The Commonwealth of Massachusetts

REPORT

OF THE

JOINT SPECIAL LEGISLATIVE COMMITTEE ON INVESTIGATION OF THE COMMONWEALTH MUTUAL LIABILITY INSURANCE COMPANY

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The Commonwealth of Massachusetts

October 11, 1937.

To the Honorable Senate and House of Representatives.

The Joint Special Committee to Investigate the Commonwealth Mutual Liability Company, created by joint order of the two branches of the General Court, has the honor to transmit herewith its report.

EDMUND S. OPPENHEIMER,
Chairman.

PHILIP BARNET,
Vice-Chairman.

FREDERICK H. TARR, Jr.

WENDELL D. HOWIE,
Secretary.

The Commonwealth of Massachusetts

REPORT OF THE JOINT SPECIAL LEGISLATIVE COMMITTEE ON INVESTIGATION OF THE COMMONWEALTH MUTUAL LIABILITY INSURANCE COMPANY.

INTRODUCTION.

Joint Order Creating Committee.

Organization.

The Joint Special Committee of the General Court to Investigate the Commonwealth Mutual Liability Insurance Company was created by a joint order of the two branches, House, No. 1638, which was adopted on March 11, 1937. The order is as follows:

Ordered, That a joint special committee, to consist of one member of the Senate to be designated by the President thereof, and three members of the House of Representatives to be designated by the Speaker thereof, is hereby established for the purpose of investigating the facts surrounding the issuance of a certificate of incorporation, and a license to transact business, to the Commonwealth Mutual Liability Insurance Company, the company's methods of conducting business and of computing reserves and paying claims, and to what extent the company's methods and practices may affect the premium rates for compulsory automobile insurance. Said committee shall be provided with quarters in the State House or elsewhere, shall hold hearings, may require by summons the attendance and testimony of witnesses and the production of books relating to the matter under investigation, and may expend for clerical and other services, after an appropriation has been made, a sum not exceeding one thousand dollars. Said committee shall report to the General Court the results of its investigation, and its recommendations, if any, together with

drafts of legislation necessary to carry its recommendations into effect, by filing the same with the Clerk of the House of Representatives before the prorogation of the present session.

Sent up for concurrence.

FRANK E. BRIDGMAN,
Clerk.

Pursuant to the terms of the order, the President of the Senate appointed Senator Edmund S. Oppenheimer of Springfield, and the Speaker of the House appointed Representatives Philip Barnet of New Bedford, Frederick H. Tarr, Jr., of Rockport, and John W. Coddaire, Jr., of Haverhill.

At its organization meeting the Committee elected Senator Oppenheimer as chairman, and Representative Barnet as vice-chairman. Wendell D. Howie of Boston was elected as secretary.

Preliminary to the holding of its first public hearing, the Committee made an exhaustive study of the known facts concerning the Commonwealth Mutual Liability Insurance Company, in order that it might properly interrogate the witnesses to be heard. A number of persons were interviewed, including Francis J. DeCelles, Commissioner of Insurance, and Henry P. Fielding of the receivers of the company under appointment by the Supreme Judicial Court.

The first public hearing was held in the State House on April 27. As the case developed it became apparent that it would be impossible for the Committee to complete its work before the prorogation of the 1937 session, as set forth in the order creating it. It therefore sought and obtained passage of an order amending the first order and extending the time for it to report to not later than the first Wednesday in December. This order was adopted in both branches on May 18, 1937.

The public hearings were not concluded until July 12, a total of thirty-six witnesses having been heard, some of them being on the stand for more than one day, — especially Commissioner DeCelles, who had seven full days with both morning and afternoon sessions. His

second appearance before the Committee, which was at his own request, covered six full days. The total amount of testimony at public hearings comprised 13 volumes and exceeded 4,000 pages, or more than 1,000,000 words. Nearly 150 exhibits were offered in evidence by the various witnesses.

Because of the New York connections involved in the case of the Commonwealth Mutual Liability Insurance Company and its affiliates, the Insurance Premium Finance Corporation and the State Underwriters Insurance Agency, Inc., which were controlled from New York, it was necessary for the Committee to go to that city for the purpose of interrogating these interests. Several New York witnesses were induced to come to Boston voluntarily and give testimony publicly under oath.

After the hearings had been concluded, a subcommittee, consisting of Senator Oppenheimer and Representative Coddaire went to New York and obtained testimony from other persons who could not come to Boston and over whom the Committee had no power of summons because of their being residents outside of Massachusetts. The stenographic record of this testimony was sworn to before a notary public.

The nature of the Committee's investigation made it imperative to seek factual information whenever and wherever it was to be found. While most of the testimony was given in public hearing and under oath, there was evidence that witnesses had been intimidated and coerced and threatened and did not dare disclose the whole truth as they knew it. No stone was left unturned by the Committee to get at the bottom of every angle in the case, but the members feel that even after their work has been completed, changed conditions will in time result in still further disclosures.

BRIEF HISTORICAL RÉSUMÉ OF COMPANIES INVOLVED.

1. The Commonwealth Mutual Liability Insurance Company.

This company was formed on October 10, 1935, and was incorporated on November 15 of the same year. Its original officers, elected at the first meeting of the incorporators, were as follows: president, Everett P. Annis; vice-president, Arthur E. Skillings; secretary, Isaac B. Lotkin; treasurer, Arthur E. Skillings. The above were directors, together with Frank J. Carey, David Hurwitz, Alexander Jones, Max Pearlstein and George S. Ryan. There were two other incorporators, E. Sargent Cox and John E. Flannery. All of the incorporators were residents of Massachusetts.

A preliminary license to obtain subscriptions was granted to the company by Francis J. DeCelles, Commissioner of Insurance, on December 14, 1935. A license to transact business was granted by the Commissioner on December 31 following.

The personnel of the company's officers and directors was changed from time to time during the ensuing eleven months, but at no time did the name or names of those actually operating the company appear in the official records. At the same time every one in any way identified with the company, as well as Boston insurance men generally, was aware of its background, from its inception.

The company became involved in difficulties with Commissioner DeCelles early in its existence, and for a long period was under constant surveillance and examination by his departmental staff. On November 6, 1936, with the knowledge, consent and co-operation of the Commissioner, one Frank Fasano, owner of a taxicab insured by the company, brought a petition in the Supreme Judicial Court, seeking for the appointment of a receiver.

Out of this action, on November 10, 1936, stipulations were entered into and agreed upon, under which com-

plete supervision of the company, its acts and its disbursements were placed in the hands of the Commissioner or his representatives. This control was continued until December 14, 1936, when the Commissioner, in his own name, brought a bill in equity in the Supreme Judicial Court, which resulted in the appointment of temporary receivers two days later, the receivers being made permanent on December 26.

In his bill in equity the Commissioner charged that the company had obtained its certificate from him by fraudulent methods, that it had failed to adopt a proper system of accounting, that it had failed to employ a competent and experienced underwriter, that it had concealed liabilities outstanding when the certificate was granted, that it had made illegal payments of large sums to its affiliates, — the State Underwriters Insurance Agency, Inc., and the Insurance Premium Finance Corporation, — that there was serious question as to who its actual officers were, that it had no complete record of receipts and expenditures or of policies issued or of outstanding claims, and that it "is hopelessly insolvent, that its business policies are unsound and improper, that its condition and management was and is such as to render its further transaction of business hazardous and detrimental to the public and to its policyholders and creditors."

During its life of less than a year, the Commonwealth Mutual wrote policies amounting to a total of $930,-209.02. There were cancellations amounting to $128,-086.64, leaving the net total amount of policies at $802,122.38, divided among 23,000 policyholders.

It is now in process of liquidation by the receivers appointed by the Supreme Judicial Court, Henry P. Fielding, Charles F. Lovejoy and William C. Giles, located at 6 Beacon Street, Boston.

2. State Underwriters Insurance Agency, Inc.

The State Underwriters Insurance Agency was incorporated on December 6, 1935, its original officers being

as follows: president, George V. Kavanaugh; vice-president, John J. Tierney; treasurer, George V. Kavanaugh; and clerk, David Levine — the same three persons also comprising the Board of Directors. The agency had an authorized capital of $50,000, with a par value of $100, although only 17 shares were issued at first.

The agency, organized as a stock company, was granted a license by Commissioner DeCelles on December 18, 1935. From the outset it was recognized that the agency was organized as an affiliate of the Commonwealth Mutual Liability Insurance Company, that it was a profit-taking enterprise, that it had the same concealed background in so far as official records were concerned, that for a long period there was an intermingling of funds, and that its sole business was to act as agent and broker for the Commonwealth Company.

Shortly after the organization of the company, the agency entered into an agreement with it to assume the acquisition costs, the settlement of claims and the general administration expenses of the company, except the salaries of the underwriters and the accountant, and would receive as compensation for such services 18 per cent of the compulsory premiums and 30 to 35 per cent of the property damage, extraterritorial and all other business. This contract, which never became effective, was cancelled by mutual agreement on February 5, 1936, and superseded by another contract effective as of January 1, 1936. The second contract reduced the compensation of the agency to 12 per cent on compulsory insurance and not to exceed 25 per cent on premiums from all other kinds of insurance.

Like the Commonwealth Company, the personnel of the agency was changed a number of times, and like the company it was in frequent difficulties with the Commissioner. The agency's license expired on June 30, 1936; and evidently due to a misunderstanding on the part of the agency, based upon negligence on the part of its organizing attorney, it did not obtain a renewal until September 15, although continuing to do business. The

agency shared offices with the company, and to all intents and purposes, except for the alleged mutual aspect of the company, appeared to be a part of it.

On November 4, 1936, following a stormy scene in his office, Commissioner DeCelles revoked the license of the agency, contending that it had received compensation to which it was barred by statute by having operated for a period without a license, and upon other allegations of misconduct and mismanagement.

In his formal announcement at the conclusion of the alleged hearing, the Commissioner said: "The license of the State Underwriters Insurance Agency, Inc., is revoked as of 3.20 P.M., November 4, 1936, for transacting insurance business for two months without a license, and the officers are hereby ordered to collect such overpayments of commission as may be charged and also to recover moneys that were paid for the original subscription."

3. Insurance Premium Finance Corporation.

The Insurance Premium Finance Corporation was organized under the laws of the Commonwealth by the same interests which had formed the insurance company and the agency. Like the agency it was a profit-taking enterprise, and its incorporators actually were straws. It received a charter on December 11, 1935, the incorporators being E. Sargent Cox, Gertrude Hanlon and Florence Murray.

The finance corporation was a stock corporation, with a contract with the agency to finance the agency premiums. Its active head was also treasurer of the insurance company.

With the insurance company petitioned into receivership, and the license of the agency revoked, the finance corporation automatically suspended business.

4. Kilby Underwriters Insurance Agency.

Less than a month after Commissioner DeCelles revoked the license of the State Underwriters Insurance

Agency, Inc., the Kilby Underwriters Insurance Agency was organized and was licensed by him, under date of November 30, 1936. The agency was intended to take the place of the first agency and contract to act as agent and broker for the Commonwealth Insurance Company. The incorporators were Benjamin F. Watson, president and treasurer; Hyman Copins, clerk; and Charles L. Doyle, who with the two other officers made up the Board of Directors. Watson had been the treasurer of the agency which had just lost its license, and represented the old interests in the new agency.

The Kilby agency opened new quarters and installed furniture, preparatory to taking up its work, but before any business was transacted, the insurance company had been closed. Although the agency still has a charter and a license, it has never functioned.

FINDINGS OF FACT.

The roots of the Commonwealth Mutual Liability Insurance Company go back to the Eastern States Insurance Company, which had been incorporated in Massachusetts as a mutual company early in 1935. There were two men actively engaged in organizing the latter company, — Thomas Black, an insurance broker of Boston, and Reuben Pittsburgh, an operator of taxicab companies, of New York, — and the capital was supplied by Frank Cohen of New York.

The Eastern States was represented originally by Herbert S. Avery, of the law firm of Avery, Dooley, Post and Carroll, who applied to Merton L. Brown, then Insurance Commissioner, for a final certificate of authority to do business. While this application was pending, the company replaced Mr. Avery as its counsel by Prof. Frank L. Simpson and his associate, Francis J. Burke, who were understood to be very close to Governor Curley's administration, politically. Subsequently, according to Mr. DeCelles, the application of the Eastern States was withdrawn, but the men behind the company, especially Mr. Pittsburgh, who had just organized a new

taxicab company in Boston and had expected his insurance to be carried by the new company, declared under oath that such was not the fact. He said DeCelles flatly refused to grant the final certificate of authority, — or license, as it is more commonly called, — alleging that the company had not met the necessary statutory requirements.

In explaining the setup of the Eastern States, Pittsburgh said the taxicabs he was to operate in his new taxicab company were to be purchased from Mr. Cohen, who was federal receiver of a taxicab company in New York. Cohen was also interested in the Metropolitan Mutual Auto Insurance Company of New York. Originally, Black and Pittsburgh endeavored to have the New York company enter the Massachusetts field, but Mr. Cohen felt that as it was a new company there might be statutory difficulties in carrying out this plan, and that it would be simpler to organize a new Massachusetts company.

At the time when the Eastern States failed to obtain its license, a newspaper editorial appeared, — along with a picture of Mr. DeCelles, — entitled "Keep the Racketeers out of Boston." In this editorial, the information for which came from the Commissioner, Pittsburgh was referred to as a racketeer. A libel suit, which was brought by Pittsburgh against the newspaper, is still pending.

Shortly thereafter, while returning to Boston from New York, where he had attended a prize fight in company with a party of men including Black, Pittsburgh met DeCelles on the boat. Black introduced him, and after the Commissioner had denied calling Pittsburgh a racketeer and had blamed the newspapers for the incident, the discussion, he said, went back to the Eastern States Company.

Pittsburgh, under oath, then quoted the following conversation:

" 'Well,' he, the Commissioner, says, 'you'll never get a charter unless — you'll have to start a brand-new company — you eliminate Professor Simpson; we don't want

Simpson.' I says, 'What's wrong with Professor Simpson? I know the man to be an honest man and I don't see anything wrong about him.' He says, 'Well, you will never get a charter with Professor Simpson. We have a man who is just as good as Professor Simpson, and he comes from my home town, Belmont.' His name is Ryan, I think. Well, I have met Ryan. The Commissioner says, 'Where are you going to be?' 'I am stopping at the Bradford,' and he says, 'I will have Ryan call you up. Anything that Ryan does represents the Commissioner.' "

There was one other point in connection with the exit of Professor Simpson from the picture, and his replacement by Ryan, for in reply to questions as to why the Commissioner wanted Simpson out of the way, Pittsburgh said:

"I don't know; he says they got no use for Frank Simpson. I said, 'He's one of your brain-trusters.' He says, 'Well, he's just a figurehead. When Jim Curley goes out of office, they're going to make me the next Governor;' that's what he says. When Curley is going to run for Senator in Washington, they were going to boost him for Governor."

Ryan was a fellow townsman of the Commissioner's in Belmont, and a personal friend. They both had summer cottages at the beach in the town of Hull. During the summer months they often traveled back and forth to Boston together.

Pittsburgh did not see Ryan after his first talk with the Commissioner, and returned to New York. A few days later Black called him on the telephone and said that he was in trouble, that the Commissioner had taken away his broker's license, and that the Commissioner said he wanted to see him (Pittsburgh). He came to Boston, saw the Commissioner and protested about taking Black's "bread and butter" away from him; whereupon, he continued, the Commissioner said he would give the license back, but that the real reason for the action was that he wanted to talk to Pittsburgh.

The Commissioner then said he was sending Ryan to see him, he added, and a few days later Ryan called him at the Bradford and said he was DeCelles' representative.

At a conference with Ryan in the latter's office, it was decided that the preliminary work which had been done on the Eastern States had gone for nothing and that it would mean starting all over again. Pittsburgh said he told Ryan that Frank Cohen was his financial backer, — which he said he had also told the Commissioner, — and that Ryan said he would take over the job of setting up a new company.

Early in October he said he received a telegram or letter from Ryan, stating that the Commissioner was on his way to New York, as a result of which he met the Commissioner and Mrs. DeCelles at the Grand Central Station and went with them to the Hotel Pennsylvania, where a suite had been reserved. He said he called Cohen and that the latter came to the Pennsylvania, and that night they all went to a prize fight. This was on the night of October 4, 1935. Late on the following afternoon he went to the Hotel Pierre. Mr. DeCelles and Mr. Cohen were in the apartment of Samuel M. Bomzon in the Pierre, with an architect named Gustave W. Iser, looking over drawings for a housing development under the Federal Housing Administration in which Cohen was interested with him. Mr. Bomzon, in whose apartment this incident took place, is vice-president of the National Safety Bank and Trust Company, and chairman of the Board of Trustees of the Hotel Pierre.

That night, the party, including Mrs. DeCelles, but not Mr. Iser, had dinner together, went to the theatre, and later to the Riviera — a night club in New Jersey. On the following afternoon, which was Sunday, October 6, Mr. Pittsburgh, accompanied by Mrs. Pittsburgh, took Mr. and Mrs. DeCelles on a sight-seeing trip in an automobile owned by Mr. Cohen. They returned to the Pennsylvania, where Pittsburgh left the Commissioner and Mrs. DeCelles around 4 or 5 o'clock.

