventy-fifth Congress)

AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO
MAKE A FULL AND COMPLETE STUDY AND INVESTIGA-
TION WITH RESPECT TO THE CONCENTRATION OF
ECONOMIC POWER IN, AND FINANCIAL CONTROL
OVER, PRODUCTION AND DISTRIBUTION
OF GOODS AND SERVICES

PART 10 - 10 A LIFE INSURANCE

INTERCOMPANY AGREEMENTS
TERMINATIONS
SAVINGS BANK INSURANCE
LEGISLATIVE ACTIVITIES

June 6, 7, 12, 13, 14, 15, 16, 20, and 21, 1939

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The CHAIRMAN. May I ask you, Mr. Cammack, what, in your opinion, is the protection of the public interest in this system that you have described?

Mr. CAMMACK. Well, I don't think there can be any doubt about the accuracy.

The CHAIRMAN. That is aside from the question. Does the result not depend upon the accuracy of the representation that you make?

Mr. CAMMACK. It depends upon the experience and the accuracy with which it is compiled.

The CHAIRMAN. And there is no check of those representations by anybody on behalf of the public?

Mr. CAMMACK. I think, Senator, it would be impossible to do anything except what we do; if the insurance department itself compiled the experience, it could do nothing but ask for the data that we prepare.

The CHAIRMAN. Do you submit these data under oath, let us say?

Mr. CAMMACK. No; we do not.

The CHAIRMAN. So that it all depends upon the good faith and accuracy of the association in submitting this material to the superintendent. Is that not so?

Mr. CAMMACK. Well, Senator, it seems to me to be impossible that these results could be inaccurate, or deliberately inaccurate.

The CHAIRMAN. And there is no check in the public interest of that information.

Mr. CAMMACK. Well, they'd have no protection if the experience was not accurately and honestly compiled.

The CHAIRMAN. That is the only protection they have, isn't it? I don't know why you should be unwilling to answer.

Mr. CAMMACK. I will answer that, but it seems to me the protection is enough.

The CHAIRMAN. Ah, but that is the only protection there is.

Mr. ARNOLD. May I approach it from a slightly different angle? I presume you would say that the accountants for public utilities are on the whole just as honest and acting in just as good faith and are just as accurate as insurance actuaries.

Mr. CAMMACK. I must admit I know nothing about public utilities, but I expect the accountants are honest people.

Mr. ARNOLD. You wouldn't mind making that assumption for the moment?

(Mr. Cammack nodded his head in the affirmative.)

Mr. ARNOLD. Now, would you be satisfied with a public-utility rate which was determined entirely upon consultation with the account-

ants of the public-utility companies and on which the public-utility commissioner exercised no independent judgment?

Mr. CAMMACK. I don't think the cases are analogous.

Mr. ARNOLD. Would you be satisfied with it?

Mr. CAMMACK. No; no.

Mr. ARNOLD. Therefore, it must be, if there is a difference, that there is some sacrosanct character to insurance actuaries which doesn't exist with public utilities.

Mr. CAMMACK. No; the only part the actuary plays in this is to compile the mortality experience. All I want to say is that one

may be able to do.

Mr. GESELL. You have another rule that fixes uniform commissions to salesmen. Why should they be uniform?

Mr. CAMMACK. Because it is for the protection of the public.

Mr. GESELL. How?

Mr. ARNOLD. You think that the insurance company is one of those instances which runs better by a rate fixing agreement than by a competitive arrangement?

Mr. CAMMACK. I don't think we fix our rates. I think the rates are fixed at the end of the year.

Mr. HENDERSON. I understood your answer to Mr. Gesell was that it would be very disorganizing. He suggested, did you not, Mr. Gesell, that it might be possible that the low expense company would get a larger part of the underwriting?

Mr. GESELL. One result of this transfer rule, Mr. Cammack, is to keep this business which has been accumulated by the big five or six companies in their hands and prevent it from being taken away from them by some independent company which is out writing insurance at lower rates and is not governed by the restrictions of your association.

CONCENTRATION OF ECONOMIC POWER

4205

Mr. HENDERSON. Do you mean no complaint or no recourse?

Mr. CAMMACK. No recourse.

Mr. HENDERSON. It has complaint, I would gather from the testimony of the previous witness, in which you were a little bit involved as a bad boy.¹ Am I not correct in that? It is not complaint you are talking about. It has no legal recourse. It has recourses that are either extra-legal or non-legal.

Mr. CAMMACK. No.

Mr. GESELL. But as a practical matter all of the companies do follow these uniform rates, do they not?

Mr. CAMMACK. That is right.

Mr. GESELL. Has there been some effort to conceal the activities of fixing those uniform rates? Am I to gather that from the fact that there is no record of it in those minute books?

Mr. CAMMACK. The constitution of the association provides that we cannot fix rates, so that it has been done informally through committees that have recommended rates on the basis of the experience compiled.

MR. GESELL. You were afraid your rate-fixing activities would be unconstitutional, is that it, so you kept them on the side.

MR. CAMMACK. I wouldn't say that. I think some companies feel that it was perhaps dangerous.

MR. GESELL. Dangerous from what point of view?

MR. CAMMACK. For myself, I could never see there was anything illegal in promulgating rates.

MR. GESELL. What did they think was dangerous about it?

MR. CAMMACK. I can't tell you, Mr. Gesell, because I was not one of them.

MR. ARNOLD. Was the specter of the antitrust laws raised?

MR. CAMMACK. I think so, that is right.

MR. ARNOLD. And that while you don't think it is dangerous, still there is no object in sticking your neck out, and therefore it is a good thing to put these in an informal meeting.

MR. CAMMACK. Personally I didn't think we were violating any

MR. HENDERSON. You would have a little difficulty in convincing people that unless there is competition in rates there is real competition, wouldn't you?

MR. CAMMACK. The competition is on the net rate that the policyholder will have to pay at the end of the first and subsequent years.

MR. ARNOLD. You did think, however, that you were getting an advantage by your conduct in 1924, which was subsequently stopped, didn't you?

MR. CAMMACK. Yes, sir.

MR. ARNOLD. And that kind of competition is competition that hurts, as appears from the meeting, isn't it?

MR. CAMMACK. I don't know how important that was.

MR. ARNOLD. It hurt. It shocked the representatives of John Hancock.

