

District Court of the United States

FOR THE WESTERN DISTRICT OF MISSOURI. CENTRAL DIVISION.

AMERICAN INSURANCE COMPANY A CORPORATION, *Plaintiff*, vs.

RAY B. LUCAS (SUCCESSOR IN OFFICE TO GEORGE A. S. ROBERTSON, JOSEPH
B. THOMPSON AND R. E. O'MALLEY) SUPERINTENDENT OF THE INSURANCE
DEPARTMENT OF THE STATE OF MISSOURI, AND ROY MCKITTRICK
(SUCCESSOR IN OFFICE TO STRATTON SHARTEL) ATTORNEY GENERAL OF
THE STATE OF MISSOURI, *Defendants*.

In Equity.

No. 270 (and related cases numbered in Equity between 270 and 426, both inclusive,
which heretofore have not been dismissed by plaintiffs).

Stone, Circuit Judge, Reeves and Otis, District Judges,
Sitting.

Stone, Circuit Judge, Delivered the Opinion of the
Court.

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A. L. ARNOLD, Clerk

By Deputy

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This opinion is arranged in main and sub-headings, as to subject matter, as follows:

I. Statement.

II. Contentions.

III. Facts.

(A) Outline of the Litigation.

(B) Committees.

(C) Groups.

(D) Conduct and Control of Missouri Rate Litigation.

In Equity.

No. 270 (and related cases numbered in Equity between 270 and 426, both inclusive, which heretofore have not been dismissed by plaintiffs).

(E) The Bribery and Collections of Money therefor.

(1) Bribery negotiations.

(2) Collections at New York for initial bribe payments.

(3) Collections at Hartford for initial bribe payments.

(4) Initial payments of bribe money.

(5) Later payment of bribe money (\$330,000.00).

(6) Procurement of money for bribe payment of \$330,000.00.

IV. Discussion and Determination.

V. Interest.

VI. Motions to Strike Answers.

VII. Costs and Expenses of Distribution.

(E)

The Bribery and Collections of Money Therefor.

(1) BRIBERY NEGOTIATIONS. The immediate actors in these sordid transactions were Thomas J. Pendergast, R. Emmett O'Malley, A. L. McCormack and C. R. Street. Pendergast was a political leader of pronounced influence in Missouri, engaged in various businesses and not an attorney. O'Malley was the then Superintendent of Insurance and a close friend of and adherent to Pendergast. McCormack was engaged in and rather prominent in insurance business at St. Louis, Missouri; had been president

of the State Agents Association in Missouri; and was a friend of O'Malley. C. R. Street (residing in Chicago) was vice-president of six companies¹³ (of which he was western manager for five); was chairman of the Subscribers Actuarial Committee; and was in charge of the Missouri rate litigations for that Committee and, therethrough, for the companies.

"Early in 1935," O'Malley went to St. Louis and asked McCormack if he "thought that the insurance companies would want to settle the fire insurance rate case." McCormack said he had no authority whatever but, if O'Malley "had any suggestions to offer, I would be glad to convey it to Mr. Street." O'Malley replied that "maybe if Mr. Street would talk with Mr. Pendergast that they might be able to get together and dispose of the case." A few days later, McCormack went to Chicago and told Street what O'Malley had said. Street said he "would be glad to meet with Mr. Pendergast." McCormack returned to St. Louis and informed O'Malley, who said he would try to arrange a meeting time. Later, O'Malley telephoned McCormack that Pendergast would meet Street in Chicago on a certain date and McCormack telephoned that information to Street. This meeting was "two or three weeks"

¹³The companies are known as the "Great American" group or Group 20. after the first trip of McCormack to Chicago. Street and Pendergast met—McCormack was in and out of the meeting which lasted an hour or an hour and a half. Street said "he would be willing to pay someone a fee for bringing an acceptable settlement." Street and Pendergast agreed Pendergast would be paid \$500,000.00 for an "acceptable settlement." "Sometime later", McCormack was in Chicago and Street told him he "was willing to raise the amount to \$750,000.00 to expedite the settlement." Within an hour, McCormack conveyed this information to Pendergast who was then in Chicago.