In his testimony, under oath, the Commissioner time

after time declared that he never met Cohen in New York or anywhere else until more than a year later, on December 13, 1936. He admitted having been in New York, and at the Hotel Pennsylvania, on October 4, 5 and 6, but branded the Cohen story as false.

The New York meeting between DeCelles and Cohen was testified to by Cohen, under oath, and by Pittsburgh, and it was confirmed to minute details in sworn statements by Mr. Bomzon and Mr. Iser, two entirely disinterested persons. It was not in accordance with testimony of Daniel J. Arnstein of the Manhattan Mutual Insurance Company, engaged in the same type of business as Cohen's Metropolitan Mutual, who testified that on the afternoon of October 5, 1935, Commissioner DeCelles was in conference with officers of his company relative to entering the Massachusetts field, and that he took Mr. and Mrs. DeCelles to dinner and the theatre in the evening. He did not know where they met Mrs. DeCelles and was very vague in most of his replies to questions. He admitted that the Commissioner had called him by telephone a few days before this testimony.

Mr. Cohen described his first meeting with DeCelles in New York in detail, but it was not until October 5, the second day, that there was a discussion of a proposed new mutual insurance company in Massachusetts. After explaining that Black and Pittsburgh had been talking to him about organizing the company, in order to make sure, in the first instance, that they could obtain insurance for a fleet of taxicabs which they were to purchase from Cohen as federal receiver for a New York company, the witness continued:

"It was during that time that Mr. DeCelles also told me of the opportunity there would be in Massachusetts for a company; that the existing companies were riding roughshod over assureds, and particularly it would be good to have a company that would be lenient with the foreign element. And I then agreed with him that I would help Mr. Pittsburgh and Mr. Black finance themselves so they could organize their new company. That

was the beginning of my connection with this Commonwealth situation. I then came to Boston several times, and met Mr. Ryan, who had been selected as the attorney for the company."

When asked what he meant by "selected as attorney," Cohen continued:

"Well, he was the one who had been selected by Mr. Black and Mr. Pittsburgh. Mr. DeCelles also told me he was a good man, that we could trust him to be responsible for the company. I arranged to give them their guaranty fund money. They arranged to organize the company. They arranged their directors, their officers. I was told that the guaranty fund money by law would be entitled to 50 per cent of the directors of the company, so the guaranty fund money could always be protected. I was also told that in order to get the business for the company an agency could be formed, and this agency would be writing the business. It later developed that it was also necessary to have a finance company, because existing finance companies were not willing to finance premiums for a mutual company, so I agreed to organize the finance company, which we did and put our money in, and from there it went on until they actually got their license."

After several conferences with Cohen and Black, Ryan took over the organizing of the Commonwealth Mutual, and also of its affiliated companies, the State Underwriters Insurance Agency, Inc. and the Insurance Premium Finance Corporation. Black, by arrangement with Cohen, was to obtain the names of ten Massachusetts citizens to become incorporators, which is a statutory provision. The company obtained its charter on November 15, 1935. On December 6, 1935, Mr. Ryan incorporated the agency, and about the same time the finance corporation. All that was done was merely to take the by-laws of the Eastern States Company and to copy them word for word, substituting the name of the Commonwealth Company for the Eastern. The agency was to obtain for the company and to do underwriting

under certain contracts with the company. Black, in turn, was to have a contract with the agency over which there was much dispute later on. At the beginning, according to Cohen's testimony, Black had represented that he would obtain more than the $100,000 insurance necessary under the law before the final license to operate could be granted.

The finance corporation was organized for the purpose of financing premiums on the installment plan. The capital of the finance corporation was supplied by Cohen. It was through the agency and the finance corporation that profits were to be obtained, and they were entirely dependent upon the Commonwealth Mutual in order to function.

During this period, Mr. Cohen testified, he visited Commissioner DeCelles in the latter's home on some four or five occasions, usually being driven there by Black. At these conferences various subjects connected with the three companies were discussed, such as the agency contract, the amount to be allowed for organization expenses and other details important to getting business under way. All of these conferences, in December, 1935, were denied by the Commissioner, who clung persistently to his original story that he never met Cohen until December 13, 1936.

On December 14, 1935, the company was granted a temporary certificate to enable it to solicit subscriptions. The statute (chapter 175, section 93) requires that no license shall be granted to a mutual company to issue policies "until it has secured applications for insurance risks in the Commonwealth, the premiums on which shall amount to not less than one hundred thousand dollars and it has satisfied the commissioner that such premiums have been actually paid to it in full in cash."

As these subscriptions were obtained, the premiums were deposited in an escrow account in the Pilgrim Trust Company, and the subscriptions themselves were sent to the Commissioner's office for the purpose of being checked by examiners. The first lot went to his office on Decem-

ber 27, and amounted to about $120,000. As they were checked, it was found that many of the subscribers could not be located, and that others, desiring to be sure of having insurance by January 1, had already obtained it from other companies.

The Department investigated a cross section of about 10 per cent of this total of $120,000 in subscriptions, as a result of which only between $80,000 and $90,000 were certified. The company then rushed up a further lot, with the final result that $114,000 in subscriptions were certified by the Commissioner. On the basis of from $30,000 to $40,000 in subscriptions having been rejected by the Department on a checking of only 10 per cent of the first $120,000, it is extremely doubtful if there ever was $100,000 in bona fide subscriptions prior to the granting of the final license. When examiners some months later went into the company and wanted to check up on the subscriptions, they learned that all the lists and blanks had been destroyed.

In the incorporation of insurance companies, the functions of the Commissioner of Corporations are by law placed in the hands of the Commissioner of Insurance, and the latter carries out the provisions of the statutes which ordinarily are the duties of the former. Under these provisions, prior to incorporation, there must be approval of the by-laws and records of the company.

In the meantime Cohen had retained Ray E. Latshaw of Philadelphia, to become manager of the company. Latshaw was a former examiner in the Pennsylvania Insurance Department and was experienced in insurance accounting. The law requires that the underwriter and accountant of a company must be approved by the Commissioner, and after a conference with DeCelles, Latshaw received such approval in both capacities.

Although not required by law, the Commissioner directed that the company deposit $25,000 in government bonds with him, as protection for the subscribers in the event that a final license was not granted. It developed that these bonds were obtained by the finance corpora-

tion and turned over to the company, which, in turn, by authority of its Board of Directors as shown by its records, gave its note for $25,000, payable to bearer in thirty days and dated December 10, 1935, — an obligation which was outstanding when Commissioner DeCelles granted the final license. The granting of the license under such circumstances was in violation of the law. The Commissioner said he knew nothing about the transaction until months later when his examiners went into the company, and that his friend Ryan and the other officers of the company had represented to him that there were no outstanding obligations other than reasonable organization expenses, which had already been fixed and approved by the Commissioner at $3,000.

The $25,000 in government bonds in the hands of the Commissioner for the protection of the subscribers was to be returned to the company upon the granting of the final license. The company had agreed, however, to have it retained by the Commissioner, as guaranty capital. That, in fact, was done on January 17.

On December 31, which was a hectic day in the company's history, the actual cash paid in by subscribers amounted to $7,000, and, outside of what were mostly paper transactions, this was the amount of money involved when the license was granted, in so far as the company was concerned. In the meantime loans from the Pilgrim Trust Company were made to the finance corporation amounting to $56,000, secured by installment notes of policyholders given to the finance corporation on upwards of $100,000 in subscriptions. This $56,000 was advanced to the company. An additional $15,000 was obtained by Cohen from New York, so that the total deposit in escrow for the company at that time was $78,000, or $22,000 short of the $100,000 necessary by law.

Early that day, Ryan, according to his testimony, by telephone arrangement with the Commissioner, sent to the latter a check for $15,000, drawn by the agency and made payable to the company. With it went an assign-

ment of the $25,000 of government bonds, then in the Commissioner's possession, as supposed collateral for the check. Ryan had no authority from the directors to make any such assignment. Later in the day Ryan told the Commissioner by telephone from the bank that there was still $7,000 to be made up, and he asked if the Commissioner would accept another check.

The Commissioner asked to speak with the president of the Pilgrim Trust Company, after which he talked with Ryan again. He told Ryan that if he would send up to his office a certificate from the trust company that there was $78,000 unencumbered, in cash on deposit in the escrow account of the Commonwealth Mutual, he would accept the $7,000 check along with it. This was done. The check for $7,000, however, was not included in the assignment previously issued by Ryan.

The Commissioner said he had no reason to think there was anything wrong with the checks, as the agreement was that he was to put them through for clearance on the first following business day. He did not ask the president of the Pilgrim Trust Company when he talked with him on the telephone whether the agency had an account or not. He did not ask Ryan or any one else, he said, who it was that was putting up this additional $22,000, merely assuming from what Ryan said that it was "the finance corporation."

As a matter of fact, neither of the two checks, amounting to a total of $22,000, was good at the time. The agency, upon which the checks were drawn, had no account in the bank, and, in fact, did not have one until a week later, and then it was built up largely by means of exchanging checks. In the second place, the $25,000 in bonds was not available for collateral to cover the checks, having already been put up as security that premiums would be returned if the license was not granted. In other words, the checks were neither certified nor secured; they were not worth the paper they were written on as of that date. Yet the Commissioner, without investigation of any kind, as he says, accepted

them as cash, feeling that there was no necessity for him to check up, especially as Ryan had told him they were covered or would be covered by checks from the guaranty capital interests.

On the basis of these checks, and notwithstanding the outstanding obligations of the company in connection with the $25,200 note it had issued to the finance corporation or bearer, the Commissioner at 4.20 o'clock in the afternoon issued the final certificate of authority to the company. Later, in testifying before the Committee, the Commissioner blamed Ryan for three essential commissions or omissions in connection with these entire proceedings.

First, Ryan had not told him anything about Cohen being in the picture, — and that if he had known of Cohen's connections with the company, it would not have been licensed. Second, Ryan had sworn, or at least said, that there were no outstanding obligations, when as a matter of fact there was the note for $25,200 which was given to obtain the $25,000 in government bonds, to which Ryan certainly was at least a party, — and that if he had known this fact he would not have licensed the company. Third, that Ryan had withheld from him the true facts concerning the checks for $22,000, — for if he had known they were worthless checks at the time he would not have licensed the company.

Thus the company was licensed to do business. That it was illegally licensed is clear. It did not have the $100,000 in paid-in subscriptions as required by law. It had outstanding obligations expressly prohibited by law. Moreover, both of these facts were readily ascertainable.

The illegality of the licensing of the company was indisputable. The Commissioner's chief examiner, Katherine M. O'Leary, in her last report on the condition of the company, on December 14, 1936, declared "the company was not entitled to its license on December 31, 1935." It was the opinion of Justice Lummus of the Supreme Judicial Court, who, in appointing permanent receivers

on December 26, 1936, declared, "I was satisfied the other day that the company never should have had a permit to do business anyway." It was admitted by the Commissioner himself, who in his petition for receivership, on December 14, 1936, declared that the company obtained its license by false representations, which he alleged were concealed from him.

The Commissioner, in his petition for a receivership declared: "The defendant on or about December 31, 1935, in order to secure from the plaintiff a certificate authorizing it to issue policies of insurance, as provided for in General Laws, chapter 175, section 32, represented to the plaintiff that it had complied with all the conditions set forth in said section and all other provisions of law; that it had adopted a proper system of accounting; that it had employed a competent and experienced underwriter; that it had no liabilities; that it had secured insurance on risks in this Commonwealth, premiums on which amounted to not less than one hundred thousand dollars paid to it in full in cash; that all of the aforesaid representations were false and material, and, relying thereupon and believing all of them to be true, the plaintiff on the last-mentioned date, issued the aforesaid certificate to the defendant."

The Commissioner further set forth: "That the plaintiff since has been informed, and now believes and avers, that the defendant never had paid-up subscriptions for insurance to the extent of one hundred thousand dollars prior to the time the certificates mentioned was issued to it; that it had certain worthless checks, which it represented were good, and were given to it as payments for premiums, but that the said checks were then worthless and were not given for the aforesaid purpose, but were given to circumvent the law and for the purpose of thereby deceiving the plaintiff; that as a consequence the defendant never had any right or authority to issue policies of insurance, and that it is now issuing such policies in violation of law and subject to the penalties prescribed by statute."

All of these representations cited in the petition were made by Ryan as general counsel for the company. If the Commissioner was in the dark concerning the true facts concerning the Commonwealth Mutual, if he knew nothing about the worthless checks and the outstanding obligation of the company, then Ryan had not concealed facts from him, but had deliberately falsified in his representations.

At the same time, because of the close friendly relations between the Commissioner and Ryan, and because of the many conferences they had together, the question might seriously be raised as to whether the allegations of the Commissioner are entirely correct. It requires a stretching of the imagination to believe that Ryan could have been guilty of such grievous wrongs against the Commissioner under all the circumstances, as are clearly indicated by the representations to which Mr. DeCelles referred.

Assuming, however, that everything the Commissioner said about Ryan is true, — and certainly it was testified to under oath, — it is the opinion of this Committee that the Commissioner cannot thus easily escape his own responsibilities.

The Commonwealth Mutual was the first such company to be organized under the amended statute (chapter 284, section 1, Acts of 1927) requiring $100,000 in subscriptions paid in full in cash prior to the granting of the license. The statute, before this amendment, required $50,000 in subscriptions and allowed thirty days in which to obtain the payments in full in cash. For this reason, if for no other, here was a situation calling for extreme caution, for the checking up of every step made toward qualifying for a license.

Moreover, the Commissioner had before him the experience of the Insurance Department with mutual companies which had come into being within the past ten years, since the passage of the Compulsory Automobile Liability Insurance Law, and which had been organized to handle the identical type of business as that in which

the Commonwealth Mutual intended to engage. That experience is a sorry page in the history of insurance companies in Massachusetts. Seven companies had failed from 1927 to 1931 inclusive, with combined deficits of from $800,000 to $1,000,000, and later losses far exceeding such figures. They were the Independent Taxicab Owners Mutual Insurance Company, which failed in November, 1927; the Motors Mutual Insurance Company in April, 1927; the Car Owners Mutual Insurance Company in December, 1928; the Bristol Mutual Liability Insurance Company in November, 1929; the Massachusetts Mutual Liability Insurance Company in March, 1930; and the Atlantic Mutual Casualty Insurance Company, which failed in May, 1931.

According to Ryan, Cohen had promised to make deposits in an account to be opened in the name of the agency, to cover both the $15,000 and $7,000 check. On January 2, he continued, he found that this had not been done, and that there was no account in the agency's name. Checks amounting to $15,000, — dated December 31, and made out to cash, signed by the officers of the agency and put through by Cohen in New York, — came to light later, having been refused payment by the Pilgrim Trust Company.

He said he called to the attention of the bank officials that the only account in the bank, which contained $78,000, was in trust, and that the Commonwealth Mutual could not open an account in its own name or pay out any money until the certificate of authority was turned over to the bank. Under the terms of the trust agreement, the certificate could not have been turned over to the bank until there was $100,000 in the trust account.

He said he did not let the Commissioner know of this situation, but that he telephoned to Cohen in New York, "and told him what he thought of the kind of trick that had been played."

Cohen said he was sorry, Ryan continued, and that he would come to Boston and straighten things out, which did not happen until just before the close of banking hours on January 6.

The $22,000 shortage was then made up by a deposit of $7,000 in cash or its equivalent acceptable to the bank from Cohen; $3,000 for organization expenses due to the finance company or agency from the company, and $12,000 in commissions to the agency for securing subscriptions. This last $12,000 payment was characterized as illegal by the chief examiner of the Department at the time of her later examination, on the ground that it would have constituted another outstanding obligation — in addition to the $22,200 note — had it been known of prior to the granting of the final license.

The $3,000 in organization expenses and $12,000 in commissions were paid into the agency account by check from the Commonwealth Mutual. When it was pointed out to Ryan that not until the certificate was presented could any such payment be made, he replied that it was a "simultaneous transaction."

Meanwhile, whether advisedly or not, the Commissioner had conveniently allowed the two checks for $22,000 to remain on his desk for a number of days. The agency account was opened just before the bank closed on January 6, and the checks were cleared on the following day, January 7, or seven days after they had been placed in the Commissioner's hands.

The Commissioner said that the lapse in time between his receiving the checks and sending them to the trust company had no significance; that the checks had remained on his desk, and that it was purely an oversight that they were not put through for clearance until five days after date originally agreed upon for such action.

However, Mr. Ryan in his testimony said he "must have" informed the Commissioner when the agency had opened its account, so that the checks could be presented for clearance. Further testimony on this incident was given by Charles M. Goldman, associate counsel for the agency and the finance corporation:

"I was present at the time they were made good, with Mr. Ryan, at the bank," he said. "Mr. Cohen and Mr. Ryan and myself, and I believe Mr. Latshaw and Mr.

Adams, met at the bank, and a messenger came from the Commissioner's office with those two checks to the Pilgrim Trust Company, and they were deposited to the insurance company's account and paid."

