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ETHNICITY AND BUSINESS ENTERPRISE: A STUDY OF THE JEWISH MUTUAL INSURANCE COMPANIES OF NEW YORK

by

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Abstract

ETHNICITY AND BUSINESS ENTERPRISE: A STUDY OF THE JEWISH MUTUAL INSURANCE COMPANIES OF NEW YORK

by

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This study focuses on a pioneering venture by Jewish landlords into the property/casualty insurance industry in New York City as insurers, a part of the industry where Jews were rarely found. The undertaking was an outgrowth of a landlords' association, formed as a defensive organization to contend with the tenant/landlord conflict on New York City's Lower East Side at the turn of the century. The association made it possible for the landlords to deal with many aspects of the conflict, including increased negligence suits brought by politicized tenants. The increase in the number of these negligence suits was extremely threatening, as during this period legal definitions of responsibility attendant upon the owneship of property became more exacting and juries kept giving larger awards.

Liability insurance emerged at the turn of the century as the means for landlords to protect their financial interests against the onslaught of negligence suits. The established companies were reluctant to provide everyone with this coverage. Among the excluded groups were Jewish landlords who owned tenement houses on the Lower East Side. When the normal channels for obtaining coverage were closed, the landlords took the innovative step of insuring themselves.

The incursion of these landlords into the role of insurer provides an example of triple marginality. These landlords occupied three analytically distinct but interrelated positions of marginality. First, they were marginal culturally as Jews in New York City in the early nineteen hundreds. Second, they were marginal vis-a-vis the real estate industry. And, they were marginal as insurers. The third position of marginality was a function of the intersection of the other two positions.

This pioneering company, as well as similar companies formed by other Jewish businessmen who shared similar problems, struggled for survival in the insurance industry for forty years faced with the continual problem of adjusting to a changing environment in the industry. Gradually, some of the companies moved from a position of marginality to that of legitimacy and respectability and others failed.

The study was based on in-depth interviews with informants who had personal knowledge of the growth birth and development of the organizations. Extensive primary source material was also used, including the Yiddish language press, judicial records, publications of the insurance industry, and the in-house magazine of the association.

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INTRODUCTION

This study focuses on a pioneering venture, by an association of Jewish landlords on New York City's Lower East Side in the early 1900's, into landlord's liability insurance. This undertaking placed them in the property/casualty insurance industry as insurers, a role in which Jews generally were not found. This research also discusses two other groups of Jewish landlords who undertook similar projects in the Bronx and Brooklyn in the late 1920's, as well as the Jewish businessmen who wrote Worker's Compensation[1] insurance and those who entered the field of automobile liability insurance during this period.

Theoretical Perspective

The incursion of Jewish businessmen into the property/casualty insurance industry as insurers provides an example of triple marginality.[2] The landlords who pioneered in the writing of landlord's liability insurance in ghetto areas in New York occupied three analytically distinct but interrelated positions of marginality. First, they were marginal culturally as Jews in New York City in the early nineteen hundreds. Second, they were

marginal vis-a-vis the real estate industry as the small owner/operator, and often occupant, of tenement houses. And, ultimately, they were marginal as insurers, in that they operated in their early years outside the parameters of the insurance industry. The third position of marginality, that of insurer, emerged as a function of the intersection of the other two marginal positions. Jewish tenement house owners did not set out deliberately to become insurers; the act of becoming insurers was an innovative adaptive response to the closure of normal channels for obtaining the needed insurance.[3] Although the Lower East Side landlords have been used as the primary example because they were the first among the New York City Jewish businessmen to undertake this type of pioneering venture, the other groups which will be discussed occupied analogous positions.

Occupancy of positions of marginality has positive as well as negative consequences for the status occupant. For the new insurers, the benefits which derived from marginality vis-a-vis the insurance industry were mainly in the area of regulation. Because the new insurer was not licensed, it did not come under the purview of the State Insurance Department. Thus, it had more freedom of action. The disadvantages stemmed from a lack of access to the established institutional arrangements in the insurance industry; as a marginal insurer, the association

network which is extremely important to the practice of insurance, was closed off. The new undertaking also profited from the ethnic marginality of its participants. Jewish landlords who shared the same problems and needs were forced to be positively and cooperatively oriented to the goals of the venture. Moreover, as the organization expanded, the ethnic community provided a ready pool of customers.

Marginality, as it applies to any position is variable; it changes through time and in relationship to different situations. In certain institutional areas, such as insurance and banking, positions outside the boundaries of the industry cannot be tolerated by the political power structure. Thus, attempts are made either to eliminate the marginal position or to extend the boundaries of the industry to include it, thereby gaining control over its operation. Although the process of legitimation moves the position to within the parameters of the industry, the position is still on the periphery. Legitimation by the political power structure does not eliminate the consequences of marginality vis-a-vis the industry. To the extent that this marginal position causes strain in the operation of the business, attempts will be made to change the definition of the situation. In the case of the Jewish insurer, that would involve gaining access to the associational networks in the

industry and seeking respectability, the hallmark of the established insurer.

This study also illustrates the natural history of an organization[4] that involves extensive adaptation to external events in its environment. The pioneering venture by Jewish landlords into the role of insurer started as a political response to the need for protection rather than as an economic enterprise which is the usual route into the industry. The eventual insurance undertaking was made possible by the pre-existence of a landlord's association originally formed as a cooperative, defensive organization to represent the landlord politically and to deal with the periodic outbursts of tenant-landlord conflict. Through this organization, the landlords were able to mobilize their resources and power[5] to satisfy their own needs for protection. The insurance venture was a logical extension of their defensive activity.

The law was the most critical environmental factor which influenced the birth, growth and development of the insurance enterprise among Jews. Initially, changes in the tort law which extended the responsibility of real estate owners made it vital for landlords to undertake the pioneering insurance protection known as landlord's liability insurance. At the same time, new legal definitions of responsibility applied to the operators of

public vehicles which propelled Jewish taxi owner into forming a company to insure taxis. Also, the Worker's Compensation Act forced kosher butchers to start their own company writing Worker's Compensation insurance to meet the demands of the legislation. Through time, these companies modified and extended their insurance offerings in response to changes in the requirements set by law. In addition, as the operation of insurance companies is very closely regulated, legislation which affected the industry also had an impact on these companies.

The existence of the new insurance venture was influenced by the environment and it in turn, contributed to changed conditions in its social space. The legislature, in its desire to bring the marginal insurance enterprise within its control passed a new law which legitimated this type of insurance undertaking. Thus, law made other operations of this nature possible and, eventually, a new set of organizations were introduced into the environment of the Greater New York Taxpayer's insurance company. The new insurance venture also changed the environment of the insurance industry by introducing innovative ways of dealing with problems of insuring ghetto areas for liability. Many of these new methods were adopted by the established companies.

This study also illustrates the process whereby an organization starts out with one set of functions and

goals and changes its goals as the environment changes in the attempt to survive and grow.[6] Originally, the companies were formed to provide insurance which was unavailable through the usual means. However, when the original function of the organization became superfluous, as it was being filled by the established companies at competitive prices, the Jewish companies elected to remain in business. They expanded their functions, changed their goals and sought insureds outside of their usual pool of customers.

Literature

The literature on marginality generally focuses on the consequences for an individual or a group stemming from its marginal position between two cultures. Although a great deal of attention in the literature is given to the strain associated with the position, innovation as one possible outcome has been a recurrent theme, especially with respect to the earlier developers of the concept.

The term marginality was first used by Park[7] in "Human Migration and the Marginal Man" to describe the individual on the border between two cultures. Marginal man was, "a man living and sharing intimately in the cultural life and traditions of two distinct peoples; never quite willing to break, even if he were permitted to do so, with his past and traditions, and not quite

accepted, because of racial prejudice in the new society in which he now sought to find a place."[8] The Jew typified this marginal man. Park was mainly concerned with ther social psychological consequences to the individual of this ambivalent position. Although Park characterized the marginal man as frought with internal conflict, suffering from a relatively constant state of "spiritual instability, intensified self consciousness, restlessness and malaise,"[9] he also visualized him as having potential for creativity and innovation.

In his discussion of the possibilities for the creativity and intellectual enlightenment of the marginal man, Park considers Simmel's image of the stranger. Coming from outside a society and remaining on its borders, the stranger is "not bound as others by the local proprieties and conventions. He views his relation to others with less prejudice; he submits them to more general, more objective standards, and he is not confined in his action by custom, piety of precedents."[10]

Stonequist's elaboration of Park's conceptualization of the marginal man also focused on the social psychological dimensions of marginality.[11] Stonequist shares Park's and Simmel's view that one of the consequences of this position is a propensity towards creativity and innovation. According to Stonequist, there is a life-cycle of marginality.[12] In the first stage, the

individual is introduced to the two cultures and assimilates, to some degree, portions of both cultures. This dual assimilation leads to the conflict experienced by marginal man. In the second stage, "the individual through one or more defining experiences becomes aware of the cultural conflict."[13] At this stage, the individual man experiences "confusion, even shock, restlessness, disillusionment and estrangement."[14] But, in the process, the individual is forced to evaluate the situation and respond. This need to respond may stimulate the individual's thought processes. The final stage is characterized by a wide range of outcomes, extending from the development of a string innovative culture to total disorganization. In a footnote to his work,[15] Stonequist comments on the fact that so much emphasis has been placed on the strain element in the marginal position. "A notion that marginal man is necessarily "abnormal," unhappy or otherwise unfortunate, appears to have arisen. This is a misconception of the facts and a narrowing of the concept of the more disorganized cases."[16]

Following the work of Park and Stonequist, a number of studies were done examining the concept of marginality and its application to various ethnic groups. Several of these studies dealt with Jews.[17] By and large, they focused on the conflict and strain flowing from occupancy of marginal positions, and concluded that although there

were various responses to marginality, generally, Jews did not manifest the "tradition associations with the concept of marginality-instability, perpetual conflict, uncertainty, etc." Jews have found a "stable modus vivendi, a clarified having come to terms with being Jewish."[18] Much of this was made possible by living within a marginal culture which was a "completer and unitary culture poised within two cultures."[19]

In the main the studies referred to have concentrated on the marginality of ethnic identity. They have not explored the way in which ethnic marginality can produce marginality in other positions occupied by the ethnic group member, although it is implicit in many of the discussions of prejudice.

The sociological literature which concerns itself with insurance is sparce indeed. The property/casualty insurance business has rarely been the subject of sociological inquiry, despite the fact that this insurance function is a vital part of the economic structure and the fact that property/casualty companies wield substantial power in the society. Generally, the few studies available deal with the life insurance business or with the insurance establishment in toto, obscuring the fundamental differences among its component parts. However, the focal point of these studies has been the ethnic factor and its influence on various corporate

actions, most particularly discriminatory hiring practices. As such, they offer insights into prevailing conditions and attitudes in the industry.

A little more than twenty years after the Fortune survey, Jews in America,[20] conducted in 1936, revealed that few Jews were to be found in the field of insurance, the Anti-Defamation League did a study[21] of Jewish representation in the executive ranks of seven top life insurance companies in the United States and found that only 5.4 per cent of the executives were Jews and that these were concentrated in sales positions and distributed in areas with large Jewish populations, where their ethnicity would maximize their productivity.

The most exhaustive study of the role of ethnicity in occupation placement and advancement in the insurance industry, undertaken in 1966 by Linda Pickthorne Fletcher, surveyed one hundred and fifty insurance companies domiciled in twenty-five states with a view towards evaluating their utilization of minority personnel.[22] Although Fletcher limited her definitions of minorities to Blacks and Puerto Ricans, missing the opportunity to discover the distribution of other minority groups in the industry, she did find that in New York City, 7.3 per cent of insurance company employees were Black and 2.2 per cent were Puerto Rican.[23] Noting that some of these were in high pay white collar positions with advancement

potential, Fletcher concluded optimistically that the future would find fairer minority representation in the insurance industry. However, her figures included the giant life insurance companies, such as Metropolitan and Prudential, with large numbers of employees in New York, and glosses over the distinction between conditions in the life and property/casualty business.[24] Observations by informants in the property/casualty industry found Blacks and Puerto Ricans largely relegated to blue collar jobs and found most minorities conspicuously absent in white collar roles except for their token presence in clerical positions.

A few studies have been made on Black Life Insurance Companies,[25] which emerged in profusion in the late nineteenth and early twentieth century, but declined during the depression. These companies were formed to meet the needs of the Black community for burial and life insurance, which the established white insurers either refused to supply or for which they charged exceedingly high prices. Although these Black Life Insurance Companies also started as voluntary associations, their route differed widely from the Jewish insurance venture because of the basic differences between the life insurance and the property/casualty insurance.

Various studies have focused on ethnic enterprise in general. For example, within the past few years,

considerable attention has been paid to problems inherent in Black entrepreneurship.[26] Kinzer and Sagarin[27] have argued that an important element to be considered in ethnic enterprise is the role of consumer demands. Blacks, they argued, enjoyed no special demands as distinct from Whites, while Orientals and other ethnics could meet specific needs of their fellow ethnic members. Ivan Light, in his tudy Ethnic Enterprise in America[28] extends the Kinzer and Sagarin hypothesis; it is not only consumer demands which support ethnic enterprise, it is also "culturally derived differences of economic organization."[29] Light finds that an important factor in success of the Orientals and lack of success among the Blacks is the availability of credit resources, generally in the form of a rotating credit system, and other social supports available within oriental communities.[30] Light also makes the crucial point that underlying the efficient operation of a rotating credit system is the existence of extensive social trust.[31] In this instance the extension of trust was a function of the cultural values of social honor and specific institutionalized cultural supports, which "resided in ascriptively defined subcommunities of region and kinship."[32] In terms of risk perception, contributions to the fund were made in the light of consensus of anticipated behavior within the subcommunity. Everett

Hughes, in Dilemmas and Contradictions of Status,[33] explores the key roles of special trust in the performance of the professional role. The colleagueship relationship characteristic of the profession demands trust based upon mutual confidence.[34] Hughes argues that new people (new in kind) entering these professional roles evoke uncertainty which can disrupt the colleaqueship relationship of trust. The concept of trust and its relationship to ethnicity seems a seminal area to examine in a study of any occupation, and particularly in insurance where trust is basic to the fabric of business activity.

What Light fails to consider is the situationed context of economic enterprise.

The one study done in the property/casualty industry was a socio-legal study of the process of claims adjusting after an automobile accident.[36] This type of study is very important as it examines the role of the claims adjustor, his different perceptions of the role and his interaction with the claimant and, thereby, sheds light on one of the crucial transactions in insurance practice.

Methodology

This study is based upon data gathered from several sources. Initially, twenty in-depth interviews were conducted with top executives of the companies under study

as well as lawyers and insurance brokers who worked closely with the companies from their start. As the intent was to find people who had information about the early days of the companies, the interviewees were selected by a snow-balling method. The questions were focused on the emergence of the organizations, specific problems arising from ethnicity and the progress of the companies. The material gathered from these interviews constitutes a significant portion of the body of the text. Where no other source is credited, the information derives from interviews.

The interview material was supplemented by several primary sources. Information about the rent strike in 1907/1908 on the Lower East Side of New York comes from The New York Times and The Jewish Daily Forward, a Yiddish language newspaper, which was translated for this study.[37]

Material about the Greater New York Taxpayer's Association and their insurance venture was extracted from the Real Estate News, the house organ of the association. This publication appeared on a monthly basis starting in 1919 and continuing through the early 1970's.

Publications in the insurance industry were also consulted for additional information. Ultimately, The Insurance Advocate and Best's Insurance Reports were the only two sources which proved useful. The tables

chronicling the development of the companies were based on material extrapolated from Best's Insurance Reports. This reference work, published annually, provides the complete uniform statistical report for every insurance company authorized to do business in the United States together with pertinent data about the structure, organization, and operating methods of each company.

Original case material as well as State Legislative documents and congressional publications were also consulted.

Historical Background

A complete understanding of the conditions under which the Jewish insurance companies emerged requires a discussion of the historical background of the period. The last decade of the nineteenth century heralded the age of reform in American society. This was the start of an era in which the ills and dehumanization of the nation's cities, brought about by rapid industrialization and the massive influx of immigrants to serve the industry, were subject to extensive study and various types of attempts at reform. This was an era in which there was implicit belief that change was possible if only the truth of the failures in American society were revealed. "...reality in its fullness must be exposed, then it must be made the subject of moral exhortation; and then, when individual

citizens in sufficient numbers have stiffened in their determination to effect reform, something could be done."[39] This was the era of muckracking journalists whose criticism of the abuses of industrialization revealed the sufferings of the poor and stirred the Protestant ethic of social responsibility and morality.[40] This was the era in which the individual ideals of increased personal responsibility were translated into the formation of settlement houses in the urban ghettos, the activity of civic clubs to influence the legislature and the extensive expansion of charitable activities. This was also the era of labor unrest, agitation for union organization to change labor's working conditions, and the promulgation of the Socialist philosophy which sought to cure all society's problems by changing the economic system.

One focal point for the activities of various types of social reformers at the turn of the century was the Jewish ghetto on the Lower East Side. Settlement houses were opened which sought to educate the immigrant population in the ways of the country and show them how their living conditions could be improved. Civic clubs also worked on the Lower East Side, investigating conditions and attempting to influence the politicians to take positive action. Many of the Jewish immigrants brought from Europe the passions for social reform. They

were receptive to the help given them by reformers and were willing to participate in seeking ways of change themselves. A significant portion of the population was literate, in Yiddish at least, and was influenced by the Yiddish press. Large numbers were also actively involved in labor organization and educated to the possibilities of social action. In addition, there was a new spirit of combativeness on the East Side in the early nineteen hundreds.[41] Jews were ready to vent their anger against the abuses within the ghetto and from outside. Manifestations of this new attitude could be found in periodic outbursts of conflict and strikes.[42]

The Progressive movement which held political sway during that period was dedicated to reform; the medium of reform, in their light, should be the state. The state was neutral and, therefore, could be more effective than any partisan instrumentality.

> ...for it was expected that the state, dealing out even handed justice, would meet the gravest complaints. Industrial society was to be humanized through law, a task that was largely undertaken in the State Legislatures. In the years following 1900, an impressive body of legislation was passed dealing with Workman's Compensation, the labor of women and children, hours of work, minimum wages for women and old age pensions.[43]

Many of these reform laws lacked adequate enforcement and administrative apparatus, however, despite their

inadequacies, the legislation resulted in impressive improvements. Perhaps most important, the laws operated to establish public policy in favor of more social responsibility on the part of businessmen and other who occupied positions of power. A further consequence of these new laws was that they made it possible for the aggrieved to turn to the courts for redress.

It was possible to deal with this new responsibility through the medium of insurance. In the case of Worker's Compensation, in fact, the law mandated insurance as the officially required method of guaranteeing responsibility. The insurance world was called upon to take new approaches to these types of insurance.

New York State was a pioneer in enacting reform legislation. Not only did these New York State laws deal with the poor conditions in the market place, but they also attempted to address a wide range of problems, including the deteriorated state of urban housing, through a series of Tenement House Laws. The insurance world responded to new demand upon the State's landlords for responsibility by devising landlord's liability insurance. In the early twentieth century, there was very little experience in this form of insurance coverage and conditions for its availability were limited. New York State was also among the first states to recognize the potential financial loss from automobile accidents

and it mandated that taxi and bus operators demonstrate financial responsibility by carrying insurance or a surety bond.

The Institution of Insurance

An exposition concerning the entry of new people into the role of insurer and the formation of insurance companies requires an examination of the function of insurance and the organization of the institution of insurance as a business phenomenon. This discussion will be limited to property/casualty insurance.

Insurance is an economic institution whose function is to reduce risk deriving from fortuitous losses, i.e., a change occurrence or accident. A simple definition of insurance from the point of view of the buyer is the contractual exchange of a certain loss of a known size, i.e., the premium payment, for the uncertainty of the occurrence of a loss of an unknown size, as would be incurred, for example, by the destruction of a factory by fire. From the insurance carrier's viewpoint, insurance customarily consists of pooling homogeneous risks in a sufficient number to permit the application of the laws of probability.[44] In this way, the aggregate sum of accidental losses to which members of the group may be subject become predictable within narrow limits. The institutional function of insurance, then, is to operate

as a link among those whose object is to pool their common risk. By definition, the insurance contract or policy transfers risks from the policy holder to a professional risk bearer.

Insurance against fortuitous damage to property by fire, windstorm or other similar occurrences, has a long history arising from the readily apparent fact that property or goods are very often destroyed by fire or otherwise impaired by a wide variety of physical hazards. Insurance against exposure to negligence liability emerged in the early part of the twentieth century with the new reform legislation. Where before an employer or landlord was merely responsible for positive acts of negligence and had many defenses at law,[45] now he was held more and more accountable for his failure to act and for the action of his servants. Inevitably, the social values of life and earning came to be translated in legal matters into money as a medium of compensation, and awards for injury grew larger and larger. As payment of a very large sum for legal liability is likely to require the liquidation of productive resources, it became evident that public liability was as much a threat to property as fire, and insurance protections against this hazard became a necessity.

Public Liability Insurance is one type of coverage available under the rubric of Casualty insurance. Public

liability insurance is essentially third party insurance, that is the insurance company pays the losses suffered by strangers which are the responsibility of the policy holder. It is called indemnification insurance in that the company indemnifies the policy holder for what he has to pay for damages suffered by a third party. In direct insurance, the other type of casualty insurance, the company pays for losses suffered by the policy holder.

In broad outline, the American insurance system consists of three main parties: the customer or insured; the intermediary, a broker or agent; the insurance company or professional risk bearer. In insurance terms, the insured might be considered the bearer of pure risk,[46] that is the risk of loss inherent in the mere possession of the item to be insured. The purchaser of insurance ideally[47] attempts to minimize his exposure to pure risk. The taxi owner tries to make sure that his automobile is in working order. The landlord attempts to comply with mandatory building codes. Employers endeavor to make their place of employment as safe as possible. In reality, however, all possible contingencies cannot be anticipated, therefore, insurance is bought to cover the residual pure risk. Insurance, then, is not purchased to recover losses, but it is a way to eliminate the uncertainty that exists as to whether or not a loss will have to be borne.