MR. HENDERSON. There was a difference there that took some business. Wasn't that it? Isn't that the thing that determines whether competition exists?

MR. CAMMACK. I am sorry I can't testify about that. I don't know the case; I don't know whether we really wrote business under that plan, or whether it was just hearsay.

MR. FRANK. The letter shows you did, and it says the measures which were necessary to whip the matter into shape, which included, according to the letter, your being badly chastised [reading from "Exhibit No. 647"]:

left some of the weaker members, such as the Connecticut General and Missouri State, at the point where they were hinting at getting out of the conference in order to enjoy cut-rate opportunities.

MR. FRANK. Mr. Cammack, I am puzzled about one thing. You say the competition comes in the net amount determined at the end of the year, but that, at the time a company is soliciting insurance the net amount is not yet known to the purchaser, and no matter what company he goes to, he will be met with the same initial rate, so that

he can't know, in his own mind, at the time he buys, whether he will do better with one company than another. Is that correct?

Mr. CAMMACK. That is true; he doesn't know.

Mr. FRANK. Then there can't be much competition at the time of purchase when he cannot ascertain until a year later whether he is getting an advantage by going to one company rather than another.

Mr. CAMMACK. I think there is keen competition, because your buyer demands illustrations from every company that is competing for the business of what that company has been able to do for other policyholders of like size in the same industry, and the company that can show the best record has the best chance of writing the business.

Mr. FRANK. Then why don't you let that differentiation between companies manifest itself at the beginning of the year in a difference of rate based upon the experience, as is done in other competitive industries?

Mr. CAMMACK. I am afraid that you would have uniform rates then, because if one company reduced its rate 10 percent all the other companies would do likewise.

Mr. GESELL. What about the actuaries? Wouldn't they stop that? Isn't that what the actuary is meant to do?

Mr. CAMMACK. No; I don't think so. I think the actuary is one to determine a rate that was adequate for most risks, that would be inadequate for some, that was not excessive, and that should be adjusted at the end of the first year so that equity could be given to the policyholder.

THE CHAIRMAN. Are there any other questions?

Dr. LUBIN. I wanted to ask, Mr. Cammack, with regard to these rules and regulations for group life, formulated in June 1938,¹ who formulated these rules, a subcommittee of the association?

Mr. CAMMACK. My memory won't allow me to answer that question.

¹ See "Exhibit No. 658," appendix, p. 4711.

² Ibid.

Mr. CAMMACK. I don't know what the practices of the companies are, but take the rules where we pay no commission on transferred cases. I believe the rules do not bind a member of the association to pay no commission on a case transferred from a nonmember company. I think some of the companies refuse to pay a commission. I don't know what the practice is, Mr. Gesell.

Mr. CAMMACK. Well, the fundamental difference is that we do not determine our price until the end of the year. I keep repeating that, but I must because that is the fundamental difference.

that, but I must because that is the fundamental difference.

Mr. HENDERSON. I keep repeating that that is not competition within the terms of understanding of the American people.

Mr. CAMMACK. I think that the object of competition is to protect the public from exorbitant prices.

Mr. HENDERSON. That is right, and the public expects that the competition will take place when a thing is bought.

The CHAIRMAN. Certainly, so that it comes down actually to the fact that you yourself fix the rate which was promulgated by the State authority, so I am asking you, Is that a desirable system or is it not?

Mr. CAMMACK. I think it is a very satisfactory system.

The CHAIRMAN. Well, then, assuming that you have been acting with the utmost accuracy and the utmost good faith, it amounts to a declaration that so far as group insurance is concerned, therefore, the experts of 19 companies should be permitted to establish the rule which the 105 must needs follow.

Mr. CAMMACK. It seems to me the superintendent of New York State can change those rates.

The CHAIRMAN. Ah, but he doesn't, you testified, because he has no opportunity to do so, and he has no machinery by which he conducts the investigation.

Dr. LUBIN. One more question. Mr. Cammack, do you remember the date of the formation of your association?

Mr. CAMMACK. I think it was in 1926; I don't recall.

Dr. LUBIN. Off-hand, do you remember at what time of the year?

Mr. CAMMACK. No; I don't.

Dr. LUBIN. Do you remember the date on which the New York insurance law was amended, and article II, section 101a, was inserted?

ORDINARY INSURANCE

Mr. GESELL. I am, Mr. Chairman. The first witness this morning will be Mr. Flynn. I might say that yesterday we considered group insurance of various forms. This morning we will consider ordinary life insurance and present testimony with respect to agreements reached by certain companies controlling the rates of ordinary life insurance.

¹ See Hearings, Part VIII, p. 3366.

Mr. GESELL. Will you tell us in a general way what the various factors involved in computing a nonparticipating rate are? Am I correct in saying that there are three basic factors, the computation of the expected mortality experience, the interest rate which the com-

the expected mortality experience, the interest rate which the company will guarantee on the contract, and the loading or amount which

¹ For above information see supplemental data, appendix, p. 4929.

4228

CONCENTRATION OF ECONOMIC POWER

is added to the net premium to cover expenses which are expected will be incurred in connection with the handling of the policy?

Mr. FLYNN. That is correct.

Mr. GESELL. You have three basic things, then, which you determine in computing a nonparticipating rate—mortality, interest, and loading or expense.

Mr. FLYNN. Right.

Mr. GESELL. The responsibility of fixing rates for any particular company rests upon the actuary?

Mr. FLYNN. Yes, sir.

Mr. GESELL. He must, by his calculations, attempt to anticipate what interest will be earned, what mortality rate will be expected, and what expenses or loadings will be incurred?

Mr. FLYNN. Correct.

Mr. GESELL. That is entirely a matter which relates to the operations of his own company insofar as the expense factor is concerned, is it not?

Mr. FLYNN. Yes; he will base his rates, so far as possible, on his own idea of the future expenses.

Mr. GESELL. Likewise, in guaranteeing an interest rate, he would look closely to his own company's investment position, what the company could expect as a company to earn?

Mr. FLYNN. He would do that, but in addition he would look at the general situation and get all the advice and counsel he could.

Mr. GESELL. Yes; and in the case of mortality, there he would want to pool the experience of his company with the experience of a great number of other companies to get the broadest possible distribution of death rates, shall we say?