While exact dates as to the above negotiations do not appear, yet negotiations for a settlement had been going on before March 19, 1935—on which date the Subscribers Actuarial Committee authorized Street "to continue to conduct these negotiations" for a settlement and there is no evidence of any negotiations for any settlement other than these.

(2) COLLECTIONS AT NEW YORK FOR INITIAL BRIBE PAYMENTS. In the latter part of April, 1935, Street wired Paul L. Haid (in New York City), who was president of the Insurance

Executives Association, to arrange a meeting of certain named persons (executives of New York companies) at Haid's office for May 2nd, to discuss with Street a question of settlement of the Missouri litigation.¹⁴ Besides Haid and Street, those attending the meeting were F. W. Koeckert (president or manager of 7 companies forming Group 11 and a member of the Subscribers Actuarial Committee), Bernard M. Culver and Ernest Sturm (president and chairman of the board, re

¹⁴Haid testified the telegram could not be found and that it did not state the purpose for the meeting. Robert P. Barbour (United States manager for a group of foreign companies—Group 34), who attended the meeting, testified he was requested by telephone "to meet with some other gentlemen in order to discuss with Charles R. Street a question of settlement of Missouri litigation." Considering the remarkable blankness of Mr. Barbour's memory as to who attended the meeting and what took place there, we take it that his retention of this fact is correct.

spectively, of 5 companies forming Group 12), William H. Koop (president of 5 companies forming Group 20), Wilfred Kurth (president of 4 companies forming Group 23), Robert P. Barbour (president or manager of 7 companies forming Group 34 and a member of the Subscribers Actuarial Committee), Harold Warner (president or manager of 6 companies forming Group 43) and Harold T. Cartlidge (deputy manager or "second officer", respectively, of the 6 companies represented by Warner). All of those present knew Street well.

The meeting was entirely informal, no minutes or notes were taken, and (according to varying estimates of those present) lasted 15, 20, 30, 45 minutes or "about an hour". The testimony as to what was said and done at this meeting is somewhat varied as to details; however, the outline appears to be as follows. Street did most of the talking and there was little discussion and no questions asked him. His statement was that he had been working upon a compromise and settlement of the Missouri litigation and "hoped" to accomplish it on the basis of return of 90% of the impounded funds to the companies and some changes in premium rates; that he needed \$100,000.00 immediately for "expenses", or "preliminary expenses" or "legal expenses"; that he expected to raise this amount from the companies in New York and in Hartford, which were those more largely interested, because it would be "physically" difficult to take up the matter with all of the

companies involved in the litigation; that he would later render a full account; and that it was necessary for him to act as “agent” of the companies in such negotiations. He made no statement as to whom he was negotiating with; who was to get the money; or why it was needed (other than the general purpose above stated). He was not questioned as to any of these matters. He either suggested or said he would let those present know the amount each should subscribe and there were no questions nor objections to this.

Immediately after the meeting, Street gave Haid a slip of paper containing the names of certain companies and the amount to be subscribed by each. Street asked Haid to assemble the checks and send them to him. The same and the following day, Haid assembled and mailed the checks to Street without any letter or memorandum. Haid kept no record or memorandum of transmittal of the checks to Street or of receipt of them from the companies by Haid (except that he checked them off on the paper slip given him by Street until all were received and after mailing checks to Street, the slip was destroyed).

The total of these checks (\$62,500.00) was made up of separate checks from companies represented at the meeting as follows: Group 11, Koeckert, \$7,500.00; Group 12, Culver, \$15,000.00; Group 20, Koop and Street, \$10,000.00; Group 23 Kurth, \$15,000.00; Group 43, Warner, \$10,000.00; Group 56, \$5,000.00.¹⁵ These checks were (except one) payable to “C. R. Street, Chairman”—the exception being Group 20 (in which Street was an executive officer) which was payable to “R. J. Folonie, Atty.”