When asked why it was necessary to have such a delegation present on January 7, to cash two checks, Mr. Goldman replied: "Because there were checks drawn from the finance company to the agency, and from the agency to the insurance company, and from the insurance company to the agency. There was an exchange of checks, so they had to have the different signatures."

As testified by numerous witnesses, it was not until some time after this date, January 20 in fact, that the company actually had $100,000 in premiums paid in cash.

The company was now in position to go ahead, but from the beginning it was beset with internal difficulties. Black had not fulfilled his pledge to acquire the necessary $100,000 in paid-in cash subscriptions. No incorporator or officer, not even the general counsel, had ever had insurance experience. The company had a 100 per cent dummy set-up. Under the statute the capital interests were entitled to one half of the members of the Board of Directors, but Black, who had the resignations of most of the original directors in his pocket, was holding them up until he was taken care of on his contract. These he later destroyed, and then, with the exception of Isaac B. Lotkin, a director and secretary of the company, the directors refused to resign except upon payments ranging from $100 to $5,000.

On February 5, 1936, a conference was held with the Commissioner at which time two important problems were discussed. Ryan had asked him if there was objection to a contract of the company with the agency, which was dated January 6, by which the agency was to receive 18 per cent on compulsory insurance premiums, and 30 per cent on property damage, extraterritorial or any other kind of insurance that might be written. Of this percentage, 12 per cent was for commissions on

policies written by the agency, and the balance was to go for operating expenses of the Commonwealth Mutual, investigations and similar expenses, which the agency proposed to pay.

The second problem was Mr. Black and his contract, which Black said called for $100 a week for three years in addition to the commissions he was to receive for obtaining insurance. Such a contract had in fact been negotiated, but had been declared void by counsel for the company and the agency. This contract, of course, was with the agency and not the company.

Commissioner DeCelles objected to the original agency contract and said that in his opinion no company could live under it. This contract was never in force. At the suggestion of the Commissioner a new contract was drawn, under which the agency would receive 12 per cent on compulsory insurance and 20 per cent on all other insurance. This contract, entered into on February 21, 1936, was made retroactive to the beginning of the year.

During the first five months of the company's existence its officers declared all moneys received, whether by the company, the agency or the finance corporation, went into one account — that of the company. The company, in turn, advanced operating expenses to both the agency and the finance corporation.

On question of the Black controversy, the Commissioner told the participants to get together and stop fighting, so that the work of the company would not suffer. It was finally agreed that the matter be left to the Commissioner to arbitrate. Upon his assertion that the proposal was a fair one, a contract was finally worked out and signed by the agency and Black, whereby the latter was to receive $35 a week for one year in addition to his commissions on insurance written. Black said he had been "double-crossed" and treated most unfairly, but he accepted the contract as being better than nothing. This contract was in payment for his services in helping to organize the company, in obtaining the incorporators, and supposedly for obtaining the original subscriptions.

As the contract worked out it was probably more lucrative than the original. Cohen testified it was executed without his knowledge or approval.

But even with these problems ironed out, the internal affairs of the company did not improve materially. The president of the company, Everett P. Annis, who was a dummy for the so-called Ryan group, and who was paid $15 a week for his services as a cosigner of checks, complained that he had no office, no desk, no chair, and that when he showed up in the office he was invariably told to get out of the way.

Clearly, persistent efforts were made to prevent Cohen and the capital group from obtaining control of the Board of Directors. During January, it is true, the resignations of four directors were obtained, but their places were not all filled; so that for some months, the Board of Directors consisted of a voting majority by the Ryan or policyholders group, over the Cohen or guaranty capital group. Because of this situation, the Cohen members would not attend a meeting of the board; for their presence would have meant a quorum, and the capital interests were fearful of what might happen.

From the inception of the company, until he severed all relations with it on October 13, Ryan was in charge of the claim department, and it was this department that precipitated most of the more serious difficulties of the company. Ryan had been retained as general counsel by the company under a three-year contract, which is the maximum allowed by law, and under which he was to receive an annual salary of $5,000 plus the sum of $35 for each day spent in the lower courts and $50 a day for appearances in the higher courts during the first year, and $50 and $75, respectively, for the next two years.

In addition to this contract and the payments under it, the Commissioner approved an incorporation fee of $1,500 for Ryan, and a total organization expense of $3,000. Testimony before the Committee, which was admitted by all parties, showed that Ryan received $2,500 direct from Cohen. Then, on March 30, Cohen

telegraphed $2,500 to Latshaw, with instructions to deliver the money in cash to Ryan. The latter said the reason for this cash payment was that he had previously received a draft from Cohen which was not honored. But two months later he received another $1,000 in cash, which had been sent by wire from Cohen to Lotkin, with instructions similar to those given to Latshaw. Later, Castelli, president of the finance corporation, and whose election as president of the company in October was a forerunner to the Commissioner's petition for receivership, brought $1,500 more to Ryan from Cohen, also in cash.

Thus, in addition to the payments made to Ryan under his contract with the company, he received approximately $10,000, of which $5,000 admittedly was paid in cash. Aside from the reason given for the first cash payment, no reason was attributed for the other cash payments, nor was there any evidence to show that these cash amounts were retained by Ryan. A request to Ryan to exhibit his books was refused.

From the beginning the condition in the claim department of the company was unsatisfactory. There was considerable complaint on the street and from within the company itself that claims were not being paid, and that in many instances court proceedings were being forced upon claimants. The general manager of the company, Latshaw, held a number of conferences with the Commissioner on this subject, as a result of which an examiner, Thomas W. McCormack, was sent into the company by the Department on February 14, 1936.

The examiner reported that the claim files were positively void of information necessary to estimate the value of a claim properly or intelligently. For this reason he recommended that the company get the files into shape as soon as possible so that adequate reserves might be set up, and so that the company also would be in a position to combat exorbitant demands by claimants.

The Commissioner sent McCormack back into the company, to examine the claim department, a few weeks

later, the examination being as of March 31, the close of the first quarter of the year. He reported that there was a greatly improved condition in the department, especially in the claim files. Although suggesting that the reserves be slightly increased, the report showed that during the first quarter, injury claims against which there were reserves of $7,625 had been closed out for $4,170, and property damage claims with reserves of $1,015 were closed out for $678.93, a total saving of $3,641.07.

Just what Commissioner DeCelles had in his mind concerning the Commonwealth Mutual during this period had not yet been made clear. It is certain, however, that Cohen, from the time of the transactions immediately preceding the granting of the final license on December 31, 1935, realized he had been taken advantage of, but his money having already been ventured there was practically nothing he could do but go on in the hope that conditions would gradually be remedied.

"If any one had come to us that week," he said, "or a month after or any time during the whole period, and just released us of our organization money, and released to us all our guaranty money, they could have had the company and God bless them. Life is too short and there are plenty of places where you can make it much faster and much happier than dealing with people you can't trust."

Cohen then gave testimony of a rather sensational turn: "As a matter of fact, as I recall it now, on two occasions, once Mr. Latshaw came to me, sent by the Commissioner — would I sell? I told him all he had to do was to return our guaranty fund, $25,000, and whatever he said for organization expenses, and he could have it.

"This was sometime in February or March. Later on, about a month or so, the same question was asked me by Mr. Ryan. I sat there in his office and I took a blank paper, and I said, 'I will sign my name at the bottom of that blank paper, and you fill in whatever you say should be organization expenses, and you can have it.' "

Latshaw in his testimony also spoke of the Commissioner approaching him relative to buying the company. The internal friction within the company continued unabated, with Ryan evidently maneuvering against Cohen for control of the Board of Directors. The most vivid description of this state of affairs was given to this Committee by Isaac B. Lotkin, the secretary:

"There was continuous strife in there," he said. "Mr. Latshaw, in his testimony here, painted the company as a madhouse. In my opinion he was charitable. After a few arguments that were forced upon me, that I had with certain men in there, including Mr. Ryan, I painted the place as a garbage pail full of vermin crawling on each other's backs. I called it a cesspool of politics. As I quite often said, if the energy that we expended in trying to outmaneuver the other fellows would be utilized for the benefit of the company, it really had a future."

In August the Commissioner attended a summer outing of the officers and employees of the company, at which time he was quoted by a number of witnesses as having patted every one on the back, told them things were going well, and that he intended to use the experience of the Commonwealth Mutual as a good example for other companies and also as a means of lowering the compulsory automobile insurance rates for 1937.

During this entire period the company evidently was in the Commissioner's good graces. While it was true that claims had not been settled as rapidly as sound insurance practice would seem to require, there was no serious worry on this score, as it was a deficiency that could be remedied without embarrassment to the company. The chief objections to the delay in claim settlements, as previously stated, came from within the company, and especially from Mr. Cohen. Large sums of money were accumulating to the company's account in the Pilgrim Trust Company, and it was upon Cohen's suggestion that about $200,000 of this money was invested in government bonds and placed in custody of the Commissioner, "as a gesture of good faith." Incidentally, these investments

were not made by the treasurer of the company, which is the ordinary procedure, but for the most part were made by Ryan.

There was no mention of reserves being too small during this period; for the experience of the company showed that it had been settling claims within the reserves set up by the company against them, an important factor which must be taken into account in any consideration on the question of reserves.

The company appeared to be going along well, and the Commissioner so stated. The chief obstacle in its path was the internal friction occasioned by Ryan's efforts to prevent the guaranty capital interests from obtaining control of the company, or of obtaining one half of the directorate, as provided by law. An ultimate showdown on this was inevitable.

On August 21, by prearrangement, a meeting of the Board of Directors was held, the first in several months. It was apparent that a deal had been made. Ryan was given a new contract for three years, increasing his salary as general counsel from $5,000 to $10,000, with the court appearance fees remaining as in the first contract. Prior to this meeting, however, Ryan had been installed in new offices at 6 Beacon Street, and supplied with clerical assistance at the expense of the company.

In return for Ryan's new contract and 100 per cent increase in salary, Count Luigi Castelli was elected to the Board of Directors as an additional representative of the Cohen capital group, and it was also agreed that a new contract between the company and agency would be drawn up by a subcommittee of Ryan and Lotkin. This subcommittee never met, after Ryan had obtained his new contract, because of his failure to put in an appearance. Accordingly, no new agency contract was ever negotiated.

At about this same time the claims started to accumulate even more rapidly. Settlements were slow and conditions became worse. Whether it was due to lack of reports by assureds or lack of investigations by the claim

department, or due to the per diem stipend which was paid to Mr. Ryan for his appearances in court, very few claims were paid for a long period of months, and a very large number of actions piled up in the courts. In fact, the Commissioner in his petition for receivership, declared that "The defendant for months permitted claims to accumulate without making any investigation whatever in many cases, that the defendant had delayed . . . the adjustment of many of its claims, that comparatively few claims were settled prior to September 1, 1936."

With the time approaching for the writing of business for 1937, and when it was expected the volume of business would be fully 50 per cent greater than for the first year, the Commissioner ordered an examination of the company. He testified that this was to be a routine examination, although under the law it is necessary to examine a company but once in three years. The chief examiner, Katherine M. O'Leary, with a staff of some eight or ten assistants, went into the company on September 23, 1936, where she remained for nearly twelve weeks, up until the company was closed, on December 14.

In an undated preliminary report which was supposed to be as of August 31, 1936, but which was made some time in October, the chief examiner went into the company's affairs at length. She disclosed the various financial transactions, or manipulations, just prior to the granting of the final license, — which have already been referred to in this report, — and which, she said, clearly did not entitle the company to a license.

The report of the examination alleged that the agency failed to function during the first five months of the year, its work having been performed by the company and finance corporation, and numerous provisions in the agency contract with the company were never carried out. Further, the statement that all moneys belonging to the company, the agency and the finance corporation were collected by the latter during the first five months appeared to be correct, but that the added contention

that all of this income was credited to the account of the company was false.

Practically all money taken in from the early days of the company up to February 13 had been paid over to the Pilgrim Trust Company as security for two loans, one for $28,000 made to the finance corporation on its note for $30,000 endorsed by Frank Cohen, and one for $23,000 to John S. Slater on his note for $30,000, also endorsed by Cohen, both notes being secured by installment notes of policyholders. There was an additional note for $5,000 by the finance corporation to John S. Slater. All of these sums had been a part of the $100,000 "paid in cash" premiums for subscriptions prior to the granting of the license on December 31, 1935.

When the bank's indebtedness was finally paid off on April 27, the report further alleged, the collateral was released and taken over to New York and rediscounted at the Penn Exchange Trust Company. Various sums of money were later transferred to New York by the finance corporation. Subsequently, the Commonwealth Mutual, through the agency, received certificates of deposit in substantial amounts from the Penn Exchange Trust Company. Because the agency had no records until June, and because the books of the finance corporation were largely kept in New York and had not been available for inspection, the chief examiner said it was impossible to know just what the exact picture was.

Continuing, she reported that subscription blanks were found to have been destroyed; there was evidence of excess credits allowed by the company to the finance corporation on cancellations; property damage coverage was entered on the premium register on the date the accident occurred; the agency had been paid $12,000 in commissions by the company for subscriptions obtained prior to the granting of the license and to which it was not entitled; the agency had been paid commissions on business written by agents direct for the company to which it was not entitled; the agency was paid commissions on business from June 30 to September 15, which

was a period when it was operating without a license; the claim files contained notice of accidents without description of injuries or circumstances; there was no quorum at the first annual meeting of the company on October 12, 1936, and therefore a question as to the legality of the election of several officers; salaries of officers had never been voted; and surety bonds were not obtained by those officers from whom they are required until February 28, 1936, two months after the company had been operating under its license, although the statute requires such bonds before the officers enter upon their respective duties and imposes a penalty for failure to comply.

These, in short, were the primary findings alleged in the report of the preliminary examination of the company. In addition, the report stated there was "a substantial deficit," but that further investigations were essential in order to determine the true state of the company's affairs. The chief examiner was ordered by the Commissioner to continue the examination, and to report as of October 31.

Meanwhile, storm clouds had been gathering rapidly. Count Luigi Castelli, who had been elected a director on August 21, when Ryan got his increase in salary, rapidly became a factor in the company's affairs. Both the Commissioner and Ryan had adopted an antagonistic attitude toward him, not so much, perhaps, that he was a representative of Cohen, as that he represented himself as a Vatican count. For a period of some weeks, if the days of testimony before this Committee devoted to the subject is any criterion, the question of whether Castelli was a count or not a count completely overshadowed all else in the history of the Commonwealth Mutual.

The guaranty group decided the time had come to force a showdown on the control of the company, for the protection of such bank loans or other obligations as were outstanding on the part of the finance corporation, which had put up the money to organize and start the company and also the agency.

Accordingly, the Cohen interests decided to make Castelli president of the company at the annual meeting to be held on October 12, 1936. It was figured that by that meeting, for the first time the capital group would be in control. Prior to the meeting Ryan had luncheon with Castelli and told him he could not be president, that he was a foreigner and that what was needed was a strong local man of broad experience to head up the company. The plan of the Commissioner and Ryan evidently was, if possible, to keep Annis, the $15-a-week dummy president, in office until such time as they had decided who should succeed him, — without regard to the interests of the guaranty capital group, which was under a serious disadvantage because it was its money that was tied up in the entire Commonwealth Mutual setup.

During the luncheon of Ryan and Castelli, Ryan informed the Count, as further reasons why he should not be elected president of the company, that "there was trouble ahead," and that "something might happen to the agency," according to the testimony of Castelli.

One more reason given by Ryan, Castelli continued, was that if the Count became president of the company, he and Cohen might take all of the funds in sight and flee to Greece, where they would find a haven safe from all dangers of extradition.

The fact that Ryan was in constant touch with the Commissioner would lead to the belief that in the event of Castelli's election, the stage had been set as early as October 12, 1936, for the taking away of the agency license.

Notwithstanding Ryan's and the Commissioner's objections, Castelli was elected president. Ryan and Annis refrained from voting. The Commissioner and his chief examiner contended that there was not a quorum present at the annual meeting, within the provisions of the by-laws. Their contention was disputed. Mr. Goldman, associate counsel for the company, who was present at the meeting, testified that 597 policyholders

and 240 shares of guaranty capital stock were represented. The by-laws required the presence of only 10 policyholders and 3 stockholders for a quorum.

At any rate, Castelli was president and Cohen controlled the company for the first time, but only on paper. There was still another hurdle. Under the by-laws, although not required by statute, the president, as a cosigner of checks, was required to furnish a bond, and the president's bond had been increased, with the approval of Castelli, to $25,000. With his education and background, and his record of accomplishments and service in the engineering field, in which he held several degrees, he felt that there would be no difficulty in obtaining a bond for any amount. Moreover, his references were of an unquestionably high standard. He made application for a bond on the day following his election.

The secretary and treasurer of the company were required to have a bond by statute, under penalty, before they could function. When the company first started business, both the secretary and treasurer functioned, in violation of the statute, for two months, and there was no protest, no warning and no comment on the Commissioner's part.

Yet, with respect to Castelli, who was not required to have a bond under statute, but only under the by-laws of the company, the Commissioner wrote to Castelli four days after his election and informed him that if he attempted to act as president before a bond was filed, he, the Commissioner, would "bring criminal action against you in the courts of the Commonwealth." At the same time he wrote a letter to Latshaw, general manager, and to O'Connell, claims manager, notifying them that if they took any orders from Castelli as president of the company, he would "hold you personally responsible."