Mr. FLYNN. Well, he wouldn't pool his experience, but he would study his own experience in relation to other current experiences.

Mr. GESELL. Then you might say that in establishing the nonparticipating rate, the matter which would be of most general interest to a group of actuaries faced with a similar problem would be the mortality problem, and the problem which would be most subjective, the one involving more closely the operation of his own company only, would be the loading and expense factor.

Mr. FLYNN. I would say the loading and expense factor would involve more nearly the indications of his own company.

Mr. GESELL. Prior to April 1933, am I correct in saying that the three Hartford companies did not have uniform rates?

Mr. FLYNN. Correct.

Cammack stated that they would like to go ahead with the idea of increasing rates, but, of course, would be embarrassed if the Travelers did not do likewise. I told him that I did not see why the three local nonparticipating companies could not get together on a joint program, for if he was agreeable, we were willing, and from what Actuary Henderson said the other day the Connecticut General are thinking along the same line.

Mr. GESELL. Your companies had operated side by side there in Hartford, Conn., without having had uniform rates for years and years and years, hadn't they?

Mr. FLYNN. Yes.

Mr. GESELL. Then suddenly, in 1932, he tells you that he would like to raise his rates, but would be embarrassed if you didn't do likewise. You could have exchanged information without coming to a uniform agreement on this thing, couldn't you?

Mr. FLYNN. Not very well. I think we would all work independently unless we were going to get together and study the problem.

Nonparticipating companies, American Life Convention, appear to want to increase rates but are waiting to see what the three companies in Hartford will do.

Mr. FLYNN. I wouldn't say that at all. It was not a matter of getting together to fix prices. It was a matter of strenuous times, strained times. Every actuary was anxious to get the very best result he could, and to pool all information, pool all investment-department knowledge, investment officers' knowledge, and in every way try to work for security.

to put it in at this point. Was the question of the violation of the antitrust laws, which assumed some proportion with respect to group insurance, raised with respect to this insurance?

Mr. FLYNN. Not so far as I know.

Mr. ARNOLD. You didn't consider them at all?

Mr. FLYNN. No.

Mr. GESELL. As a result of these memoranda, the Aetna, the Travelers, and the Connecticut General, the three largest nonparticipating companies, got together and agreed to a program of uniform rates for ordinary insurance, did they not?

Mr. FLYNN. Right.

Mr. GESELL. Now, that program for uniform rates was a program for uniform rates, whether you call it pooling or whether you call it rate fixing, or no matter what you call it, Mr. Flynn. You agreed to all the factors in ordinary life insurance nonparticipating rates.

Mr. FLYNN. After full discussion and examination of the experience and the figures of each of the three companies, and after considerable debate, we reached a conclusion which was agreeable to all three.

Representative BARNES. Mr. Chairman, may I interrupt right there? What percentage does the mortality play in the fixing of rates? You base it upon loading, interest charges, and mortality. Now, what percent of your total rate is made up of your mortality?

Mr. FLYNN. That is very difficult to answer because the mortality by age throughout the life of the contract is discounted at a particular rate of interest. You mean if the premium were \$30, how much of that could be reasonably figured as the mortality cost?

Representatives BARNES. Correct.

Mr. FLYNN. May I ask my assistant for an estimate on that?

The CHAIRMAN. Surely.

Mr. FLYNN. The best answer that I can give is that the net premium which involves the mortality cost, discounted for interest, would be about twenty-four or twenty-five dollars out of a \$30 premium.

Representative BARNES. In other words, the big major part of your rate structure is the mortality table.

Mr. FLYNN. Yes, sir.

company in the future.

The CHAIRMAN. So now again I am asking you, as a layman, what confidence can I place in the standard fixed by the so-called experience tables when I find you, the secretary of the Travelers Insurance Co., drafting a memorandum like this, which shows such a tremendous variation among the three leading companies of Hartford?

Mr. FLYNN. Well, these were at the beginning of negotiations. We were all basing estimates upon the same table.

Mr. GESELL. Isn't it a fact, Mr. Flynn, that in reaching an agreement upon the basis of mortality experience that you use in computing your rates, you have in effect reached an agreement which directly affects the amount of profit that each of the companies will make, since it is from the mortality savings that you nonparticipating companies make such a large percentage of your profits?

Mr. FLYNN. Are you basing your question on gain and loss exhibit figures?

figures:

Mr. GESELL. Your company has made money, hasn't it?

Mr. FLYNN. Yes; but I thought you were thinking of those exaggerated profit figures which appear in the gain and loss exhibits.

Mr. GESELL. Your company has made money, has it not, and does not that money which is made come from, to a large extent, savings in mortality?

Mr. FLYNN. To a large extent; yes.

Mr. GESELL. Let me get at it this way, Mr. Flynn: Your companies now have uniform agreements for surrender charges, do they not, and surrender values?

Mr. FLYNN. Yes.

Mr. GESELL. When did those agreements go into effect—was it not in connection with the uniform rate increase of 1933?

Mr. FLYNN. Yes.

Mr. GESELL. Now, what is the uniform basis that all of your companies are operating on at the present time?

Mr. FLYNN. I haven't the detail. I will have it prepared.

Mr. GESELL. Will you just consult with your associates and tell us what charges you have agreed to? It is a very simple program, Mr. Flynn.

Mr. FLYNN. Mr. Gesell, you mean the basis for making the decision?

Mr. GESELL. You testified your three companies have a uniform agreement which has been in effect since the uniform rate increase in 1933. All I want to know is what that uniform basis is.

Mr. FLYNN. The basis of surrender charges has been changed since 1933.

Mr. GESELL. Can you tell me what it is now?

Mr. FLYNN. Under our present plan the surrender value is based on charges of one-third of the reserve in the second year, with a minimum of \$12.50 and a maximum of \$25 in later years, no surrender charge in the twentieth and later years.

TESTIMONY OF JOHN M. LAIRD, VICE PRESIDENT, CONNECTICUT
GENERAL LIFE INSURANCE CO., HARTFORD, CONN.

Mr. GESELL. Mr. Laird, you are connected with the Connecticut General, are you not?

Mr. LAIRD. Yes.

Mr. GESELL. In what capacity?

Mr. LAIRD. Vice president and secretary.