The book entries and memoranda made by the several companies issuing these checks—concerning the purpose for which issued—were as follows:

As to Group 11. The cash book entry was “N. L. Board, C. R. Street, Chairman, \$7,500.00” (“N. L.” means National Local Board). Ledger entry was in the account “Nat’l. and Local Boards” and was “C. R. Street, Chairman—\$7,500.00.” Koeckert, who gave the information or instructions upon which these entries were made, testified that neither the National Board nor the Local Board had anything to do with Missouri litigation and could give no satisfactory reason for this wrong entry. Ordinarily, a

¹⁵Group 34 represented by Barbour seems to have made no contribution. Another Group (56) made a check on the same date (May 2, 1935) to Street for \$5,000.00. There is some testimony that J. L. Parsons, who represented Group 56 was at this meeting but

he testifies positively that he was not and we accept his testimony—he obtained the information upon which he issued the check from Haid.

requisition is made for a check. There was none for this check but only an office memorandum.

As to Group 12. There is considerable testimony concerning the manner in which this check item was handled.¹⁶ A concise statement is that it was purposely handled in an “unusual” manner in a “suspense account” and as for “legal expenses”,

As to Group 20. Requisition for this check was made by Street to be payable to “R. J. Folonie, att., in payment of advance on Missouri Attorneys’ fees” and to be charged to “suspense”. Neither Koop nor Street ever brought this matter to attention of the board of directors of the company issuing the check.

As to Group 23. Order for check made by Kurth to be “to order of Charles R. Street, Chairman” for “Advance on Missouri Refund Case, Legal”. The journal entry was “Legal. Charles R. Street, Chairman Mo. Refund Case * * * \$15,000.00.” Although the progress or lack of progress of the Missouri litigation was mentioned by directors at their monthly meetings, Kurth never told them of this check or transaction.

As to Group 43. The order for the check was “to the order of C. R. Street Chairman” for “Advance a/c Missouri Litigation”. The memo for journal entry “Suspense Account Dr. \$10,000.00 To Legal Expenses Cr. \$10,- 000.00 Reason for transfer Payment made May 2, 1935 to C. R. Street, Chairman, as advance on account of Legal Expense, Missouri Litigation to be charged to suspense, as there is a possibility of its recovery.”

As to Group 56. This check was issued on verbal directions of Parsons (president of Crum and Forster) to Wyatt (connected with Crum and Forster and vice presi

¹⁶Sixteen printed pages of the master’s report is devoted to a summary of this matter. The details appear mainly in the testimony of Culver, Emes, Moeckel and Henne. (president of the companies represented by that concern). The voucher, attached to the office copy of the check, showed “Ind. and Cos.” (meaning “individual and company’s account” in the ledger). There was nothing to show what the expenditure was for. The above voucher statement meant only an advance by Crum and Forster for the benefit of companies represented by them. There is no further record except a memorandum of apportionment of this amount between the seven companies represented by Crum and

Forster. When this memo was made is not clear. It is entitled "Missouri Impounded Prem. as of 3/31/35"; next follows the separate, the total, and the percentage impoundings of the seven companies; next the \$5,000.00 is apportioned to the several companies on the basis of percentages of impoundings shown.

(3) COLLECTIONS AT HARTFORD FOR INITIAL BRIBE PAYMENTS. This meeting was at Hartford the afternoon of May 3rd, the day following the above New York meeting. A day or two before the meeting at Hartford, Street telephoned G. C. Long, Jr. (Vice-president and in charge of western business of the major companies in the Phoenix Insurance group (Group 40)), asking him to arrange a meeting of executives "in authority" of the Hartford fire companies for the afternoon of May 3rd. Street said only that he had an important matter to bring before the executives. Long telephoned the executives.

The meeting was attended by W. R. McCain (Group 2), Alfred Stinson (Group 5), R. Clark (Group 8), R. M. Bissell (Group 22),¹⁷ Gilbert Kingan (Group 28), Frank D. Layton (Group 31), Edward Milligan and G. C. Long, Jr. (Group 40), J. H. Vreeland (Group 45) and R. D. Safford (Group 53). Street opened the meeting and did most of the talking. He stated he believed he could settle the Missouri litigation and he was working on a compromise. "I can settle this case if the companies