This action on the part of the Commissioner was unreasonable in the extreme, and was so characterized by Governor Curley, who, in Castelli's presence, ordered DeCelles to "give the boy a chance."

It was most unusual, also, for the Commissioner, in

such a short space of time, to take upon himself the added duty of seeing that the company was carrying out the provisions of its by-laws.

The real reason for failure of Castelli to obtain a bond was never fully disclosed. What happened, or who did it, was not revealed, but testimony before the Committee (and information obtained from other sources) indicated that the attitude of every bonding company was that while there was no risk or question of loss involved, "We do not wish to write that particular bond."

Events then occurred rapidly. Ryan severed all connections with the company by resigning on October 13, the day after Castelli's election, both as a director and as general counsel, thereby giving up a $10,000 a year salary and lucrative court fees as were specified in his contract. Ryan, in his testimony, declared the company to be positively solvent when he resigned.

The Committee was unable to obtain any satisfactory reason as to why Ryan should have given up such a profitable connection, unless by arrangement with and at the suggestion of the Commissioner. His only reason, as testified to by him before the Committee, was that he had discovered Count Castelli "was not a Vatican count," as the latter had represented himself to be.

The Committee took the view that it did not care whether Castelli was a count or not. It was concerned entirely with his conduct as an officer of the Commonwealth Mutual; and in so far as it has been able to determine, his character and reputation in business as well as socially were not subject to question.

The Commissioner's attitude toward Castelli, for some reason which is rather obscure to the Committee, was one of intense dislike, and he took no pains to conceal it. He also testified that Castelli's connections with Cohen, and the understanding that he had become a director in Cohen's New York company, the Metropolitan Mutual Auto Insurance Company, — which brought about "an intermingling of personalities between the Commonwealth Mutual and the Metropolitan Mu-

tual," — prompted him in his decision with respect to Castelli.

Coming as it did within twenty-four hours of the time he had told Castelli that "there was trouble ahead," and that "something might happen to the agency," in the event of Castelli's election, Ryan's resignation strengthens the belief that Ryan and the Commissioner, in the event of failure to obtain undisputed control of the company, had previously adopted a policy of "rule or ruin," and that Ryan, upon suggestion from the Commissioner, eliminated himself from all connection with the company just before the storm broke.

At any rate, just one week after Castelli's election as president of the company, the Commissioner called in the officers of the agency for a conference or "hearing" on the question of why the license of the agency should not be revoked. This conference was held on October 19.

Mr. Slater had been made general counsel of the company to succeed Ryan, and Samuel Silverman had become counsel for the agency. The agency was charged with having operated without a license from June 1 to September 15, Ryan having neglected to obtain a renewal or to mention the subject when the first license expired. The Commissioner had, however, renewed the license on September 15. The Commissioner also charged that the agency was not entitled to commissions for the business which it had written during the period in question.

After an informal discussion, the Commissioner asked Silverman to have a private talk with him. As a result of that talk Silverman assured the officers of the agency that everything was all right, that the Commissioner would leave them alone. On November 4, however, Silverman received a telephone call from the Commissioner asking him to "round up the boys" of the agency and come in to see him concerning the agency. There was no suggestion that a formal hearing was to be held. When they arrived, the Commissioner forthwith staged what Silverman characterized as a "Soviet trial." The

Commissioner said the question before him was on the revoking of the agency license, and over vehement, heated and finally bitter protest on Silverman's part, he proceeded with his "hearing."

The proceedings were arbitrary and calculated. Officers of the agency were not allowed to produce their books in order to answer the Commissioner's questions. Obviously prearranged, the "hearing" would have been farcical had it not been so serious and so far-reaching in its consequences. At the conclusion, he revoked the agency license.

The attending publicity given to the Commissioner's action was reflected immediately upon the Commonwealth Mutual, because of the close connection of the agency and the company in the public mind. No surer plan of wrecking an insurance company could have been devised. Claimants and their counsel besieged the offices of the company seeking settlements. The scene was one of chaos.

About this same time Lee M. Friedman and his associates had prepared a petition on behalf of a client, one Fasano, a policyholder in the Commonwealth Mutual, seeking appointment of a receiver for the company to take it over and conserve its assets. This action, it was testified, had been prompted by street rumors and newspaper publicity, to the effect that the company was in dire financial difficulties and was about to fail. In other words, this situation was precipitated by the Commissioner's actions, whether or not they were justifiable, — which incidentally is a moot question, — inasmuch as he had renewed the agency's license only six weeks before, and especially because of his subsequent action on the agency issue.

Mr. Friedman went to the Commissioner with his Fasano petition. The Commissioner testified repeatedly that he had no connection with, and was in no way involved in, the Fasano petition. This is not the fact. His interest in and his connections with the Fasano suit, and his insistence upon quick action, cannot be ques-

tioned. He was responsible for it by reason of canceling the agency license. He accompanied the Fasano counsel to the office of the clerk of the Supreme Judicial Court on November 6. There was no Supreme Court justice in the Court House at the time, Justice Crosby having left a few minutes before. The Commissioner was not only a party to, but the instigator of, the incident which then followed.

Justice Crosby was finally reached at the Back Bay Railroad Station, where he was awaiting arrival of his train for his home. The circumstances were explained to him, and he authorized the clerk of the Supreme Court to issue an order of notice. When the case came up for hearing the Commissioner was present, although he stated in his testimony that he was there on another matter.

The Fasano case was postponed temporarily. Counsel for Fasano and for the company, within a day or two, came to an agreement on stipulations, under which the Commissioner was to assume virtual control of the company. This agreement was signed on November 10. The Commissioner immediately placed his assistant and relative by marriage, John McAuliffe, in charge of the company, and thereafter no claim could be paid, and no expenditure of any kind made, except upon approval of McAuliffe.

About this time a new figure appeared on the scene, one Nathan Fink, a member of the bar of Massachusetts, who in some mysterious way, as was testified before the Committee, "muscled in" on the case. The plight of the company in its negotiations with the Commissioner was desperate. Mr. Cohen had his personal counsel, Charles H. Griffiths of New York, come to Boston to see what he could do. There was a conference, arranged by Castelli, in the home of Governor James M. Curley, at which the Commissioner and Mr. Griffiths were also present. The detail of that conference, though interesting, is not of primary importance to the case, except that Griffiths made an appointment to see the Commissioner at his office on the following day.

When Griffiths entered the Commissioner's office, Fink was there. Whether his presence was at the request of the Commissioner or merely as a result of his "muscling in" proclivities, from that time on he became the middleman in subsequent proceedings. Griffiths did not know who or what he was; he couldn't ask him to get out; he accepted him as a go-between for the Commissioner, as did Cohen and others shortly afterward.

In the days that followed there were innumerable conferences. The Commissioner, with Fink's help, worked out a plan for a complete reorganization of the company. Cohen and his representatives were to be ousted. New officers, Massachusetts men, were to be found to take over the company. New capital was to be brought in. The Commissioner and Fink prepared what the former called a "functional chart," an elaborate plan which would show what every person connected with the company was to do and be responsible for. It was worked out so minutely that it even included half-girls and quarter-men, defining just what a half-girl was to do, and what a quarter-man was to do.

Fink, as was recognized generally, and as so evidently indicated by the Commissioner himself from these facts, had taken Ryan's place, even to the extent of aiding and abetting in seeking to obtain control of the company. At the same time Fink tried to make it appear that he was representing the guaranty capital group.

But it was found that if the company was to be pulled out of the fire by such a plan, it lacked an agency. Then one of the astounding features of the whole case developed. Mr. Fink had a talk with the Commissioner, and out of the talk was born a new agency, to be known as the Kilby Underwriters Insurance Agency. The new agency was comprised, on paper, of Benjamin F. Watson, president and treasurer; Hyman Copins, clerk; and Charles L. Doyle.

Watson, strangely enough, was the treasurer of the agency which the Commissioner had put out of existence shortly before. Copins was a new figure. Doyle was

Fink, for he was an assistant of Fink's, and in testimony he readily admitted that Fink had one-third interest in the new agency. It was further shown that Fink had absolute control of the agency, because of a provision requiring a 70 per cent vote of the outstanding stock before any action of any kind on anything could be taken, and Fink held 33⅓ per cent of the stock.

The new Fink agency was given a license forthwith, and while it opened up new offices it did not function, even though the Commonwealth Mutual formally designated it as its agency and so notified the Commissioner. It was, however, making plans for 1937 business.

Two days later, as indicating what was still in the Commissioner's mind, a new precedent was established in insurance circles, when he went to the Commonwealth Mutual and gave a "pep" talk to the claim department. In this talk he indicated that things were working out satisfactorily, that everything would soon be all right, and that if the claim men performed their work properly, not seeking settlements on the ground the company was in difficulties, there was nothing to fear.

To expedite the settlement of claims, the guaranty capital group brought a number of long-experienced claim men over from New York. They lasted one week. Commissioner DeCelles ordered their discharge on the ground they were endeavoring to take advantage of conditions to obtain unfair claim settlements. He next, through Fink, forced the resignations of Castelli, Adams and others, by representing that he would not negotiate with the guaranty capital group so long as those men held office in the company.

Who took their places and served during the final two weeks of the company's existence is immaterial to this report, except in one instance. The new treasurer, Joseph B. Crowley, who had been a protégé of the Commissioner in the company from its earliest days, first as assistant accountant and then as assistant manager, obtained his bond without difficulty and but slight delay, which is interesting in view of what happened in the case of Castelli and one or two others.

During all of this period he was being kept informed of conditions within the company by his chief examiner who, with her corps of assistants, had been examining the company since September. Their examination was never completed, according to the testimony of the chief examiner, although they spent approximately twelve weeks on the task which ordinarily should not have taken more than a fraction of that time. The chief examiner was merely obeying the Commissioner's orders.

In the meantime Fink, at least in his own opinion, was operating the company. He had said he had the Commissioner's ear and every one believed him. His next move was to ask for $1,000, which had been approved by the Commissioner and which was agreed to by Mr. Cohen and Mr. Griffiths, who felt that under the circumstances they would have to go along with him if they hoped to get anywhere with the Commissioner. A voucher for the payment was made out and initialed with an O.K. by McAuliffe. When it came to signing the check, the available cosigners, Adams and Lotkin, objected. McAuliffe told them the Commissioner knew all about it and it was all right, and they signed the check under protest.

Meanwhile Fink had been looking at some of the claim files, particularly relating to cases which he had settled or gone to court with as counsel for claimants. He put in an occasional appearance at the company offices, and spent much time in the Parker House or with the Commissioner. He testified that he was running the company during this period, but it appeared from testimony that he was the only one who knew it or even thought it. His own assistant, Mr. Doyle, testifying under oath, said that Fink was at no time in charge of the company or running it, although he had succeeded in placing Doyle in the claim department for a short time.

An illustration of how Fink employed his chiseling methods was given to the Committee by Frank P. Hurley, the last manager of the claim department. Mr. Hurley said a telephone call came one Friday afternoon, while he was in the main office of the company. He continued:

"Some one told me Mr. Fink was calling me, so I went to the phone and this voice on the phone said, 'Why the hell is it, Frank, that when I try to reach you I can't reach you?' Well, I recognized the voice, and I said, 'Oh, were you looking for me, Nate?' He said yes and I thought he was kidding. I said, 'Perhaps it's because the company offices are a little split up and I have been trying to hide away in a corner of the office, and it's probably a little difficult—but what do you want me for?'

"He said, 'How many cases have you got on the list for next week?' He was apparently familiar with our practice of setting up on Friday a list of all suit cases coming up during the following week in different courts and districts and some auditor cases, and get them lined up to be ready to try them. I don't remember just how many there were but I told him, and I said, 'Why?' He said, 'Well, I'm going to take care of all of them.' I said, 'Who says so?' He said, 'I say so,' and I said, 'Well, don't you think that information should come to me from some other source?' And he said, 'No,' and I said to him, 'Go to hell.' That is about the only time Mr. Fink ever tried to interfere with the operation of the claim department. . . . I represented the company in those cases the next week, and thereafter."

Fink next made a request for $2,000. Again a voucher was drawn up and given an initialed O.K. by McAuliffe for the Commissioner. The Commissioner knew all about the $2,000 and it had his approval. But at this time both Adams and Lotkin refused to sign the check. They did not know what Fink was, who he was, what he had done, was doing or was supposed to do, and they knew of no action of any kind having been taken which connected Fink with the company. For these reasons they would not permit the company's money to be squandered in such fashion. When Crowley succeeded Adams and got his bond, he signed the check forthwith. But Lotkin was still the other cosigner, as his successor had not qualified, and he refused point blank to sign it, and Fink never got this $2,000.

Lotkin, in his testimony, after explaining how he was induced to sign the first check for Fink for $1,000, — over his strong protest, — said that Fink "grilled" him on the question of signing the second check.

" 'I signed the first $1,000 check,' I told him, 'but that's no reason I'll sign the second.' He said, 'The Commissioner says it is O.K.' I said, 'To hell with you; I'm done.' And I walked into the office of the receiver, already appointed, and I found him in, with McAuliffe. He said, 'You feel better now, not signing the $2,000 check. Now the vultures have got it,' meaning the receivers. I said, 'I don't care who has got it.' And he referred to me in an uncomplimentary way. And I retorted, 'You must remember, Mr. Fink, one of these days you may be grateful that I refused to sign this check and regret that I signed the $1,000 check.' I said, 'Some day there may be a real probe of this affair, this entire fiasco, and the stench will drive you out of Massachusetts, so leave me alone.' He said he would catch up with me some day, so here I am, and God have mercy on my soul."

Following the petitioning of the company into receivership, Fink filed a claim for $5,000 with the receivers, with $1,000 being credited and with an alleged balance due of $4,000. The claim was disallowed and when he persisted in pressing it, the receivers asked for an itemized bill, showing just what he had done — to which Fink did not reply.

If Fink was entitled to any compensation for his alleged services, that compensation should have come from the Commissioner, whom he represented, or from the Cohen group individually, which had accepted him under a feeling that he had been forced on them. Certainly the money was not due him from the company, and the receivers may well bring action for the recovery of the $1,000 improperly paid to him upon the say-so of Commissioner DeCelles. The only thing Fink accomplished was in obtaining the license from the Commissioner for the Kilby agency, and for this he had already been paid

by being given control of the agency and one third of its stock.

It should be noted at this point, that just as Ryan had testified that the Commonwealth Mutual was entirely solvent when he left the company on October 13, so did Castelli as of the date of his forced withdrawal on November 30. Castelli, in fact, gave the Committee detailed figures as to the condition of the company at that time.

From January 1 to September 30, 1936, he said — which was a few days before he became president of the company — only $38,620.25 had been paid in claims, both for personal injury and property damage, representing a total of 642 claims. On the same date there were 4,359 claims outstanding, or a ratio of 14.7 claims paid as against those outstanding, this being the record for the first nine months of the year. There were 427 claims in suit at the same date.

Castelli said that from the time he was elected president of the company until the end of the same month, that is, from October 13 to 31, a total of $40,289.39 was paid in claims, or more than during the entire preceding nine months. From November 1 to the 30th, when he left the company, $144,293.87 was paid in claims. Thus, he said, from October 13 to November 30, under him, claims paid amounted to $184,000, as against $38,000 under Ryan in nine months. Among the claims paid in Castelli's régime were eight fatal cases out of a total of fourteen that had been pending all year, he added.

On December 12, while proceedings were pending in court, the outstanding property damage claims numbered 1,081, against which were reserves of $15,979.57. Personal injury claims numbered 1,630, with a reserve of $171,926.75. As against a total of reserves of $187,906.32 the company had liquid assets of $242,894.40. Moreover, the claim payments both under Ryan and under Castelli had been made at a total less than the reserves which had been set up against them.

On this basis, Castelli said, the company was clearly

solvent, and if he had been left alone, "with Mr. Latshaw to run the company on a business basis and not a political basis, the company would still be going."

Asked who would not permit the company to run on a business basis, he replied: "You have it now in your own hands, the proof from court records and newspapers everywhere, that the Commissioner pushed the company into receivership. He wanted a company that was solvent to be entered insolvent, for what reasons I don't know; but I only say this, undoubtedly the company wasn't sent into receivership for business reasons."

As a last resort, Cohen finally decided to make a definite appeal to the Commissioner in person, to show him his own figures as to the financial condition of the company, and to offer to do, in fact, anything within reason to permit the company to continue in business. A series of meetings between Cohen and the Commissioner followed. The first was on Friday evening, December 11, 1936, when the Commissioner accompanied Cohen and one or two others to the Mayfair, a Boston night club. This meeting is denied by the Commissioner, but is verified by those who were present in the party and by disinterested persons who met and talked with them at the time. The second meeting was on the following night, December 12, when the Commissioner went to Cohen's room in the Parker House and remained for several hours. The final meeting came on the night before the Commissioner brought his petition for receivership against the company.