Mr. GESELL. Were you familiar with the discussions which took place among the three companies in 1926, with respect to arriving at a uniform rate program?

Mr. LAIRD. In a general way, yes.

Mr. ARNOLD. You wanted to remove that competitive advantage.

Mr. LAIRD. Well, the three companies had agreed on what we thought was the minimum safe rate to charge for new insurance to be issued thereafter, and there were naturally zones where we didn't have a complete meeting of the mind. This was one of them.

Mr. ARNOLD. The agreement constituted the acceptance of the highest possible basis out of three diverse views, didn't it?

Mr. LAIRD. No, not necessarily. In fact, it would seldom work out that way. In practice, as I remember it, each of the three companies worked out tentative gross premiums according to its best judgment of the future. Then we got together and compared notes and, if there was a variation, we tried to decide according to our best judgment what was the best rate that we should guarantee, having in mind that we must make the contract safe so that we would be able to fulfill our obligations and, on the other hand, having in mind that fully over

Mr. LAIRD. Do you mind repeating that?

Mr. FRANK. I say your purpose was to eliminate competitive arrangements and to arrive at an anticompetitive agreement.

Mr. LAIRD. The purpose was to have uniform rates on the contracts which all three companies issued, and to have comparable rates on any odd forms that any one of us might happen to have.

Mr. FRANK. And the purpose, therefore, was to stop competition within that field?

Mr. LAIRD. Within the three companies, who, of course, did a very small fraction of the total insurance business in the country.

CONCENTRATION OF ECONOMIC POWER

4245

Mr. ARNOLD. You were all more comfortable in your minds when competition was eliminated.

Mr. BEERS. Yes, sir.

Mr. GESELL. And that is the final agreement which was reached on that policy?

Mr. BEERS. I could not swear to that without checking rate books. I presume it is.

Mr. ARNOLD. And there was no insurance commissioner supervising these particular rates, as there was in group life?

Mr. BEERS. None.

Mr. GESELL. The memorandum in the first paragraph states [reading from "Exhibit No. 668"]:

Mr. Keffer and I have attended three meetings with Mr. Laird of the Connecticut General, Mr. Flynn of the Travelers, and their assistants, and this morning we reached an understanding with them with regard to the proper rates to be charged for modified life policies.

(three of the latter), at the conclusion of which you went part way toward raising the rates. That is the story, isn't it?

The CHAIRMAN. This memorandum is dated December 6, 1932.¹

Mr. BEERS. My present opinion with respect to our 1932 decision is that of course we blundered. We did not raise the rates enough.

The CHAIRMAN. And your original position was altogether wrong?

Mr. BEERS. I am sorry to say it was, but it was competitively desirable, if competition is desirable.

The CHAIRMAN. Which was competitively desirable?

Mr. BEERS. The decision we reached.

The CHAIRMAN. The decision to eliminate competition was competitively desirable?

Mr. BEERS. No, sir; the decision to charge the rate we charged was competitively desirable.

The CHAIRMAN. Of course that decision to charge the rate you did charge was reached by way of agreement among three companies which were supposedly competing.

Mr. BEERS. In the rate book that we were talking about there was not going to be that kind of competition among themselves. Of course we were competing with the other 90 percent of the industry.

The CHAIRMAN. That is to say, among the three the competition was to be eliminated, but not among the other 90 percent.

Mr. BEERS. The price-fixing arrangements would be proper only in the most limited circumstances.

Mr. ARNOLD. The limited circumstances being when the companies could get together and compromise and negotiate concerning the competitive advantage of another. Is that the limited circumstances?

Mr. ARNOLD. Did the idea of the existence of an antitrust law ever occur to anyone during this conference?

Mr. BEERS. I presume it occurred to everyone during this conference, sir.

Mr. ARNOLD. And you accepted the possibility of violation of the law as a necessary risk of doing business?

Mr. BEERS. I think we would put it this way. I am not a lawyer.

Judging from what lawyers told me, and so on, I came to the conclusion that we were not violating the law.

Mr. ARNOLD. Had you read the warning correspondence which the Metropolitan Life wrote in connection with rate fixing in group insurance?

Mr. BEERS. I have read correspondence and also engaged in discussions from time to time.

Mr. ARNOLD. And you discarded the statements of those counsel as not being worth consideration?

Mr. BEERS. No, sir.

Mr. ARNOLD. But weighing them you came to the conclusion that the antitrust laws did permit the fixing of rates in a group, informal or formal?

Mr. BEERS. The weight of the legal advice I received seemed to justify that, sir.

Mr. ARNOLD. Suppose that public utilities fixed their rates by agreements between each other, and without supervision or regulation by any public body. Would you be willing to hazard a guess as to whether that would be good practice?

Mr. BEERS. That is another business. It is easy for me to hazard a guess that the people in the other business might be selfish. The people in my business I don't think are.

Mr. ARNOLD. Never selfish?

CONCENTRATION OF ECONOMIC POWER

4249

Mr. BEERS. Seldom.

Mr. ARNOLD. Seldom very selfish. You do consider profits, however.

Mr. BEERS. We consider them in a rather academic way nowadays. We hope a little later to be able to consider them in a practical way. We think we should make a little profit.

Mr. ARNOLD. Your basis, then, for making a distinction between public utilities and insurance companies with respect to the private monopolistic power to fix rates is that insurance companies are composed of people of so much higher moral and mental caliber that we are safe with them and unsafe with public utilities?

Mr. BEERS. I don't need to apologize for a somewhat frivolous reference to the comparison between the men in the industry. No; of course, not.

Mr. ARNOLD. May I say that the question was frankly argumentative and intended to bring out the point. You need not answer it.

Mr. BEERS. I will see if I can do it. I did want to make the point seriously that, of course, I don't know the public-utility business. The second point I would like to make is that as I understand the meaning of the words "public utility" most public utilities have of necessity a monopoly. Each company has a monopoly, almost, usually a real monopoly, of the services that it is performing for the group for whom it is performing them. In the insurance business there is no monopoly that I know about on the part of any one company.

Mr. GESELL. Now that isn't followed at all when you are fixing these nonparticipating rates. You don't submit any data to him of one sort or another.

Mr. BEERS. Yes; quite right.