¹⁷ Also present was A. G. Dugan, general agent at Chicago for the major group 22 company, who happened to be in Hartford at the time on other business. want me to, but I want you to trust me." He said he would need some money for "legal expenses" and "incidental expenses"; that he wanted to raise \$100,000.00; that the New York companies had contributed about \$65,- 000.00; and that he needed the balance. There was discussion concerning the advisability of settlement and the terms on which Street thought it could be made. Several of those present thought it was stated by Street that the money was needed to employ additional and local attorneys because the present attorneys were unfavorable to any compromise and, also, were not on good terms with State authorities and counsel for the Superintendent—others do not remember such statements. The only memorandum made of the meeting (see footnote 18) makes no mention of additional counsel to be employed either because present counsel not suitable for compromise negotiations or for any other reason. In fact, this memorandum, by inference, negatives such thought since it states the money to be

raised is to be “turned over” to Hicks and Folonie (the then general counsel) “but it is not to be delivered unless the settlement, as above referred to, is effected”. Street did not state with whom he had been negotiating nor whom he expected to pay this money to—no questions were asked concerning these matters. He expected the larger companies to advance these sums because it would be easier and more expeditious than trying to deal with all of the 137 companies. He made it clear that the \$100,000.00 was needed immediately and he wanted to raise it right then and there. He stated there would be an accounting later. He wanted the companies represented to contribute the round figures he pro-rated to each.

There was no secretary at the meeting and no notes or memoranda were made by anyone at the time. Later, Stinson made a memorandum for his own use. Because of illness, Stinson was not a witness. The contents of this memo are not remembered in all details by others at the meeting. It is as set forth in footnote.¹⁸

Someone suggested that Long be given the checks and that he send them to Street at Chicago. The checks were: from group 2 \$5,000.00, group 5 \$3,500.00, group 8 \$2,000.00, group 22 \$10,000.00, group 31 \$5,000.00, group 40 \$6,500.00, group 45 \$4,000.00, and group 53 \$2,000.00—a total of \$38,000.00. Six of these checks came to Long later that afternoon by messenger. The next day they

¹⁸MEMORANDUM

Saturday, May 4, 1935 *In re*: Missouri Situation

An effort is being made to settle the Missouri rate case thru the intervention of those who wish to terminate this long drawn- out legal struggle, and what is now proposed is that 80% of the impounded premiums shall be returned to the Companies, 10% shall go to the public and 10% will be for the expenses in the handling, and from and after a date to be fixed, maybe March 1st, the rate of premium applying in the State of Missouri will be as follows:

The theoretical $16 \frac{2}{3}$ advance over the 90 brought the rate to 105%. We will, under this agreement, reduce this 105% theoretical rate to 100%, which is the rate that was in effect before the Hyde order.

It is necessary to carrying on this activity, to use temporarily \$100,000, which will be

accounted for when the settlement is made and we are asked to contribute our proportion of this sum as shown below.

A meeting was held yesterday in the Aetna Fire Board Room at which were present Mr. Ross McCain of the Aetna, Mr. Layton of the National, Mr. Milligan and Mr. Long of the Phoenix, Mr. Bissell of the Hartford, Mr. Stinson of the Automobile and Standard, Mr. Vreeland of the Scottish Union and National, Mr. Clark of the Caledonian, Mr. Safford of the Travelers, Mr. Kingan of the London & Lancashire and Mr. C. R. Street, Vice President of the Great American located at Chicago and Chairman of the Actuarial Committee.

We were asked to contribute as an advance for legal expenses the sum of \$37,500. as the participation of the group of companies centered at Hartford. \$62,500 was raised among a few of the New York Companies on Thursday. Mr. Street is to turn this money over to our attorneys, Hicks & Fologie but it is not to be delivered unless the settlement, as above referred to, is effected. After the agreement has been effected the attorneys will appear before the court and secure its approval to a stipulation were mailed to Street at Chicago with a letter.¹⁹ The check of group 2 was handed Street at the meeting. Layton, who represented group 31, testifies he referred Street to the group Western Manager in Chicago, G. H. Bell. May 7, Bell gave the check for \$5,000.00 to Street. This check was given on Street's statement to Bell that money was needed for attorney fees and expenses. Group 28 made no contribution. Its representative at the meeting (Kingan) told Street the matter was outside his jurisdiction and for Street to take it up with Carsten Claussen, his western manager, in Chicago. Street never mentioned the matter to Claussen. Some of the checks were payable to C. R. Street, Chairman and others to of this settlement, as above referred to and the advance money will be accounted for.