Insurance is generally obtained through the medium of a broker or agent, an independent entrepreneur who operates as a liaison between the buyer and the insurance companies. For the most part, insurance companies do not deal directly with the customer.[48] The role of the broker is the interface between the customer and the company. For the customer, the broker is a professional buyer of insurance licensed and regulated by the various States, who also provides expert advice as to the amount and type of insurance necessary to fill particular needs. For the businessman customer, the broker also offers skilled assistance in negotiating contracts with the companies. For the company, the broker is the agent of the customer in the purchase of insurance, qualified to translate his perceptions of the customers needs into technical language, and, ideally, acquaint the company with most of the knowledge it needs to make a fair decision on writing the policy. In the jargon of the industry, the broker is said to place a risk and the company to accept it. For both parties, the broker provides a two way flow of information and interpretation. In the event of a claim, the broker is customarily again the medium for communication and negotiation between the contracting parties.

Brokerage houses are of various sizes, ranging from Marsh and McLennon, the biggest broker in the country,

writing as much total premium as the fourth largest insurance company in the country, to the small insurance broker who holds a license and uses it to supplement his income from another occupation. Some informal power is generated by size, so that a brokerage house doing a large volume of business with a particular company will be in a better position to dictate the terms of negotiations with a company than a small broker.

Insurance companies, for the most part, fall into two categories, the Stock Company and the Mutual.[49]

The Stock Company is a business enterprise formed by stockholders for the purpose of making a profit from the sale of insurance.

> A stock company is owned and controlled by the people and firms who have invested money in it. It is run for the purpose of giving its stockholders a return on their investment. The stockholders, who need not be policyholders in the company, elect the directors, and they select the officers to manage it. In a stock insurance company, ... the funds collected as premiums and those derived from investments are used to pay losses and expenses and to set up the reserves required for the safe operation of the enterprise. What remains from these funds is distributed by a stock company in the form of dividends to its stockholders rather than to its policyholders. A stock company sells insurance at cost-plus a profit to the owners of the business.[50]

The Mutual is a non-profit organization formed by potential policy holders to provide themselves with a

type of insurance which they are unable to obtain elsewhere at a satisfactory price.

A mutual insurance company is owned and operated by its policyholders.

> It is run for their exclusive benefit. They are the company. There are no stockholders. Each policy holder is entitled to a voice in the affairs of the company. Together they elect its board of directors. The directors, in turn, elect the officers who serve as the active managers of the business. From its policy holders, in return to agreeing to secure them against loss, the company collects sums of money called premiums. Out of this fund and from income derived from investments the company pays the losses sustained by its policyholders and the expenses of running the business; it also sets up reserves required by law or by good judgment for the safe operation of the company. What is left over is returned to the policyholders in the form of dividends. A mutual company sells insurance at cost.[51]

From a practical point of view, the Mutual company rapidly becomes the possession of vested interests which have the same organizational objective as the Stock company management, subject to two considerations: the competitive ability to turn profits back to policy holders as dividends or discounts and the need, for a time, to provide the service for which the company was specifically formed. The latter constraint is really an advantage, as the Mutual Company management is presumed to have advantageous knowledge in the particular class of business and, in addition, the original policy holders

form a ready group of available customers.

Mutual companies are characterized by a willingness to entertain greater risks, albeit of necessity rather than choice, thus extending the industry boundaries into new frontiers. As the formation of a new Mutual insurance company requires little more than a pool of customers and capital, the Mutual type company represents a possible point of entry into the insurance industry for any group without the need of acceptance by gatekeepers in the industry. There is, however, a built-in constraint which makes some groups more unequal than others in the utilization of this route. The success of a new Mutual is dependent upon its immediate ability to sell insurance to non-members of its original founding group as well as to non-members of the larger group from which they were drawn. This may explain the absence (with one exception) of Black Mutual Insurance Property and Casualty Companies which reflects the absence of concentrations of Black commercial enterprises to form the original pool of customers and the expectation that Black insurance companies will not be able to expand into the non-Black insurance business. In Atlanta, Georgia and other areas, where there apparently exists an adequate pool of Black customers, Blacks have entered the life insurance industry. As the emergence of the Mutual Insurance Company is dependent upon this pool of

customers, from a structural point of view, Mutual companies might be regarded as derivative, dependent upon the needs of certain types of occupations.

Insurance companies may be of many sizes ranging from the gigantic corporate structure capable of wielding national power to the small operation confining itself to one type of business and not at all concerned with national power. Although the size of an insurance company is not necessarily a function of its form, of some two thousand insurance companies in the United States, the main portion of which are Mutual companies, the Stock companies write about seventy-five percent of the insurance, and, on the average, are larger companies.

One of the key roles in an insurance company is that of the underwriter. Historically, the underwriter at Lloyds was a private entrepreneur who made the final decision to accept a risk on his own behalf and perhaps for a syndicate of businessmen whom he represented. With the development of the American insurance system and its organizational elaboration, the underwriting role became institutionalized as a part of the bureaucratic structure of an insurance company. There exists considerable variation between insurance companies and between different types of insurance lines, i.e., Fire, Automobiles, Inland Marine, etc. written, as to how

elaborate the underwriting department is and where final underwriting decisions are made. Large companies have extensive underwriting departments with authority delegated hierarchically in terms of the size of class of the risk: smaller companies may have one person responsible for underwriting and final decisions made by top management. For example, the Royal Insurance Company in its New York office alone has an entire floor devoted to over fifty underwriters of a high level of discretion; at Glacier General Insurance Company of Montana, all submissions must be approved by the President.

The main task of the underwriter is to scrutinize the application for insurance and make the decision as to whether his company is willing to undertake the risk. As a basis for his decision, he must take into account both the physical and moral hazards inherent in any risk presented for consideration. To some extent, he is guided by definite company procedures with regard to the evaluation of the physical and moral hazards which affect the potential for loss in a given class of business. Physical hazards may be obvious or easily determined by inspection of the property to be insured. An apartment house with a restaurant on the ground floor may be distinguished from one without a restaurant as to fire hazard, and a finer distinction may be made between a restaurant with greasy flues and one that employs a flue

cleaning service. However, not all properties can be placed in neat categories. Further, if the underwriter rejected all business that did not fall within the technical definition of some manual, he would reject potentially profitable business which would defeat the objectives of the company. The underwriter must, therefore, act with a great deal of discretion in the evaluation of the loss potential of a given piece of business and make a considered judgment as to its acceptance. He might modify the hazard by recommending protection that the client must undertake or he might negotiate a premium suitable to increased hazard.

It is in the gray area of the moral hazard that many problems arise. Where the underwriter recognizes a moral hazard, the business will be rejected. The building owner who has had previous suspicious fires may not be issued another policy. The taxi driver who has a record of drunk driving will not be insured.

In addition, there is a morale hazard which is closely related to the moral hazard but some underwriting departments consider this more dangerous. "Almost every insured is guilty in some degree of morale hazard. Morale hazard results from the indifference engendered by insurance. 'I have insurance, so why should I worry'." Morale hazards tend to merge into moral hazards. The building owner may not deliberately set fire to his

building, but he does little to prevent the fire. He allows trash to accumulate. If a fire should occur, he would be slow to call the fire department. Moral hazards, however, are generally not that clear cut and frequently, there is considerable difficulty in judging whether or not a moral hazard actually exists. It is here that the Underwriter exercises subjective judgment, and his prejudices may affect his decision to accept a particular piece of business. The underwriter may avoid the decision entirely by redlining entire districts or he may avoid groups of particular ethnic or socio-economic identity. Witness, for example, the withdrawal of insurance companies from areas affected by the urban riots in the 1960's.[52]

A consideration of the historical development of the insurance phenomenon in the United States helps shed light on the nature of the problem faced by new classes of businessmen entering the market and on the ethnic factor as it influences those in gatekeeper roles such as underwriters. Insurance activity in America dates to colonial times when merchants, experiencing undue hardships in their dependence on British underwriters, took action on their own behalf. In 1721, John Copson, with the support of several wealthy American merchants, opened an agency in Philadelphia for the specific purpose of insuring maritime risks. Within several years, the

scope of his operation was extended to cover inland marine, i.e., goods in transit but not on the high seas. Copson did not break with the British underwriters completely, but merely operated as an agent empowered to entertain risks and settle claims in the name of the British underwriters. It was in 1735, that the first completely independent American Insurance company, the Philadelphia Contributorship for the Insurance of Houses against Fire was organized by Benjamin Franklin and personal friends as a non-profit Mutual company owned by its policy holders. Thus Mutual insurance was the earliest form practiced in America.[53] Franklin improved upon the English plan in that he mandated a system of inspection and only those people who opened their property for inspection and agreed to abide by all safety recommendations were insured. In addition, Franklin charged for the insurance in accordance with the extent of the risk. This was the start of the science of rating in the United States.[54]

New England mill owners were among the first group of businessmen to form their own Mutual Insurance company. Although their mills were as fire resistant as possible for the early 1800's, no existent insurance company in the United States would insure them against fire, except at exhorbitant rates. Because of adverse financial conditions in the United States at that period,

mills were closed and fires were deliberately set. As a consequence, insurance costs soared. Finally, the mill owners organized their own company which accepted only selected risks. Through their special knowledge of their own plants, the mill owners were able to develop techniques for avoiding fire and for limiting the extent of damage from fire when it did occur. Thus the established companies avoided the situation where lack of knowledge precluded forecasting, while the mill owners took the residual risk collectively, as they worked to modify the possibilities of loss. Eventually, this group expanded to open several insurance companies known collectively as the Factory Mutuals. Today, the Factory Mutuals are potent competitors in fire insurance where the policy holder is willing to accept the loss prevention system they have developed. Through the years, other groups of businessmen have followed suit, with the company name often reflecting the Founder's trade, e.g., The Lumberman's Mutual, the Jeweller's Mutual, and so on.[55]

The owners of these early companies and, for the most part, their clientele, consisted of the elite, the merchants and politically influential members of the community.

> Another characteristic common to the founders of (the early mutual companies) is that they were public-spirited,

> conscientious men who were leaders in their communities and respected by their neighbors. For example, the first chairman of the Providence Mutual Fire Insurance Company, which was founded in 1800 and is the oldest fire insurance company in Rhode Island, was David Howell, a brilliant lawyer and scholar, a member of the Board of Fellows of Brown University and for twelve years United States district judge of Rhode Island.[56]

Although the individual underwriter, the merchant gentleman of Lloyds, insuring his fellow merchants never developed significantly in this country, the custom of insurance provided by the elite for a specific in-group was brought forward by Franklin and by the early New England mill owners.

In many ways, the elitest orientation emerged as a response to the requirements of the insurance enterprise, in that the entire endeavor is based upon the trustworthiness of the insured and upon the promise and ability of the insurer to pay claims. In the early days, prior to the development of the financially reliable corporation and government regulation, clientele needed some means of evaluation. The social position of the insurer was the most adequate indicator available. These companies, concentrated in the East, mainly in New England, at first were managed by their founders and employees chosen for auxiliary characteristics considered suitable for access to future management positions. In his discussion, "Dilemmas and Contradictions of

Status,"[57] Hughes suggests that through time certain auxiliary characteristics come to be associated with the occupant of a position. This seems to be the case in the insurance industry. Early companies, staffed by White Anglo-Saxon Protestants, established this as a pattern and continually reinforced it through time by conscious hiring patterns. Below, we will discuss in some detail elements in the occupational environment which serve to perpetuate these policies.

In several ways, the insurance industry is unique. First, it is the only type of business enterprise whose sole commodity is a promise. The fulfillment of this promise through the payment of claims is secondary to the operational function of accepting risk and issuing policies which embody the promise. A second unique quality of the industry is the extremely broad based authority for the making of decisions. Purveyors of tangible goods leave very little decision making to their operative personnel. A tangible commodity salesman will sell its goods to any customer able to pay for them. The insurance underwriter, who accepts or rejects an offered risk on behalf of the company, decides whether or not he chooses to conclude a sale with individual purchasers. Although the techniques of insurance companies have moved towards standardization of conditions for accepting risks, much is still discretionary and the gatekeeper

role is powerful, particularly in its exclusionary aspect.

Perhaps most important, is the overriding occupational mores which define the insurance contract to be one of uberrima fides,[58] or utmost good faith. This concept imposes a high degree of honesty upon role partners and permits a substantial portion of the business to be conducted on mutual trust. Trust is essential at all stages of the interaction. The insurance contract treats in the extreme, with intangibles. The promise to pay a sum, uncertain, at a time, uncertain, contingent upon possible occurrence in the future to a beneficiary who shall have concealed no fact that is material to the risk, falsified no information and done everything to prevent and nothing deliberately to cause the loss. Further, in a typical transaction, the insured requests coverage from a broker and must accept the word of the broker that the insurance is in force until the issuance of a policy often several months in the future. The broker, in dealing with the underwriter, often accepts an oral commitment. The broker trusts that a claim based on a verbal agreement will be honored by the company.

It becomes evident that the flow of business in the insurance industry rests upon trust and discretion and involves interaction between parties having strong

justification, both objective and subjective, for mutual trust. Studying the professions, Hughes points out that in a field such as medicine, where a great deal of discretion is essential to the relationship among practitioners, the auxiliary characteristics of the physician becomes a crucial element in according trust.[59] "You can trust one of the boys, some one like yourself, but how can you trust a stranger?" Because of the overriding necessity for trust in the insurance interaction, at each step of the transactions the individual involved seeks some personal validation of his role partner's reliability. One source of reliability lies in the auxiliary characteristics of the individuals in the transaction. The reassuring characteristics are more likely ideational in homogeneous populations.

In an industry where so much weight is placed upon the mutuality of trust, where the commodity to be sold is merely a promise for future performance couched in complex legal terms, i.e., extensions, limitations, definitions and exclusions seldom understood by the insured, where the ultimate cost of the policy is often unknown at the time a price is set, it seems inevitable that abuses will eventually occur. As insurance is a social device and is very important as a financial institution, it also seems inevitable that it would be subject to government regulation.

Historically, control and regulation of the insurance industry was the province of the various States, in that the Supreme Court in Paul v. Virginia, 1868, held that the insurance industry was not commerce, therefore, the Federal government had no right to regulate the practice.[60] This ruling remained in effect until 1944 when a landmark case, the South-East Underwriters Association, 322 U.S. 533, resulted in the Supreme Court ruling that insurance was commerce and as such, when conducted across state lines, was interstate commerce and subject to federal regulation. For various political and economic reasons,[61] the inclusion of insurance under federal law in effect challenged some of the basic practices of the industry. For example, under the Robinson-Patman Act, 1936, there was a question as to whether brokers could receive commissions, and as a response to this court ruling, the National Association of Insurance Commissioners drew up a model bill outlining the type of insurance regulation it felt was needed. This proposal which became known as the McCarran-Ferguson Act or Public Law 15, partially exempted the insurance industry from federal regulation and relegated most control to the States.

In New York State, the Insurance Department is responsible for a broad range of the activities of the companies and brokers. With regard to the companies, the

primary responsibility of the State Insurance Department is to protect the public by seeing to it that companies operating within the state are financially equipped to fulfill their responsibilities. In the event of financial difficulties in an insurance company, the Department will intervene. It will assume the management of the company. As we will see this has been the case with the early Brooklyn mutuals and with the Empire Mutual Insurance company. The Department also regulates rates and expenses of the companies. With regard to brokers and agents, the Department sets a minimum level of competence for the acquisition of a license and uses the licensing power to insure honesty and ethical behavior. Finally, the Insurance Department has legal control over the contractual provisions in insurance contracts and their effect on the customer. Recently, New York State instituted an ombudsman office to deal with complaints about the quality of service extended by companies and brokers.

As a regulated industry, the rates a company charges, i.e., the price a policy holder pays for insurance coverage, are subject to control by the State Insurance Department and insurance companies are called upon to justify their rating structure. As a matter of law, the rates an insurance company charges must be high enough to cover all their losses and to pay all

reasonable expenses incurred by the company in its servicing of the insureds. In addition, the rates must not be unfairly discriminatory, that is each policy holder is expected to pay his fair share of the claims and expenses projected by the insurer.

> Although equity is easy to define in the abstract, it is impossible to obtain in practice. Indeed perfect equity is unrealistic. To achieve it each insured would have to be placed in a special class by himself, because no two insured present the same conditions of risk, to say nothing of expenses. If each insured were put into a separate category, the principle of insurance-statistical prediction of total loss values through study of large numbers of homogeneous units - would be thrown overboard. So, in insurance at least, complete equity is a contradiction.[62]

The State authorities also determine what percentage profit is acceptable and what percentage is excessive. Very often, the mutual insurance companies can earn adequate profits and charge a lower rate than is extant in the industry. Essentially, this is due to their loss prevention activities which means that they are forced to pay fewer claims.

Chapter Plan

In chapters two through four, the birth, growth and development of the Greater New York Mutual Insurance Company is discussed. Chapter two focuses on the social conditions under which the landlord's

association was formed. In chapter three, the focal point is the emergence of the marginal insurance venture and chapter four follows the development of the company through 1950.

Chapter five and six shift to a presentation of other similar projects. In chapter five, two other companies who also wrote landlord's liability insurance are examined. Chapter six diverges to consider the conditions under which Jewish businessmen formed insurance companies to write Worker's Compensation and automobile liability insurance.

New laws in the insurance industry and their effect on the companies from 1950 to date is the topic covered in chapter seven. And chapter eight explores the progress the companies have made in moving from marginality to respectability.

Introduction

Footnotes

1. Worker's Compensation is the new usage which replaces Workmen's Compensation. Worker's Compensation will be used throughout this paper except in the case of direct quotes.

2. There is an extensive literature dealing with the concept of "marginal man." For example see, Robert E. Park, "Human Migration and the Marginal Man," The American Journal of Sociology, (May 1928), pp. 881-893, Everett Stonequist, "The Problem of the Marginal Man," The American Journal of Sociology, (July 1935), pp. 1-12, Aaron Antonovsky, "Towards a Refinement of the Marginal Man Concept," Social Forces (October 1956), pp. 57-62, David Golovensky, "The Marginal Man Concept: An Analysis and Critique, Social Forces, (May 1952), pp. 333-339. (The May 1952 issue of Social Forces has several articles on the topic).

3. In his discussion, "Social Structure and Anomie," Robert Merton suggests that innovation is a possible response to a situation in which socially prescribed goals are present but the institutional means of achieving them are not available. Robert K. Merton, Social Theory and Social Structure, (Glencoe, Illinois: The Free Press, 1959 ed.), pp. 176-181.

4. For a discussion of the institutional School of Organization analysis see, Charles Perrow, Complex Organizations, (Glenview, Illinois: Scott, Foresman and Company, 1972), pp.177-204.

5. For a discussion of the mobilization of power and resources by minority groups see, Hubert M. Blalock, Jr., Toward a Theory of Minority Group Relations, (New York: Capricorn Books, 1970), Chapter 4, pp.109-142.

6. See discussion of the expose tradition in institutional analysis in Perrow, Op. Cit., pp.180-187.

7. Robert Park, "Human Migration and the Marginal Man," The American Journal of Sociology, (May 1928), pp.881-893.

8. Ibid., p. 892.

9. Ibid., p. 893

10. Ibid., p. 892.

11. Everett V. Stonequist, "The Problem of Marginal Man," The American Journal of Sociology, (July 1935), pp.1-12.

12. Ibid., p.10.

13. Ibid., p.10.

14. Ibid., p.10.

15. Ibid., p.11.

16. Ibid., p.11.

17. Milton M. Goldberg, "A Qualification Of The Marginal Man Theory," American Sociological Review, (1941), pp.52-58, Aaron Antonovsky, "Toward a Refinement of the Marginal Man Concept," in Social Forces, (October 1956), pp.57-62, J.S. Slotkin, "The Status of Marginal Man," Sociology and Social Research, No. 1 (September 1943), pp.47-54, David I. Golovensky, "The Marginal Man Concept, an Analysis and Critique," in Social Forces, (May 1952), pp.333-339.

18. Antonovsky, "Towards a Refinement of the Marginal Man Concept," Op. Cit., p.62.

19. Goldberg, "A qualification of the Marginal Man Theory," Op. Cit., p.57.

20. Fortune Magazine, May 1936. The survey also found few Jews in the financial occupations in general.

21. Benjamin R. Epstein and Arnold Foster, Some of my Best Friends, (Farrar, Straus and Cudahy, 1962), p.211. It should also be recognized that the employment of Blacks by life insurance companies, touted by these companies as a move towards less discrimination, also has the same reasoning.

22. Linda Picthorne Fletcher, The Negro in the Insurance Industry, (Philadelphia: University of Pennsylvania Press, 1970).

23. Linda Picthorne Fletcher, "Racial Employment Policies of Insurance Companies," Best's Review, (July 1970), p.24.

24. The State Commission on Discrimination periodically has held informal investigations of the industry. They feel that the industry has made progress but largely in the large life insurance companies. They did not distinguish between the two forms of organization, but admitted that it had been difficult to motivate the property/casualty companies to change their mode of operation.

25. James B. Browning, "The Beginning of Insurance Enterprise Among Negroes," Journal of Negro History 22 (October 1937), Robert C. Puth, "Supreme Life: A History of a Negro Life Insurance Company," PH.D. dissertation, Department of Economics, Northwestern University, 1967. Also see, Ivan Light, Ethnic Enterprise in America, (Berkeley: University of California Press, 1972), Chapter 8.

26. See for example, James M. Hund, Black Entrepreneurship, (Belmont, Ca. Wadsworth, 1970), Eugene Foley, "The Negro Businessman: In Search of a Tradition," Daedalus, Winter 1966, pp.107-144.

27. Robert H. Kinzer and Edward Sagarin, The Negro In American Business, (New York; Greenburg, 1950).

28. Ivan Light, Ethnic Enterprise in America, (Berkeley, California: University of California Press, 1972).

29. Ibid., p.18.

30. Ibid., p.18.

31. Ibid., pp.57-60.

32. Ibid., p.59.

33. Everett Hughes, "Dilemmas and Contradictions of Status," in Everett Hughes, Men and Their Work, (Glencoe: The Free Press, 1958).