The CHAIRMAN. Let me finish this question. What I was leading up to, Mr. Beers, was a comparison between the method employed in fixing the two rates. The testimony of Mr. Cammack, which I think is substantially approved by your statement now, to the effect that the good faith and accuracy of the actuaries in presenting this composite experience is the basis upon which the insurance commissioner acts.

Mr. BEERS. No.

The CHAIRMAN. Your qualification of it is merely that the insurance commissioner has all of this material available to him and if

he wanted to change, he could; and, therefore, since he doesn't change, your report must be accurate and in good faith.

Mr. BEERS. Well, isn't it something like this? Perhaps I have to report, being in some business or other, that I took in \$2,000 gross income last year and here are my books to prove it and they say, "Oh, we won't look at your books. We will take your word for it." But the fact I have said here are my books to prove it makes it somewhat different than if I say, "I made \$2,000 last year and that is my statement and that is all you have to go on." Isn't there that difference?

The CHAIRMAN. I see your point exactly. Let me get this concluding question in and then I will abandon the field. Now I am referring to paragraph 5 of Mr. Flynn's memorandum,¹ dealing with the mortality table which shows a variation, not as wide a variation as it seems to my lay mind in your opinion, but a variation.

Mr. BEERS. A substantial one.

The CHAIRMAN. My thought was that if the actuaries of these three companies can disagree to the extent indicated by Mr. Flynn's memorandum with respect to the mortality table, what assurance have we that there is not an equal inaccuracy in the sort of information that your association has presented to the State insurance commissioner, because in neither instance do you have anybody participating in the preparation of this data on behalf of the public or of the insured.

Mr. BEERS. The similar inaccuracy to which you refer and which exists—probably you asked your question in a way you didn't intend—the similar inaccuracy might be this. In our interpretation of the meaning of the past mortality results, which interpretation leads to our recommendation, there will be differences of opinion from time to time, and what you would call the similar inaccuracies to the differences of opinion in this paragraph to which you refer. With respect to the basic data which is merely, you might say, the ratio of the number of deaths to the number of employees insured, there can be no inaccuracy because that is mere arithmetic.

"Being Good"

The CHAIRMAN. But now, coming back to the fundamental question, to what extent in your opinion should there be participation by some agency acting in the public interest in eliminating competition in these fields of competition, in which, in your opinion, competition should be eliminated?

Mr. BEERS. I do not feel that that participation has been proved necessary by results, and I am inclined to think that it is unnecessary.

The CHAIRMAN. So that we can safely trust to the good faith and scientific accuracy of the insurance executives in determining these

rates and in determining in what fields competition shall be permitted to survive and in what fields it ought to be eliminated.

Mr. BEERS. My theory may be wrong; I'd say yes, as long as we are good.

The CHAIRMAN. Well, now, who is going to determine how long you are going to be good?

Mr. BEERS. I hope that employers who are buying new group policies, individuals who are buying ordinary policies, and from time to time legislative bodies will take a look at us and see it.

¹ "Exhibit No. 665," appendix. p. 4718, at p. 4719.

The CHAIRMAN. Now, that reminds me of the phrase that appeared in that memorandum; that memorandum, by the way, was dated September 30, 1924.¹ There seemed no possibility of getting the Western Union, which was an insurance company, to release the business in this case, "and the only point in writing was to let them know that we understood their attitude and to put some fear in them so that they would not molest other Travelers' renewals in that territory."

Is that the way to make them be good, by putting the fear into them?

Mr. BEERS. I don't know. I don't remember that. Incidentally, I don't like the sound of the memorandum. It probably sounds a good deal different this year than it would have 15 years ago; and one memo, while it probably—

The CHAIRMAN (interposing). Well, of course, you can't judge the weather by a swallow. That is true, but I think there is more than one in this instance.

were discussing originally in your testimony this morning? There is no supervision by any State superintendent?

Mr. BEERS. No; there has been no supervision with respect to any of those agreements.

Mr. FRANK. Now, at the time those agreements were made was there some publication of the fact that such agreements had been made and of the basis upon which they had been arrived at?

Mr. BEERS. Are you referring to this agreement? Do you mean the agreement we made to adopt certain rates and surrender values? You used the plural.

Mr. FRANK. I'm sorry; I should have used the singular.

Mr. BEERS. It was, you might say, obvious from the facts that were made public that we were adopting the same rates on surrender value at the same time. At least, I think it was the same time, the same date.

Mr. GESELL. Yes.

Mr. BEERS. And consequently that was as good a fact as if there was publication; but whether we published it, I don't know.

Mr. FRANK. Was the public informed; were the insurance buyers informed of the basis upon which you raised that agreement?

Mr. BEERS. The statement that that was made on such and such a

loading wouldn't interest the public.

MR. FRANK. That isn't what I was referring to. I was referring to the matters contained in these memoranda as to whether you were to agree on which life tables to use, and how you were to adjust them, and whether the loading one was to be sufficient to make possible certain profits, and so on. That data might be very interesting to insurance buyers, wouldn't you think?

Making Information / Formulas Understandable / Accessible to Policyowners

CONCENTRATION OF ECONOMIC POWER

4255

MR. BEERS. I think, sir, we are talking about the same thing really, because if you are going to tell what this premium rate is, you must state the mortality table, which may be a particular mortality table or a percentage variation of another one. You must state the loading formula, which is quite complicated. You must state the rate of interest and any other things that vary the actuarial computation. By the time you get through you have a very complicated statement.

MR. FRANK. What was that?

MR. BEERS. By the time you get through you have a very complicated statement, and the buyer of insurance wants to know how much it is at his age; that is all.

MR. FRANK. I appreciate that often the formulas which technicians use are unintelligible to the laity, but they are capable of being made intelligible, aren't they?

MR. BEERS. I think there was a publication. Didn't we publish in one of the actuarial journals something about this?

MR. BEERS. We would probably avoid that language out of deference to those of us who were worrying most about these antitrust cases.

MR. HENDERSON. Mr. Beers, you said that all this actuarial computation involved formulas which would be uninteresting to the public. It wouldn't be, however, to a buyer of insurance. Take myself, who bought some insurance about that time. It would be of advantage to know that there had been an agreement reached about the rates by these companies, would it not?

MR. BEERS. I doubt it, sir.

MR. HENDERSON. Let me then assure you it would be to me as a buyer.

MR. BEERS. You are different.