The Hartford Companies contributing follows:

are	as	\$
Aetna		5,000.
National		5,000.
Phoenix		5,500.

Hartford	10,000.
Automobile & Standard	3,500.
Scottish Union	3,000.
Caledonian *	1,500.
Travelers	2,000.
London & Lancashire	2,000.
Total	\$37,500.

Alfred Stinson

HEM (Signed) Alfred Stinson.”

¹⁹The body of the letter is as follows:

“I enclose herewith cheques as follows:

Scottish Union,	\$ 4,000.
Caledonian,	2,000.
Travelers,	2,000.
Hartford,	10,000.
Automobile,	3,500.
Phoenix,	6,500.

all being in the nature of advances for litigation expenses in connection with the Missouri case.

You will observe the cheques are made payable either to you as Chairman or to Folonie as Attorney. No acknowledgment is required.”

Hicks and Folonie. Probably fifteen minutes of the meeting were devoted to the raising of the money—the balance to discussion of the suggested terms of settlement and to Street’s statement.

The book entries and memoranda made by the several companies issuing these checks—concerning the purpose for which issued—were as follows. *As to group 2*, it does not appear what, if any, book entries were made as to the check. *As to group 5*, there was a check requisition stating check desired was for “advance Legal Fees” with instructions to charge to “General Expense”. The expense journal entries show carried as “general expense”. The entries in the “legal expense account” throw no light upon the nature of the transaction. *As to group 8*, check transmitted to Long in letter marked

“Private” and stating check “being advance payment in *re* Missouri litigation.” The check had notation on face of “advance *Re* Missouri litigation”. The testimony seems silent as to what, if any, book entries were made. This transaction was not brought to attention of the board of directors. As *to group 22*, carried in “suspense account” until end of year, and then probably (the evidence is not clear) charged to “legal expense”. As *to group 31*, there is no testimony as to how this was entered on the books. No memorandum concerning check or for what given was made by Bell, who issued it. The amount was shown in regular statement of “receipts and expenditures” made to the home office—no explanation of purpose of expenditure was given to or asked by home office. As *to group 40*, the check bore on its face the notation “Advance in *re* Missouri litigation”. How the expenditure was entered on the books does not appear. As *to group 45*, it was entered on the books as “legal expenses”. A receipt given by Street showed “In payment of (Handed to Atty. R. J. Folonie).” The amount was claimed as a federal income tax reduction item in 1935 and disallowed “for failure to substantiate the nature and reason for such expenditures.” The only explanation given the tax examiner was “legal expenses in connection with the Missouri impounded premium.” The disallowance was not protested. As *to group 53*, the item was held in “suspense”. Later, in March, 1936, it was charged to “legal exp.” Five of the checks were payable to Street “Chairman”, 2 to “Hicks and Folonie, Attys”, and 1 to “R. J. Folonie, Attorney”.

No account was ever given by Street to anyone as to the use made of any of this money procured by him at New York and at Hartford and no such account was ever requested thereafter by any of those issuing the checks or by anyone representing the companies which gave the checks.

(4) INITIAL PAYMENTS OF BRIBE MONEY. After receipt of these checks, for \$100,500.00, Street took them to Folonie. Street endorsed the checks payable to him and requested Folonie to pass them and the checks payable to Folonie or to Hicks and Folonie through the Hicks and Folonie bank account and to give Street two checks for \$50,000.00 each. This was done. The two checks were cashed by Street and furnished the money for the first and second payments to Pendergast.

About May 9, 1935 (two days after receipt of the last check (from Bell (for group 31) by Street)), Street telephoned McCormack (at St. Louis) to come to Chicago.

McCormack was in Street's office next morning. Street gave him a package containing \$50,000.00 in currency and asked him to take it to Pendergast. McCormack went to Kansas City by plane that day and delivered the money to Pendergast. Between this delivery and a meeting in Kansas City, on May 14, 1935, McCormack told O'Malley of the payment to Pendergast. At that meeting, the outline terms of a settlement were determined. This meeting was participated in by O'Malley, Street, McCormack, Folonie, local counsel for the companies, counsel for the Superintendent and an actuary from the office of the Superintendent. Counsel later worked this outline into the formal agreement of May 18, 1935.