34. Ibid., p.108.

35. Ibid., p.108.

36. H. Lawrence Ross, Settled Out of Court, (New York: Aldine, 1980).

37. Translation was done by Mrs. Gertrude Herschler.

38. Richard Hofstadter, The Age of Reform, (New York: Vintage Books, 1955).

39. Ibid., p.202

40. Ibid., "The Progressive Impulse," Chapter V, pp. 174-214.

41. Howe, Op.Cit., pp.123-126.

42. Howe, Op.Cit., p.124.

43. Hofstadter, Op.Cit., p.242.

44. Mark R. Greene, Risk and Insurance, (Cincinatti, Ohio: South-Western Publishing Co., 1968), Chapter 2, pp. 20-50.

45. Robert I. Mehr and Emerson Commack, Principles of Insurance, (Homewood, Illinois: Richard D. Irwin, Inc., 1974), pp.61-63.

46. For a classic discussion of risk see Frank H. Knight, Risk, Uncertainty and Profit, (Boston: Houghton Mifflin, Co., 1921.

47. Mark R. Greewe, Risk Aversion Insrunace and The Future, (Indiana University, 1971).

48. It should be noted that there are some direct writers such as Allstate but they constitute a small percentage of the companies.

49. Reciprocal companies and Lloyds groups also exist, but are not relevant to the current discussion.

50. John Bainbridge, Biography of An Idea, (New York, Doubleday and Co., 1950), p.20.

51. Ibid., p.20.

52. Harvey D. Shapiro, Fire Insurance and The Inner City, (The New York City Rand Institute, February 1971).

53. Bainbridge, Op.Cit., p.46.

54. Ibid., p.48.

55. For an extensive discussion of the Mutual Movement see Bainbridge, Op.Cit.

56. Ibid., p.78.

57. Hughes, Op.Cit., p.108

58. Blacks Law Dictionary defines uberrima fides in terms of the insurance industry. "A phrase used to express the perfect good faith concealing nothing with which a contract must be made; for example, in the case of insurance, the insured must observe the most perfect good faith towards the insurers, p.1769.

59. Hughes, Op.Cit., p.108.

60. Mehr and Commack, Op.Cit., pp.787-789.

61. Ibid., p.189.

62. Ibid., p.642.

CHAPTER II

THE FORMATION OF A DEFENSE ORGANIZATION
THE GREATER NEW YORK TAXPAYER'S ASSOCIATION

The late nineteenth and early twentieth century witnessed an intense political and social struggle over housing. The large goals of this conflict were to delegitimize the absolute powers of the landlord over his tenants by raising the expectations of the tenants and by forcing the landlord to assume more responsibility for conditions in the property which he owned. With the increased density of poor population in urban areas brought on by immigration and industrialization during this period, it became evident that the common law provisions for the relationship between landlord and tenant, formulated under rural agricultural conditions, were inadequate to provide for the same relationship in urban, industrial society.

One of the focii of this struggle was New York City's tenement house area on the Lower East Side, peopled mainly by poor Jewish immigrants. The parties to this conflict were the Jewish tenants, politicized by the Jewish Socialists and the social reformers, on one side and Jewish landlords on the other. Some of the tactics employed in this conflict by the tenants, or others on

their behalf, were political action, law suits and periodic confrontational outbursts in the form of rent strikes. The tactics employed by the landlords tended to be defensive in nature, aimed at preventing the erosion of their property rights. One defensive reaction took the form of a cooperative association formed to protect their financial interests. The purpose of this chapter is to examine the conditions under which these Jewish tenement house owners joined together in 1908 to form the Greater New York Taxpayer's Association, the parent body of the Greater New York Mutual Insurance Company. To this end, it is necessary to consider several factors: the changing social and legal definition of the obligations of the landlord to the tenant and the specific conflict situation which precipitated the formation of the Association.

Changing Obligation Of The Landlord To The Tenant

The housing conditions facing the poor immigrant population in the urban ghetto areas of New York City during the late nineteenth and early twentieth centuries, were abysmal.

> Throughout the nineteenth century, few building standards or regulations controlled tenement construction. A mushrooming of slums in Manhattan created filth and squalor equal to the worst in Europe or Asia. Even before the East Side became a Jewish quarter, tenements spread through its streets - as also in Cherry Hill, Five Points, and Mulberry Bend to the south; the "Bloody Sixth" west of the Bowery; and the

> Negro sections of Greenwich Village to the north.[1]

Periodic outbreaks of typhus, cholera and smallpox, often in epidemic proportion affecting the entire city, were traced to the tenement areas with their poor facilities for even a modicum of cleanliness. In addition, frequent fires in the tenements resulted in substantial loss of life and property. Crime in the slum areas also ran rampant. As early as 1840, The Association For Improving The Conditions Of The Poor initiated a study of the housing conditions confronting the poor in New York City. It painted a dismal picture:

> Large rooms have been divided by rough partitions into dwellings for two or three families (each perhaps taking boarders) where they wash, cook, eat, sleep and die, many of them prematurely for the circumstances in which they live make fearful havoc of health and life; ...Many of the dwellings are out of repair, and the yards from the neglect of the sinks, in so vile a condition that they can scarcely be stepped into without contracting filth of the most offensive kind.[2]

This report submitted to the State Legislature in 1853, and rejected, was a part of the beginning of a political and social struggle led by social reformers in an attempt to force the State Legislature to make the landlord more responsible for his property.

Barring action by the State Legislature which would require tenement house owners to upgrade their premises, there was no legal way in which a landlord could be held

responsible for the conditions in the apartments which he leased. The relationship between the landlord and the tenant was governed by the tort law. "The law of torts is distinguished by the fact that, unlike criminal or contract law, it is today interpreted on the basis of common law."[3]

> ... the term "common law" is frequently used in opposition or contradistinction to the written or statute law. In this sense, common law includes those principles, usages, and rules of action applicable to the government and security of persons and property which do not rest for their authority on any express and positive declarations of the will of the legislature.[4]

The common law did not require that the landlord do anything to fix or repair the demised premises, which is that portion of the landlord's property dedicated to the exclusive use of the tenant. "It is the well settled general rule that there is, at common law, no implied obligation or duty on the part of a landlord to make repairs or alterations to the demised premises."[5] As the landlord was not responsible for maintaining the interior of the apartments in the tenements which he owned, he could not be held responsible for injuries to his tenants which occurred within their apartments, even though these injuries were a direct result of defects in the leased premises. Where there is no responsibility to act, there is no responsibility deriving from the failure to act.

> There is no reason ordinarily for holding a landlord in the absence of any agreement, fraud or neglect on his part, liable to his tenant for the present or future condition of the demised premises, ... And it is a general rule of the law of torts, that to maintain an action for personal injuries occasioned by the negligence or want of care of another, it must be made to appear that the defendant owed some duty or obligation to the party injured which he failed to discharge or to perform.[6]

The landlord, however, was responsible to some extent for the common areas of his property, i.e., the staircases and entry hall which were used by everyone and remained in the control and possession of the land-lord. The landlord also had responsibility for the sidewalks adjoining his building with respect to tenants and the public. In 1898, a landmark decision made the landlord responsible for the sidewalk areas even though part of the structure was leased.

> The owner cannot relieve himself of the duty without parting with the entire possession of the property benefited, for the safety of the public requires that the owner, as long as he is in possession of any part of the property, should be compelled to keep his structure in the sidewalk in suitable condition for use as a part of the sidewalk. As the duty is imposed by law for the public safety, its extent is measured by whatever the public safety requires.[7]

"In the absence of a statute, the owner or occupier of real property is responsible only to insure that members of the public shall not run upon a hidden peril and that they shall not be wantonly or freely harmed."[8] The

failure to maintain these areas free of "hidden peril" exposed the landlord to liability for possible injuries to the tenants or the public brought about by his negligence. He was liable under the law of negligence, part of the common law of torts.

Although there are a great many legal definitions of negligence, Black's Law Dictionary appears to contain the basic idea. According to Black's, negligence is:

> "The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do."[9]

Negligence, the act or the omission to act, therefore, is related to the general consensus as to the behavior which may be expected from a reasonable man. "The standard by which "reasonableness" is measured is an external one and is based on what society expects of the individual rather than what the individual himself considers reasonable."[10] In the early twentieth century, a landlord could be held liable for negligence if a tenant fell and was injured when one of the steps in a stairway used in common by all the tenants, gave way.[11] However, the landlord could not be held liable when a piece of bedroom ceiling fell on the tenant's head, because this occurred within the confines of the leased apartment.

The extension of liability, that is, "the state of being bound or obliged in law or justice to do, pay or

make good something"[12] out of the common areas into the leased or demised premises, could only be placed on the landlord by legislation or by the courts, which can modify, define or replace the common law. Initially, the tenement house legislation passed in New York did not have the extension of the landlord's liability into the leased premises in mind; the aim was a generalized attempt to improve the living conditions of the poor. It would be more than fifty years before the landlord was to be held responsible for the bedroom ceiling falling on the apartment occupant.[13] The violation of any requirements of the Tenement House statutes by the landlords could be defined as negligence, per se, i.e., "conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances ... because it is in violation of a statute."[14]

> In other words, it is inconsistent with ordinary prudence for a man to set up his private judgment against that of the lawfully constituted public authority. We must assume, therefore, that the ordinary prudent man would not do such a thing, since to do so would be to change his entire nature and to forgo the very traits that brought him into existence. He would, in fine, cease to be the pattern man he must continue to be in order to be at all.
>
> Upon common law principles, therefore, when the legislature had by public statute established a certain standard of conduct in order to prevent a danger that it foresaw, it has in this regard forewarned "the ordinary prudent man" and through him

> the defendant in a civil action, whose conduct must always coincide with this common law criterion.[15] (Evers v. Davis, 86 N.J.L. 196, 90 Atl. 677 (1914).

The first Tenement House Law was passed in New York in 1867. This law culminated more than ten years of pressure by social reformers upon the state legislature to do something about the conditions in the tenement houses. Although the first report which the Association for Improving the Conditions of the Poor submitted to the Legislature in 1853 was not adopted, the association continued to mobilize citizens' opinion and, finally, in 1954, the state legislature appointed a committee, The Council of Hygiene Of The Citizens' Association, to study conditions in the tenements. Their report was made in 1865, but it took two more years for the legislature to pass this first law.[16]

The Tenement House Law of 1867 merely spoke to the most blatant violations of proper hygienic living; "it mattered mainly as a promise of things to come"[17] With the advent of this law, it now became public policy to upgrade the tenement houses. Many of the complaints of the Citizens' Committee and the medical authorities consulted surrounded the fact that the houses did not have adequate means to dispose of waste, human and otherwise. This was a prime cause of epidemics that ran rampant among the tenement house population. Therefore, this law required that "good and sufficient water closets or

privies be incorporated into every building." In 1867, sufficiency was defined as one toilet for every twenty inhabitants of the house. These privies, as well as other sources of water where present had to be connected to the City's sewer system, and the use of cesspools was outlawed. Further, no house could be used as a tenement unless every sleeping room had ventilation. In theory, this provision eliminated partitions erected in the former large apartments for the affluent, where one large room was converted into several small cell like rooms. Ventilation was also required on the roof which would service the entire house. The emphasis on hygiene was underscored by making the Board of Health responsible for enforcing many of the health provisions of the law and by giving the Board of Health virtually autocratic powers. Other segments of the law were enforced by the fire department, and yet other by the police.

In addition to dealing with blatant health problems, the law of 1867 also mandated that every tenement house four stories or higher should be "fireproofed," and forbade the storing of wood or other flammable materials.[19] Fire escapes had to be accessible to every apartment and all the stairs in these houses had to be constructed of fireproof materials and have bannisters to protect the tenants using them. Most of the provisions were fought by the landlords, who worried about diminished profits.[20]

Despite the Tenement House Law and the tremendous power assigned to the Board of Health, conditions in the tenements continued to deteriorate. Essentially, the enforcement of the law was impeded by several factors. Namely, the numerous loopholes in the law that the landlords took advantage of and the lack of a single enforcement agency. In addition, the public hue and cry to improve the conditions of the poor seemed to die down between 1867 and 1877. "Worst of all, insufficient funds were provided for enforcement, thereby establishing for the next half century a pattern of failing to live up to regulations that were inadequate to begin with."[21]

During this period, the State Charities Committee did manage to convince the legislature to put through an amendment which stipulated that only sixty five per cent of a lot could be used for a building with the intent that this would allow for more light and air reaching the apartments. However, even this was not completely effective as the Board of Health still had discretionary power, and, very often, they granted permission for as much as ninety per cent of the lot to be used thus defeating the intent of the amendment.

In the attempt of the Charities Committee to upgrade the existing conditions in the tenement houses, and the attempt of crusaders to find the proper type of housing for the poor, a contest for architectural design was

announced in a trade journal, "The Plumber and Sanitary Engineer"[22] The object of the contest was a design that "combined maximum safety and convenience for the tenant with maximum profit for the investor."[23] The first prize went to James Ware who offered the double decker dumbbell tenement which provided the full use of the lot by a block of rooms front and rear connected by a handle formed by narrow lateral courts which reached neither the streets nor the yards. This new prized design was to prove the worst construction possible and added greatly to the plight of the poor in inadequate housing.

The second Tenement House Law was passed in 1887 after several years of agitation by Felix Adler of the Ethical Culture Movement, his followers and other social reformers. This law attempted to deal with some of the problems of enforcement which the prior law had not addressed. Perhaps the most important element in this law, particularly from the perspective of the growing landlord obligations, was that, for the first time, the law recognized the accountability of the landlord for the conditions in his buildings. A janitor was required for every house designed for eight families or more,[24] and the name and address of the owner had to be on file so that the Board of Health could contact him in case of violations. The need for a more unified approach to the problem was also recognized, and, to that end, a permanent

Tenement House Committee was established which was to convene annually to review the enforcement of the law. In a perhaps futile attempt to shore up the enforcement of the law, the number of sanitary engineers increased from thirty to forty five. The law required more toilets; now the ratio of facilities to tenants was one to fifteen rather than the one to twenty stipulated by the previous legislation. Furthermore, the occupancy of each floor by more than one family was prohibited if the hall did not open to the outer air.

The enactment of the second Tenement House Law moved towards increasing the obligations of the landlord to the tenant, however, it, too, was largely unenforceable. Perhaps the worst problem which rendered the law almost impossible to enforce was the sparce number of inspectors assigned to this herculean task. For example, in 1890, sixty one inspectors were allocated to the entire city in which there existed eighty two thousand six hundred and fifty two tenement with over two million three hundred and fifty thousand occupants.[25] As the law called for a semi-annual inspection and this could not be accomplished, from a purely physical point of view, the condition of the law was translated into a semi-annual census. Police help was enlisted, and this was said to have a salutory effect on the morale of the tenement dweller, as it implied evidence of government interest. From a practical point of view,

the most that the sanitary engineers could do was to listen to complaints and act upon a limited number of the most flagrant violations.

As the law of 1887 did not have the large scale effect which social reformers anticipated, pressure for such reform continued to come from individual reformers and civic groups, most particularly from the newly emerging Settlement House Movement. In New York City's Lower East Side, University Settlement (originally The Neighborhood Guild) opened in 1886, followed by Greenwich House and The Henry Street Settlement House under the aegis of Lillian Wald.[26] The participants in the Settlement House movement had as their aim not only to alter the physical circumstances of the populations in depressed areas, but to uplift their morale, enlarge their horizons and upgrade their aspirations as well. The Settlement House was very important as it operated as a focal point for organizing local groups to work for the improvement of the neighborhood.

Lillian Wald, Lawrence Veiller, "a patrician radical" associated with University Settlement House,[27] and other civil leaders, notably the crusading journalist Jacob Riis, attempted to organize the public and exert pressure on the State Legislature for more exacting legislation.

> It was fortunate for the immigrants that native reformers and muckrakers found in the East Side an outlet for their wish to ease the lives of the oppressed. Jacob

> Riis, a reporter for the New York Sun, published in 1890 his classic study of tenement life, How The Other Half Lives, and for the next two decades, through a stream of articles and books, he kept forcing upon the middle class readers an awareness of the horrors of the slums.[28]

Riis also felt that it was extremely necessary to pressure the landlord, as Riis recognized that the landlord, in opposing new legislation and refusing to make voluntary changes in his houses, was fighting for what he, as a landlord, deemed to be in his own best interests.

> The law needs a much stronger and readier backing of a thoroughly enlightened public sentiment to make it as effective as it might be made. It is to be remembered that the health officers, in dealing with the subject of dangerous houses, are constantly treading upon what each landlord considers his private rights, for which he is ready and bound to fight to the last. Nothing short of the strongest pressure will avail to convince him that these individual rights are to be surrendered for the clear benefit of the whole.[29]

In 1894, after years of this type of agitation, the Governor appointed a third legislative commission to again study conditions in the tenements.[30] Acting upon their recommendations, some of the worst slums in the city were eliminated and replaced with small parks.[31]

In 1896, another attempt was made to combine the building of ideal tenements with the profit motive. This time the impetus came from the Association To Improve The Living Conditions Of The Poor, through its Department of Dwellings, which promoted a series of conferences about

the potential of reform in the tenement house. As an outgrowth of these conferences, a private organization of investors was formed, The City and Suburban Homes Company, which was to specialize in the building of ideal as well as profitable tenements. They worked in cooperation with the Tenement House Committee of the Charity Organization Society and put together a tenement house exhibition which showed all types of tenements, from the best to the worst. A great deal of publicity attended upon the exhibition and daily conferences were held in which private organizations, legislators, and the general public as well were present.[32]

One of the effects of these conferences on the tenement house was finally to convince state Legislators that a new tenement house law was, indeed, needed. The Tenement House Commission of 1900 was created, which, within a short period of time, drew up recommendations for the Legislature which accepted the report as the basis for The Tenement House Law of 1901.[33] Under the terms of this law, a tenement was defined as,

> Any house or building or portion thereof, which is either rented, leased or hired out, to be occupied in whole or in part as the home or a residence of three families or more living independently of each other and doing their cooking upon the premises, and includes apartment houses, flat houses, and all other houses so occupied.[34]

The framers of this new Tenement House Law were cognizant of the main deficiencies of prior legislative

efforts, namely, that they were essentially unenforceable. To deal with the problem of enforcement more effectively, the responsibility was centralized under one newly created agency, The Tenement House Department, the forerunner of today's Housing Department. The 1901 law also spoke more vigorously to the responsibilities of the landlord. The section entitled "Requirements and Remedies", made possible the enforcement of the Act through a remarkable series of powers and penalties."[35]

> First, a permit to commence building might be granted only after determination that the place and specifications conformed at every point to the law ... The penalties for violation of the Act provided for imprisonment or fine - the latter being $200 if the offense was willful, and, in every case, an additional $10 for each day after the first that such violation was committed - or both fine and imprisonment at the discretion of the court. The owner and his agent were subject to both penalties and cost. In addition, there were civil penalties and, under certain conditions, penalties were to become a lien upon the property. Procedure for the prevention of violations was outlined in unusual detail.[36]

Like the earlier law, the new law also required the registry of the name and address of the owner, but in this case, it outlined in detail the procedure for serving notices, orders and summonses as to violations in the houses he owned. Structurally, the new law eliminated the dumbbell style housing by requiring that all new tenement houses were to have windows at least sixteen feet away from the opposite building, and placed toilets and running

water in each apartment. Unobstructed fire escapes and solid stairs also had to be incorporated into each new building.

Although a large number of landlords complied with the new law, particularly those of the Lower East Side where the improvements were easily translated into profit through higher rents, it was never effectively enforced despite the safeguards which the Legislature had attempted to guarantee. From the first, there were continual attempts both by the real estate interests and social reformers to modify the legislation. The real estate interests and builders sought a relaxation of the law claiming that the conditions which it set made building necessarily more costly.[37] An important spokeman for the landlords, the United Real Estate Owners Association, decided to test a provision of the law which, in effect, forced the landlord to constantly make the repairs required by each new amendment to the law. After several years of litigation, the United States Supreme Court ruled in favor of the law.

> Had the courts ruled against the Tenement House Department in the "Katie Maudon" case, it would have barred the state from "retroactively" raising housing standards Landlords who had complied with the tenement house laws at a particular time would be safe from interference, despite the evolution of minimum standards[38].

The social reformers, on the other hand, not only opposed the modifications sought by the real estate

interests, but they also wanted the law to be strengthened in favor of the tenant. Perhaps the most effective fight to protect the law against the landlord sponsored amendments was waged by the East Side Civic Club, which managed to perform the feat of uniting the various elements of the Yiddish Press as well as the English newspapers. With the publicity contributed by a united press, Club members obtained forty thousand signatures to a petition opposing weakening amendments to the new law. Activists in the Club and representatives of twenty two other east side organizations also exerted pressure on governmental agencies by attending all the hearings of the Board of Estimate, the Mayor, and the Albany Legislature, making sure that the opinion of the tenants and the reformers were always clearly represented.[39]

The thirty five years spanning the enactment of the first Tenement House Law to the Law of 1901, and the amendment of 1903, was a period in which the obligation of the landlord to his tenants was increased and more clearly defined by the State Legislature. Despite the fact that the legislation had a poor record of enforcement, its provisions could and did serve as a basis for actions against the landlord. The landlord's failure to conform to the statute was negligence; it was a violation of the tort law and, therefore, the landlord could be held financially liable for his failure to comply if such

failure caused injury to a tenant who sued the landlord and brought his condition to the attention of the court. Many landlords protected themselves against possible actions by purchasing third party liability insurance, a form of protection which had been available since 1887.

The Jewish Landlord and Tenant

During the latter part of the nineteenth century, there was a steady flow of Jews into the United States.[40] The first large influx of Jews emigrated from Germany as a response to the deteriorating economic situation and political unrest which caused them severe difficulties. Of these early Jewish immigrants, some left the east coast and settled in various parts of an expanding country. Others staved and settled, for the most part, on the Lower East Side of New York. By 1870, the Lower East Side had a distinctly Jewish atmosphere, which was intensified by the waves of Eastern European Jews who arrived later.