This conference was held on the night of December 13, 1936, in the Bellevue Hotel, while other interested parties were gathered at the Parker House. There was much running back and forth between the two hotels. Fink was handling negotiations, as he testified, hoping that this would be the last conference, and as it turned out, it was.

The Commissioner, according to his testimony, had received a verbal account of what was going into a report of his chief examiner, Miss O'Leary, which was to

be made available to him in writing on the following day, December 14. This report, which was the third and last during her three months or slightly less of examining the Commonwealth Mutual, in addition to alleging an impairment of the guaranty capital to the extent of $188,068.09, reviewed and amplified her earlier reports and also made the emphatic finding that "the company was not entitled to its license on December 31, 1936."

Cohen's figures and those in possession of the Commissioner differed materially, because of the amount set up as reserves. The examiners had said the company reserves were too low, and they prepared a set of figures far higher. Which set of figures was correct is a matter of opinion, purely, and has never yet been determined, although the entire question of solvency hinged upon these reserves.

Cohen was ready to listen to suggestions, and further than that, if it was found necessary, he was prepared and so offered to put $100,000 in cash into the company, in addition to what he had already put in at the beginning, to meet any alleged deficit the Commissioner might say existed. To this offer the Commissioner was silent. At three o'clock in the morning of December 14, 1936, this unusual conference broke up; but the attitude of the Commissioner was such at the time that every one connected with the company believed that the Commissioner was going to let them continue in business and work out their own salvation, subject to his supervision. Even Fink so testified.

Seven hours later, the Commissioner exploded a bomb among them. Without notice or ado, he went to the Supreme Judicial Court, with Assistant Attorney General Ronan, and filed his own petition for the appointment of a receiver, alleging that the company was insolvent, had been improperly managed, and that its continued operation would be hazardous to the public. He testified the petition had been under preparation for a week previously. He requested that an early hearing be given.

The Commissioner knew that on the following day,

December 15, the Fasano suit was to come before the court for final decision, and that there was every indication at the time that the suit would be withdrawn. Hence his haste. The hearing on the Commissioner's petition was set for the 15th, before Mr. Justice Lummus, at the conclusion of which a temporary receivership was allowed.

Although the Commissioner throughout, both in court and before this Committee, alleged that the company was insolvent, the Committee does not find that the question of solvency or insolvency has ever been determined. The entire question resolved upon the reserves set up by the company to meet outstanding claims, as compared with far higher reserves set up by the Commissioner.

Counsel for the company represented that the Commissioner's reserves were most unfair to the company, that the company "was being reserved to death," and pointed out how easy it was to reserve a company to death if the Insurance Department decided to do so. To this Justice Lummus replied: "The power of the court is not limited to cases where you are insolvent. If you are in an unsound financial condition, or if your business policies or methods are unsound or improper, or if your condition or management is such as to render further transactions of business hazardous to the public, this may be done. . . . I am not talking about technical compliance with the requirements, although I think that is doubtful. I am talking about the furnishing by the company of substantial protection such as the statute requires, which was far from such as should ever permit you to have a license or to do business in the first place."

The offer of Mr. Cohen to put up an additional $100,000 in cash if the court felt the company reserves were too low, was made in open court by Mr. Silverman, but was not commented upon by the court or by the Commissioner. Counsel also argued that the Commissioner had failed to live up to statutory provisions requiring him to notify the company to replenish its reserves and its

financial condition, if he felt the company was not financially sound. He asked the court to go into detail on the reserve question, or to have an auditor or master appointed for the purpose, which the court did not do.

On December 26 arguments by counsel were heard, no further evidence being introduced, and Justice Lummus made the temporary receivers permanent. The company appealed to the full bench, contending among other things that it had been unable to obtain a full hearing on the question of solvency or insolvency of the company. The appeal was denied on the ground that the record did not show a denial of a full hearing, but in the final paragraph of its dismissal of the appeal, the full bench said (1937, Adv. Sh. 625 at page 627): "It is of high importance that no receivers be appointed and no decree entered for the liquidation of a corporation except after full hearing. Great judicial care ought always to be exercised to the end that there be no receiverships save in instances where necessity is disclosed in order to protect rights and prevent wrongs."

CONCLUSIONS.

Two sets of factors emerge as the sources of the troubles in which the Commonwealth Mutual Liability Insurance Company became involved. The first consisted of internal factors, the second of external factors.

The various transactions, contrary to law, which marked the issuance of the company's license, handicapped the company from its origin. The setup of the company, with a group of officers and directors and a general counsel, not one of whom had previous insurance experience, was a distinct liability. The type of risks accepted and the overmanning of the company with inexperienced political appointees were both detrimental. The delays in organizing the bookkeeping and claim departments, attributable to this inexperience no doubt, were such that the company never was able to bring them up to date, which resulted in confusion and turmoil. The domination of George S. Ryan over the Board

of Directors, his constant maneuvering for control of the company, his laxity in handling claims, — for he was in sole charge of the claim department for the first nine and a half months of the company's life, — were also important factors.

These various internal circumstances, contributing in part to the plight of the Commonwealth Mutual, were closely entwined with the external factors as represented in the person of the Commissioner of Insurance, Mr. DeCelles, aided and abetted first by Ryan and finally by Nathan Fink. Many if not most of the internal factors, in fact, can be attributed to the Commissioner, because it was clearly shown that practically from the outset he elected to administer rather than supervise this company.

The administration of an insurance company is not the function of any insurance commissioner. A commissioner carries sufficient responsibilities without burdening himself or his department with extraneous or unauthorized powers which are neither imposed nor contemplated by law.

1. Illegality of License.

The Commonwealth Mutual Liability Insurance Company was illegally licensed on December 31, 1935. It had failed to comply with the statutory requirements that it have $100,000 in subscriptions paid in full in cash as a prerequisite to such license. It had outstanding obligations, other than reasonable expenses of organization, in direct violation of the law. If the Commissioner was not fully aware of both of these circumstances, he was negligent in his duty to know these facts. The records of the company plainly showed the outstanding obligation of $25,200.

That the license was granted illegally was substantiated by most of the witnesses appearing before the Committee. It was so found by the chief examiner of the Insurance Department. It was confirmed by Mr. Justice Lummus of the Supreme Judicial Court. It was

admitted by the Commissioner in his bill in equity seeking a receivership for the company, although he denied he knew these facts at the time of the issuance of the license.

The Committee finds that the Commissioner knew, some weeks before the license was granted, that Frank Cohen of New York was the financial backer of the company, despite the Commissioner's sworn testimony that had he known of the Cohen connection he would not have granted the company a license.

Further, the Committee finds that the Commissioner was instrumental in the retaining of Ryan by Cohen to organize the company and later to become its general counsel, that he guided Ryan — who admittedly had no previous insurance experience — throughout the formation period and during the life of the company until Ryan resigned at his suggestion, and that he was at all times aware of the details connected with the inception and operation of the company.

The Committee finds that, by arrangement with Ryan and through him with Cohen, the Commissioner accepted two checks, amounting to a total of $22,000 as a part of the alleged $100,000 in subscriptions paid in full in cash, knowing at the time that they were not valid. At that time there was no account in the bank against which the checks were drawn. These checks, accepted on December 31, 1935, with the express understanding that they were to be presented for clearance on the first business day following, were designedly held by the Commissioner for more than one week until such time as he was notified by Ryan that an account had been opened and that the checks could finally be deposited.

The outstanding obligation of the company, prior to the issuance of the license, other than reasonable expenses of organization, consisted of a note for $25,200, evidencing a loan of $25,000 in government bonds supplied by the Insurance Premium Finance Corporation. This loan, duly authorized and appearing in the records of the company, was transacted on December 10, 1935.

Its existence was known to the Commissioner, or should have been known upon proper investigation.

In all of these preliminary transactions, Commissioner DeCelles was an acquiescent party. The facts were readily ascertainable and it was clearly his duty to know of them. If he were not aware of them, as he testified, he was guilty of gross negligence and incompetence.

2. Operation of Company.

Born under such circumstances as have been disclosed, it was not surprising that the company was seriously handicapped from the beginning. It was faced with staggering obligations before it could begin to function. Its earliest days were hectic. Its offices were a scene of confusion and turmoil. Not one of the officers or directors had the slightest conception of how to proceed. Not one of them had previous insurance experience.

Cohen had sent to Boston Ray E. Latshaw, a former examiner in the Pennsylvania Insurance Department and experienced in insurance matters, to become general manager. Latshaw was formally approved by the Commissioner as underwriter and accountant for the company, as required by law. Upon him rested the task of bringing order out of chaos. Had he been permitted to function in the capacities for which he was engaged, conditions would have been much improved, but he was interfered with at every turn, chiefly by Ryan. As Latshaw testified, he became general manager, underwriter and accountant in name only.

From the outset the company adopted an open-door policy in so far as risks were concerned. This is generally the case with the new companies until they can have an opportunity to weed out the worst cases. Large numbers of the insured in the Commonwealth Mutual had been rejected by all other companies doing this kind of business. This fact added to the difficulties.

Henry J. Fielding, receiver for the company, in testifying before the Committee relative to the type of risks taken by the company, cited the case of one insured who

was involved in five accidents in a single week. There was also testimony that, as shown by Lane's report, there were a great many undesirable characters among the company's assureds.

The company was hampered by being greatly overmanned, a large number of the employees being inexperienced and inefficient. Most of them obtained their positions on recommendation of the Insurance Department. There was evidence of gross preference without regard to ability. Inexperienced employees who had political connections were receiving higher compensation than many who had long insurance experience. There were three times as many claim men as there should have been, and three or four times as many female employees as were needed in the claim department.

Under the statute the guaranty capital interests were entitled to name one half of the directorate. From the first days of the company until October 12, 1936, there was continuous strife within the company over the efforts of these interests to obtain what they were rightfully entitled to, and which the Commissioner's group headed by Ryan had blocked. This condition made proper and efficient management impossible. It was not until the annual meeting, at which Count Luigi Castelli was elected president, that the guaranty capital group obtained its legal representation, and then it was only on paper.

The battle which was waged by the Commissioner and Ryan to prevent the election of Castelli as president, and the circumstances concerning it, were significant. The action of Ryan in telling Castelli in advance that in the event of his election "there was trouble ahead," and that "something might happen to the agency," was illuminating. In fact, no other conclusion is possible except that the Commissioner and Ryan, in the event that control of the company slipped away from them, were bent upon destruction of the company; and the first step in such a program was to destroy the agency, invite public distrust generally, and precipitate what would be tantamount to a run on a bank. This conclusion was

borne out by Ryan's severing connections with the company immediately after Castelli's election.

When the company was first organized, the secretary and treasurer not having obtained bonds functioned for two months in violation of the law. Despite the fact that the law carries a penalty with it, no objection was voiced by the Commissioner. There is no statutory requirement for a bond for the president, but such a provision was contained in the company's by-laws. Within two or three days after Castelli became president, he was notified in writing by the Commissioner that if he attempted to perform the duties of president before obtaining a bond, criminal action would be brought against him.

Castelli never received a bond. There is more than just a suspicion that the bonding companies, apprised of the Commissioner's attitude toward Castelli, did not dare write the bond for fear of incurring the displeasure of the Commissioner and inviting possible reprisals from him.

It has already been shown in this report that during Ryan's control of the claim department there had been a continuous laxity in the settlement of claims. The delays in organizing the bookkeeping and claim departments, and the failure of the claim department to keep up with investigations, were in part responsible. More important even than these reasons, however, was the evident decision on the part of Ryan that it was more lucrative for him to force claims into the courts, where, in addition to his salary, he would receive a per diem fee as provided for in his contract.

All of these internal factors were known to the Commissioner. He was responsible for several of them. His interference, both directly and indirectly, with the operation of the company was to a very large extent at the bottom of its troubles. He failed to supervise where supervision was his duty. He administered where administration was beyond his authority.

3. Attempted Rehabilitation.

After the Commissioner had brought the difficulties of the Commonwealth Mutual to the point where its continued existence became doubtful, as a result of the cancellation of the license of the State Underwriters Insurance Agency, there was talk of rehabilitating the company.

It was at this point that Nathan Fink entered the proceedings and became the Commissioner's intermediary and representative in place of Ryan. Fink, it appears, was designated by the Commissioner to work out a rehabilitation plan. Although he tried to represent himself as being in the employ of the guaranty capital group, Fink, working with the Commissioner, started plans under which the group would be eliminated and would be compelled to pocket its losses.

Accordingly, the rehabilitation idea had two separate and distinct approaches. The first was that of the Commissioner and Fink, who were working to take over the company and to control it exclusively, directly or indirectly, with the New York interests driven out. Fink interviewed various men who he thought might become interested. He had several proposed possibilities for the presidency. He claimed to have uncovered new capital.

The Cohen group, on the other hand, were working on a plan to conserve and protect their own interests. Even so, they were prepared to go to great lengths to appease the Commissioner. They compromised with him, and, as a result of the representations made by Fink, believed that they were making progress. Upon Fink's suggestion that the officers representing the New York group must get out before the Commissioner would give any consideration to their plan, Castelli and others were removed. Cohen offered also, if it was necessary in the opinion of the Commissioner, to put in an additional $100,000 in cash for the purpose of meeting such deficit as the Commissioner might determine existed.

In the meantime Fink had incorporated a new agency company, under the name of the Kilby agency, and as

his compensation for his alleged rehabilitation work, he obtained one third of the stock and the voting control in this new agency. Notwithstanding this gratuity, the Commissioner approved payment of a fee of $1,000 to Fink from the Commonwealth Mutual, which Fink received, and a second fee of $2,000 which he did not receive. At this time the Commissioner, under stipulations in the Fasano suit, had complete control over expenditures of the company.

The Committee finds that if Fink was entitled to any compensation it was from the Commissioner, whom he represented, or the guaranty capital interests, whom he claimed to represent. He was not in the employ of the company and was not entitled to payments of any kind from it.

From all of the evidence before it, the Committee finds that the only rehabilitation of the company contemplated by the Commissioner consisted of his attempt to take the company away from those who financed it.

The Committee further finds that the Commissioner in all of the many conferences with the Cohen group on the rehabilitation subject was devoid of sincerity. While giving every indication that he would approve the company's continuing in business, with the New York interests remaining in the picture, — even to the extent of convincing Fink, if Fink's sworn testimony can be believed, — he was and had been for a week preparing in secret his bill in equity seeking a receivership for the company.

At a time when there was every indication that the company could be saved, the Commissioner deliberately plunged it into receivership.

4. The Question of Insolvency.

Commissioner DeCelles, during the final days of the Commonwealth Mutual's life, in his court proceedings and before this Committee, represented that the company was hopelessly insolvent. Justice Lummus of the Supreme Judicial Court in the receivership proceedings

specifically said, as previously quoted in this report, that the question of allowing the petition for receivership was not dependent on proof of insolvency. At no time during the proceedings did he say he found the company to be insolvent.

The question of insolvency was based almost entirely on the adequacy of the reserves set up to meet unpaid and outstanding claims. The company, based upon an experience of having met claims in the aggregate at less than the reserves set up by it, contended that under its figures the company was solvent. The Department examiners estimated the reserves at a far higher figure. On the basis of their estimates, the Commissioner claimed the company was insolvent.

It was purely a case of which set of figures was correct. When counsel for the company sought to have a determination made by a master or an auditor, Judge Lummus explained, as already stated, that it was not necessary to prove insolvency in a suit for receivership. Thus this issue has never been adjudicated.

It is quite possible that the amount of claims which will be filed with the receivers, will exceed the assets of the company. This is to be expected, as claimants, knowing that they in all probability will receive only a dividend, will multiply the size of their claims manyfold. It may also be that delay in settling claims may cost the company more later.

5. Effect of Commonwealth Mutual Failure upon Rates.

Under the order creating it, the Committee was also directed to determine and report as "to what extent the company's methods and practices may effect the premium rates for compulsory insurance."

During its public hearings the Committee was informed that the Massachusetts Automobile Rating and Accident Prevention Bureau had agreed to eliminate the experience of the Commonwealth Mutual in the compilation of all

data for the year 1936. Consequently, the company's loss experience and its methods of doing business will have no effect upon the compulsory insurance rates.

6. Francis J. DeCelles, Insurance Commissioner.

Insurance Commissioner Francis J. DeCelles was not made an issue by this Committee in its investigation. Under the order creating it, the Committee was directed to investigate, in the first instance, "the facts surrounding the issuance of a certificate of incorporation and a license to transact business, to the Commonwealth Mutual Liability Insurance Company."

The Committee devoted seven full days, morning and afternoon, to listening to Mr. DeCelles. It denied his repeated request that he be allowed to cross-examine witnesses, just as it denied this right to any other person appearing before the Committee. Such procedure is not permitted before the committees of the Legislature. The cross-examination is confined to the members of a committee. It allowed him, however, to put in anything and everything in the way of testimony and exhibits.

During the hearings, and toward the latter part of his testimony, he asked that the following statement be placed in the record:

"The Committee has been exceptionally fair to me since I have been on the stand. I do not want any inference drawn, whatever. If the Committee and myself in the hearing and cross-examination appear to be in conflict at any time, it is merely the conflict of a court. . . . May I frankly say that the attitude of the Committee has been exceptionally fair to me, and let that go in the record."