About a week after this meeting, McCormack went to Chicago at Street's request. Street gave him a second package of \$50,000.00 in currency for Pendergast. When this was delivered, Pendergast took \$5,000.00 and gave McCormack \$22,500.00 to deliver to O'Malley, which McCormack did, piecemeal at various times when requested by O'Malley.

(5) LATER PAYMENT OF BRIBE MONEY (\$330,000.00). About April 1, 1936, McCormack was called to Chicago by Street. Street gave him \$330,000.00 to take to Pendergast, which McCormack did. Pendergast counted the money, kept \$250,000.00 and sent \$40,000.00 to O'Malley by McCormack. About six months later, McCormack was given by Street an additional \$10,000.00 in currency which he delivered to Pendergast.

(6) PROCUREMENT OF MONEY FOR BRIBE PAYMENT OF \$330,000.00. The money for this payment of \$330,000.00 was procured by Street in the following way. Under the Motions for Decrees and the accompanying Stipulations, 20% of the impounded funds were to go to policyholders and 80% to the respective companies. Of the 80% going to the companies, 50% was to go forthwith direct to the companies from the Custodian. The remaining 30% thereof was, under the motions for decrees and stipulations, to go to "Robert J. Folonie, one of the counsel for plaintiff, and Charles R. Street, Chairman for the insurance companies, who, for them, are supervising this litigation, which the said named parties will take as Trustees for and on behalf of plaintiff insurance companies, and to account therefor to the plaintiffs but not to this Court or the Superintendent." As entered, the decrees (February 1, 1936) provided, *concerning accounting* for this 30%

going to the trustees, as follows: “they shall account only to the plaintiff; hut if this Court shall so order, they are to file a report of disbursements with the Judges of this Court.” February 7, 1936, Fologie and Street made a declaration of trust wherein they recited receipt [from

the Custodian] of United States securities of par value \$2,500,000.00—the market value was then \$2,770,562.00. The declaration provided that, out of such funds, would be paid (1) the sums required by the agreement with the Superintendent of May 18, 1935, a copy thereof being attached to the declaration (a total of \$700,000.00); (2) costs, fees, and expenses assessed by any court; (3) “for other payments” directed by the Actuarial Committee in writing; and (4) distribute the remainder to the companies under directions of the Actuarial Committee.

In June, 1935, a circular letter had been sent to the companies by the Subscribers Actuarial Committee stating that an agreement for settlement had been made and giving the general terms thereof. February 4, 1936, the Subscribers Actuarial Committee sent to each of the plaintiffs a circular letter summarizing the provisions of the decrees of February 1, 1936. Among other things, the summary states that “30 per cent [of the impounded funds] to C. R. Street and F. J. Fologie, trustees.” Also that:

“The money coming into the hands of C. R. Street and R. J. Fologie, trustees, will be employed to discharge any debts incurred by or under the direction of this committee; agreed amounts payable to the Superintendent of Insurance and for his counsel; court costs; Custodian’s fees; attorneys’ fees and expenses of counsel for the companies; costs of administering and safeguarding money in the hands of the trustees; contingent allowances or charges; any remaining balance subject to distribution to the companies will not, in the nature of the matter, be finally and completely distributable for some time to come.”

“Sometime” in March, 1936, Street telephoned or wired Haid to gather “certain executives” on a “named date” in New York. Haid telephoned the executives. Four attended—Sturm (group 12), Koop (group 20), Kurth (group 23) and Warner (group 43). The meeting lasted about fifteen minutes. Street told them he needed about \$450,000.00 (including the \$100,500.00 subscribed earlier) for “legal expenses”; that the additional \$350,-

000.00 would approximate 5% of the formerly impounded funds; that the trustees were about to disburse 11% to the companies; that when they received checks for this 11%, he wanted them to send him checks for 5% to meet these legal expenses; that deductions from the 5% of amounts previously advanced (to make up the earlier \$100,500.00) would be made. No inquiries nor further explanations were made as to what the money was to be used for; why the money was needed; nor why it was not paid direct by the trustees from their funds—"there was no discussion at all with reference to the necessity of getting the money right away." Procurement of consent to this plan was the only purpose of the meeting. There was no objection. The companies represented at the meeting had deposited with the Custodian about 25% of the total impoundings.