The flood of immigrants seeking to settle on the Lower East Side exacerbated an already overcrowded and difficult situation. Every possible square inch of land was utilized to erect the tenement house, the most economical and lucrative form of housing available. These houses were considered extremely good investments and land values continued to rise. The landlord's return on rentals

was extremely high and the cost of upkeep was extremely low. "Nowhere else did the speculators market flower as luxuriously as it did here....where earlier immigrants have learned to exploit the misery of later comers."[41]

Not all of these immigrant investors were speculators; some number of them saw the real estate market as their one source of social security. Old age - pensions and job disability payments were not an institutionalized part of the work world and few of these people had other investments to provide for emergencies. Howe, in World of Our Fathers, presents a graphic description given by one investigator into the process by which immigrants from Eastern Europe become land owners:

> First, they become lessees. By constantly saving the East Sider gets together $200 or $300, with which, as security, he gets a four or five year lease of a house. He moves his own family into the least expensive apartment. He himself acts as janitor; his wife and daughters as scrubwomen and housekeepers. He is his own agent , his own painter, carpenter, plumber and general repairman. Thus he reduces expenses to a minimum. He lets out apartments by the week, always calling promptly himself for the rent. By this giving constant attention to his work he has perhaps a few hundred dollars every year as profit. By the time his lease expires, this has swollen to a few thousand. With this he buys a tenement outright. He puts down from $3,000 to $5,000 on a $45,000 building, giving one, two, three, sometimes four mortgages in payment ... then he repeats his old operation ... When the third or fourth mortgage comes due, he has invariably made enough out of the building to pay it off. He keeps on at hard work and likewise pays

> off the third and second. Then, as his rents still come in, he invests them in more tenements.[42]

In How The Other Half Lives, Jacob Riis makes a similar, though not as complementary, observation about how those Jews who became small entrepreneurs (contractors) in the garment industry and turned their tenement apartments into "sweaters," invested their money in tenement houses.

> At the least calculation, probably, the sweaters family hoards up to thirty dollars a month and in a few years will own a tenement somewhere and profit by the example set by the landlord in rent collecting. This is how the savings of Jewtown are universally invested.[43]

One of the informants pointed out that both his father and his uncle were peddlers as were many of their friends, and that they regarded the tenement house purchase as a splendid investment; it was a place to live, a source of a little money to provide extras for the family and to provide their children with a proper education. And, most important, it was security for their old age. After all, if they owned the house they could not be put out on the street.

Sociologically, it would appear that one notable characteristic of these owners of one or a few buildings was their marginality. Not only were they ethnically marginal, which subjected them to the strains attendant on prejudice at that period, but they were also financially marginal. For the most part, their income was either from

very small businesses such as the "sweaters" Riis describes or from peddling, the occupation most often associated with Lower East Side. When these marginal people invested in real estates it often took very long and the investments demanded arduous sacrifices from the investor and his family.

From the viewpoint of these landlords, The Tenement House Law of 1901 placed an undue burden on them. According to one informant[44] whose family owned several of these tenements, a few of the owners gathered informally from 1896 on to discuss shared problems. These landlords felt that they had struggled hard to buy their houses, and that the mandatory repair schedule of the 1901 law was financially disastrous. In their opinion, they could not improve the conditions for the tenants without hurting themselves. Many lived in the same buildings and shared the same problems. At one point, some members of this informal group apparently tried to join with other real estate interests to present their case to the State Legislature. However, the informant went on to say when his father discussed the situation in later years, he always made a point of the fact that these Lower East Side landlords, the owners of one or two houses, never felt particularly welcome with the uptown Jews (the Yahudin) and larger real estate interests.

The Rent Strike

Because of widespread disregard of the new tenement law and worsening conditions in the tenement areas, many of those active in the struggle for better housing changed their tactics; mobilization of public sentiment to pressure the state legislature was not enough, actual confrontation between the landlord and the tenant was the next step. To this end, an attempt was made to organize the tenants to withhold rent. As a result, incipient rent strikes occurred in 1905 and 1906, although they were not wide spread. It was not until the period of December 1907 through January 1908, that a well organized rent strike was mounted that mobilized an impressive number of participants. The New York Times estimated that, at the height of the movement, upwards of one hundred thousand people supported the strike[45]

It would seem that the extent of participation in the rent strike during this period was a function of several factors. First, and perhaps most important, the country was in an economic crisis and financial conditions in the City were extremely bad, with massive unemployment among the tenement house population. The unemployed could not possibly meet the demands for a rent increase due at the beginning of the year.[46] In addition, the organizers of the strike were indiginous to the area; they lived with the same problems and were better able to organize

themselves into action groups and utilize the unemployed who were readily available to help with the strike. Many of the organizers were Socialists and had the backing of the party machinery.

In analyzing the major conditions under which social conflict can emerge, Louis Kriesberg, Sociology of Social Conflict indicates three necessary conditions for the emergence of conflict.

> First, the group or parties to the conflict must be conscious of themselves as collective entities, separate from each other. Second, one or more groups must be dissatisfied with their position relative to another group. Finally, they must think that they can reduce their dissatisfaction by the other group being different, that is they must have aims which involve the other group yielding what it would not otherwise yield.[47]

Massive unemployment and a projected rise in rents given the environment of the tenements would seem to provide the necessary conditions for the tenants to see themselves as an oppressed group, dissatisfied with their position vis-a-vis the landlords. However, it would appear to have required the organizing acumen of the Socialists in the area, coupled with the willingness of the indiginous groups to volunteer their services and to commit themselves to the cause of reducing rents in order to provide the sufficient conditions for the strike to take place.

The strike apparently started about the same time, mid December 1907, in the Jewish areas of both Brooklyn and the Lower East Side. From the beginning this was a Jewish strike; the organizers were Jewish, the tenants were Jewish, and, for the most part, the landlords were Jewish. It was not until the end of the strike that the Italian and Polish leadership evinced some interest in the strike. The most extensive, in depth coverage of the strike was in the Jewish Daily Forward, a Yiddish language newspaper which had, by this time, achieved some prominence in the Jewish community.[48] The strike in Brooklyn, according to accounts in the Jewish Daily Forward, was led by two groups; the Anti-High Rent League, composed of "prominent New Yorkers" and the Pants Maker's Union. On December 19, 1907, the Pants Maker's Union ran this announcement in the Jewish Daily Forward:

> The Brooklyn Pants Maker's Union with the Anti-High Rent League have started a fight against the landlord robbers to force them to reduce high rents which they charge so mercilessly. In the short time of the fight, it has been possible for the Pants Maker's Union and the Anti-High Rent League to get a reduction of $2.50 to $3.00 per month. Encouraged by victory, we now want to wage a struggle with more courage. We want to organize systematic rent strikes and force the landlords not to behave so cruelly to the tenants.
>
> On Tuesday, December 24, we will have a big conference on the rent problem at 71 Cook Street, the office of the Pants Maker's Union. We are asking all the unions to send three delegates each to this conference so that together we can wage this important struggle.[49]

The strike on the Lower East Side seems to have developed through the convergence of the activities of two groups, an indiginous women's movement and the Socialist Party of the Eighth Assembly District.[50] The strike, according to the New York Times[51] was started by a young shirtworker, Phyllis Newman, who organized four hundred women in the Grand Street area.[52] The immediate aim of the rent strike was to force the landlords to reduce the rents by eighteen to twenty per cent rather than to raise them on the first of January as scheduled. Their long term aim was to convince the landlords that the tenants were a force to be reckoned with, that they had power and that their demands had to be met. Their objective was to organize at least one hundred thousand, as such a large number could not be ignored. Jacob Pankin, the Socialist lawyer, was hired by the women's coalition to represent their interests with the landlords and in court.

At about the same time as the women's movement was organizing, the Worker's News column of the Jewish Daily Forward[53] carried an article signed by Jacob Pankin and B. Feigenbaum, another prominent Jewish Socialist leader, demanding lower rents because of the economic crisis in the country and calling for mass action against the landlords:

> Friends, the consequences of the crisis makes itself felt day by day. Tens of thousands of workers are being fired from

> shops day by day. These workers remain without the means of support. Added to these troubles, and more important than the other troubles, is the problem of tremendously high rents.
>
> Friends, at the time of prosperity when we had the possibility to provide our wives and children with a piece of bread, the blood-thirsty landlord kept raising the rent and we have, as always, shown our weakness and allowed them to carry on their blood-thirsty plans. But now, will you beggars still remain indifferent? Come to our mass meeting on High Rents, Monday night, December 23, Apollo Hall, 126-128 Clinton Street.[54]

According to the Jewish Daily Forward, the Apollo Hall meeting was extremely successful, with an attendance of well over one thousand people. Many had to be turned away as the Hall was packed. The tenants who came to the meeting appeared to be extremely hostile to the landlords.

> A short pot-bellied little Jew, who many of the tenants recognized as their own landlord, asked for the floor and tried to persuade the people at the meeting that the tenement houses were his merchandise and that he has damn well the right to ask whatever he wants for his merchandise. They all booed him, and begged him to leave the platform.[55]

At the end of what was described as a very emotional meeting over one hundred men and women volunteered to agitate among the tenants to organize them to protest the rents and to participate in a rent strike. An information bureau and clearing house was established in the headquarters of the Socialist Party of the Eighth Assembly District on Grand Street, which would provide information

and help for the strikers. A resolution speaking to the sense of the meeting was also passed. The resolution exemplifies the flavor of much of the rhetoric of the strike printed in the Jewish Daily Forward.

> We, tenants of the East Side gathered here, Monday, December 23, at a mass meeting called by the Eighth Assembly District Socialist Party, and at which Socialist speakers explained to us the seriousness of the present situation and described to us the misery of poor Jewish people on the East Side and of the working man, Resolve:
>
> 1. To organize into a mighty federation to force the landlord to lower rents sufficiently so that we will be able to pay it in the present difficult times.
>
> 2. Realizing that as long as the present day thievish system will persist, there will also have to be crises, we shall not stop at the fight against the landlords, but we will also help the Socialists in their fight against high food prices, and against all the savage capitalist squeezers who suck the worker's blood.
>
> 3. Knowing that in such times as these, the servants of capital disguise themselves with a mask of "compassion" and "justice" with their charity, we declare that we the working people which creates everything do not ask for any charity, but only our rights.[56]

Initially, about one thousand families who lived on Stanton Street and Cherry Street joined the rent strike. The leadership of the Eighth Assembly District Socialist Party took over the direction of the struggle at the behest of the tenants.[57] There was some indication that, at this point, the women's movement united with

Socialists. The Jewish Daily Forward reported that many women workers, who long since recognized the necessity to fight for lower rents, planned to go en masse in a house to house canvass to into the movement all those who were willing to participate.[58]

A "Committee of Ten,"[59] part of the Rent Agitation Bureau formed by the Socialists to carry on the strike, coordinated the striker's activities, and were able to mobilize over one hundred volunteers at any given time in addition to their regular members who contributed their spare time.

> The clubrooms of the first agitation district of the Socialist Party, 313 Grand Street, was packed all day long yesterday with volunteer committees of men and women who went around in the tenements to help all the tenants to join the movement. Every single committee declared that numbers of tenants have declared themselves ready to join and enthusiastically promised to take part in this great movement and share in the fate of all the others.[60]

Although most of the work was voluntary in nature, eventually a mandatory contribution was requested:

> The Socialists have yielded to the temptation of asking the tenants for money. They defend this action by saying that they have to employ lawyers in addition to the ones that give their services free. And, besides that some salary must be paid to Executive Secretary Kaplan. The head of each family will be asked to contribute twenty-five cents to the Anti-Rent Agitation Bureau.[61]

The Socialists' campaign against the landlords employed a variety of tactics. First, they pursued their

goals through judicial channels. The decision was made that the landlord should be forced to bring action in court to dispossess the tenant. The strategy was that a whole building would refuse to pay their rent at one time, thus evoking eviction notices for all tenants.

> Yesterday the leaders of the movement for lower rents began to work out the details for the great struggle. If, as is expected, thousands of tenants will join this movement, and if all these tenants will refuse to pay rent, the landlord will probably demand that the courts issue warrants to throw the tenants into the street. ... It will take time before decisions are handed down and it will not be an easy thing to get warrants for thousands of tenants.[62]

In addition, the remaining tenants agreed to house the evicted tenants, so that they remained on the premises. "In case a family will be thrown out, another family has to take their things. The evicted family will be given shelter in the house where they live. All those who participate in the struggle will be organized into a kind of assistance committee."[63]

By January 2, 1908, the "landlords had served dispossess notices on more than sixty families on the East Side, and the Socialist lawyers who are engineering the rent reduction campaign have agreed to defend these cases in court."[64] On appearance in court, the lawyers pleaded for more time and individual hearings, thus effectively clogging the court calendar. The Jewish Daily Forward expressed some disdain for Judge Sanders, a Jew, who

helped the landlords by issuing wholesale dispossess notices instead of issuing them one at a time which was the usual procedure. They suggested that he had done this because he was also a landlord.[65]

City agencies were also prepared to lend assistance to the anti-rent campaign. The Board of Health and the Tenement House Commission were notified of building code violations by volunteers who went to the tenements and inspected them. These agencies responded immediately and notified the landlord that violations must be removed within a stipulated time period. If action was not forthcoming, a lien was placed on the property preventing transference of the property, a device often resorted to by the landlord to avoid the necessity of removing violations. New York Times[66]

As a supplement to these legal maneuvers, the rent strikers employed tactics of face to face confrontation with the landlord which evoked intensely bitter and hostile and often fearful responses from the landlord. A committee of tenants went to the landlord's home, often in the same building or neighborhood, and argued with him about the defects or violations in the building, while trying to convince him to lower the rent. Two of these personal confrontations are described in the Jewish Daily Forward:

> The tenants of the Dentist, Dr.Wasserman, of 74 Rivington Street, are also on strike. The Dentist has sent to the headquarters this message. He wants to meet with a committee of the strike leadership. A Committee called on him and the Dentist began by calling his tenants "schnores." Then he declared himself ready to reduce a little of the rent if the "schnores" will fix the plumbing themselves. The Committee thanked him kindly for his "good heartedness" and went away.
>
> A committee of the Eighth Assembly District Socialist Party also visited the landlord of 212 Madison Street. This landlord acts out the role of a very fine Jewish gentleman. He is a member of the Pike Street Synagogue and several charitable organizations. But his charitableness has not kept this fine Jewish gentleman from raising his rents without compassion. The Committee asked this good hearted landlord to give in, pointing to all the defects in his buildings. He finally replied that if all the others would give in, he would give in too, but not until then.[67]

Very often, the committees threatened the landlord with court action or physical abuse or both. They would also try to convince the landlord that evictions cost eight dollars each and that the rent reduction requested was not much greater.[68] The personal interaction apparently became so bitter that some of the landlords employed strong arm men to beat up the tenants who requested rent decreases,[69] while other landlords hid and waited to see what would happen to their fellow tenement house owners.[70]

Following the success in mobilizing rent strikers in the Eighth Assembly District, on December 27, 1907, the

Second Assembly District Socialist Party took up the cudgel and appointed a Committee to organize the tenants in its East Broadway area. Three days later, on December 30, 1907, the general committee of the Socialist Party took over the main leadership of the movement with a view towards spreading the strike into every Jewish neighborhood in New York City. The strike in Brooklyn would continue under the leadership of the Pants Maker's Union, who would be given aid, if necessary.[71]

A rent strike would seem to be a ready vehicle for the presentation of a socialist political ideology. Certainly, it was an ideal ground for confrontation and conflict with the landlord, who epitomized the deficiency of capitalism. It was also an ideal situation for obtaining publicity for their activities.

One of their tactics was to organize public meetings at strategic locations such as Cooper Union or Rutgers Square. According to accounts in the Jewish Daily Forward, the Socialists would try to obtain police permission for these meetings, however, the permit was difficult to obtain and sometimes entirely unattainable.

> Not only the landlords but the "kind hearted" police dislike the rent strikers. It was very difficult to get a permit for the meeting in Rutgers Square. A Committee from the Eighth Assembly District Socialist Party was sent from one inspector to another and then to Commissioner Bingham. Every one of those "noble gentlemen" first inquired for which ticket the Committee voted election day, and then the police

> insolently told them to go back to the country they came from. This kind of thing didn't help. They had to issue the permit.[72]

Whether or not permits were issued, the meetings were held, and these outdoor meetings apparently attracted thousands of irate tenants. These crowds were often subject to police brutality. "The open air meeting was brutally dispersed by police with clubs. Many of the strikers were beaten. The police are working hand in glove with the landlords."[73] The Jewish Daily Forward considered the police brutality especially infamous, as Tammany Hall had sent a Jewish Captain to be in charge of the police. Not only were the police brutally dispersing the rent strikers outdoors, but "they and their Jewish Captain are conducting a pogrom against the rent strikers by breaking into their homes and beating up the workers."[74] The Jewish Daily Forward questioned Commissioner Bingham on his attitude towards the strikers and his rationale for not issuing permits. His response was, "that there are terrible people on strike." It would seem, however, that the police brutality, the complaints to the Commissioner and the newspaper publicity which the conflict received also served to publicize the strike and the Socialist cause outside of the Lower East Side.

Although the rent strike was essentially a Jewish phenomenon, at the beginning of January 1908 the Jewish Daily Forward reported that its offices were being

beseiged by Italians and Poles who wanted to emulate the Jews and strike for lower rents.[75] The Poles wanted to organize a rent strike in Newark, and the Jewish Socialist organization offered its aid. The Italians were neighbors of the Jews in poor neighborhoods, and had already given out handbills to their fellow countrymen, instructing them to follow the lead of the Jews and to strike. There is no indication in the Forward or in the New York Times that the strike spread to the Italian neighborhoods in New York. There is, however, some indication that it did spread to Newark.[76]

By the first of January 1908, the Forward reported, many landlords had capitulated, particularly in Brooklyn. From the eighth of January to the sixteenth, there were daily reports of tenants winning in court and landlords seeing the light and settling by lowering the rents. After January seventeenth, the reports of the rent strike and the struggle cease abruptly. It would seem that by the middle of January the rent strike was over.

Formation Of The Greater New York Taxpayer's Association

One of the functions of the conflict between the tenants and the landlords of the Lower East Side was to propel the landlords into the formation of their own association to assert organized power against the organization of the rent strikers. Coser points to this unifying aspect of social conflict:

> Antagonism against a common enemy may be a binding element in two ways. It may lead to the formation of new groups with distinct boundary lines, ideologies, loyalties and common values, or stopping short of this, it may result only in instrumental associations in the face of a common threat.[77]

In this case, it would appear that each side of the conflict represented a different form of conflict organization; the rent strikers had a temporary instrumental association for carrving out the strike. The stimulus for their organization was a function derived largely from the outside. After the strike, the tenants themselves did not form an ongoing association. On the other hand, as we will show, the landlords formed their own ongoing association with distinct boundary lines, ideologies, goals and plans of action for the future. Forming this permanent type of organization seemed to place the landlords in a more advantageous position for any future conflict either with the tenants or with others.

The rent strikers, through their association, i.e., that organized by the Socialists, apparently wanted to negotiate with individual landlords in a divide and conquer mode of bargaining. While a few of the landlords responded to this show of power and agreed to lower the rents but refused to recognize the Socialist Committee as legitimate negotiator for the tenants,[78] others joined together to fight the tenants. On January 3, 1908, over

one hundred of the landlords, who refused to capitulate to the demands of the tenants, formed their own organization to fight the rent reduction campaign. One of the real estate owners, a lawyer, Harold Phillips, who was instrumental in organizing the landlords said that, "all publicity possible should be given to the landlords side of the case as it was hard for them to make both ends meet what with taxes and the cost of repairs."[79] There was also some suggestion by Mr. Phillips that permitting the intimidation of the landlords was in the best interest of the political power structure. "They, i.e., the newly organized landlords, must not let any landlord fall, because the politicians want this so as to put fear in the hearts of the remaining landlords."[80] It is interesting that landlords and tenants both perceived the political power structure as antagonists. What appears to be the case was that the police were hostile to the strikers and that the political power structure supported the tenants because of their votes. Evidence for this certainly can be found in the assistance of the Board of Health and Tenement House Commission.

During the next few weeks, an ad hoc group of the landlords met and formulated plans for establishing a formal organization. It seems probable that the nucleus of this ad hoc group consisted of some of those people who had been meeting earlier.[81] On January 8, "the Secretary

of the tenement house owners who have organized to fight the strike announced that the landlords would open headquarters at 95 Second Avenue with lawyers on hand to advise the landlords."[82] The temporary headquarters at 95 Second Avenue was the home and real estate office of Max Kahn, who later became a prime mover in the landlords' organization. One of the first actions of the landlords was to establish a fund of $20,000 collected from the participating landlords, to pay lawyers' fees for dispossess and other necessary legal actions.

Finally, on January 23, 1908, the Greater New York Taxpayer's Association was incorporated in the State of New York. There is no firm indication as to how many landlords joined this organization. The newspapers suggest 600,[83] but this figure is high in light of the fact that statistics released by the association in later years indicate that some 300 joined in the first year of operations. A substantial number did join, however, and, extrapolating from the list of members released in later years, well over ninety five per cent were Jewish.

Sociologically, this new organization could be categorized as an instrumental group, functionally specific[82] organized as a defensive reaction to the organized onslaught of the rent strikers. The defensive nature of the group is apparent in their establishing a defense fund and in their next act, which was to set up a

Rent Adjustment Committee whose function was to act as a negotiator in tenant-landlord disputes. They hoped to dispel some of the organized hostility directed towards the landlords and possibly to prevent a further outbreak of extensive rent strikes. In an editorial written shortly after the inauguration of the "Real Estate News", the in-house publication of the Greater New York Taxpayer's Association, Simon Greenfield, one of the members, points to the salutory benefits of the Rent Adjustment Committee in making the tenants aware that the landlords are reasonable people striving to understand the problems of the tenants, but beset with their own problems.