Prior to his second appearance on the witness stand, which was at his own request, others had testified. They had sharply criticized the Commissioner and had assailed him for some of his acts in the case of the Commonwealth Mutual Liability Insurance Company.

Following that testimony, he asked to be heard again, although at the end of his first day he had twice declared,

in reply to questions, that he had no further facts to present.

On his reappearance, the Commissioner made an issue of himself. Placed on the defensive by his critics, he launched out vigorously at them. For days his testimony was devoted to attacks on the personal characters of those who disagreed with him. In addition to making an issue of himself, he made an issue of Frank Cohen and of Count Luigi Castelli.

In Cohen's case, it was a question of whether they had met and that he had knowledge of the Cohen connections prior to the licensing of the company.

In the case of Castelli, the issue became whether or not Castelli was a bona fide count.

The Cohen angle, once having been made a principal issue by the Commissioner, assumed major importance as the hearings progressed, especially because the Commissioner testified that if he had known Cohen was back of these companies, the Commonwealth Mutual would not have been licensed. His repeated insistence that he knew nothing of Cohen's presence in the picture until Miss O'Leary went into the company to examine it late in September of 1936, and that he met Cohen on December 13, 1936, for the first and only time, also focused attention on this phase of the investigation.

Under the order creating it, the Committee had no authority, in so far as Cohen was concerned, to consider anything other than his connections with the Commonwealth Mutual Liability Insurance Company and his conduct in relation to that company.

Whether the Commissioner was in New York on October 4, 5 and 6 of 1935, met Cohen and was entertained by him, appeared to be of no consequence, until the Commissioner and other witnesses had testified.

As far as the Committee was concerned it had no reason to consider it a questionable action if the Commissioner had met Cohen in New York and had gone to night clubs with him. If a man from outside of the State desired to come into Massachusetts for the pur-

pose of engaging in the insurance business, what more natural than a desire on the part of an insurance commissioner to look him over in his home surroundings, check on him, talk with him, and, if he had been mixed up with companies that previously had failed, to determine if he had gained from the experience and was prepared to operate a legitimate, sound and reputable company?

But the Commissioner over and over again denied he had ever met Cohen in New York then or at any other time. On the other hand, Cohen and other witnesses were equally insistent that the meetings did take place, and they went so far as to name disinterested persons who were present and who were in the dinner parties and night club tours which were arranged for the honored guest. Moreover, the Commissioner admitted having been in New York on the dates mentioned.

Cohen testified that he also visited Commissioner DeCelles on four or five occasions, at the Commissioner's home, during December, 1935, after the New York meeting but prior to the granting of the final license to the Commonwealth Mutual. He told of a meeting, also, on December 11, 1936, at which time they went to a Boston night club, the Mayfair, in company with others, which had been verified by this Committee, and of another meeting on the following night in Cohen's room in the Parker House. All of these numbers of meetings took place before December 13, 1936, the day fixed by the Commissioner as the one and only time he ever met Cohen.

Every employee of the company, and every employer of the agency and the finance corporation, as well as Boston insurance men generally, knew almost from the beginning that Cohen was the financial backer.

The Committee checked every angle to this phase of the case. The testimony of the disinterested parties was obtained in New York. In the face of the complete record the Committee finds, despite his repeated denials, that Commissioner DeCelles met Mr. Cohen in New

York on the dates mentioned, that he was entertained by him, and, further, that before the Commonwealth Mutual was organized the Commissioner knew that Cohen was to be the financial backer.

The Commissioner's attitude toward Castelli was one of extreme antagonism. The real reason or reasons behind it were not fully revealed to the Committee. From the evidence presented, however, it was evident that there was far more to the Commissioner's attitude than appeared on the surface.

When Castelli first arrived from New York to become identified with the agency and the finance corporation, he was received on a friendly basis by the Commissioner. He visited at the Commissioner's summer home with Ryan. He escorted Mrs. DeCelles and Mrs. Ryan to a "Beano" party. Even when Castelli was made a director in the Commonwealth Mutual late in August, in exchange for a new contract granted to Ryan which doubled the latter's salary, there was no opposition from the Commissioner.

But when the guaranty capital group decided to make Castelli president of the Commonwealth Mutual, and when it carried out that decision in the face of bitter antagonism from both Ryan and the Commissioner, all semblance of friendliness toward Castelli suddenly disappeared. He became the instrument by which the Cohen interests were wresting control of the company away from the Commissioner and Ryan, and it was upon him that the full intensity of the storm descended.

Both the Commissioner and Ryan testified that their opposition to him was based on investigation which led them to believe that Castelli was not a count, and that he therefore was an unfit person to be the head of an insurance company. The Commissioner added two other reasons, evidently as afterthoughts: first, that by his election there became an intermingling of personalities between the Metropolitan Mutual of New York and the Commonwealth Mutual of Massachusetts; and second, that he lacked insurance experience.

The Committee has no reason to believe that Castelli misrepresented his title in this connection; but whether he was a count or not, would not justify the wrecking of an insurance company. The intermingling of personalities between the New York and Boston companies was known to both the Commissioner and Ryan before the Commonwealth Mutual was given its license. If Castelli was lacking in insurance experience, so was Annis and every other officer of the company including Ryan, and at least Castelli's educational and business background was far superior to that of the $15-a-week dummy president whose successor he became.

The Committee finds that the attitude of the Commissioner and of Ryan toward Castelli, as before mentioned, was solely that he was the instrument used to wrest control of the company away from them, and that by temperament he was not to be easily eliminated from the path leading toward the goal at which they were aiming, namely, the seizing of the company, directly or indirectly, for themselves.

Because of the Commissioner's connections with Ryan, his first interest in the company may have been paternal, but it did not long remain as such. During the early weeks of the company's existence, he testified, he tried to be helpful by sending in an examiner to show the company how it should be run. He is next pictured as making overtures, through intermediaries, for the purchase of the company from the guaranty capital interests, all the while, through Ryan's hold on several members of the Board of Directors, preventing these interests from obtaining the control to which they were justly entitled by law.

He was fully aware at all times of the accumulation of claims under Ryan. From time to time he had representatives in the company reporting to him what was going on. He was cognizant of Ryan's failure to obtain or even to mention the renewal of the agency license when it expired; and although he did renew the license some weeks later, he held this lapse of license and the

continued operation of the agency without it as his chief reason for canceling the agency's license and putting it out of business.

He paved the way and to all intents and purposes was a party to the Fasano petition for receivership, though disclaiming any and all connection with it. Throughout his testimony before the Committee he was vague and evasive in reply to questions. His testimony relative to Cohen, when he met him and as to his knowledge whether Cohen was behind the Commonwealth Mutual, was false from the beginning to end.

The Commissioner was not alone in his disregard of the oath which he had taken. In fact, it is doubtful if any of the many witnesses, aside from minor exceptions, were entirely frank with the Committee. Some of the witnesses clearly had been intimidated, and the Committee received evidence from various sources that pressure, intimidation, coercion and open threats had been made in this case probably to a greater extent than in any investigation conducted by a Committee of the Massachusetts Legislature. Even members of this Committee were approached by friends of the Commissioner.

The efforts made to keep the New York witnesses away from the hearings may be cited in this connection. The Committee could not summon witnesses from outside of the State, but desired to have Cohen and others appear voluntarily.

First, Fink telephoned to Mr. Griffiths in New York to learn whether he and Cohen intended to come to Boston to testify. Following Fink's call emissaries from Commissioner DeCelles, who for a month after the hearings began were in New Jersey and New York seeking evidence against Castelli, Cohen and others, approached friends of Cohen and asked them to tell the New York witnesses, especially Cohen, that if they knew what was good for them they would stay out of Massachusetts.

Edward L. Ford, one of the Commissioner's confidential secretaries, was evidently in charge of this work, although much of the Insurance Department had been engaged

over a long period in collecting information to bolster the Commissioner's case. Ford, it was shown, visited friends of both Castelli and Cohen. With them he left the Commissioner's official card bearing the State seal, at the top of which were written the words "Mr. Ford." A photostatic copy of this card was sent to the Committee in May.

Evidently the taxpayers' money, as well as the name of the Commonwealth of Massachusetts, was used to intimidate and even to persecute people. From the continuous presence at the hearings of a large representation from the Insurance Department, it would appear that the taxpayers' money was improperly spent here as well.

Entirely apart from these methods, the conduct of the Commissioner, and the testimony given by him under oath before this Committee, was such at times as to be clearly reprehensible. At the close of his first day before the Committee he was asked twice if he had anything further to add to his testimony, and he replied in the negative. When, in response to his request, he was later allowed to appear for six full days, after other witnesses had appeared in the meantime, he adopted an entirely different attitude. Any one and every one who had disagreed with him or with his actions in connection with the Commonwealth Mutual, became a "gangster and a racketeer."

Cohen and his friends he charged with being gangsters and having been engaged in various illegal enterprises. The Committee asked various witnesses concerning Cohen's character, but not one other witness called Cohen, or any of his friends or associates, a gangster or a racketeer.

Typical of the Commissioner's testimony was the following characterization of Cohen: "His machinations run the entire scale from trickery and unethical deals to actual fraud. He has operated for years, leaving a trail of disaster in his wake. He is the mad dog of insurance; when he appears on the scene companies wither and die."

If what the Commissioner says concerning Cohen is true in its entirety, then the responsibility for Cohen's coming into Massachusetts is entirely his; for he met Cohen in New York, was entertained by him, discussed the possibilities of the new company with him in advance, and knew that Cohen was the financial backer of the Commonwealth Mutual. Despite his denials, the proof of these facts, from entirely disinterested sources, is indisputable.

Moreover, even after the Commonwealth Mutual had been closed, it was shown during the hearings that the Commissioner offered to co-operate in a move to have the Metropolitan Mutual of New York enter the Massachusetts field, or to permit the organizing of a new mutual company by the Cohen interests.

During his testimony relative to the Fasano bill in equity, the Commissioner said he was not a party to it and that he was not involved in it in any way. He went much further. He said he had reason to believe that this was a part of a plot to force him into court before he was ready with proof of the insolvency of the Commonwealth Mutual. This statement was as false as it was absurd. The Commissioner was in conference on the Fasano case before the petition was filed. He accompanied Attorney Lee Friedman and associates, counsel for Fasano, to the office of the clerk of the Supreme Judicial Court. It was upon his insistence for speedy action that a judge of the Supreme Court had to be reached at a railroad station to grant authority for process to issue.

Throughout the earlier hearings at which he testified, the Commissioner had given high praise to the Pilgrim Trust Company and its officers, "blanket praise," as he called it. In his later appearances, while chafing under questions concerning his acceptance of $22,000 in checks drawn against an account that did not exist, he made a most astounding accusation against this same institution and its officers.

The Commissioner said it had come to his attention,

and he believed it to be true, that an account had been opened in the trust company in the name of the agency, that the $22,000 in checks were drawn and sent to him, and that after closing hours on the same day, December 31, 1935, the account had been withdrawn with the knowledge and consent of the trust company officers.

So grave was this accusation that Governor Charles L. Hurley sent the Bank Commissioner, William P. Husband, Jr., to investigate forthwith. The Bank Commissioner reported to the Governor, and testified before this Committee, that the accusation was false in its entirety. The State Underwriters Insurance Agency, upon which the checks were drawn, had no account in the Pilgrim Trust Company on December 31, 1935, nor was any account opened in its name until quite some time later. This is another example of the Commissioner's statements which had no basis in fact.

It was also apparent that testimony of members of the Insurance Department was either evasive or deliberately false, or that information was being suppressed in an effort to shield the Commissioner.

The Committee finds that the Commissioner's actions in connection with the Commonwealth Mutual Liability Insurance Company constituted an abuse of power and an unwarranted interference with the management and operation of the company. His conduct before this Committee was reprehensible. Practically all the material upon which he based his attack on the various personalities associated with the company or its affiliates, was obtained long after he had petitioned the company into receivership, in fact, while the hearings before this Committee were in progress. Much of the testimony he presented was obviously false. While the Committee has no power of recommendation, it does believe that the Commissioner has demonstrated his unfitness for the important and responsible position which he holds.

RECOMMENDATIONS AS TO LEGISLATION.

Throughout its investigation the Committee has been impressed with the continued disclosures demonstrating that there was no lack of authority in the Commissioner of Insurance to prevent the licensing or the operating of the Commonwealth Mutual Liability Insurance Company. The Committee therefore does *not* recommend that the Commissioner be given any additional authority or discretion as to the licensing of new companies. There is ample power conferred by the statute. In addition, the Commissioner wields a tremendous extra-statutory power which every company, broker or agent recognizes and considers with care. To grant a Commissioner, whether the present incumbent or any other, additional authority, merely confers upon him the arbitrary power to determine whether or not a particular new company may be formed regardless of whether it has met every statutory requirement. The functions of any Insurance Department are to supervise and not to administer insurance companies, which was what Commissioner De-Celles attempted to do in the case of the Commonwealth Mutual. It is equally true that insurance companies cannot be run by legislation.

1. Out of the circumstances surrounding the licensing of the Commonwealth Mutual has been shown the need of legislation requiring, as a prerequisite to obtaining a license, a statement of the officers and incorporators of a company, under oath or under the penalties of perjury, as to organization expenses, which are to be subject to the approval of the Commissioner as at present, and also that there are no secret agreements or outstanding obligations of any kind. While the absence of such legislation does not in the least relieve the present Commissioner from the responsibility of ascertaining the true facts in the case of the Commonwealth Mutual, where such outstanding obligations existed contrary to law, it is felt that the requirement of a statement under oath

and subject to the penalties of perjury will be an extra safeguard and protection to the public.

2 and 3. It has been established that in a number of cases where there have been failures of mutual companies engaged in writing automobile insurance, an interlocking agency has been a contributing factor. In the case of the Commonwealth Mutual, the Commissioner, as required by law, approved an experienced underwriter for the company. The underwriting, however, was not done by him but by the State Underwriters Insurance Agency, which, together with the Insurance Premium Finance Company, had the same financial connections as the company. This practice if allowed to continue will lead to the failure of insurance companies in the future. An agency depends for its existence upon sales of insurance. It is not concerned with the type of risk which the insurance company accepts. It is too much to expect that an agency will disregard its financial welfare and exercise an unbiased judgment on the acceptability of the risk involved. Underwriting and selling insurance are conflicting interests and must be carried on separately. Underwriting must be done by the company. It is essential for the protection of policyholders and claimants that agencies not be permitted to decide which risks the company shall accept. It is also thought wise to divorce a mutual company from any connection with a finance company, as the Committee finds that in nearly every case the agency and finance company have the same ownership and management, and an opportunity is afforded for further profit at the expense of the policyholders of the insurance company.

4. For a period of years the use of the words "United States" and "Commonwealth," in the titles of banks, insurance companies and business corporations, has caused much confusion and misunderstanding among people generally, and more especially among our foreign-born population. It is very easy for the uninformed to believe that such institutions or corporations are creatures of the United States or the Commonwealth, and that the

financial resources of the federal and state governments are behind them. The Committee recommends legislation prohibiting the use of these words in the titles of any bank, insurance company or business corporation, or by an individual doing business in Massachusetts.

5. During its investigations and studies the Committee has had constant recourse to the insurance laws of the Commonwealth, as contained in chapter 175 of the General Laws. It is the belief of the Committee that this chapter is in such a disordered and confusing state that a complete revision and recodification should be made. The formation and operation of the Commonwealth Insurance Company brings up the whole question of the definition of the word "mutual." The Committee did not have the time nor was it empowered to go into the subject of mutual insurance. It does feel, however, that the entire subject of mutual insurance should be studied at the same time that chapter 175 is studied and revised.

6. While an examination of the list of incorporators of the Commonwealth Mutual Liability Insurance Company would have disclosed the fact that they were all "dummies," the Committee feels that further safeguards may be obtained by publishing the names of proposed incorporators and by providing for a public hearing. This will help make it certain that the persons who signed the articles of organization are actually in existence as well as not being straws for others.

Drafts of legislation carrying out the Committee's recommendations are annexed hereto.

PROPOSED LEGISLATION.

No. 1.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT REQUIRING THE FILING BY INSURANCE COMPANIES OF CERTAIN FINANCIAL STATEMENTS PRIOR TO THE GRANTING TO THEM OF A LICENSE OR CERTIFICATE OF AUTHORITY TO ISSUE POLICIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section four of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following: —

Before granting licenses or certificates of authority to a company to issue policies of insurance or annuity or pure endowment contracts, the commissioner shall be satisfied, by such examination as he may make and such evidence as he may require, that such company is otherwise duly qualified under the law of the commonwealth to transact business therein, and he shall require the filing with him of a certificate signed and

sworn to by the officers of the company stating the amount of expenses incurred in the organization of the company and stating that the company has no outstanding liabilities other than said organization expenses. He shall require every domestic company to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify its annual statements and ascertain whether the company has complied with the law.