The 11% checks were issued to each of the various companies and the 5% checks returned by them. The 11% checks were made payable to the several companies and all were signed "Robert J. Fologie and Charles R. Street, Trustees." All of these 5% checks (there were 91 checks) were made payable to "C. R. Street, Agent", except 8 made to "C. R. Street" and 7 made to "R. J. Fologie, Agent". All of the 5% checks are dated between March 18 to 29, 1936, except 11—10 of these 11 were dated in April and the remaining 1 (for \$495.50) dated November 25, 1936 (the executive of that group having been away). The total was \$347,582.64. From this, the \$330,000.00 was sent to Pendergast,

At the time these 5% checks were issued the situation was as follows. All of the companies (including the agency of Crum and Forster (group 56) and the Underwriters' Grain Association (group 57)) had, with one or two exceptions, received all of the 50% of impounded funds going direct to the companies; all knew that they had theretofore, for several years, contributed (through the Missouri Inspection Bureau) to the expenses of the litigation as it progressed; all knew that, under the decrees, 30% (over \$2,700,000.00) had been set aside to the trustees to take care of all expenses of the litigation; all knew that any balance over such expenses was to come back to the companies^{19a}; all knew that the 11% checks had come from the trustees and represented such payments coming back to the companies; all issued these checks in conjunction with receipt of payment by the trustees of 11% from this trust expense fund; each knew that its 5% check was not made payable to the

trustees or to either, as trustee—each check being made to one of the persons who was a trustee but to him as “agent” (except the 8 made to Street as an individual); all understood the checks had something to do with this litigation; most of them were informed or “assumed” the checks were for “legal expenses” or for “expenses” of the litigation; there could be no possible use for the checks except in connection with expenses of this litigation which was then closed except for distribution to the policyholders; theretofore, all expenses of this and related litigations during the entire time of the Missouri rate controversies had been paid to the Missouri Inspection Bureau on requisitions made by it—except the advancements made at the New York and Hartford meetings to collect the initial \$100,500.00 bribe money.

Except in a few instances, the 5% checks were requested in person or by telephone by Haid, by Erskine (Haid’s assistant) or by Street—the few exceptions were by brief letters. Except as shown hereinafter (in a few instances), there was no explanation given nor asked as

^{19a}The matters just recited above in this paragraph as to knowledge were known to all because (in addition to direct testimony of such knowledge by practically all of the companies) the Actuarial Committee had sent to each company the terms of the settlement in June, 1935, and also the terms of the decrees (embodying the distribution of the impounded funds, which was in line with the settlement) on February 4, 1936—both being before any of the 5% payments.

to the use for the money except for “expenses” or “legal expenses” or the like. In those few instances where explanation or accounting was promised, none was ever offered thereafter and no further request ever made therefor.

The situation as to the information upon which these 5% checks were issued, any book entries, memoranda, correspondence, etc., is (stated in very concise form) as to each group, as follows:

GROUP.

1. Haid telephoned from New York to president of group companies at Newark, New Jersey, stating 11% check would be sent and 5% check desired to Street “in connection with Missouri impounded premiums”. Requisition for check stated “In connection with Mo. Imp. Prem.” Check issued solely on this statement from Haid.

After check issued, president assumes he was informed by Haid that 5% check was for “legal expenses” because company books contain such entry. The parent company issued the check for the group and later the subsidiary company reimbursed for its proportion under check requisition issued for “5% legal fee—Missouri Impounded Prem.”

2. No one in this group knows why this check was issued. Check does not show. No book entries in evidence. Check was for 5%, less \$5,000.00 previously contributed to the \$100,500.00 initial bribe money.
3. “Legal expenses” or “extraordinary expenses”— inquired as to details but got no information— told to send at once, did not inquire why.
4. Does not recall unless told for “some unadjusted expenses”.
5. Memorandum of telephone request for check, from Haid, states it “is to supplement the amount [\$3,500.00 contributed to \$100,500.00 initial bribe money] that we sent * * * and this payment is for same purpose of advanced legal fees in connection with the rates in Missouri.” Haid had said was