> As has always been the case, frictions, disputes and misunderstandings, whether they be between individuals, classes, intranational, international, have always culminated into a mutual understanding between the disputants with a resultant strengthening of their combination or else have served to unify and strengthen the internal forces of one or both. For us, the various disputes, rent strikes and what other forms of landlord and tenant unrest there are, have served to bring the contending parties into a more intimate relationship with a consequent better understanding and a fuller realization by the tenants of the difficulties real estate has been and at present even more so is laboring under.[85]

Simmel observes that "a hostility must excite consciousness the more deeply and violently, the greater the parties' similarity against the background of which the hostility arises."[86] It seems possible that just his

perception of similarity with the tenants evoked much of the landlord's definition of the strike as intensely bitter. In a brief historical sketch of the formation of the Greater New York Mutual Insurance Company, the bitterness of the struggle is recalled. "The year 1907 was one never to be forgotten by the old time house owner. As a direct result of panic which gripped the City, the relationship between landlord and tenant on the East Side was in a state of turmoil."[87] One of the people interviewed, the son of a landlord of that era, suggested that some of the bitterness and sense of outrage on the part of the landlords stemmed from the fact that confrontation with the rent strikers was, in a way, confrontation with ambivalences in their own philosophic orientations. The founders of the Association, for the most part first generation middle Europeans, considered themselves emancipated pragmatic Socialists. Some of the landlords, particularly those with only one house often owned in concert with the rest of the family, experienced extensive role conflict, as they were often supportive of family members who participated in the burgeoning trade union movement. Others, who were financially more successful, nonetheless maintained their Socialist philosophy and interacted with the Jewish Socialist community.[88] Perhaps the reasonable position presented in the editorial, and the reasonable positions taken during

the life of the Association, is also a reflection of the attempt not to be too far removed from those whom, to some degree, some of the landlords still regarded as a reference group.[89]

Voluntary Associations perform a variety of functions in American society.[90] One of the main functions is to work towards social change.

> As soon as a felt need for some social change arises, one or more voluntary associations immediately spring up to secure the change. Not only do they operate directly on the problem, but their attention to it also makes the government concerned about the problem, as a democratic government had to pay attention to the interests of its voters.[91]

This social change function seems particularly relevant when the voluntary association is an interest group which has its origins in social conflict.[92] It seems informative to observe the manner in which this organized landlord's group attempted to influence and modify the subsequent tenement house laws.

As a defensive interest group, one of the earliest goals of the Greater New York Taxpayer's Association was to exert pressure on the City and State governments for the proper administration of the law, i.e., in a manner that was not, in their lights, arbitrarily discriminatory against property owners. Landlords had to push for extensive social change. They needed relief from burdensome taxation in order to be financially able to

improve their property to comply with new laws. And, landlords needed to change their public image; in this time of social upheaval, landlords were often the villains, and this they thought, was unfair. These organizational goals are stated in their charter

> To establish an association of men and women joined together for the purpose of protecting and promoting the interest of real estate owners and citizens of Greater New York and to secure economical, efficient and honest administration of the public affairs of the City of New York and the State of New York, to secure as far as possible a system of taxation that should be for the best interest of the citizens of the State of New York; and which shall be regulated on a fair and equitable basis; to secure enactment of just laws in the interest of the property owners of Greater New York and to approve and take measures to influence the public opinion for the purpose of preventing enactment of unjust and injurious legislations.[93]

As a pressure group, the leadership of the Greater New York Taxpayer's Association projected that its membership should be widespread and the Association should take a position of leadership in uniting all real estate interests in the City. Periodically, editorials appeared in the Real Estate News calling for unity. In essence, these editorials pointed to the adversary position of the landlord and argued that united action was necessary to force the legislatures to pass just laws for the real estate owners. A typical editorial presenting this view was written by Isadore Berger, the general manager of the new organization.

> ...heads of the realty organizations of this greater city should get together. Jealousy and all differences whether trivial or otherwise should be laid aside and all attention concentrated to devise ways and means for a large general drive to enroll every property owner in the greater city and swell the membership rolls to huge proportions. Then there would be established an institution that could demand the enactment of just laws, and proper administration of State and City finances and departments. Under such conditions of organization only can real estate reestablish itself as a safe and conservative medium for investment.[94]

Despite the attempt to broaden the base of the membership, the realtors who joined and they did so in ever increasing numbers, tended to be Jewish tenement house owners. The sprinkling of Italians or members of other ethnic groups were also immigrants whose property was on the Lower East Side. There is no indication that much headway was ever made in associating with other real estate associations in the area. They were able to form temporary conditions surrounding specific issues.

Regardless of the fact that they were unable to marshall extensive support, they did take action on their own. The Association had representatives present whenever bills important to real estate interests were introduced in Albany. They also monitored elections and evaluated each candidate in terms of his position on real estate issues. Eventually, one of the leaders of the Association made an unsuccessful bid for office.

Conclusion

The early twentieth century was a period of stress for New York City's tenement house owners on the Lower East Side. There existed a continual state of conflict between the landlords and tenants, often erupting into bitter personal confrontations. Conditions in the properties were poor at best, even by the standards of that period, and the continuing influx of immigrants who gravitated to the Lower East Side only worsened the situation. This was also the era of social reform, in large measure directed towards ameliorating the lot of the immigrant. Laws were passed mandating the upgrading of the tenement house and more and more decisions were handed down by the courts holding the landlord responsible for the conditions of his property. Many of the City's social agencies, both public and private, sought to guarantee that the new laws were obeyed and they pressured the tenement house owners to provide more inhabitable conditions for their tenants.

The tenement house owners viewed themselves as beleaguered. Many were themselves immigrants and lived in the tenements under the same conditions. Most were only marginal real estate investors and saw the increasing demands upon them as excessive and impossible to fulfill. The political sector, as they perceived it, was unresponsive to their needs and problems. After a

particularly bitter rent strike in December 1907-January 1908, the East Side tenement house owners joined together in a Taxpayer's Association to deal cooperatively with the myriad of problems which they shared as owners of real estate, i.e., recurrent rent strikes, general conflicts with tenants, repair work, hiring janitors, dealing with the City's agencies, taxation and so forth. They sought to generate countervailing power in the political arena of New York City which they perceived as being in control of pro-tenant interests. In the next chapter, we will discuss the further elaboration of the defense elements in the association and its formation of the Protective and Defense Committee which provided the landlord with protection against any liability that accrued to him as outcome of negligence.

Chapter II

Footnotes

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56. Ibid., p.2

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66. New York Times, December 28, 1907, p.2

67. Jewish Daily Forward, December 28, 1907, p.1

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CHAPTER III

THE PROTECTIVE AND DEFENSE COMMITTEE: A PIONEERING VENTURE INTO LANDLORD'S LIABILITY INSURANCE

As a response to a period of intense conflict within the Jewish Lower East Side ghetto community, The Greater New York Taxpayer's Association was formed in 1908. Although the specific hostile outburst in the form of a rent strike, which motivated the landlord to form a defensive association, was shortlived, the conflict itself continued. In place of rent strikes, the new arena for the conflict was the court. The Tenement House Law of 1901 very clearly defined the landlord's increased responsibility while the courts made him liable for injuries resulting from failure to comply. To some extent, the landlords could protect themselves financially against the consequences of a lawsuit for negligence by buying public liability insurance, which had been available since the turn of the century. In 1914, however, because of an increasing number of lawsuits, the few insurance companies which wrote landlord's liability insurance decided that the Lower East Side property owners were poor underwriting risks and either withdrew their coverage or insisted upon monumental rate increases. In

this chapter we will discuss the defensive actions the Association took when faced with the non-availability of insurance. We will also consider the other areas of activity of the Association during this period which supported the defensive effect of the organization. Finally, we will examine the increasing responsibilities placed upon the landlord by the court in terms of its impact on the further development of the Protective and Defense Committee.

Social Background To the Emergence of the Protective and Defense Committee

Six years after the rent strike crisis of 1907-1908, the Greater New York Mutual Taxpayer's Association was confronted with another emergency situation. In 1914, an ever increasing number of lawsuits for injury were being brought against its members. The genesis of this emergency situation can be found in the convergence of several factors. The Tenement House Law of 1901 significantly enhanced the responsibility of the landlord.[1] Not only did it specify physical conditions necessary in the tenements, it also spoke, at length, to the remedies available to the authorities and, by extension, to the tenants for non-compliance with the law. The rent strike of 1907-1908 served to politicize the tenants. The Socialist leaders of the rent strike

made this immigrant population aware of the possibilities to use the law for their protection, and continually informed them of their rights as citizens. It seems that there was a generalized societal increase in the propensity to sue; there was more public awareness about negligence as many new, highly publicized laws underlined the American value placed on the morality of responsibility.

The Tenement House Law of 1901, which substantially increased the landlord's responsibility, was only one aspect of this change.[2] Another area of change which affected the tenement house dweller, as well as the entire working population, was the legal definition of the responsibility of the employer to the employee. By 1913, after years of pressure by social reformers, the constitution of the State of New York was amended to make possible a Workman's Compensation Law. The whole concept was revolutionary; it mandated the employer's absolute liability, i.e., the mere happening of an accident created the liability. The law stipulated that the employer must provide insurance or give other security for the payment of claims.

Revolutionary studies were also made in the area of automobile liability insurance. Until 1916, under the common law rule of privity, i.e, mutual or successive relationship to the same rights of property,[3] the negligent

car manufacturer could only be held liable for injuries to the purchaser of the vehicle. In 1916, however, the automobile was declared by Justice Benjamin Cardozo to be an inherently dangerous instrumentality which extended the liability for faults of manufacture to any person likely to be injured. In the case of McPherson v. Buick Motor Company,[4] 217 N.Y. 382, 111 N.E. 1050 (1916), Justice Cardozo said:

> If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser and used without new tests, then, irrespective of the contract, the manufacturer of this thing of danger is under a duty to make it carefully.[5] Ibid.

Justice Cardozo, in a series of lectures at Yale University in 1924, pointed to the importance of the extension of liability since the turn of the century.

> We in the United States have been readier to subordinate logic to utility, so that remedies of third parties, beneficiaries of a contract, at first grudgingly allowed, are now multiplying and expanding. The development is merely a phase of the assault, now extending along the entire line, upon the ancient citadel of privity. In New York, there is a remedy in tort, regardless of privity, against the negligent manufacturer, where the subject of the manufacture is likely to be dangerous to life. The things classified as dangerous have been steadily extended with a corresponding extension of the application of remedy.[6]

In addition to these legal changes extending liability, there was an increased public sensitivity to possible actions which could be taken in various circumstances. Social reformers continued to exert pressure on public officials and the public to ameliorate the conditions facing the poor and oppressed. Indeed, some of these legal changes were a culmination of years of work on the part of the reformers. One of the aims of the social reformers was to make the poor aware of their rights vis-a-vis the employer, the landlord and others with whom they interacted in a power relationship. Many of the City's settlement houses held classes informing the membership of just these things. It seems possible that more lawsuits occurred because of this heightened awareness.

Inevitably, the liability insurance industry was affected both by the changes in societal definitions of responsibility which enormously extended the causes of action and by the propensity of the public to seek redress by court action. Best's Insurance Reports speaks to the problem of more and more lawsuits in 1917, by which time it was affecting the entire liability industry:

> In the public liability business, the suits in proportion to the amount of business transacted are increasing. In New York City, suits are brought on account of any injury, however trivial, and the number of suits brought on real or imaginary

> accidents not previously reported to the companies is causing disquietude.[7]

Best's Insurance Reports attributes these cases to some known but apparently unmentionable situation.

> ...the condition both in New York City and Boston is to a very large extent due to circumstances over which the casualty insurance companies have no control but which are well known and understood by all those engaged in the business.[8]

Although there is no way to fathom what was in the mind of the writer, and his allusion was to the whole casualty industry, which encompasses all forms of liability insurance, one informant offered the hypothesis that Best's had singled out New York and Boston because of their high immigrant population which the industry regarded as highly litigious. One additional factor which might help account for the mounting lawsuits should not be discounted; lawyers in negligence cases work on a contingency fee (a percentage of the award) and jury awards were gradually increasing. Negligence cases, therefore, became a profitable area of practice. An insurance journal published in 1912 addresses this problem:

> Every accident now, no matter how minor, is almost certain to mean a claim, and there are sufficient damage-claim attorneys to push every claim to the limit.
>
> It is claimed that when a city begins to show an abnormal loss ratio, it can largely be attributed to personal damage case lawyers ... Chicago, New York and

> Philadelphia are in the lead when it comes to the activity of the shyster lawyer.[9]

Best's also suggested that the increase in lawsuits was a function of the new co-defendant laws, which make the insurance company a co-defendant with the insureds. For example in May of 1917, the Boylan law was passed, which

> ...made liability insurance policies not contracts of indemnity for the insured, but contracts of insurance for the insured, for whether the insured is solvent or not, able to pay claims, or judgments or not, still the insurance company to the limit of the policy, must pay.[10]

The immediate result was that the juries increased their awards. Best's points out that in making the insurance company a co-defendant with the insureds, there is notice given "to the world and to the jury in particular that the defendant is insured" and thus able to pay a large jury award. It would appear, moreover, that an important latent function of this co-defendant law was to depersonalize the insurance lawsuit. The claimant is suing the insurance company, rather than the person who caused the injury.

The period preceding the crisis of 1914, then, was one in which the American values of morality and humanitarianism[11] was translated into increased responsibility for the landlord. The degree of responsibility was defined by statute and by a burgeoning number of lawsuits

brought against the landlord. To the extent that members in the Greater New York Taxpayer's Association were insured, the insurance company became a partner in defending the landlord. This partnership soon became uncomfortable.

The Emergence Of The Protective And Defense Committee

The proliferation of lawsuits which confronted the members of the Greater New York Taxpayer's Association in 1914 were perceived as threatening and, in large measure, not based on any negligence on their parts.

> These actions for injuries, some real, some trivial, some fancied, but in most cases fictitious, all demanding fanciful sums in settlement, were becoming an every day event. The situation looked threatening and the owners began to fear for their equities. To fight was costly, to settle would only aggravate the situation.[12]

According to one informant,[13] these suits became known collectively as the "stairses" cases deriving from the fact that many of the old style tenements had wooden stairways, often with defective or missing metal stairplates and nosings and with oilcloth covering in need of replacement, and it was exceedingly easy for someone to trip on the stairs and sustain considerable injury.

Whether these lawsuits which confronted the landlord were legitimate or contrived, as the landlords suggested, was irrelevant to the legal procedure which followed the

action. Each of these suits required the landlord or, in most instances, his insurance company, to defend the case in court or to make an out of court settlement with the plaintiff. The cases which were defended in court were often costly to the insurance company as judgments were heavily in favor of the complainant.

As a result of the large number of lawsuits and of the adverse, expensive settlements, those landlords who carried public liability insurance faced prohibitive rate increases or the total unavailability of the coverage. Many of the old line stock companies ceased issuing liability policies on the Lower East Side as too great an underwriting risk. Within a short period of time, property owners in this area were unable to obtain liability insurance at any price from any insurance company.[14] Landlords who could not obtain insurance coverage were placed in an untenable position. They were personally liable for defending cases brought against them in court and, at a time when adverse judgments in negligence suits were increasing, they also faced paying settlements which threatened their equities. Members of the Greater New York Taxpayer's Association repeatedly sent delegations to the Insurance Commissioner to complain about the failure of insurance companies to provide insurance for a segment of the New York City property owners. The Insurance Department, however, did not have

the authority to force insurance companies to entertain unwanted risks. Such power could only be granted to the Insurance Department by the State Legislature.[15] As property ownership, devoid of insurance protection, placed the owners in continual jeopardy, a solution to this potentially disastrous situation was sought in collective action through the Association by the formation of the Protective and Defense Committee.

> ...at a meeting held in Stuyvesant Casino in 1914, the Protective and Defense Committee was conceived and organized to solve the gravest problem that ever perplexed tenement house owners in this city. It was thus that a system of mutual liability protection was evolved, whereby a property owner who was a member of the Greater New York Taxpayer's Association was safeguarded against the activities of unscrupulous accident claimants.[16]

The objective of the Protective and Defense Committee from its inception was to provide its members with the liability protection which the insurance companies had either withdrawn or made too costly for many of the marginal tenement house owners. This protection encompassed the usual activity of an insurance company, that is, they collected premiums, paid claims and defended actions in court. The sub-committee of the Association set up its offices in the same parlour floor apartment that the Association occupied, the home and offices of Max Kahn. The first members of the sub-committee, Isadore Berger, a hardware store owner, Max Kahn, a real estate

owner and manager, and Harold Phillips, an attorney, all insurance amateurs, worked on a voluntary basis. Both Mr. Berger and Mr. Kahn were marginal landlords, according to an informant, and made little money from their respective businesses. The only member of the trio who was affluent was Harold Phillips, the attorney, and, by the time that the company was officially licensed, he was owed about one hundred thousand dollars in back legal fees.

The insurance activities of the Committee were financed by the price charged to the landlord for protection. The rate set for a property, in accord with the then current practice of insurance companies, was a function of the frontage measurement of the property; loss experience having been found statistically to be proportional to the front footage of tenement houses, a dimension easy to measure. In the beginning the Committee arbitrarily decided that a five thousand dollar payment on any one claim was the highest exposure they were willing to accept.

The first step in the functioning of the committee was its differentiation into three departments: the Financial Department, the Inspection Department, and the Claims Department. An overview of the operation of these departments was published in 1919 in the Real Estate News.

> Application for protection is first made to the bookkeeper and cashier whose duties are to take the member's money and make the

> necessary entries and proper disposition. The new house is then referred to the Inspection Department to determine whether the condition of the house makes it acceptable for registration. Suppose the Inspection Department overlooked an important defect in the building and recommended to the financial department the issuance of a certificate of registration, should an accident occur as a result the Association is at once a loser, should the case come to trial or not. The duties therefore of this department are to use all care and discretion to determine all the defects in the building and exercise every precaution to have all repairs made before the approval... The claim department then has a free hand ... to combat any accident ... as long as the property in question was in a safe and perfect condition at the time of acceptance.[17]

Although underwriting and rating committees were not specifically designated, their functions were performed by the named committees.

If an insurance company is, by definition, a professional risk bearer, then the Protective and Defense Committee may very well be defined as an amateur risk bearer. They were amateurs in that they were, for the most part, unschooled in the intricate workings of an insurance company; the expertise they garnered was an outcome of the on-the-job training. They were also amateurs in the sense that they were operating a de facto insurance company which was unlicensed. Certainly, in making the decision to do their own underwriting, their own rating and their own claims handling, the Committee performed the function of a licensed insurance carrier.

The members of the Committee might also be considered amateurs in that they participated in this substantial undertaking as volunteers. Of course, the voluntary nature of the enterprise eliminated much of the overhead costs of maintaining an insurance company. However, it should be noted that the large financial undertakings in insurance derive not from maintaining the company, but from the need to establish statutory reserves against claims.

From an insurance perspective, one important question arises when considering the goals of the Protective and Defense Committee, namely how could these amateur risk bearers presume to underwrite a class of risk which professionals eschew as too risky? An answer to this question requires a reexamination of the insurance function, i.e., the transference of risk. The would-be insured, in this case the tenement house owner, bears the pure risk of financial liability to persons injured in or about his tenement house. Although he is uncertain as to whether an accident will occur, should it occur, a pure risk can only produce loss. He seeks, for a fixed charge, to transfer this pure risk to an insurer, a carrier of the cumulative risks of a class of insureds, i.e., all tenement house owners. It seems evident that there is a built-in distinction in the perception of risk from each of these positions. The property owner sees only the

potential catastrophic effect of being sued personally and being wiped out financially should the worst occur; the insurer knows that the cumulative risks will, with certainty, produce a number of claims, and the only risk that he sees is one of underanticipation generally deriving from poor underwriting. For the stock companies, the further acceptance of the tenement house liability insurance was, at best, speculative; they could, if they chose, continue to undertake the risk of this class of business for the sake of possible future profit, but they chose to avoid it for fear of further extensive losses, a position which good underwriting dictated. The property owners had no such choice. They were saddled with the unavoidable pure risk inherent in their real estate activity by virtue of the new liability exposures. They chose to moderate the risk by bearing it collectively. What was for the stock companies an excursion into speculative risk, was for the Protective and Defense Committee and the membership of the Association, a relief from risk, at least to a degree.

Faced with the responsibility of effectively managing the pooled risk, The Protective and Defense Committee decided on a risk reduction strategy. The mere transference of risk from the individual to the collectivity was only the first step in the attempt to deal collectively with the problems inherent in increased

exposure to lawsuits. The transference of risk itself does not reduce risk; it might even increase the risk potential as it might encourage the individual to act irresponsibly as someone else is bearing the risk (underwriters call this morale hazard). After all, the stock companies, professional risk bearers, had insured the tenements and had lost money on this class of business. The substance of the Committee's risk modification plan was quite simple. They attempted to avoid legitimate claims by loss prevention techniques, and when claims were made, legitimate or otherwise, they fought the cases strenuously in court.

The success of the risk reduction strategy depended on a system of normative controls in which the individual landlord was compelled to put the goals and values of the Committee before his personal needs.[18] Unlike the conditions set in the usual insurance transaction of that period, where there was a simple exchange of money for protection, in the transaction between the Committee and the members, there was the requirement that the landlord follow the instructions of the Committee no matter what the personal inconvenience. Each owner was responsible to the collectivity for maintaining and managing his property safely and in accordance with the requirements of the Tenement House Law, thus preventing losses for all. In exchange, the Committee was to aid each owner to operate

his building safely. To fulfill its obligation, the Committee set up an Inspection Department which examined the registered properties frequently and made recommendations on the removal of hazards which could lead to accidents. Compliance with the stringent rules set down by the Inspection Committee was a condition of the continued protection by the collectivity. The only sanction employed was immediate suspension of the protection. In an article in The Real Estate News, the importance of the Inspection Department is pointed up:

> The factor that is solely responsible for the cutting down of legitimate cases ... is the Inspection Department of the Committee. This section consists of trained men on daily duty. Each house registered with the Committee for mutual protection is periodically given a rigid inspection and a copy of the defects found on the premises is forwarded to the owner. Prompt repair is insisted upon and where the trouble is of a dangerous character, immediate attention is demanded. As the penalty for non-compliance is the suspension of registration, the orders are met with an immediate response.[19]

The Inspection Department also aided the owner by maintaining a list of repair men recommended for large jobs who would perform acceptably for a reasonable price. Very often these repair men were property owners and Association members themselves, so that it was in their best interests to please their fellow members. The Inspection Department also set up a separate Repair Department.