No. 2.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT REQUIRING THAT NO MEMBER, OFFICER OR EMPLOYEE OF A MUTUAL FIRE COMPANY SHALL ENGAGE IN CERTAIN BUSINESSES CONNECTED WITH INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section seventy-five of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting at the beginning the following new sentences: — No incorporator, officer, director, member, agent or employee of a mutual fire company shall be a member, officer, director, agent or employee of, or, directly or indirectly, be financially interested in, or receive any financial benefit from or on account of, any agency of such company or transact the business of financing the payment of premiums on policies of insurance accepted and issued by any such company or, directly or indirectly, be financially interested in, or receive any financial benefit from or on account of, any such business or be a member, officer, director, agent or employee of, or, directly or indirectly, be financially interested in, or receive any financial benefit from or on account of, any association, firm or corporation engaged in any such business.

No. 3.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT SUBJECTING INCORPORATORS AND EMPLOYEES OF CERTAIN MUTUAL INSURANCE COMPANIES TO CERTAIN PROVISIONS OF LAW RELATIVE TO MUTUAL FIRE INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section ninety of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "agents" in the fifth and in the tenth lines, in each instance, the word: — employees, — and by inserting before the word "officers" in the fourth and in the tenth lines, in each instance, the word: — incorporators, — so as to read as follows: — *Section 90.* Mutual companies, other than life, formed to transact or transacting business under any one or more of clauses three, four, five, six, seven, eight, nine, ten, twelve and thirteen of section forty-seven, or under clause (*a*), (*b*), (*d*) or (*e*) of section fifty-four, and the incorporators, officers, directors, agents, employees and members of such companies shall, except as provided in clause (*e*) of said section fifty-four and in

sections ninety A, ninety B, ninety-two, ninety-three, ninety-three A, ninety-three B, ninety-three C, ninety-three D and one hundred and thirteen B, be subject to all the provisions of this chapter relating to mutual fire companies and their incorporators, officers, directors, agents, employees, and members, so far as applicable.

A policyholder in any domestic mutual company specified in the first paragraph of section fifty-five or in any domestic mutual company incorporated on or after April sixth, nineteen hundred and eleven and prior to January first, nineteen hundred and twenty-seven under a special charter and authorized to transact the same kinds of business as the mutual companies specified as aforesaid shall not be liable to pay his proportionate part of any assessments which may be laid by such companies unless he is notified of such assessment within one year after the expiration or cancellation of his policy.

No. 4.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT PROHIBITING THE USE OF THE WORDS "COMMONWEALTH", "STATE" OR "UNITED STATES" AS A PART OF THE NAME OF CERTAIN CORPORATIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section nine of chapter one hundred and fifty-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "commissioner" in the ninth line the words: — ; provided, that no business corporation, bank or insurance company shall have as a part of its corporate name the "Commonwealth", "State" or "United States", — so as to read as follows: — *Section 9.* A corporation organized under general laws may assume any name which, in the judgment of the commissioner, indicates that it is a corporation; but it shall not assume the name of another corporation established under the laws of the commonwealth, or of a corporation, firm, association or person carrying on business in the commonwealth, at the time of such organization or within three years prior thereto,

or assume a name so similar thereto as to be likely to be mistaken for it, except with the written consent of said existing corporation, firm or association or of such person previously filed with the commissioner; provided, that no business corporation, bank or insurance company shall have as a part of its corporate name the word "Commonwealth", "State" or "United States". The supreme judicial or superior court shall have jurisdiction in equity, upon the application of any person interested or affected, to enjoin such corporation from doing business under a name assumed in violation of this section, although its certificate or articles of organization may have been approved and a certificate of incorporation may have been issued to it.

SECTION 2. This act shall not apply to any business corporation, bank or insurance company authorized to transact business in the commonwealth on the effective date thereof which then has as a part of its corporate name the word "Commonwealth", "State" or "United States".

No. 5.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

RESOLVE PROVIDING FOR A SURVEY AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE INSURANCE LAWS OF THE COMMONWEALTH.

Resolved, That a special unpaid commission, to consist of one member of the senate, to be designated by the president thereof, and three members of the house of representatives, to be designated by the speaker thereof, and three persons to be appointed by the governor, is hereby established for the purpose of making a survey and study of the laws of the commonwealth relating to insurance, with a view to making such changes therein or additions thereto as may seem advisable for clarifying or improving said laws. Said commission may expend for clerical, expert and other expenses such sums, not exceeding, in the aggregate, dollars, as may hereafter be appropriated therefor. Said commission shall report to the general court the result of its investigation, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives on or before the first Wednesday of December in the current year.

No. 6.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT FURTHER REGULATING THE POWERS AND DUTIES OF THE COMMISSIONER OF INSURANCE RELATIVE TO INSURANCE COMPANIES IN PROCESS OF INCORPORATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section four of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "therein" in the sixth line the following: — Before granting such licenses or certificates of authority to a company he shall, in addition, immediately make an investigation as to the applicants for incorporation and as to the purposes thereof, and any other material facts relative thereto, and shall give them a public hearing, notice of which shall be published once a week for three successive weeks in some paper published in the county where the corporation is to have its principal office or rooms, and if said office or rooms are to be in Boston, in some Boston daily paper, the last publication to be at least three days before the day set for the hearing, — so that the first paragraph will read as follows: — Before granting

licenses or certificates of authority to a company to issue policies of insurance or annuity or pure endowment contracts, the commissioner shall be satisfied, by such examination as he may make and such evidence as he may require, that such company is otherwise duly qualified under the law of the commonwealth to transact business therein. Before granting such licenses or certificates of authority to a company he shall, in addition, immediately make an investigation as to the applicants for incorporation and as to the purposes thereof, and any other material facts relative thereto, and shall give them a public hearing, notice of which shall be published once a week for three successive weeks in some paper published in the county where the corporation is to have its principal office or rooms, and if said office or rooms are to be in Boston, in some Boston daily paper, the last publication to be at least three days before the day set for the hearing. He shall require every domestic company to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify its annual statements and ascertain whether the company has complied with the law.

MINORITY REPORT OF JOHN W. CODDAIRE, JR.

As a minority member of this Committee I am in irreconcilable variance with the majority. For this reason I have decided not only to register my emphatic dissent from its alleged findings of fact and conclusions, but to present a minority report setting forth my views as briefly as possible.

The chairman of the Committee in opening the first public hearing, after reading the order providing for the investigation, made the following pertinent comment:

"Now this Committee is formed under the order which I have just read. We are interested only in the action which led up to the formation and receivership of the Commonwealth Mutual Liability Insurance Company. I do not think any one on the Committee cares to hear anything relative to character assassination or anything of that sort. We want fact, — facts which have some bearing on the question."

Because I heartily subscribed to that statement, and because I deplored subsequent happenings in this case, I shall confine myself to findings of fact which are material to draw conclusions germane to the order under which we are created and to minimize the personal element, wherever possible, which appears to have played all too important a part in this investigation.

There is one vital issue in the Commonwealth Mutual case. It is the determination of those factors, those weaknesses in our insurance statutes, which make possible the formation and subsequent failure of just such companies as are here involved. It is this issue in which primarily I am interested, and which the recommendations for legislation which I am submitting seek to solve.

It is an issue which has existed in this Commonwealth for a number of years, and one which, for several reasons, has not been met successfully.

As far back as January, 1930, a Special Commission to Study Compulsory Motor Vehicle Liability Insurance and Related Matters, in its report to the General Court, devoted attention to the subject of "Protection Against Insolvent Insurance Companies."

"About 60,000 car owners," the report said, "have lost their insurance protection and have been obliged to take out new insurance in other companies in order to operate their cars because of the failure of three mutual companies during the last year or two since the present law went into effect. This is a serious situation which ought to be guarded against."

Notwithstanding this report of seven years ago, the situation still exists, and in the meantime five more companies, including the Commonwealth Mutual, have failed, making a total of eight in ten years, while the number of car owners who have suffered runs high into the thousands.

It is with these thoughts in mind that I have approached the case of the Commonwealth Mutual.

Certificate of Incorporation.

The first specific duty imposed upon the Committee by the order creating it was to investigate the facts surrounding the issuance of a certificate of incorporation to the Commonwealth Mutual. This certificate was issued on October 18, 1935, under the provisions of chapter 175 of the General Laws. The Company was incorporated to insure upon the mutual plan (1) "any person against legal liability for loss or damage on account of the bodily injury or death of any person, or on account of any damage to property of another; or (2) against loss or damage to, or loss of use of, motor vehicles. . . ."

The incorporation of the Company was a routine affair, inasmuch as no policies could be issued until after it had obtained a final certificate or license to transact business. Under the law ten or more residents of the

Commonwealth may form such a company. The name of the company and articles of organization are subject to approval by the Commissioner, who is to determine if the incorporators are of good repute and intend in good faith to operate the company. Moreover, the officers and a majority of the directors must make oath to the articles, which include an agreement of association, the record of the first meeting of the incorporators, including the by-laws and the name, residence and post office address of each officer.

If the Commissioner finds that the provisions of the law relative to the organization of the corporation have been complied with, he is required by law to endorse the articles. The articles then go to the Secretary of State where they are filed, and upon payment of a required fee a certificate of incorporation must be issued by the Secretary.

In the case of the Commonwealth Mutual the provisions of the law were fully complied with. The Commissioner accepted the sworn articles of organization, including the by-laws, in all good faith, actually having no other alternative. The Company received its certificate of incorporation and then set about to qualify a preliminary license under which it could write subscriptions as a preparatory step to obtaining a final license to transact business and write policies.

The granting of the certificate of incorporation was not a real issue in the case at any time, except, as shown at the hearings before the Committee, the incorporators, with one or two possible exceptions, were straw men, who were expected to step aside after the Company started to transact business. This was not the understanding given to the Commissioner at the time, and he was forced to take their statements and their oath to the articles of organization.

Whether any of the officers or directors willfully and knowingly ascribed their signatures to false statements is a question which only the courts can properly determine. It might be pointed out, however, that the statute

relating to the articles of organization and the sworn statements (G. L., c. 156, § 10) contains the following provision:

> The directors who sign such articles and the officers and directors who sign any amendment thereof shall be jointly and severally liable to any stockholder of the corporation for actual damages caused by any statement therein which is false and which they know, or on reasonable examination could have known, to be false.

License to Transact Business.

The Commonwealth Mutual obtained its final license to transact business by illegal and fraudulent means. It resorted to false representations. It concealed the true facts from the Commissioner of Insurance.

Katherine M. O'Leary, chief examiner for the Insurance Department, in her last report on the examination of the Company which was carried on under her direction, stated:

"An inspection of the records and the bank statements showed that the Company was not entitled to its license on December 31, 1935. Two checks for $15,000 and $7,000, respectively, were submitted as part of the initial $100,000 for paid-in subscriptions. These were drawn against a bank account that did not exist on that date. The Company was supposed to have no liabilities other than reasonable organization expenses approved by the Commissioner of Insurance, but the records show that it had borrowed $25,000 par value United States government bonds on a note, dated December 10, 1935."

The Commissioner, in his bill in equity which led to the appointing of receivers, pointed out that the Company had falsely represented to him that it had complied with the provisions of the law in every particular. By outright deception and by concealing the facts — which were not discovered until months later — the Commissioner was prevailed upon to grant the license to transact business.

During the court proceedings, when counsel for the Company attempted to justify the acts which had been

perpetrated as a technical meeting of the legal requirements, Mr. Justice Lummus declared:

"I am not talking about your technical compliance with the requirements, although I think that is doubtful. I am talking about the furnishing by the Company of substantial protection, such as the statute required, which was far from such as should ever permit you to have a license to do business in the first place."

Under all the circumstances and all of the evidence in this case it would appear that the Commissioner acted in entirely good faith in granting the license to transact business to this Company, and the fact that a gross fraud was perpetrated upon him cannot alter such a conclusion.

The history of this case shows that the Commissioner had demanded and obtained as safeguards more from this Company than had ever been asked of a company applying for a license. He had in mind two thoughts, — first, the number of failures of mutual liability companies; and second, that "economic necessity" demonstrated the need of coverage for those unable to get automobile insurance and who were entitled to all possible consideration and protection.

Whether or not, if the matter was litigated, these demands could have been enforced, is very questionable. They were separate from the legal requirements which the Company had not met, as was later shown. If, however, these requirements had not been insisted upon or had failed of enforcement, it would seem that the Company's position was far different.

It is a well-known principle of law, moreover, that statutes are strictly construed, and therefore compliance with the terms of the statute law covering requirements necessary for a company to qualify to receive a license to do business would entitle this Company to its license.

If the Commissioner failed to grant the license after such compliance, the court would force him to issue the license, if the Company sought a writ of mandamus. Therefore it is the opinion of the minority member of this Committee that these extra demands or requests by the

Commissioner of Insurance could not be insisted upon, being outside of the statutory requirements.

Even before the Commissioner issued the preliminary certificate to the Company, he had demanded and received these extra requirements. There was a bond in the penal sum of $100,000, which was executed by the Company, conditioned upon the prompt return to the subscribers of all advance premiums in the event of failure to obtain a final certificate. The Company's agents were required to give to it fidelity bonds aggregating not less than $50,000.

Further, as an additional safeguard, although not required by law, the Commissioner insisted on a "guaranty capital" of $25,000 in United States securities, given in assignment to him and to be placed in the treasury of the Commonwealth for safe-keeping.

At the time of issuance of the checks for $22,000 as a part of the $100,000 paid in premiums, which were made payable to the Company by the State Underwriters Insurance Agency, Inc., — which were given to the Commissioner as evidence of and represented as being assets of the Company, — an assignment of the $25,000 in government securities was required as security. The Commissioner's request was that these $25,000 in bonds, although already given over as security for the protection of subscribers pending the issuance of the final license, be assigned as collateral security and guarantee that these checks were good.

It is true that the assignment only included one of these checks, although it was intended that the assignment cover both checks. This was the result of the rush in the fulfilling of the requirements late on the final day of the year at a time when the offices of the Company were being stormed by signers of subscriptions clamoring for their policies. Without the final license the Company could not write the policies. Without the policies a vast number of automobilists and taxicab operators could not have obtained their registration plates and would have been barred from the streets and highways of the State for at least the first few days of January, 1936.

The technical fact that the assignment covered only one of the checks is not material, in view of the lack of authority for the Commissioner to insist on these extra requirements of which this assignment was a part. At any rate, this was at least an equitable assignment of these bonds to cover the check not mentioned in the assignment as well as a legal assignment for one.

As for the bonds themselves, they were free and clear, because while they were held by the Commissioner as protection for subscribers pending the issuance of the final license, upon the issuance of such license they were simultaneously released. Then, under the assignment as security for these checks, they would still be held and no actual time would intervene between their respective capacities as security for subscribers and the guarantee of the checks.

In so far as these $25,000 in government bonds were concerned, four simultaneous actions were involved, — the expiration of the preliminary license; the termination of the function of the bonds as protection for subscribers; the granting of the final license; and the bond's new capacity as a guarantee of the checks.

The Pilgrim Trust Company had certified that $78,000 unencumbered was on deposit in its vaults in an escrow account. This money was paid in for subscriptions. It could be used for no other purpose. The $22,000 in worthless checks, the product of a complex and spurious transaction, were presented to the Commissioner as evidence of the remaining cash paid in for premiums. Had these checks been good, this would have been cash paid in also. However, they were not, inasmuch as no account on which they were supposed to have been drawn had been opened, although previous steps had been taken to open such an account with the bank and had been abandoned.

There is a distinct difference of opinion whether the Commissioner should have considered these checks on their face value. It might be said that the exercise of sound discretion would have led the Commissioner to have insisted on their certification, or to have inquired

at the Pilgrim Trust Company as to whether there was an account on which these checks were drawn. The fact that the checks were made good a week later does not alter a transaction on the part of the Company which clearly was fraudulent, which was concealed from the Commissioner and upon which the Company was not entitled to its license to transact business.

Methods of Conducting Business.

In the order creating the Committee it is specifically provided that the investigation and report include the Company's methods of conducting business and of computing reserves and paying claims.

It was upon these three all-important factors that the receivership was predicated. Moreover, the true condition in a company is not readily discernible, with respect to these factors, even in an ordinary case. To quote from the report of the Special Commission on Compulsory Insurance of 1930, already referred to:

> The present law requires that he (the Commissioner) be able to prove the existence of insolvency, or some other cause which may be difficult to prove, before he can apply to the court to stop the business of the company. This involves an extended examination of the company's finances, pending claims and the necessary reserves required to meet them. It may take six weeks or so under present conditions to complete such examination, and the condition of the company may change for the worse meantime.

So complex and so involved was the set-up of the Commonwealth Mutual and its subsidiary corporations, with interlocking officers, intermingling of funds and lack of complete records, that it required a far longer period to determine the true state of affairs upon which action could be based. In fact, even after nearly twelve weeks of examination by Miss O'Leary, chief examiner, and her corps of assistants, it was impossible to uncover all of the manipulations which had been carried on.

As Miss O'Leary's reports show, however, there was sufficient evidence available to reveal that a deplorable

condition of affairs existed — as the Supreme Judicial Court found in ordering the receivership.

Without going into all of the ramifications which were uncovered, or showing in detail how the Company, its agency and finance corporation functioned, a fair idea of the methods of conducting business and of computing reserves and paying claims can be given by quoting from two or three paragraphs from Miss O'Leary's last report, and from the bill in equity filed in the Supreme Court by the Commissioner upon her evidence.