MR. HENDERSON. I don't think I am much different from anyone who wants to know whether he is buying in competition or buying in a fixed market. I think pretty generally the American public does like to know, if possible, in what kind of a market it is buying.

Mr. BEERS. You were buying in a very competitive market, sir.

Mr. HENDERSON. I am not so sure after the testimony of these last 2 days; that is the reason I am asking. Was the public generally apprized of this agreement; just the simple fact that an understanding had been arrived at after all these years about this uniformity? Outside of this little statement to a learned society that Mr. Cammaek made, was there any general notice put upon the public?

Mr. BEERS. Yes; I believe so. I think by the scrutiny of the newspapers and insurance journals, notices of this change in rates were

Information Hard to find

Mr. BEERS. Yes; I believe so. I think by the scrutiny of the newspapers and insurance journals, notices of this change in rates were made amply clear to everybody. I don't believe we made the first page of the daily news.

Mr. HENDERSON. I don't think it got down to me, either.

Mr. GESSELL. On this point, if I may interrupt a moment, the Life Insurance Edition of the National Underwriter for the issue of Febru-

4256

CONCENTRATION OF ECONOMIC POWER

ary 24, 1933, reading from a small box at the bottom of page 15, had an announcement reading something as follows, and I think this is more or less the frankest statement that we have been able to find of a public nature on this matter:

The Aetna Life has announced that it will make a slight increase in non-participating rates, effective April 1. When the Travelers, near the end of last year, announced an average increase of 4 percent at older ages, it was rumored that Aetna would take similar action early this year unless investment appreciation make this unnecessary. The Travelers, as it happened, after making the announcement, did not actually put the increase in force, but is expected to do so also about April 1. In the case of the Aetna, it is said there will be little change in rates below age 30 or above age 55. Between ages 31 and 55, the advance will range from 3 to 8 percent, probably averaging around 4 percent.

Mr. HENDERSON. There is nothing in that, Mr. Gesell, which suggests to me that it was by arrangement. On the contrary, what I would gather from that is the same thing I would gather from announcements on merchandise which is bought in competition, that the leader in the business had made certain arrangements, that somebody else followed him, that changes had been made and in competition uniformity had come about because of the necessity of meeting the price. There is nothing in that that you have just read which suggests the public was put on notice. Certainly the policyholders were not put on notice.

Mr. GESSELL. I have been unable to find anything of the sort.

Mr. BEERS. I would not like to accept that as being the most open

statement of the thing without a little study of the press clippings myself, if they are available at this late date.

What I started to say a minute ago was that if you bought insurance at that time you were probably told by your agent that he was giving a policy in a company with the lowest net cost, and he would be glad to compare the net cost with all the other companies you might be interested in, because, of course, you ought to have that thing interpreted to you by an expert, and if you asked him about nonparticipating insurance he would have known that the three Hartford companies had the same rate and would have told you. Do you remember whether you bought participating or nonparticipating insurance?

nonparticipating insurance he would have known that the three Hartford companies had the same rate and would have told you. Do you remember whether you bought participating or nonparticipating insurance?

Mr. HENDERSON. Leaving aside what I bought——

The CHAIRMAN (interposing). I think the witness ought to insist on an answer.

Mr. HENDERSON. The insurance agents who talked to me didn't talk at all as you have just been talking.

Mr. BEERS. They should have known better.

The CHAIRMAN. This colloquy between Commissioner Henderson and the witness prompts me to ask, where do the actuaries buy their insurance, or could they buy insurance?

Mr. ARNOLD (interposing). You thought it wise, in view of that split of opinion, then, in your group as to whether the antitrust laws applied, to conceal this machinery.

Mr. BEERS. To avoid publicizing, absolutely. That is, our lawyers did not feel absolutely sure that they knew the answer; they thought the courts might have to decide something.

Mr. ARNOLD. And you also felt it wise, I take it, not to call the attention of those who were enforcing the antitrust laws to the nature of this price-fixing arrangement.

Mr. BEERS. I wouldn't know how to do that, sir.

Mr. ARNOLD. By letter or by phone or by wire or by oral conferences, are the methods I could think of.

Mr. BEERS. Do they give hypothetical decisions?

Mr. ARNOLD. It is quite frequent that this matter is opened and called to the attention of people engaged in enforcing the antitrust laws. That is the frequent procedure.

Mr. BEERS. As I said, I am not a lawyer; I couldn't answer that.

Mr. ARNOLD. But you thought it wise, on the whole, in view of the situation in your own group who were not sure about the antitrust laws, and in view of the situation of various prosecuting officers, not to make this public. Is that a fair statement?

Mr. BEERS. It is a little stronger than I would have made, sir—not much

Mr. ARNOLD. And you don't think that the price fixing in life insurance has led to lower cost?

Mr. BEERS. Ordinary life insurance, oh, I don't know, we have perhaps had less sufficient rates or more sufficient rates, I can't say.

Mr. ARNOLD. In any event, it has led to higher immediate costs, hasn't it?

Mr. BEERS. No, sir; I don't think so.

Mr. ARNOLD. There have been certain instances to which you have testified with respect to one policy at least where it led to higher costs.

Mr. BEERS. That was only one instance in one agreement.

Mr. ARNOLD. But in that instance it did.

Mr. BEERS. No, sir; that was an indivisible agreement.

Mr. ARNOLD. But you were induced to raise your rate; you so testified, didn't you?

Mr. BEERS. Yes; but it is not an example, I think.

Mr. ARNOLD. It is an example.

Mr. BEERS. No, sir.

Mr. GESELL. May I say, Mr. Chairman and Mr. Arnold, we have considered here only the first agreement among these three companies, and this afternoon we will proceed to consider at least two other agreements that have happened since 1933. Possibly that background would be of some advantage to the committee.

2nd Issue

Mr. GESELL. The three companies, Mr. Flynn, raised their rates on April 1, 1933, did they not?

Mr. FLYNN. Yes.

Mr. GESELL. Those rates were uniform?

Mr. FLYNN. Yes.

Mr. GESELL. Now when did you next get together and raise rates?

Mr. FLYNN. The next rate change was January 1, 1935.

Mr. GESELL. You discussed that rate change as early as 1933, did you not?

Mr. FLYNN. I believe that is correct.