> When any minor repairs are necessary and which if not given speedy attention may result in accidents, take advantage of our Repair Department. This Department was created for your benefit. You are charged only labor and material and 10 per cent overhead and saves you considerable on what a mechanic would charge for the same work. This Department was not created only to take care of any inspection orders you may receive from us. You may call on them at any time for any minor repair.[20]

In focusing on loss prevention techniques, the Protective and Defense Committee followed a policy which is an integral part of the mutual insurance company concept. Historically, mutual insurance groups have focused on their superior knowledge of the field in which they are providing protection to reduce losses, thus the American mill owners were able to lessen fire losses in their mills.[21] In fact, the Factory Mutual Insurance Company developed this loss prevention technique to such a fine degree, as in their pioneering work in automatic sprinkler systems, that they became famous for improving the nationwide standards of fire prevention.

One of the mechanisms used to communicate with the landlords and to reinforce the normative standards and goals of the Protective and Defense Committee was the Real Estate News. The publication was started by the Association in an endeavor

> ...to put its members in touch with the best that is said and done in their particular line of business, and to keep them appraised of pending and protective

> legislation affecting their interests. In these times of stress and mud slinging, it is absolutely imperative that the house owner's side of every question be adequately and properly presented in the forum of public opinion. House owners have been indiscriminately accused of everything short of murder. The rank and file of house owners have been vilified for the shortcomings of a few, and the public has been led to believe that all house owners are profiteers because of the actions of a few.[22]

Moreover, in addition to these stated goals of creating a better image for the tenement house owner, and acquainting him with legislative activities, a substantial proportion of every month's edition was concerned with the landlord's obligations to the Protective and Defense Committee. The compliant landlord was praised publicly by having his name listed in the journal.

Periodically, editorials in the Real Estate News spoke to the tendency of members to give priority to their own values rather than those of the collectivity, and cautioned that, if the landlord did not cooperate, claims could not be reduced, and the system could not operate.

> Many of our owners look upon the Inspection Department of the Protective and Defense Committee as an unnecessary adjunct to the business of that Committee and as an evil which could be dispensed with. To them the Inspection Department is an autocratic body representative of repair orders to their buildings, troubled with the mechanics and dunning letters for greater expediency in completing specified repairs sometimes to be wound up with the very unwelcome notice of suspension.[23]

Insurance, this editorial went on to explain, does not constitute a license for accidents to occur. "Property owners have grown to consider liability insurance as a license to neglect their properties allowing them to develop into accident traps."[24] Insurance should merely provide coverage for expenses should a claim occur despite the best efforts of the owner to avert it. In the past, insurance companies have taken a very lenient attitude towards inspecting insured premises.

> It was this very same lax attitude on the part of the insurance companies permitting disrepair thereby inviting accidents that cause premiums for liability insurance to skyrocket. We have no doubt that on closer insight into the matter owners would rather sink part of the excess premium into necessary repairs of their own buildings, than to pay excessive insurance rates which eventually must be paid out in the form of a settlement of judgment to somebody who met with an accident, real or fancied, in the premises which, by virtue of the insurance police has been neglected.[25]

Monthly, the Real Estate News reinforced the normative expectations the Committee had for the landlords by publishing a long list of instructions for accident prevention. These instructions pointed to the main sources of claims against the property owner, e.g., worn stair treads, weak railings, slippery floors, cracked ceilings, and inadequate lighting. In addition, the Real Estate News published many series of articles by safety experts on preventing accidents in tenements that did not

necessarily derive from obvious sources. One of the outstanding accomplishments of the Committee in the safety area was the virtual elimination of coal hole cover cases, "by causing the old style coal cover to be replaced by the new, hinged, self locking and key opening type."[26] It also mandated that heavy iron stair plates replace the existing stair plates with the aim of eliminating the stairway accident.

> Most of the accident suits brought against landlords owning old type buildings with wooden stairways are predicated upon defective metal stairplates, nosings and torn oilcloth. The problem of the elimination of these cases was placed in the hands of an Executive Board Committee for solution. The Executive Board of the Protective and Defense Committee has decided to order owners of buildings with wooden stairways who wish to continue under the protection of the Protective and Defense Committee of The Greater New York Taxpayer's Association to install upon wooden stairs special heavy iron treads approved by the Association.[27]

The most important element in the success of the safety campaigns was compulsory compliance with the recommendations. Very often, this involved replacing perfectly serviceable items for new supposedly safer models at substantial costs to the owners. An informant related that at one point the decision was made that the old style ceramic faucet handles were a danger and were the cause of many lawsuits. The ceramic handle broke off in the hand of the user and the broken edge caused ex-

tensive injury to the hand and often resulted in the loss of fingers. This type of handle was also responsible for leakage and water damage. A campaign was mounted in the Real Estate News and amongst members of the Association to have all the ceramic handles changed. At first, the campaign was limited to personal recommendations and appeals in the Real Estate News showing hands without fingers and relating this type of accident to the cost of the insurance. Finally, in 1941, when the Committee had been transformed into an insurance company, the Company decided that it would take the responsibility for replacing the faucets. The Company sold replacement handles to the landlords at twenty cents per faucet, a substantial discount from the wholesale price of thirty five cents. In addition, they paid two cents trade on each porcelain handle returned to the Company after an equal number of metal handles were purchased.[28]

Accident prevention through exacting safety standards was the first step in a risk reduction strategy. A further moderation of risk was available to the Committee which was denied to the stock companies; the Committee could handle claims in a more personal manner. The stock companies operated from an impersonal bureaucratic model; they had to depend upon experiential decisions and their experiences had been bad. To the stock company underwriter, the tenement house was terra incognita, and

the tenants and the owners were, at best, unpredictable, at worst, predictable in terms of the negative stereotype of the immigrant Jew. The Committee members and their claims adjustors were on home ground; they had direct personal contact with the insured owners and some control over the insured's actions through the threat of cancellation, and, most important, they were comfortable in relating with the immigrant tenant. The value system of the Association prescribed a good relationship between tenant and landlord. For the Committee, this good relationship was a necessary condition to the reduction of claims.

> The expression by the landlord of his solicitude for the well being and condition of an injured tenant has at times assuaged the feeling of rancor and hostility that is frequently created in the heart and mind of an injured person, or his family, because of the disinterestedness of the owner or his agent to the tenants injury. The opportunity of determining the exact cause of an accident as given by the injured person's own description of the occurrence, as well as the extent of the tenant's injury, is far more favorable and more easily obtainable if the owner approaches the situation under friendly auspices instead of in the fashion of aloofness and hostility.[29]

A technique was also developed for the claims adjustor to see the injured parties quickly after an accident occurred. This kind of swift show of interest reinforced the image of the landlord as a caring person and went far to reduce the size of claims and keep cases

out of court. Interestingly, when claims adjustors were hired, it was mandatory that they spoke a fluent Yiddish so that they could adequately communicate with tenants. Of course, the cooperation of the landlord in immediately reporting the accident was an absolute requisite.

If a case finally went to court, it was fought vigorously. Here again, the absolute cooperation of the landlord with the demands of the Committee was essential.

> The Protective and Defense Committee is doing splendid work. I wish to impress upon every member that he must do all to cooperate with the Committee. I mean actual physical cooperation. In fact it is expected of you and above all you owe it to yourself and the property. Every member is expected to lend all the assistance he can to the Claim Department in the Protective and Defense Committee in any case that is being defended for him. The assistance starts with the occurrence of an accident when a landlord is expected to give immediate notification to this office.[30]

This type of personal approach was not typical of the manner in which stock companies handled liability insurance at that time, although some of the elements in this approach are now mandated by the policy terms. It should be noted however, that large insurance companies still do not have any personal contact with their insureds and do all their business through the broker. The Protective and Defense Committee soon gained a reputation for fighting all claims and frequently were at odds with the negligence lawyers who regularly appeared in the

tenant-landlord disputes. In an article on the operation of the Legal Department, Harold Phillips, the first attorney for the Committee reported that, "we'll get you yet," is the usual daily greeting accorded to representatives of the Claims Department of the Protective and Defense Committee by members of the legal fraternity involved in negligence cases.[31]

The system of normative controls that the Protective and Defense Committee established, which stressed the primacy of the obligation of the individual to the collectivity, was supported by a value system which directed attention to the necessity for morality in the relationship between landlord and tenant.

> We deem it our imperative duty... to criticize and protest against the careless and often criminal manner in which many owners, mostly of the cheap class of tenements, attend to the upkeep and repairs of their property. Their attitude is one that completely disregards the moral, legal, safety and sanitary obligations they owe to their tenants and the community. Tenement houses harbor many families consisting of old and feeble people and many children. The owner is morally the guardian of the safety of these families in his premises. The tenants of late demand better and cleaner housing conditions. The owner is demanding and getting better rentals. So why not satisfy each other and live in harmony and friendship.[32]

It should be noted, however, that although morality was strongly valued by the Greater New York Taxpayer's Association and certainly, the recurrent image that the

organization attempted to project was that of the good, though often misunderstood landlord, this image of morality was often limited or threatened by the overwhelming need of the collectivity orientation. This value conflict is exemplified by the situation in which the Protective and Defense Committee had to choose between the morality of compensating an accident victim on the one hand and obtaining a quick release from an unsophisticated claimant on the other, or again, fighting legitimate claims vigorously in court. It seems apparent that, for the risk modification plan to operate effectively, orientation to the collectivity had to be the overriding consideration.

The crisis of mounting claims in the face of extreme difficulty in securing liability insurance coverage which precipitated the formation of the Protective and Defense Committee in 1914, was somewhat resolved by 1916. "In 1915 and 1916, many of the judges discovered that stairway accidents were becoming such a nuisance in the courts because of their frequency that they took a hand in scrutinizing the testimony of witnesses. As a result numerous dismissals were granted."[33] By 1919, however, an upsurge of tenant-landlord unrest began to develop. It would seem that this renewed conflict had two main sources; the organization of the Tenant's League Movement and agitation for a new rent law which ultimately was

passed April, 1920.

The Tenant's League Movement started in the Bronx in 1919 and soon spread to a substantial portion of the City. The main objective of the movement was the lowering of rents through the organization of rent strikes. The landlord would be forced to negotiate with a committee of the Tenant's League which would set down the conditions under which the landlord was to operate his buildings. If the landlord refused to negotiate with the committee, no rent would be paid. An editorial in the Tribune[34] suggested that the Tenant's League had been taken over by radical Socialists who wanted to use the conditions in the tenements to further their political ambitions. The leaders of the movement cited, said the Tribune, were either office holders or candidates for office in the City government. The Greater New York Taxpayer's Association's response to the projected possibility of rent strikes was to take immediate defensive action through their Rent Adjustment Committee. As an overall course of action the Committee recommended that rents not be raised before consultation with the Committee members. The message was delivered through instructions published in the Real Estate News. The same issue contained an article on the possible causes of discontented tenants and positive actions that could be taken to avoid conflict.

Home owners are advised by the Rent Adjust-

> ment Committee of this Association to keep their houses in a clean good condition, pay proper attention to minor repairs and hot water where furnished, as neglect of these small but important items are most frequently the cause of discontent among tenants.[35]

The Rent Adjustment Committee also pointed out that its research had revealed that rents had been raised unnecessarily and that services were inadequate. This was dysfunctional for the collectivity in that it would cause conflict.

> The Rent Adjustment Committee which has adjusted difficulties in hundreds of houses recently, found that many owners have raised rents several times during the year without making the necessary repairs, etc. As it is the aim of this organization to keep friendly relations between landlords and tenants and prevent oil being placed on the fire in this era of restlessness, property owners should not take undue advantage of the situation. It should be a fair mutual bargain of give and take. Give proper service to tenants and take fair rent in return.[36]

By 1920, conditions in the tenements again showed extensive deterioration largely as a result of the war and the attendant housing shortage. Virtually any type of housing was used and many of the older houses which were abandoned and regarded as unusable under the terms of the 1901 law were again rented with little rehabilitation and less regard for their legality. Consequently, considerable pressure was exerted upon the State to create a Rent Commission to regulate the percentage return the

landlord would be allowed on his investments and thus to control excessive rent increments. The law which established the Rent Commission was also to regulate the conditions under which landlords could evict tenants from their apartments. The Greater New York Taxpayer's Association, as might be anticipated, opposed the passage of the Bill as being undemocratic.

> There is no moral justification in the appointment of commissions of laymen or so called experts by the grace of political powers to sit in judgment as to what return the owner and investor in real property is entitled to charge up against his property, which to buy and maintain he may have labored a life time. If such a course should ever be deemed legal, this would mean the end of freedom and democracy within our borders.[37]

The Rent Adjustment Committee, however, did agree with the proponents of the Bill that some landlords were, indeed, avaricious and were taking advantage of the housing shortage, but the members of the Association should not be penalized for the faults of others. The picture they painted of their membership was a beleaguered class whose plight was ignored by all. To show that increased rents were selective and not universally unreasonable, the Rent Adjustment Committee did a study of rent prices from 1906 which they offered to submit to any legislative body interested.

> The members of the Greater New York Taxpayer's Association own their properties mostly in sections of the Lower East Side,

> Yorkville, Harlem and Williamsburg. In these sections rents were steadily reduced since 1907 up to about a year and a half ago, these reductions being caused by an overproduction of buildings. The results of the loss of rents and steadily increasing vacancies were depreciating values, thousands of forclosures, savings lost and many suicides. In all these years of panic, the real estate owner had no sympathetic friend in either administration, press or public... The owners of cheap and medium grade tenement houses are being crushed between two milestones. One is the high cost of maintenance due to the high cost of labor, material, coal and the high scale of janitor's wages, etc., the other is the hue and cry of rent profiteering really occasioned by the practices of the higher class apartment houses but affecting those tenement house owners though they are really innocent of such procedures.[38]

Upon passage of the rent law, the Real Estate News made their membership conversant with the terms of the new law by presenting it in simple language. Periodically, the newspaper also explained specific aspects of the law which might possibly cause difficulties for the membership. One of the consequences of the new law, according to the reports in the Real Estate News was a resurgence of claims. The new law very carefully defined the conditions under which the landlord could evict a tenant and the remedies the tenant had, a law in response to the dispossess notice. When the case was brought to municipal court "the tenant puts in a counter claim that the apartment is in disrepair and accuses the owner of being indifferent."[39] In instances where the counter claim

was tried in front of a jury, the writer in the Real Estate News felt that the landlord could not win the case.[40] Representatives of the Protective and Defense Committee suggested that since this new legislation went into effect, the number of accident claims members doubled.

> Claims that were considered "dead" are "suddenly coming to life." Those lying dormant and under ordinary circumstances would never be prosecuted because they are groundless, are becoming active because the tenants feel that they are practically immune from the landlord and to offset any increases they may have received in their rents, bring suit and take a chance.[41]

Because of the success of the Protective and Defense Committee as "a heaven of refuge for the owner who could not obtain liability insurance,"[42] in 1921 the leadership of the Association introduced the idea of starting their own fire insurance company. This was to be a regular stock company which required subscribers willing to make financial investments. Originally about two hundred and twenty members subscribed four hundred thousand dollars, but the company was never formed. Mr. Kahn, writing in the Real Estate News, attributed this lack of general enthusiasm to the conservative attitude of the membership, and suggested that the only reason that the Protective and Defense Committee got started was that "an actual calamity

situation existed."[43] It would seem that this orientation to the original defensive nature of the Association characterizes a broad range of its policies and this becomes particular evident when eventually the Committee is transformed into a mutual insurance company.

Further Extension of Landlords Responsibility: The Cardozo Decision

The period dating from the first Tenement House Law to 1922 was one in which the legislature gradually increased the landlord's obligations to assure the safety of tenants and others in his premises. As the obligations of the landlords became more defined and as the tenants, for various reasons, became more willing to sue, more and more cases were brought to court. One of the leading cases of this period, Altz v. Lieberson,[44] 233 N.Y. 16, 734 N.E. 703 (1922), brought before Justice Cardozo on appeal, had far reaching consequences for the development of increased landlord's liability. Justice Cardozo believed that the law must speak to the common good and it was the obligation of the judge to decide cases not only in the traditional ways, but also in the light of moral and social considerations.

> ...when the social needs demand one settlement rather than another, there are times when we must bend symmetry, ignore history

> and sacrifice custom in the pursuit of other and larger ends ... the final cause of law is the welfare of society. The rule that misses its aim cannot justify its existence.[45]

Quoting from the eminent jurist Roscoe Pound, Cardozo underscored Pound's sentiment. "Ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws than one can exclude the vital air from the room and live."[46]

In the landmark case of Altz v. Lieberson, the Cardozo decision was clearly founded on the ethical and moral consideration that it was the duty of the legislature and the judiciary to "care for those who could not care for themselves."[47] The plaintiff, a tenant in one of New York City's tenement houses in 1917, was injured by a falling ceiling within the apartment which the landlord, the defendant, had failed to repair even though notified of its potential danger. The landlord was sued for damages in lower court in New York City. The court ruled in favor of the defendant and on appeal, the case was brought before Justice Cardozo. The question at issue was whether there was a breach of duty on the part of the landlord in not repairing the apartment ceiling. In several cases decided in the lower courts after the enactment of the Tenement House Law, "it had been assumed by the court and the profession that the liability of the landlord remained the same as at common law in so far as the premises

demised to the tenant were concerned."[48] That is, that the landlord had no duty to make repairs within the leased premises.[49] Cardozo's decision to change the duty of the landlord to the tenant, well established under common law extended the responsibilities of the landlord to an appreciable degree.

> At common law there was no duty resting on the landlord of an apartment house to repair the rooms demised (Golob v. Pasinsky, 178 N.Y. 458 70 N.E. 973). His duty of repair was limited to those parts of the building which the occupants enjoyed in common (Dollard v. Roberts, 130 N.Y. 269, 29 N.E. 104, 14 L.R.A. 238). The Tenement House Law has changed the measure of his burden ... Every tenement house and all parts thereof shall be kept in good repair. (Section 102).
>
> The comprehensive sweep of this enactment admits of no exception. We are not at liberty to confine it to those parts of the building not included within the premises demised. The legislature has said that the duty shall extend not only to some parts, but to all. Apter words could hardly have been chosen wherewith to exclude division of responsibility between one part and another. The command of the statute directed, plainly is, against the owner (of §§ 76, 103, 104, 140) has thus changed the ancient rule.
>
> No doubt, before a right of action will accrue in favor of the tenant, there must be notice, actual or constructive, of the defect to be repaired. No doubt the defect itself must be one that has relation to the maintenance of the building as a tenantable habitation. This limitation results by implication from the context of the section which forms part of the article entitled, "sanitary provisions." The meaning is that the premises shall not be suffered to fall into decay. The duty to prevent this,

> which, in part at least, once rested upon the tenant, is now cast upon another.
>
> A narrower construction ignores, not only the letter of the statute, but the evil to be cured. A "tenement house" as the meaning is enlarged by the definition of the statute may include the dwelling of the rich. In its primary and common application it suggests the dwelling of the poor (Kitching v. Brown, 180 N.Y., 414, 422, 73 N.E. 241, 701 RA. 742). We may be sure that the framers of the statute when regulating tenement life, had uppermost in their thought the care of those who are unable to care for themselves. The legislature must have known that unless repairs in the rooms of the poor were made by the landlord, they would not be made by any one. The duty imposed becomes commensurate with the need. The right to seek is not limited to the city or its officers. The right extends to all whom there was a purpose to protect.[50] 233 N.Y. 16, 134 N.E., 703 (1922).

Cardozo's decision reversing the common law, supported the myriad social reformers who were pressing for the passage of even more restrictive and socially conscious housing bills. It also set the conditions under which the landlord would have considerably more legal responsibility for the maintenance of his premises than prior to the case. The landlord thereafter, would be more open to action against him for failing to fulfill these new responsibilities. "Property, like liberty, though immune under the constitution from destruction, is not immune from regulation essential to the common good."[51]

Fraudulent Claims

The Cardozo decision, according to Justice John M. Tierney of the Bronx Supreme Court, must bear the responsibility for the dramatic increase in lawsuits, both genuine and contrived. There has been

> ...problem with appalling number of accident cases which has perplexed and harassed property owners for many years. In no other class of law suit is such downright and deliberate perjury committed as in the trial of accident cases, especially those of the tenement house variety, where tenants seek to recover money damages for all sorts of fanciful or even trumped up claims. Ever since the famous Cardozo decision was handed down, the courts of the City have been overwhelmed by the most unprecedented wave of litigation in the history of court practice. Under the "authority" of this ruling and under the baneful influence of unscrupulous attorneys and ambulance chasers, dishonest litigants have found legal license to come into court and deliberately and wantonly perjure themselves in order to succeed in their attempt to fleece money from the pockets of property owners.[52]

Supporting that view, an editorial in the same edition of the Real Estate News suggested that there was great urgency to pressure the legislature to modify the Cardozo decision or else house owners and insurance companies would spend millions to cover illegal claims.

At this time the phenomenon of the "accident broker" emerged. Essentially, the "accident broker" surveyed tenement house areas to locate those houses which were not

well cared for and thus presented themselves as good places for accidents to happen. Subsequently, the "victim" appeared on the scene, generally when witnesses were present, and flopped or had another type of obvious accident. A lawyer who was part of the operation then handled the lawsuit. Very often, these "victims" became chronic litigants and were involved in multiple accidents under different names in various parts of the City.[53]

In another variety of accident claim, perhaps less criminal but certainly unethical from the standpoint of the legal profession, lawyers would approach real accident victims and convince them that they should sue the landlord to collect a large sum of money for their injuries. The lawyers worked on a contingency basis and received a percentage of the claimant's award.

Although fraudulent accidents were criminal in nature and ambulance chasing lawyers unethical.[54] Nonetheless, liability companies were adversely affected by the number of claims and the size of the awards. Obviously, the legitimacy of a claim was not always, if ever, a factor in the jury's award to the complainant. By the end of 1924 jury verdicts were increasing in size. "It is not unusual for a jury to return a verdict of fifteen thousand, twenty five thousand or even fifty thousand dollars, indeed such verdicts are getting to be quite common."[55]

Insurance companies which continued to write

landlord's liability policies constantly raised their rates.