"The Company has not been properly managed and many of the requirements of the law relative to the conduct of its business have been disregarded," reported the Chief Examiner, after setting forth numerous improper payments of money and rendering a statement which showed an impairment of guaranty capital amounting to $160,102.25.

The Commissioner in his bill in equity, concerning business methods as revealed by the examination, declared:

"The defendant, its officers and agents have neglected to keep fair, accurate and complete records and books of account recording the financial transactions of the defendant; there is no complete record of the receipts and expenditures; there are no records concerning the disposition and diversion and misuse of large funds purported to have been paid to the defendant for subscriptions prior to December 31, 1935; there are no records of payments of large sums actually made to third persons who never had any claim against the defendant and who are not therefore entitled to receive anything from the defendant; that the records and books of account are so incomplete, misleading and inaccurate as to conceal the improper and wrongful payment by the defendant of divers large sums of money; that there are no records showing charges for those who received the various large sums of money from time to time; that neither the defendant nor the agency nor the finance company has a complete or correct list of all the policies issued by the defendant or any record of its outstanding claims."

As for the methods of computing reserves, Miss O'Leary found and her testimony to the same effect was corroborated, there wasn't any. It was a hit or miss system, with the reserves later being found to be woefully inadequate. So few claims were settled in the early months of the Company's life that there was little or no experience on which to compute reserves. Ordinarily a low arbitrary figure was fixed, regardless of whether the case had been investigated or not. From time to time, as conditions warranted, the figures might be increased. While Miss O'Leary was conducting her examination they were substantially increased, but at no time, in her opinion, were they nearly adequate.

In her final report the Chief Examiner referred to a financial statement of the Company as of October 31, 1936, and added: "The loss reserves in this statement were about 40 per cent actual settlements effected after November 1, 1936. The remainder were in many instances the Company's own initial estimates."

On the question of the claim situation generally, Miss O'Leary reported:

"Discord within the management, particularly with reference to the settlement of claims, has created an unfortunate situation where hundreds of claims have not been properly investigated, the claim department is more or less disorganized, the files cannot be readily located, and until recent weeks the Company was not settling many losses. Nearly 7,000 personal injury claims have been reported, a claim frequency much above normal. Practically no underwriting appears to have been done. Many of the risks accepted have been cancelled several times during the current year by other companies which probably accounts for the high loss ratio this Company has experienced."

It was testified to during the hearings by Miss O'Leary and others, that in the latter weeks of the Company's life claim adjusters were effecting settlements below their true value by representations that the Company was in difficulties, that it might fail, and that claimants would

be wise to accept what they could get. The Commissioner also, in his bill in equity, set forth that "in many instances claimants have become anxious to secure immediate cash settlements rather than risk the chance of having to prove their claims in liquidation."

Such, in brief, was the Company's methods of conducting business and of computing reserves and paying claims.

Effect of Failure on Rates.

The Committee was directed to report as to what extent the Company's methods and practices may affect the premium rates for compulsory automobile insurance. The following correspondence on this point is self-explanatory:

Under date of March 11, 1937, from W. N. Magoun, manager, Massachusetts Automobile Rating and Accident Prevention Bureau, 89 Broad Street, Boston, to Hon. Francis J. DeCelles, Commissioner of Insurance:

> In view of the situation resulting from the fact that receivers of the Commonwealth Mutual Liability Insurance Company have been appointed, I respectfully notify you that in the compilation of data by this Bureau pertaining to the year 1936, it is my intention to omit entirely all exposures, premiums and losses, statutory (compulsory) and Massachusetts guest occupant of the Commonwealth Mutual Liability Insurance Company. I will ask the governing committee of the Bureau to ratify this action at the next meeting of that committee.

From Mr. Magoun to the Commissioner, under date of April 14, the following:

> At a meeting of the governing committee of this Bureau, held on Tuesday, April 13, 1937, I carried out your request and asked the governing committee to ratify my action in omitting the experience of the Commonwealth Mutual Liability Insurance Company from all data compiled for the year 1936. The governing committee voted to ratify such action, as you will note from the records of the meeting of the governing committee, sent to you in the usual manner. It is my understanding that this procedure is in accordance with your wishes in the premises.

Conclusions.

From a judicial, or even quasi-judicial standpoint, the drawing of conclusions and findings of fact necessarily depend upon the integrity, the character and the credibility of the witnesses. Assumptions and inferences should have their place only upon the most substantial and trustworthy evidence.

In the hearings before this joint special committee charged with the investigation of this Company there was a decided conflict of testimony and of opinion. On one side were witnesses and testimony upholding the Company and its business methods and defending its financial condition. These witnesses and their testimony also upheld and defended the actions, methods and opinions of those who formed the Company and the agents of the financial interests who operated it. It was their contention that the Company was sound in its operation and in its financial condition, and they condemned in strong language the action of the State in seeking receivership.

On the other hand, as representing the Commonwealth and the public, were witnesses and testimony of an extremely damaging nature to the Company and to those behind it and those who operated it. From its inception, it was contended, the Company had not acted in good faith. The methods used in obtaining a certificate to transact business, the failure to function within legal requirements, the handling of claims and reserves, and the final issue of solvency were characterized as hazardous, unsound and improper.

In reaching conclusions which are based on impartial and objective deliberations, the minority member of the Committee has weighed the evidence with care, considered its source, and the motives and credibility of witnesses.

Of the many witnesses appearing before the Committee, two may properly be said to be the key witnesses in the case, — Katherine M. O'Leary, representing the

State, and Frank Cohen of New York, representing the Company. A comparison of these two witnesses affords a striking example of the considerations controlling the findings to be made.

Miss O'Leary has been associated with the Massachusetts Department of Insurance for more than thirty years, and has been chief examiner in the department since April 1, 1922. Her experience was first as a clerk in the examination division, then as an auditor and later as an examiner. During all of this period her work has had to do with frequent examinations of the books, accounts, vouchers and various other financial records of many insurance companies. She has enjoyed an enviable reputation as an examiner under several insurance commissioners, all of whom have had high praise for her ability and integrity.

Together with her staff of examiners, Miss O'Leary went into the Commonwealth Mutual Liability Insurance Company, and at the request of the Commissioner, conducted a careful and painstaking examination, over a period of many weeks. It was upon her findings that all subsequent action concerning the Company was taken. The Commissioner of Insurance was guided by the facts disclosed by Miss O'Leary and her staff, which became the basis of the petition for receivership. She was the chief witness at the hearing before the Supreme Judicial Court which resulted in the receivership. To do other than to attach great weight to her testimony would be nothing short of ridiculous.

As opposed to Miss O'Leary's testimony and her findings there is the testimony of Frank Cohen, the financial backer and guiding force of all three of the companies involved in the case. His testimony must be scrutinized in the light of his background which, as far as the business of insurance is concerned, is subject to question. In official New York insurance circles he is considered to be an opportunist in the insurance field — one who operates on a large scale, but on thin equities.

Coming to testify before this Committee he was ac-

corded the comfort of a writ of protection, obtained by the majority of the Committee without the knowledge or consent of the minority. His answers to questions were in many instances evasive and sometimes tinged with contempt. He was unable to explain away his manipulation of checks in connection with the fraudulent and illegal obtaining of a certificate to transact business.

The trail of Mr. Cohen's insurance operations has been wide, but there is no desire here to do more than cite one case alone which to any fair-minded person is sufficient to answer the question as to his credibility. Although questioned, he left unexplained to the Committee the decision of the United States District Court for the Southern District of New York in the case of Albert Hurwitz as Trustee in Bankruptcy of the Underwriters Finance Corporation against Louis H. Pink, Superintendent of Insurance, as liquidator of Lloyd's Insurance Company of America, and Frank Cohen. This opinion says in part, "Cohen not only participated in the fraud, but was the prime mover therein." This is only one sentence in an opinion which held that Cohen was involved in a fraudulent transaction.

It has been admitted by practically every one who has looked into the facts that the Commonwealth Mutual obtained its license to transact business by fraudulent means. Despite the testimony of Mr. Cohen and his associates, it was shown that the Company was operated on an unsound and improper basis. There can be only one conclusion to be arrived at under these findings of fact, — that the Commissioner of Insurance acted in the public interest and in support of his oath of office, in bringing the Company's operations to a close.

Moreover, and this is most important, the Supreme Judicial Court also so found. As between Mr. Cohen, his friends and his array of counsel, on the one side, and between Chief Examiner O'Leary, Commissioner of Insurance Francis J. DeCelles, and the Supreme Judicial Court of Massachusetts, on the other side, the minority member of this Committee must concur with the latter

group. He cannot accept the testimony of the former on the history of this Company as true, their versions as accurate, and their conclusions and opinions as sound, unbiased and uncolored by prejudice and disappointment in the collapse of their unsound business venture.

Much was made during the court proceedings and during the hearings before this Committee of the issue as to whether this Company was solvent or insolvent. Miss O'Leary and the Commissioner found the Company to be insolvent. The Company executives and backers, quite naturally, contended it to be solvent. In the eyes of the court, in determining that permanent receivers should be appointed, Mr. Justice Lummus made the following emphatic statement:

"The power of the court is not limited to cases where you are insolvent. If you are in an unsound financial condition, or if your business policies or methods are unsound or improper, or if your condition or management is such as to render its further transaction of business hazardous, all this may be done. . . . I was satisfied the other day that the Company never should have had a permit to do business, anyway."

Stripping this case, therefore, of all extraneous testimony and unessentials which have been injected into it, the minority member of this Committee must find, as did the Supreme Judicial Court, that justice and the public good required the action taken by the Insurance Department.

The minority member, therefore, respectfully submits that the conclusions herein set forth are the essentials in this investigation of the Commonwealth Mutual Liability Insurance Company.

Recommendations.

A. Throughout the insurance laws, chapter 175, reference is made to "residents of the commonwealth," both with respect to incorporators and also of directors of certain companies. Because of abuses which have been discovered, it would seem that the word "resident"

should be defined in section 1 of chapter 175. This recommendation is made to make sure that a resident is a resident in fact, and is not merely establishing a temporary domicile for the purpose of circumventing the law. It might well be that the word be defined as a person who has actually resided in the Commonwealth for a period of not less than six months.

B. In the case of the Commonwealth Mutual Liability Insurance Company it was brought out that the subscriptions for policies which are obtained prior to securing a final license were, by custom, investigated only to a limited extent. As a result of the experience in this case, the Department of Insurance now believes subscriptions should be investigated 100 per cent. So many subscriptions, for one reason or another, are rejected, it would seem that the 100 per cent investigation be required by law.

C. As a further protection for policyholders of mutual liability insurance companies some provision should be made to require these companies to increase their surplus according to their premium income. A minimum guaranty capital of $25,000, to be increased each year or each time that policies are written in excess of a standard $100,000 unit, so that the guaranty capital will always be one quarter of the total premium written, is recommended.

D. During the hearings in the Commonwealth Mutual case, it was brought out that insurance adjusters had forced settlements by representing that the Company was in poor condition and might fail, thus obtaining unfair settlements. To meet such a situation, where fraudulent coercive or deceitful methods are used to obtain settlements, or in which an insurance adjuster has recommended claimants to attorneys to represent them, or has in any other way been guilty of conduct resulting in unfair disadvantage to a claimant, or to his attorney or witness in a case, said adjuster be subjected to a fine of not less than $50. Upon complaint, the Commissioner of Insurance should be required to conduct a

hearing, and should he find probable cause, he should be required to prosecute the company employing the adjuster forthwith.

E. In order to clarify a condition which is extremely vague as the law now stands, several amendments are needed in chapter 175, section 93. At present, as a prerequisite to qualifying for a license to transact business, $100,000 must be paid in as premiums in cash. Provision should be made to have this money on deposit in an account in a bank in the Commonwealth in escrow for subscribers.

F. For several years commissioners of insurance have been requesting that inasmuch as they must shoulder the responsibility, they should be given greater powers over the licensing of insurance companies. Under the present statutes relating to life insurance companies a commissioner, in his discretion, may refuse to issue a license "if the commissioner is of the opinion that the granting of such certificate to any company would in any case be prejudicial to the public interest."

There is no good reason why this same provision should not apply in the case of other companies, providing, however, that any person or company aggrieved by the failure of the Commissioner to issue a license shall have an appeal to the Supreme Judicial Court, and that upon such appeal the burden of proof will be on the Commissioner to show why the license should not have been granted. Such legislation is accordingly recommended.

The minority member approves recommendations, in addition to the foregoing, as follows:

To require as a prerequisite to obtaining a license a statement of the officers and incorporators of a company, under oath or under the penalties of perjury, as to organization expenses, which is to be subject to the approval of the Commissioner as at present, and also that there are no secret agreements or outstanding obligations of any kind.

To require that underwriting be done by a company

and not by an agency, and to divorce mutual companies from any connection with finance companies.

To provide for a complete revision and recodification of the insurance laws, as contained in chapter 175 of the General Laws.

To require the publishing of names of proposed incorporators of insurance companies, and providing for public hearings to establish that they meet the requirements of existing statutes.

JOHN W. CODDAIRE, JR.

PROPOSED LEGISLATION

A.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT DEFINING THE WORD "RESIDENT" WITH RESPECT TO THE INCORPORATORS, OFFICERS AND DIRECTORS OF INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section one of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting after the word "law" in the fifty-second line the following new paragraph: —

"Resident", with respect to incorporators, officers and directors of a company, a person who shall have resided within the commonwealth at least six months immediately prior to the exercise of the authority or the election referred to in the context.

B AND E.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT FURTHER REGULATING THE FORMATION AND TRANSACTION OF BUSINESS BY MUTUAL LIABILITY INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter one hundred and seventy-five of the General Laws is hereby amended by striking out section ninety-three, as appearing in the Tercentenary Edition, and inserting in place thereof the following: —

Section 93. No policy shall be issued by a mutual company formed to transact business under any one or more of the several subdivisions of the sixth clause of section forty-seven until it has secured applications for insurance on risks in the commonwealth the premiums on which shall amount to not less than one hundred thousand dollars and the commissioner is satisfied, upon investigation of every such application, that such premiums have been actually paid to it in full in cash, nor until said cash has been deposited in a bank or trust company duly authorized to transact business in the commonwealth and held by it in

escrow for the benefit of the subscribers pending the issue to the effect of the certificate required by section thirty-two, nor, if it proposes to transact business under subdivision (*e*) of said clause, until it has made arrangements satisfactory to the commissioner, by reinsurance, as provided in section twenty, to protect it from extraordinary losses caused by any one disaster.

The liability of any policyholder in such a company to pay his proportionate part of any assessments which may be laid by the company, in accordance with law and his contract, on account of losses and expenses incurred while he was a member, shall continue so long as there are outstanding any obligations incurred while he was such a member.

C.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT REQUIRING MUTUAL LIFE INSURANCE COMPANIES TO ESTABLISH AND MAINTAIN A GUARANTY CAPITAL.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section ninety-three of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by inserting after the first paragraph the following new paragraph: —

No policy shall be issued by such a company until it has established and unless it continues to maintain a fully paid up guaranty capital, the amount of which shall equal twenty-five per cent of its total premium income, but not less than twenty-five thousand dollars, and shall otherwise be subject to the provisions of section seventy-nine.

D.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT PROHIBITING CERTAIN PRACTICES IN THE PROSECUTION AND SETTLEMENT OF CLAIMS AGAINST INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter one hundred and seventy-five of the General Laws is hereby amended by inserting after section one hundred and ninety-three B, inserted by chapter three hundred and fourteen of the acts of nineteen hundred and thirty-seven, the following new section: —

Section 193C. No company and no officer, claim adjuster or agent thereof shall effect, or attempt to effect, the settlement of an insurance claim by misrepresenting the financial condition of such company, or recommend any attorney to represent a claimant against such company, or so act as to cause an unfair disadvantage to such a claimant or to his attorney or witnesses in the prosecution of his claim. Violation of this section shall be punished by a fine of not less than fifty dollars.

F.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Thirty-Eight.

AN ACT EXTENDING THE POWERS OF THE COMMISSIONER OF INSURANCE RELATIVE TO THE INCORPORATION OF INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section thirty-two of chapter one hundred and seventy-five of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by striking out the second sentence and inserting in place thereof the following: — No such certificate shall be issued until the commissioner is satisfied, by such examination as he may make and such evidence as he may require, that the company has complied with the laws of the commonwealth, adopted a proper system of accounting, employed a competent accountant and a competent and experienced underwriter, and is without liabilities except such organization expenses as the commissioner shall approve as reasonable, and except, in the case of a stock company or a mutual company with a guaranty capital, its liabilities to stockholders for the amount paid in for shares of stock, nor, in the case of a life company, until he is

satisfied, as aforesaid, that the company has employed a competent and experienced actuary, and that its officers and directors are of good repute and competent to manage a life company; provided, that if the commissioner is of the opinion that the granting of such a certificate to any company would in any case, be prejudicial to the public interest, he may in his discretion refuse to issue it, subject to appeal to the supreme judicial court, and in case of such appeal the burden of proof shall be on the commissioner to show reasonable and just cause for his refusal to issue such certificate.