Mr. GESELL. First of all, I will ask you if you recognize this as a memorandum that you prepared.

Mr. FLYNN. Yes.

competitive reasons.

Mr. GESELL. In other words, you would continue to sell policies on a basis which you didn't think was actuarially sound in order to compete with the participating companies.

Mr. FLYNN. We might have to delay our increase in rates and forsake some mild profits, or something of that kind.

Mr. GESELL. So when you say that you believe the competitive situation would permit a raise, that the traffic would stand the rate in-

ation would permit a raise, that the others would stand the rate increase, you meant that you thought you could raise the rates which would assure you of greater profits and which would insure the policyholders greater protection, without hurting your competitive position.

Mr. FLYNN. That is it.

Is that the way you meet with your competitors to iron out the differences between you with respect to rates?

Mr. FLYNN. I think, Mr. Gesell, that is more nearly a meeting of actuaries, professional men interested in their work, and it has that guise really rather than competing companies.

Mr. GESELL. You mean this is sort of like the Harvard-Yale football teams going out to a dance together after a big game?

Mr. FLYNN. I would think so. Actuaries meet quite often to discuss professional problems.

Mr. GESELL. Really you were not only actuaries, you were officials of your companies, you were meeting and discussing mutual problems and reaching decisions, were you not?

Mr. FLYNN. I don't know that we reached decisions; we tried to persuade one another and argue matters out.

Mr. GESELL. As an actual matter what happened was, was it not, that your company, the Travelers, the Connecticut General, the Aetna, the Metropolitan, the Prudential, the Provident Mutual, the six companies present at this conference, all announced the rate increase simultaneously on January 1, 1935?

Mr. FLYNN. I really can't say about the three participating companies, but the three nonparticipating did.

Mr. ARNOLD. You don't seriously contend, do you, that this wasn't a somewhat informal method of fixing rates?

Mr. FLYNN. No; I won't say that it was not an informal effort to persuade the actuaries of the companies to look at it in the same way.

Mr. HENDERSON. This line of the actuary as a professional and technical man and the line of the actuary as an operating officer of the company come together at times, don't they?

Depression, Companies in Trouble

Mr. GESELL. With respect to that memorandum which discusses at considerable length expected interest rates and some other technical matters, I was particularly interested in this portion of the memorandum. It states [reading from "Exhibit No. 673"]:

Up to the time of the depression the three large nonparticipating companies domiciled in Hartford had enjoyed very large annual earnings and seemed to be well provided against contingencies. The severe losses of the depression have sharply reduced the surpluses of these companies, and the fall which has already taken place in the interest rate has reduced the normal annual margin very substantially. In the opinion of the two larger companies which raised their rates at certain ages about a year ago, the necessity for a further increase in premiums has become quite acute. They are, however, very much hampered in the matter of premium rates by the fact that the premiums of the three participating companies referred to are so low that a moderate in-

crease in the nonparticipating rates would bring them very close to the par-

¹ Entered later as "Exhibit No. 674," see appendix, p. 4727.

Mr. GESELL. You mean over a great number of years, maybe as many as 30 or 40, the companies might under certain circumstances which weren't certain to occur, get into some degree of financial difficulty.

Mr. HOWELL. Yes.

Mr. GESELL. Why should that be a factor, Mr. Howell, in a determination made by three participating companies with respect to what rates they should charge? That is the nonparticipating companies' problem, is it not?

Mr. HOWELL. Don't you think the memorandum itself sets forth why that is a factor? If there had been any large and important failures in the life-insurance business, whether participating or nonparticipating companies, we all would have felt the resulting resentment in public opinion. I think that is a very serious factor. We had no desire to have trouble.

Mr. GESELL. Isn't that the excuse that is quite customarily made whenever people get together to fix rates—that if they don't have some bottom to their rates there is going to be somebody who is going to get hurt and the whole business is going to be hurt?

Mr. HOWELL. I don't know whether that is customarily made, but I am certain that Mr. Little was very sincere in taking this position, and I, for one, agree with him.

Mr. HENDERSON. It is certainly always important to a competitor to have sufficient rates.

Do you mind if I finish the sentence?

Mr. HOWELL. Not at all.

I just wanted to make that distinction here.

Mr. HOWELL. If you will let me make just one comment in that connection, I think it would be useful to bear in mind that a life-insurance contract is a continuing contract. I imagine most of the other commodities whose prices you have studied deal with transactions over and done with. Unfortunately in a life-insurance contract we have to estimate, and let me say that rate-fixing is not an exact science. You probably realize by this time it can't be.

Mr. HENDERSON. We are beginning, despite some of the testimony, to recognize that.

Mr. HOWELL. And, therefore, we are in a very unfortunate position if we fix a rate that must roll on into the years and find that that rate isn't adequate. That does strike me as being an important factor for your consideration.

Mr. HENDERSON. We are interested in that because, as you say, a price that is fixed usually has to do with one contract and then it is terminated. But, on the other hand, just as you emphasize the

continuing nature of your service, the amount of money which is expended from the ordinary family income for insurance bulks very, very large, and so everything which has to do with rate-fixing, or price-fixing, affects a large part of the expenditures, and therefore becomes increasingly important.

you?

Mr. HOWELL. Well, of course, once again I get back to the belief that we don't have concerted action except incidentally, because I can't go past the thought that we needed this increase in rates, and we had to have it. And when we needed another increase in rates last December we made it, anyhow.

Mr. HENDERSON. But you don't want to go past the bald fact, however, that there was a concerted action.

Mr. HOWELL. You mean that there was on this occasion?

Mr. HENDERSON. Yes.

Mr. HOWELL. No; that existed.

3rd Agreement

Mr. GESELL. So far we have covered two rate agreements among the nonparticipating companies, have we not, the one in '33 and the one in '35?

Mr. FLYNN. Yes.

Mr. GESELL. When was the next one?

Mr. FLYNN. I believe it was effective March 1, 1937.

Spectator Insurance Year Books.

This table, which is entitled "Life Insurance, Total In Force, New Business, and Terminations, United States Legal Reserve Life Insurance Companies, 1928-37," contains the basic data about which we shall talk this morning.

Mr. GESELL. Has this schedule to which you refer been prepared under your direction?

Dr. DAVENPORT. It has.

Mr. GESELL. From Spectator Insurance Year Books. Is that the source?