> The liability insurance companies issuing landlord's liability policies find it necessary to increase their rates as of March 17, 1924 due to the increased hazard and the cost of claims and suits founded upon negligence. It is not known at this time whether the recent increase in the rates will be sufficient to cover the many claims and suits arising by reason of accidents occurring in tenement and apartment houses.[56] (Article in publication of Brooklyn Chamber of Commerce reprinted in REN May 1924 p.117).

Despite these increased rates, insurance companies rarely attained a rate which represented a sound underwriting decision on this class of business. At the end of December, 1924 an announcement was made by Jesse S. Phillips, General Manager of the National Bureau of Casualty and Surety Underwriters, that, for the first time, "the rates for owner's, landlord's, and tenant's public liability insurance has been made on a territorial basis."[57] In the nation as a whole, the increase was twenty eight per cent. For New York City, the rise was one hundred and ninety per cent. In areas where the underwriters decided to retain the business, they discontinued writing policies for a term longer than one year thus affording the underwriters the opportunity to renew the risks annually.

In 1924, the decision was made by stock companies to withdraw from certain additional areas in New York and

"approximately seventy-five per cent of the stock companies writing landlords liability insurance have discontinued accepting risks in certain areas of Brooklyn."[58] Throughout the late 1920's, more and more insurance companies withdrew altogether. And in view of the Greater New York Taxpayer's Association, the fault lay in increased moral hazard.

> The activities of unethical lawyers and doctors, ambulance chasers, a perverted and mercenary attitude of some of the public and the somewhat lenient, if not benevolent, attitude of most judges and juries has placed the whole casualty insurance industry in such a defensive position that it is threatening to the very life of this form of protection. The business of accident insurance has become so involved with elaborate machinery for the defense of the individual claim that premium rates per force are becoming prohibitive and at that without additional profit accruing to the companies.[59]

The Protective and Defense Committee indicated that, while to some extent, it too was affected by the fraudulent claims, it would not pay out its members' money without fighting and its reputation as a difficult claims settler had prevented many lawsuits from being initiated.

Conclusion

In 1914, the Greater New York Taxpayer's Association faced the gradual withdrawal of the mainline insurance companies from the landlord's liability insurance market on the Lower East Side and the dramatic increases in rates

for this insurance imposed by the companies which remained. This action by the insurance companies was, in large measure, due to the ever expanding societal definition of the landlord's responsibility and the attendant increase of claims upon their reserves. Without insurance, the landlord was in continual jeopardy in that his equity in his property could be lost.

After studying the situation, the leadership of the Greater New York Taxpayer's Association concluded that the best approach to continued protection for their membership was the formation of a committee which would provide cooperative insurance. With the establishment of the Protective and Defense Committee, the Association was, in effect, launching a mutual insurance company, albeit unlicensed. Their operating philosophy was simple; prevent losses and vigorously defend claims. Both these approaches required members of the collectivity to exchange some of their independent rights for the protection afforded by the collectivity. Where the landlord was unwilling to enter into this exchange, the Committee withdrew its services.

Because of their ability to control the actions of the membership through immediate sanctions, the Committee was extremely successful where the stock companies failed. When it first opened its doors in 1914, it had 100 policy holders. By 1928, that number had increased to

7500. Of these policyholders, more than 95 per cent were Jewish.

Because of the need to prevent accidents and thus prevent claims, an important latent function of the Protective and Defense Committee was to protect the tenement house occupant. The Tenement House Law sought to protect the occupant of the tenement by mandating physical improvement, but the fine for failure to comply was relatively trivial. The courts, through decisions made on cases stemming from the Tenement House Law, imposed higher penalties upon the landlords for non-compliance, but only in instances where the landlord was a defendant in a lawsuit. The Protective and Defense Committee organized its protection around the simple idea that insurance would only be kept in force for those landlords who fixed and maintained their property. In this way, not only was the source of injuries reduced, but the tenements belonging to Association members became more inhabitable. The joint action of the tenement owners through the Association actually functioned to implement the legislative intent of the Tenement House Law to improve living conditions for the tenants.

This type of defensive functioning took on added significance after 1922, when Justice Cardozo, in the case of Altz v. Lieberson overturned the common law definition of the obligation of the landlord to the tenant. With the

new ruling, the range of the landlord's liability was dramatically extended and the landlord, exposed to increased threat of litigation, had increased need for the protection afforded by the Protective and Defense Committee. In the next chapter, we will discuss the transformation of the Protective and Defense Committee into a licensed mutual insurance company and its operation as a company.

CHAPTER III

Footnotes

1. See discussion of Tenement House Law, supra., pp.52-64

2. Black, Law Dictionary, Op.Cit., p.1423.

3. McNiece, Op.Cit., p.458.

4. Ibid., p. 458

5. Tycho Brahe, ed., Selected Writings of Benjamin Nathan Cardozo, (New York: Fallow Publications, 1947), p.219.

6. Best's Insurance Reports, (Oldwick, New Jersey: A.M. Best Company), Introduction to Casualty and Miscellaneous reports 1917, pp.vii, viii.

7. Ibid., p.viii.

8. The Argus, May 1912, Vol. LXXIV, #5, p.142.

9. Ibid., p. 42. Although the Boylan Law currently applies in many states, it does not apply in New York State.

10. Robin Williams, American Society (New York: Alfred A. Knopf, 1960), pp.424-428.

11. Real Estate News, December 1919, Vol. 1, p.4.

12. Interview with an Insurance Broker who dealt with companies.

13. Journal of Commerce, in Real Estate News, May 1927, p.4.

14. This power was not granted until 1968, when companies were compelled to participate in New York's Fair Access to Insurance Requirements Plan in respect to fire insurance on buildings.

15. Unpublished history of the Greater New York Taxpayer's Association.

16. Real Estate News, January 1919, p.8.

17. Talcott Parsons and Edward A. Shils, editors, Towards a General Theory of Action, (New York: Harper Torchbooks, 1962 edition), p.81.

18. Real Estate News, December 1919, p.4.

19. Ibid., April 1920, p.10.

20. John Bainbridge, Biography of an Idea, (New York: Doubleday and Co., 1950), p.207.

21. Real Estate News, January 1924, p.22.

22. Real Estate News, June 1923, p.3.

23. Ibid., p.3

24. Ibid., p.4.

25. Real Estate News, March 1922, p.8.

26. Real Estate News, February 1922, p.39

27. Real Estate News, May 1941, p.163

28. Real Estate News, January 1922, p.3.

29. Real Estate News, December 1920, p.19.

30. Real Estate News, February 1920, p.4.

31. Real Estate News, February 1924, p.1.

32. Editorial, New York Tribune, October 31, 1919, p.6.

33. Real Estate News, December 1919, p.3.

34. Ibid., p.3.

35. Ibid., January 1920, p.14.

36. Ibid., p.3

37. Ibid., November 1920, p.4

38. Ibid., p.4

39. Real Estate News., April 1920, p.102

40. Real Estate News, January 1921, p.6, March 1921, p.13

41. Mc Niece, Op.Cit., pp.839-841

42. Cardozo, "Nature of the Judicial Process", in Brahe, Op.Cit., p.133

43. Roscoe Pound, "Laws and Jurisprudence of England and America", 27 Howard Law Review, pp. 731-733 in Brahe, Op.Cit., p.18

44. Altz v. Lieberson, Op.Cit., in Mc Niece, Op. Cit., p.840

45. New York Law of Landlord and Tenant, Op.Cit., p.752

46. Ibid., p.752

47. Altz v. Lieberson, in Mc Niece, Op.Cit., p.141

48. Cardozo, "Nature of the Judicial Process", in Brahe, Op.Cit., p.141

49. Real Estate News, April 1925, p.16

50. Real Estate News, February 1924, pp.8-10. See June 1934, p.193 for an excellent description of accident fraud ring.

51. Both situations were dealt with by legislation growing out of the Wasservogel investigation of the Appellate Division of the New York State Court.

52. Real Estate News, October 1924, p.5

53. Editorial, Brooklyn Chamber of Commerce in Real Estate News, May 1924, p.117

54. Real Estate News, December 1924, p.6

55. Real Estate News, May 1924, p.17

56. Real Estate News, May 1926, p.10.

CHAPTER IV

THE GREATER NEW YORK MUTUAL INSURANCE 1927-1950

THE LEGITIMIZATION OF A MARGINAL VENTURE

On August 10, 1927, after thirteen years of operation as a de facto insurance company, The Protective and Defense Committee of the Greater New York Taxpayer's Association, was licensed by the State of New York as an authorized mutual insurance company. The period from 1927 to 1950 was one in which the company, formed as the Greater New York Taxpayer's Mutual Assurance Association and ultimately changed to The Greater New York Mutual Insurance Company, further elaborated its characteristics as a collective endeavor organized to provide its member landlords with liability insurance.

The absolute necessity for an insurance company which would write landlord's liability insurance in high risk neighborhoods grew with the passage of time. In 1929, The Multiple Dwelling Law was passed which incorporated the revolutionary Cardozo abrogation of the common law relationship between landlord and tenant. This new law, and many court cases which followed it, further extended the liability of the landlord to his tenants and to others

who entered on his premises, beyond that which existed before. Liability insurance, therefore, became indispensible.

It is the purpose of this chapter to discuss the development of the insurance company against the background of accretions in the responsibility of the landlord to his tenants and to others.

Greater New York Mutual Taxpayers Assurance Association

For thirteen years, the Protective and Defense Committee of The Greater New York Taxpayer's Association provided landlord's liability coverage for tenement house owners on the Lower East Side as well as in other tenement house neighborhoods of New York City, largely for buildings owned and occupied by Jews. In 1927, The Insurance Department of the State of New York took notice of the fact that the Protective and Defense Committee was operating an unlicensed insurance company and was, therefore, in violation of the law. However, the Insurance Department, did not seek to terminate the Committee's work. What it did seek was jurisdiction and regulating authority over the Committee's activities. To this end, The Insurance Department recommended that the State Legislature amend the Insurance Law to permit the Greater New York Taxpayer's Association to form an insurance company. This amendment, § 71(a), was enacted

into law in the Spring of 1927. It is interesting to note that the definition of the Protective and Defense Committee as an insurance company represented a radical change in the prior attitude of the Insurance Department. Through the years, the Department had offered some informal advice, but did not define the Committee as a functioning insurance carrier. What precipitated the change in the Department's attitude at the particular time that it occurred is not abundantly clear. Several informants[1] theorized that perhaps a goodly number of complaints had been filed with the Insurance Department about the Committee's way of conducting business. Certainly, there was substantial hostility expressed towards the lawyer representing the Committee in court, because of the tough and uncompromising attitude towards settling claims. The highly competitive price structure was also considered suspect by the mainline insurance companies which wrote landlord's liability insurance, even though they were not competing for the same customers. And, underlying these possible factors, the informants agreed that anti-semitism surely played an important role in the complaints.

At that juncture, no matter what the source of the attitude change, the Insurance Department was cooperative in helping the Protective and Defense Committee to start its operation as the Greater New York Taxpayer's Mutual

Assurance Association. Of course, one of the factors which must be emphasized in assaying the cooperative attitude of the Insurance Department was that the Protective and Defense Committee was the only source of insurance coverage for a large group of the City landlords. As the Insurance Department lacked the authority to fill the gap by ordering other companies to step in, controlling the Protective and Defense Committee was the logical alternative.

In response to the new conditions of their functioning set by the Insurance Department, a special meeting of the Association was held June 1, 1927, authorizing the reorganization of the Protective and Defense Committee into the Greater New York Taxpayer's Mutual Insurance Association and allowing the newly formed company to absorb the assets of the Committee and assume all of its liabilities.[2]

The announcement made in the Real Estate News about the change in status of the Protective and Defense Committee was designed to forestall any anxiety on the part of the landlords because of the fact that the Committee's activity was now officially removed from the control of the landlords' association.

> There will be no substantial change in the nature, character and scope of the service heretofore rendered by the members of the Committee. The Greater New York Taxpayer's Association, as a membership society, will

> be continued. All of the services rendered by that society to its members in all problems affecting real estate will be continued as heretofore. The benefits of the insurance company will be confined, as far as possible, to members of the Greater New York Taxpayer's Association, and the methods followed by the Protective and Defense Committee that have proved so successful will guide the management of the company.[3]

From the beginning, however, the distance between the new insurance company and the Association was pro forma rather than actual. The pioneers who occupied positions of power and authority in the Protective and Defense Committee occupied the same positions in the new insurance company. Moreover, they did not relinquish their offices in the Greater New York Taxpayer's Association, but continued to contribute their time and effort to the landlords' organization which they had founded. The close relationship between the two groups remained constant until the mid-seventies, when the Association ceased its activities.

Early Bureaucratization

The transformation of the Protective and Defense Committee into an insurance company had an immediate effect both within the organization and on its external environment. Perhaps the most important change was external, but it had a broad range of internal consequences. As a licensed insurance carrier in the

State of New York, the company now had to submit to the jurisdiction of the State Insurance Department. For the first time, their entire accounting procedures were subject to audit by the State. The State now had the authority to dictate the minimum reserve requirements , that is the amount of money which the company had to hold against the necessity of paying claims. The State also regulated the rate setting procedures which were the basis of premiums charged. As is still true today, the State Insurance Department was responsible for the solvency and financial health of licensed insurance companies which gave the Department virtually dictatorial powers over the financial affairs of insurance carriers. In the exercise of this responsibility, the State required that companies must file reports of their financial conditions, i.e., their capital and reserves, their premiums and losses, and their justification for rates, among other things. Certainly, more attention had to be given to these aspects of the company's financial operation and a more complex division of labor ensued than prior to the licensing.

The other immediate effect on the company was internal; it moved from a cooperative service to a business activity. Although the nature of the service did not change, the construct within which it was provided did. Because of the requirements of the insurance industry, it seems that there was a strain towards

bureaucracy. To a degree, this tendency was also present in the Protective and Defense Committee's way of organization, however, it became more apparent with the growth of the company.

As a first step, the people who had contributed their time in the beginning and worked for a nominal fee during the latter years of the Protective and Defense Commitee now became the paid officers of the company. In an attempt to build the volume of business, the company added a Sales Department. Under the Protective and Defense Committee, the landlord approached the Committee for his insurance needs. Now salesmen were hired by the company to prospect for landlords who did not carry insurance or who were insured with other companies. These salesmen were, in the main, Jews, with a few Italians to deal with the Italian tenement dwellers. Despite its reduced rates and its reputation for being very scrupulous in defending claims against its insureds, in its earlv days The Greater New York Mutual had a modicum of difficulty in obtaining new insureds, particularly outside of its usual customer pool of mainly Jewish landlords. A productive sales staff was a necessary condition of growth of the organization.

One of the possible reasons for landlords who were not members of the Association and, thus, were not insured by the Protective and Defense committee from its inception, to shy away from the mutual type insurance

company was the existence of the Assessibility clause in the policy. The Assessibility clause stipulated that the members or policyholders could be assessed for a proportional charge in excess of their initial premium, if the projection of aggregate claims proved to be inadequate. Therefore, the insurance was not obtained for a fixed fee. It seems that for some landlords whose houses were insurable by the mainline companies, the twenty per cent discount did not prove an adequate substitute for the certainty of fixed insurance costs. The Assessibility provision was exercised to rescue several mutual insurers in Brooklyn and this section of the contract constituted a real risk of increased costs to landlords. The function of the sales staff was to impress landlords with the quality of service rendered by the company. In 1945, the Assessibility feature ceased to be a problem as it was eliminated by statute from all New York State insurance policies.

It appears that the growth of the Greater New York Mutual and the attendant tendency towards bureaucratization demanded by the insurance function eventually presented the company with certain problems in its relationship with the insureds. During the years of the Protective and Defense Committee, there was an extremely close relationship between the Committee and members of the Association. It was a necessary condition of the

collective venture which was reinforced by their shared ethnic bond. In its early days of the company, emphasis continued to be placed on a close relationship with the insureds.

One of the early problems faced by the company was the defection of a portion of its insureds which resulted in a loss of business which they could ill afford. The defection was made possible by the opening up of alternative markets for the landlords. The provision of the insurance law which made the formation of the Greater New York Mutual Insurance Company possible, also allowed for the emergence of other companies under the same conditions. Within a short period of time, not only had several other legitimate mutual companies come into being, but several poorly financed, fly-by-night, taxpayers associations were formed to write landlord's liability insurance. Interestingly, all these alternate companies were also run by Jews. Because of their poor underwriting and extremely marginal, if not criminal, nature, these companies offered insurance at rates even below those of The Greater New York Mutual. According to the Real Estate News, the defection was caused by the feeling expressed by some landlords that, "our organization, because of its growth, was indifferent to the small owner."[4] In the late twenties, the small owners resented and complained about the rigid demands for building maintenance imposed on them

by the Inspection Department. The Real Estate News ran a series of articles about the danger of using alternate taxpayer insurance companies and about the value of obtaining insurance through a reliable source. The following excerpt is typical of the articles:

> When owners of real estate buy into the membership of the Greater New York Taxpayer's Association and into the insurance protection of the Greater New York Mutual Insurance Association, they are buying something more significant in that they purchase into the integrity that has so painstakingly been built into the Association, a part of which they become when their membership is accepted.
> ... they (i.e. the landlords) should always bear in mind that this company was built by the landlords for landlords, and is always sympathetic towards the realty owner. Membership and insurance in the company does not end with the monetary exchange, but extends itself farther into mutual bonds that only kindred interests can weld.[5]

In an attempt to continue the close relationship with insureds, the Greater New York Mutual Insurance Company opened branch offices in the Bronx and Brooklyn. These branch offices made accessibility to customers more possible, and, therefore, meant that they could provide better service. The provision of personal service was very important in those early days as there was growing competition not only from the fly-by-night companies, but also from the other legitimate taxpayer's associations which were forming in the Bronx and Brooklyn.

As the company grew and took on more and more of the operating characteristics of a regular insurance company, it started to employ brokers and agents to produce business. Originally, as we pointed out, the company added a sales division. The functional advantage of a sales staff was that the company was a direct writer. Therefore, no intermediary stood between the company and the insureds. With growth, however, it was more expedient to employ agents and brokers to produce business as the possible sources of business were expanded. With the introduction of the broker or agent, a middleman now stood between the company and the client. Most of these brokers were also Jewish. It seems that this lack of direct contact often interfered with the insured's remaining oriented to the good of the collectivity.

The lack of this direct relationship also interfered with the processing of claims in an expedient fashion, a necessary condition of the company's operation. The head of the Claims Department made this point in the Real Estate News:

> The writer, therefore, desires to impress upon property owners the necessity of making prompt reports to the insurance company. The practice of notifying brokers on the telephone concerning accidents, and the agent in turn notifying the company by letter is one which involves, at times, serious delays. Quite often in the transmission of facts by the broker the latter quite innocently supplies the company with inaccurate and incomplete

> details. In the interest of all concerned it would therefore appear that the most effective and desirable method of reporting accidents is the one by which the owner directly supplies the company with a formal written report so that it may promptly and effectively institute its investigation into the facts of the accident.[6]

It seems that the direct reporting of the accident functioned not only to afford the company more accurate information, but also to reestablish a closer relationship with the insured whose continued help was needed in case a lawsuit would develop.

One of the problems in the maintenance of this special type of close relationship between the company and the insureds appears to be built into the nature of the social interaction, particularly as the company expanded. Ideally, both the operation of an insurance company and the buying of insurance should take place within a social framework that is instrumental and affectively neutral. The Protective and Defense Committee made demands upon its insureds for an expressive type of loyalty; the landlord had to be more oriented to the good of the collectivity than to his own personal interests. The continued growth and health of the insurance company also required an expressive type of loyalty; buying insurance from The Greater New York Mutual, "does not end with the monetary exchange, but extends itself farther into mutual bonds that only kindred interests can weld."[7]

However, it appears that the company's claim to this type of loyalty was weaker than the Committee's claim and that it diminished with growth as new customers bought their policies from brokers and, for the most part, had an instrumental relationship with the company. Evidence of the difficulty in maintaining the cooperation of some insureds was apparent in the often repeated reaffirmation of the primacy of the collectivity as an overriding value. Owners of houses, said one ediorial, must cooperate with the collectivity if insurance rates are to be kept down. Unfortunately, said the editorial, some landlords regard the liability policy as a license to neglect their property.

> These thoughtless landlords assume the wholly unprincipled attitude that because they have paid an insurance premium, they are free to allow their buildings to develop into accident traps and these become favorable settings for real or fictitious accidents.[8]

The Company also devised graphic methods to communicate with the landlords. Monthly, issues of the Real Estate News carried photographs of buildings which had potentially dangerous defects. The articles explained why the conditions were dangerous and the proper way in which they should be fixed. Most of the articles included a warning that neglect would surely cause higher insurance rates for all and that landlords had the obligation to keep up their property. In addition,

> Many liability inspectors carry with them a portfolio of photographs depicting conditions of serious disrepair which gave rise to the occurrence of accidents, or because of the existence of such conditions, claims have been made for alleged accidents... Through the use of the photographs depicting such conditions, owners are more readily convinced that a certain condition exists in their building which might be dangerous to those who might be legitimately injured, as well as presents a favorable site for the illegitimate accident.[9]

Extension of Landlord's Responsibility

New laws and court decisions constituted one of the most important elements in the environment of the Greater New York Mutual Insurance Company. The Protective and Defense Committee came into existence because of a growing legal requirement that the landlord's be more responsible for their houses and an attendant withdrawal of mainline insurance companies from the risk of insuring Lower East Side landlords. The Greater New York Mutual was able to expand because the continuing increments in responsibility placed on the landlord by the legislature and the courts created a climate in which it became more and more necessary for the landlord to be insured.

The Tenement House Law of 1901, one of the factors leading to the eventual formation of the Protective and Defense Committee, was very limited in its ability to enforce its provisions. In 1927, after considerable pressure from social reformers organized tenants and

landlord's groups for a more adequate tenement house law, another commission was established to recommend changes to modify the existing regulations and to make them more responsible to the overall public good. As a result of the reports of this committee, the Multiple Dwelling Law was passed September 1, 1929. The Multiple Dwelling Law was more far reaching than the Tenement House Law of 1901 (amended 1903), but applied only to those buildings erected after the Law was passed, except for some specific cases where landlords were required to upgrade parts of pre-existing buildings.