Dr. DAVENPORT. That is the source.

Mr. GESELL. I wish to offer the schedule for the record.

Satisfactory / Unsatisfactory Terminations from Consumer Point of View

term insurance terminates by what is known as *expiry*. From the policyholder's point of view, terminations by death, by disability, by maturity, represent satisfactory completions of the insurance contract, and it may be said that to the extent that expiry represents the terminations of policies originally written for a term of years, expiry

also represents a satisfactory mode of termination.

It is a generally recognized fact that the great bulk of life insurance terminates in a manner that cannot be regarded either by the companies or by the policyholders as entirely satisfactory. A great deal of insurance terminates within a short time after it is sold, by reason of the failure of the insured to keep up the payments of his premiums. When such failure to maintain premium payments occurs before the policyholder is entitled to a refund of any portion of the reserve against his policy, the insurance is said to have terminated by *lapse*. Let me repeat that because it is very important: When such failure to maintain premium payments occurs before the policyholder is entitled to a refund of any portion of the reserve against his policy, the insurance is said to have terminated by *lapse*.

Dr. DAVENPORT. It is called a lapse under those circumstances.

Mr. FRANK. Does that mean that he has made contributions which are in effect savings by him, together with interest accumulations thereon, and that in the circumstances you describe he receives back no portion of those savings?

Dr. DAVENPORT. When a policy is said to terminate by lapse he gets no portion of that reserve back. That is correct.

Mr. FRANK. In effect that is the savings portion of his insurance?

Dr. DAVENPORT. Yes, sir.

Mr. FRANK. And under the circumstances you have described, he has made what were assumed to be savings, but which he does not receive?

Dr. DAVENPORT. That is right.

Senator KING. It is part of the contract that if he shall not continue his payments he will lose the benefits of that.

Reasons for Life Insurance ending and Percentages. Doesn't Look Good.

considerably less than 10 percent of the terminations. How much did they represent?

Dr. DAVENPORT. The terminations by death in the first period represented 7.9 percent of the total terminations; in the second period they dropped to 6.59 percent of total terminations.

Mr. GESELL. Using the terms which you used in discussing terminations on the previous chart, is it fair to say that in both periods the terminations representing the successful accomplishment of the plan contemplated by the policyholder at the time his insurance was taken out are a relatively small percentage in either of the 10-year periods?

Dr. DAVENPORT. A very small percentage. I have summarized the significant relations that are revealed in this chart, as follows: The largest single mode of termination was by lapse. Lapse accounted for 62 percent of all terminations. Surrender accounted for almost 16 percent, and decrease for 4.4 percent.

¹ See "Exhibit No. 684," appendix, p. 4737.

Mr. FRANK. Dr. Davenport, may I ask, where an industrial policy terminates by lapse, is the cost to the insured greater than if he

terminates by lapse, is the cost to the insured greater than if he took a policy for that same period in the form of term insurance?

Dr. DAVENPORT. Oh, much greater.

Mr. FRANK. Then, if his intention had been to have insurance only for the limited period, his cost would have been much less if he had taken term insurance?

Dr. DAVENPORT. Yes.

Mr. FRANK. Would you not, therefore, assume that if he were well instructed and intelligent, he would not have taken out the ordinary industrial insurance for the short period?

Dr. DAVENPORT. That is a very great assumption which doesn't jibe with the facts as we understand them.

Mr. FRANK. But if he had been well-instructed.

Dr. DAVENPORT. If he were an intelligent prospect and had been well informed by the agent what you say is perfectly true.

makes inquiry of the company that the facts are known. In the case of the ordinary policies, I should imagine that the companies would know the name, address, and so forth, and would be much more likely to take the initiative.

Dr. LUBIN. In other words, as you understand it, it is possible for a policy to lapse without the individual getting his surrender value back, although there is a surrender value under the contract?

Mr. GESELL. I think I can properly say, "What was that?" due to the buzzer. How much by death during the 1928 period?

Dr. DAVENPORT. Four and forty-five one-hundredths percent of the terminations. Of the number of industrial policies that terminated in the 10-year period from 1928-37, 4.45 percent of them terminated by death. In the previous period, 7.34 percent terminated by death.

Dr. LUBIN. I may appear to be naive, but I do want to ask a question which occurs to me. How do you account for the fact that the American people buy 193,000,000 policies in a period of 10 years? In other words, how does it happen? Are people so anxious to have insurance that they are willing to do almost anything to get it?

Dr. DAVENPORT. Well, of course, the institution of insurance satisfies a very deeply rooted desire on the part of the average man. In part it is an answer to that, but that has been present all the time. In part it is a tribute to the perfection of the art of salesmanship and the organization of large crews of selling agents. I think we have learned a technique of selling life insurance.

Dr. LUBIN. Are you implying that we have learned the technique of taking advantage of this fundamental desire for security?

Dr. DAVENPORT. I am not impugning the motives of the insurance company or the agent.

Mr. HENDERSON. But in all this squirrel-cage activity in that 193,000,000 you pointed out there must have been some workers that had five, six, eight, and nine policies.

the wives, or other members of the family.

Mr. GESELL. But the net result of this tremendous selling of new policies with a very small gain is that there must be a continual turnover of policies within a single family or family group.

Mr. HENDERSON. Are you trying to avoid my characterization of this as squirrel-cage activity? It seems to me you are going around the barn.

Mr. GESELL. There must be continual selling and reselling of policies to the same family and individual, must there not?

Dr. DAVENPORT. I am sure that occurs.

Mr. GESELL. There are not 193,000,000 people in the United States, are there, Dr. Davenport?

Dr. DAVENPORT. No; according to the Census about 130,000,000.

Mr. GESELL. Every time a policy lapses there is some loss to the policyholder, is there not?

Dr. DAVENPORT. It means he has paid a great deal more for the protection that he had than was necessary.

Mr. GESELL. So that as this process continues and he is sold and resold and sold again, he, as a laboring man, is suffering continual loss every time that occurs, is he not?

Dr. DAVENPORT. That is perfectly true.

Mr. FRANK. If he took term insurance, there would be no such loss, I assume.

Dr. DAVENPORT. That is right. The cost of term insurance would be much lower and would be more in proportion to the actual expenses involved covering him, giving him what he actually got.