Since the Cardozo decision in 1922 which abrogated the parts of the common law in favor of the tenement house dweller, gradually more and more liability for the upkeep of his premises has accrued to the landlord. It was recognized by Cardozo as well as other judges and, eventually, the State Legislature, that the tenement house dweller was a captive on the premises having little recourse for alternate living space and it certainly could not be assumed that the tenant was able to contribute to the maintenance of the apartment.

The Cardozo decision of 1922 was formally incorporated into the Multiple Dwelling Law of 1929. §78 of that law embodies the Cardozo decision. "Every multiple dwelling, including its roof or roofs, and all parts thereof, and the lot upon which it is situated, shall be

kept in good repair." As is the case with the enactment of many new laws, the courts were called upon to interpret its meaning through litigation. Many of the decisions handed down in cases tried on the basis of both the Tenement House Law, and the Multiple Dwelling Law substantially extended the liability of the landlord.

One of the factors which generated a number of cases surrounded the question of which portion of the building was to be considered the province of the landlord. The problem lies in the wording of the Multiple Dwelling Law. The difficulty in interpretation has arisen over the phrase, "and every part thereof." For a considerable time this statement was held to mean that in order for an object to be part of a multiple dwelling and the responsibility of the landlord, it had to be a fixture permanently attached to the building in such a fashion that it could not be removed without damage to the premises. If the object could be easily removed without damage to the building, then it was not properly a part of the building and did not come under the obligation of maintenance placed upon the landlord by the Multiple Dwelling Law.[10]

For the most part, these disputes related to the question of whether items such as ice boxes, refrigerators and gas ranges were indeed part of the building, whether the landlord had the obligation to keep them in repair, and whether injury caused by the defective operation of

one of these objects gave rise to liability of the landlord for negligence. There was considerable controversy and a variety of decisions as to whether any one of these items was a part of the apartment. Until 1944, it was generally held that these items and those of a similar nature were not part of the apartment and that they could not be considered as fixtures, and, therefore, that the landlord was not under obligation to repair them. For example, in the case of Cooperman v. Anderson, 285 N.Y. Supp. 376: 158 Misc., 155 (City Bronx 1935),[11] "the plaintiff was injured by a washtub cover which fell on her when she was washing clothes in the bathtub by reason of the looseness of the screws which attached the cover to the bathtub."[12] The case was decided on the theory that the landlord was not negligent in that

> in the present case there is no evidence that the washtub cover was dangerous when installed and that the landlord knew or ought to have known the probable results of danger. The danger, if any, resulted from the use and lack of repair."[13]

The court found for the landlord and held that, "the bathtub cover was not part of the tenement house and the landlord is not responsible for the failure to repair."[14] In the case of Kitchen v. Landy,[15] 215 App. Dov., 526 a stove was judged not part of the apartment and a tray in the gas range was excluded from being part of a multiple dwelling in the case of Mackintosh v. B and C Estates,[16]

19 N. Y. Supp. 2d 399: App. Term (1st Dept. 1940). In 1944, however, in the case of Herring v. Slattery,[17] 291 N.Y. 793 (1944), the Court of Appeals held that § 78 of the Multiple Dwelling Law applies to "fixtures or appliances such as cooking stoves, refrigerators, etc., supplied by the landlord" and that it is incumbent upon the landlord to keep all these items in repair or be liable for the occurrence of any accident.

Although the Cardozo decision clearly established that the landlord was responsible to the residential tenants in his buildings, it was unclear as to whether this liability extended to business tenants. After all, Cardozo clearly stated that "we may be sure that the framers of the statute when regulating tenement house life, had uppermost in their thought the care of those who are unable to care for themselves."[18] In 1931, in the case of Sticker v. Seril Realty Corp.,[19] 256 N.Y. 687 (1931), the Court of Appeals went beyond this in deciding that the landlord is responsible for maintaining that portion of a house used by a tenant for business purposes.

The courts have also extended the liability of the landlord to include guests of tenants. Prior to these decisions, the liability of the landlord to guests of the tenants was very limited.

> The liability of a landlord to third persons who are on the demised premises at the invitation of the tenants is, as a general rule, no greater than his liability to the tenant. He is not, as a general rule, liable to a third person, such as members of the tenant's family, employees, guests, etc., for personal injuries caused by the unsafe condition of the demised premises, and this rule of non-liability is held to extend to structural defects.[20]

New added responsibility of the landlords to persons other than tenants when on the premises was particularly underlined in a series of decisions about accidents in the backyards of tenements when they are used by children as playgrounds. When a landlord grants permission, either expressed or implied, for children to play in the yard, the courts have made it incumbent upon the landlord to protect the children. In the case of Peterson v. Crawford,[21] in which a child was hurt when bricks in the retaining wall in a tenement house fell on him, the court found that

> ....there was evidence sufficient to establish that the infant plaintiff who was a playmate of a tenant was an invitee and that the yard appurtenant to the defendant's apartment had been used for a long time by the plaintiff and the children of the tenants, so as to make it a place used with the knowledge and consent of the defendants.[22]

the courts also indicated that:

> ...there was ample evidence to support a finding that the defendants should have anticipated that the infant would be likely to play as he did and that the defective conditions of the retaining wall in the

yeard might subject the plaintiff to injury.[23]

In the course of building maintenance, landlords, of necessity, employ independent contractors. The question of the landlord's liability as a result of the work of the independent contractor whom he hires, was raised in several cases starting in the 1930's. In 1934, a tenant was injured by a poorly installed electric fixture and sued the landlord. (Selden v. Nixon Realty Corp.,[24] C. Ct. N.Y. 134, 153 Misc., 560, 275 N.Y. 438. On appeal in 1939, the court found that the landlord was responsible for the work of the independent contractor as "the duty to keep the premises in repair is non-delegatable, therefore, the negligence of a contractor in making repairs is chargeable to the landlord."[25] Not only was the landlord liable to tenants for the work of the independent contractor, he was also responsible to the public for an injury caused by the work of a contractor where the work "contracted for must necessarily create a dangerous or an unreasonable interference with the public highway."[26] This was decided in the case of Riedel v. Karpen,[27] 291 N.Y. 802 (1944), in which the plaintiff, a passerby on the public highway, i.e., the street in front of the defendants house, was injured by a panel of glass which had been negligently installed the day before by an independent contractor. The courts also found that the

liability of the landlord extends to the employees of the independent contractor who might be injured in the course of doing the work for which the contractor was hired. Rohs v. Weil,[28] 271 N.Y. 444 (1936).

Another indication of changes in societal definitions of the landlord's responsibility was manifested in Chapter 907, §234 of the Real Property Laws of 1937, which prevented the landlord from inserting hold-harmless clauses in a lease which

> exempts the lessor from liability for injuries to persons or property caused by or resulting from the negligence of the lessor, his agents, servants, or employees, in the operation or maintenance of the demised premises or the real property containing the demised premises.[29]

These clauses are void in that they are against public policy. Prior to this change it was held that "stipulations between a landlord and tenant determining which shall bear a loss rising from non-repair or misrepair of the tenement and which shall be immune, are not matters of public concern."[30] An editorial in the Real Estate News spoke to the extensive responsibility this would place upon the landlord as it had previously been the custom to place hold-harmless clauses in leases.[31]

An article in The Spectator,[32] the publication of the Rhode Island Insurance Company, cogently summarizes this trend towards dramatic increases in landlord's liability.

> The common law liability of the landlords to tenants and third parties has been so modified and enlarged by statute and judicial decision that there is now little resemblance to the duty with which a modern property owner is chargeable and that of a nineteenth century land holder. Of course, the changes and modifications which have been made are all praiseworthy and each one marks a milestone in a constantly improving social pattern. Formerly, and under the original scheme of things, many persons whose rights were outrageously violated, were left uncompensated for their grievances against landlords who kept their overhead low by refusing to make the improvements which decency and common sense demanded, but which were not required by the law.
>
> Today the law requires that property owners not only be chargeable with the responsibility of keeping their premises in repair, but also imposes the duty of seeing to it that such repairs are made in a prudent and safe manner.[33]

Throughout the 1930's liability, insurance rates continued to rise piecemeal and in May of 1939, there was a complete city-wide revision of rates taking into account the experience of all companies.

> In certain sections of the City, rates for personal insurance coverage were increased; in others they were decreased, while in some instances they remained unchanged. The net overall effect of the revision produced a city-wide increase of 2.5 per cent. Manhattan experienced an increase of 7.7 per cent.[34]

Editorials written in the Real Estate News by officers of The Greater New York Taxpayer's Mutual suggested that rises in rates were a direct result of the courts' interpretation of the Multiple Dwelling Law and the

additional statutory obligations that had been placed upon the tenement house owner.

> "Recent decisions in the appellate courts have greatly enlarged and extended the liability of the landlord in personal injury litigation, which still comprises about 90 per cent of the calendar and trial work of the courts."[35]

In addition, the liberality of juries in accident cases was also a factor in higher rates. The editorial went on to point out that the liability which the legislation and the courts had placed upon the landlord was reflected in the added obligations of the insurance companies which had undertaken to indemnify the landlord.

> ...and with each increase in liability involving a correspondingly larger payment of money damages, it is a foregone conclusion that the losses so sustained must be reflected in higher insurance costs, since it is conceded as an elementary principle of rate making that rates follow risks. Thus the greater the risk and the larger the expansion of liability for such risks, the greater is the cost of furnishing that type of insurance which covers the particular risk.[36]

Expansion of Function

Throughout the years there were repeated suggestions that The Greater New York Mutual expand into areas of insurance other than landlord's liability. Initially, some members of the Board of Directors suggested that the Association might establish a fire insurance company to

operate parallel with the casualty or liability company. That idea was vetoed. Fire insurance companies were willing to write in Jewish areas. In the thirties, many members of the Association pressured the Company to write the entire roster of liability insurance needed by landlords including janitor's compensation insurance. This idea was also rejected.[37]

> Our experience and long years of training in this field has made us the outstanding specialist in one of the mos specialized lines of insurance. It is, therefore, our conviction that the interests of our policy holders would best be served if we continue to devote our talents so that we may afford property owners a continuance of the high type of service that has come to be expected of us.[38]

However, in 1939, because of a court decision which further extended the liability of the landlord by making the "seller of a building responsible for defective conditions arising during the ownership, although the injuries occurred after the transfer of title,"[39] The Greater New York Mutual filled the gap in the landlord's protection by issuing a Grantor's Protective Liability Policy.

During the war years, the company decided that as a general principle it would "unquestionably and unqualifiedly indemnify insureds to the limits of the liability expressed in their policies,"[40] by issuing policies which did not contain the war risk exclusion form

which was added to many of the stock company policies. To do any less would not be in keeping with the responsibility which the company owed to the landlord. The addition of the war risk exclusion form placed the landlord in jeopardy as several new situations arising from the war created unaccustomed hazards in apartment buildings. For example, there were accidents due to blackouts. These accidents presented a legal problem in the early days of the war, as there was considerable doubt as to whether an air raid warden could order the hallway lights extinguished in view of the fact that the Multiple Dwelling Law required them to be on. Or again, there were the exposures which landlords faced when donating their premises for the use of the civil defense forces. As the people coming into the apartment house were considered invitees, the landlord was responsible for their safety. In the early days of the war, there were many of these cases. In one instance a landlord was sued for $100,000 in the death of an air raid warden who fell down a flight of stairs which led to the boiler room which he mistook for the men's room. These cases had to be defended until the federal government recognized the situation and passed an emergency war bill which covered many of these situations.

It was not until 1945 that The Greater New York Mutual moved away from its position that it would only

write landlord's liability policies for third party bodily injury and consulted the membership of the Association about the desirability of adding property damage liability insurance.

> Until recently, The Greater New York Taxpayer's Insurance Company was unable to afford such coverage because of the limitation of charter power. It has now been licensed by the Insurance Department to afford this form of protection in addition to its customary, well known landlord's liability insurance and it is anticipated that it will be in a position to accept applications for such coverage after March 15, 1945.[41]

Accompanying this announcement was a printed application which the members could forward to the company stating that they thought the company should write this business and that they would like to take advantage of the offer. It seems that one of the functions of this announcement was to reinforce the special relationship between the company and the association.

Shortly after adding the property damage liability line, the company also decided to include water damage liability. The addition of this line of insurance "broadened the protection which most old line companies offer property owners under the customary property damage form of policy."[42] One of the reasons this type of insurance was added seems to be that many of the policy holders and insurance brokers assumed that they were covered for water damage liability under the standard

policy. These policy holders were very surprised to learn that this was not the case.[43] The Greater New York Mutual felt that by including this type of coverage, they could afford better protection to the landlords at a price considerably lower than that charged by the regular insurance companies, and compete in the market with these companies.

Position of The Greater New York Mutual vis-a-vis the Insurance Market, 1930 - 1950

During the first twenty years of its existence as a licensed insurance company, The Greater New York Mutual remained a conservative, stable insurance carrier.

A clear picture of the relative size and activity of the Greater New York Mutual can be best gained by observing its growth patterns. Statistics for the period 1930 to 1950, Table 1, demonstrate that for more than twenty years following its incorporation as an insurance company in November of 1927, The Greater New York Mutual Taxpayer's Insurance Association was true to its beginning as The Protective and Defense Committee of The Greater New York Taxpayer's Association. Devoting itself exclusively to Public Liability insurance for its founding clientele, the company experienced a modest growth in the twenty year period of 103 per cent from $1,029,000 to $2,092,000 as per Table 2. This may be compared to a nationwide growth

of liability premiums for all mutual companies of 975 per cent, from $4,000,000 to $43,000,000 as shown in Table 3. This is an interesting comparison as The Greater New York Mutual, a small company, actually commanded some 25 per cent of the mutual General Liability premium market in 1930, as shown by a comparison between Table 2 and Table 3. By 1950, however, it had dropped to less than 7 per cent of the premium market. At least part of this disparity in growth appears to be a function both of the ever increasing need for liability insurance itself and the appeal of the mutual insurance concept as an efficient means to meet this need, particularly where the need is specialized as in the case of the landlords of the New England mill owners.[44] The nationwide statistics put this in sharper focus; the liability premiums of stock companies increased 445 per cent, again a reflection of the continually expanding need for this type of coverage, but the mutuals experienced a 975 per cent growth figure in the same twenty year period, as may be determined from Table 3.

In order to perceive the position of the Greater New York Mutual vis-a-vis the entire insurance market, it is necessary to consider the combined stock and mutual statistics nationwide. In 1930, The Greater New York Mutual garnered 2.5 per cent of the nationwide General Liability premiums, stock and mutual combined. Each

successive five year period, this proportion diminished until it reached 1.1 per cent in 1950 as can be seen in a comparison between Table 2 and Table 3.

A comparison of the growth patterns of The Greater New York Mutual shown in Table 4 with the nationwide trends, shown in Table 5 for five year intervals, reveals more specifically the points at which liability insurance expanded. From 1935 to 1940, The Greater New York Mutual increased its premium by 49 per cent, an increase consistent with nationwide liability premium trends. From 1939 to 1940, The Greater New York Mutual increased only 17 per cent, compared to a nationwide increase of 68 per cent, which may be determined by table 3, as the liability insurance community responded to the industrial insurance needs of the prewar years while the Greater New York stayed with its tenement house base. During the war years of 1940 to 1945, the nationwide premiums increased another 41 per cent, but The Greater New York grew only 17 per cent, again revealing the same patterns as in the previous five year period. From 1945 to 1950, the industrywide premium increase was 76 per cent, 95 per cent for the mutuals, but only 75 per cent for The Greater New York. With other insurance companies expanding their liability insurance writings in all other areas of the economy, The Greater New York cautiously explored the market for landlord's liability insurance for apartment houses a cut

above its previous tenement house milieu.

A 2.5 per cent market share of business in 1930 and 56 per cent reduction to 1.1 per cent of the market share in 1950, at first glance, does not seem particularly impressive. However, considering the size of the insurance industry nationwide and the number of companies involved in writing insurance, it certainly seems worth commenting upon. As we pointed out, the early twentieth century was a period of extensive social change, one aspect of the change was the increased legal responsibilities which landlords had for their tenants and other people who entered their premises. The influential Cardozo decision, whose moral tone foreshadowed changes throughout the country, initially spoke to the problems faced by the poor in the New York tenement houses. The 2.5 per cent of the General Liability market was specifically insurance on tenement houses. It was a small but impressive niche in the huge insurance market, carved out first by The Greater New York Mutual and subsequently entered by other New York mutual companies, which changes in the law and the Cardozo decision had both forced and facilitated. The diminution of The Greater New York to 1.1 per cent of the market share by 1950 merely shows that the industry was growing around it with new needs and new legal requirements of the economy in general.

Conclusion

From 1927, when the Protective and Defense Committee of the Greater New York Taxpayer's Association was transformed by the State of New York charter into an insurance company, until 1950, the Greater New York Mutual Insurance Company managed to attain a position of financial integrity and respectability within the insurance industry. One of the main characteristics of the company, which enhanced its reputation, was its essential conservatism. The company initially sought to confine its activities to landlord's liability insurance, the need for which had precipitated the Greater New York Taxpayer's Association into the field of insurance. The few expansions of coverage which the Greater New York Mutual allowed were related to the new needs of landlords which were brought about by expanding legal definitions of the landlord's responsibility.

Eventually, however, structural changes in the environment of the insurance industry, rather than the changing needs of the landlord, forced the company to change and expand its offerings.[45]

During the years since its transformation from the Protective and Defense Committee to a licensed insurance carrier, the company moved towards bureaucratization and experienced some problems attendant upon this change. The

operation of the insurance company was dependent upon the willingness of the membership to exchange personal freedom for the good of the collectivity; without this exchange the mutual concept could not function effectively. However, as the years went on and the company grew larger, the new insureds did not have the same close relationship with the company, and, therefore, did not have the same moral constraint to act for the good of the collectivity.

Throughout the years, the company devised many ways to enforce the value of the primacy of the collectivity from moral suasion to the withdrawal of services. These tactics were more successful at some times than at others. For example, during the depression when money was not readily available, there was a wholesale defection from the company to other, newly formed mutuals, some of which were not legitimate, or to self insurance, i.e., in this instance undertaking the risk of being uninsured. The option of being uninsured, however, became less and less an acceptable alternative as more and more liability accrued to the landlord with each passing year following the Cardozo decision of 1922.

Essentially, the Greater New York Mutual was an innovative company in terms of its operating procedure. It valued a direct relationship with its insureds, and it tried to maintain this in spite of the presence of the insurance broker in an interface position between the

two. The mainline companies, for the most part, deal exclusively through the agent or broker. The company also developed an extensive Inspection Department and would not issue a policy to a building which did not meet the Department's standards. The mainline Property/Casualty companies adopted this technique in liability insurance much later than did the Greater New York Mutual. Alternately, however, the company was extremely conservative from a financial point of view as we have shown.

An interesting footnote to the story of the Greater New York Mutual Insurance Company is the fate of the Association which created it. The Greater New York Mutual Taxpayer's Association continued its work as a representative of its landlord members until the early seventies, when it ceased its activities. Sociologists have observed that one of the important functions of a voluntary association, for a democratic society, is to act as a link between the individual and the political power structure.[46] This appears to have developed into one of the main purposes of the organization in that it continued to present the landlord's viewpoint to the political power structure in an atempt to influence it for the good of the landlord. It also interpreted the requirements of the law to the landlord as, very often, these requirements were confusing and contradictory. Moreover, it seems that this

politicization was a logical outcome of its origins as a defensive organization.

In the next chapter we will consider two other Jewish mutual insurance companies, the Consolidated Mutual of Brooklyn and The Security Mutual of the Bronx, which also wrote landlord's liability insurance.

Chapter IV

Footnotes

1. The information in this chapter comes from the interviews. For reasons specified in the methodological appendix, I did not quote them directly but incorporated all the material into the text.

2. Real Estate News, February 1928, p.2

3. Real Estate News, September 1927, p.8

4. Real Estate News, August 1929, p.7

5. Ibid., p.7

6. Real Estate News, March 1947, p.90

7. Real Estate News, August 1929, p.7

8. Ibid., p.7

9. Real Estate News, August 1945, p.27

10. Helfenstein, Op.Cit., p.11

11. Cited in Helfenstein, Op.Cit., p.13

12. Ibid., p.13

13. Ibid., p.13

14. Helfenstein, Op.Cit., p.12

15. Ibid., p.12

16. Ibid., p.14

17. Ibid., p.12

18. Altz v. Lieberson, Op.Cit., in McNiece, Op.Cit., p.840

19. Helfenstein. Op.Cit., p.15

20. New York Law of Landlord and Tenant, Op.Cit., p.790

21. Real Estate News, July 1942, p.229

22. Ibid., p.229

23. Ibid., p.229

24. In Helfenstein, Op.Cit., p.71

25. Ibid., p.71

26. Ibid., p.71

27. Ibid., p.73

28. Ibid., p.73

29. Real Estate News, October 1945, p.343

30. New York Law of Landlord and Tenant, Op.Cit., p.783

31. Real Estate News, May 1939, p.158

32. The Spectator, May 23, 1946, p.38

33. Ibid., p.156

34. Real Estate News, May 1939, p.159

35. Ibid., p.156

36. Ibid., p.158

37. The Association did this independently through an arrangement with the New York State Fund.

38. Real Estate News, November 1940, p.372

39. Real Estate News, July 1939, p.226

40. Real Estate News, March 1942, p.180

41. Real Estate News, February 1945, p.80

42. Real Estate News, October 1945, p.342

43. Ibid., p.343

44. For a discussion of the New England Mill Owners see Bainbridge, Op.Cit., Chapter 2.

45. These will be discussed extensively in Chapter VII.

46. Rose, Op.Cit., pp.213-252.

CHAPTER V

GROWTH OF AN IDEA: CONSOLIDATED MUTUAL AND SECURITY MUTUAL INSURANCE COMPANIES

With the formation of the Protective and Defense Committee, The Greater New York Taxpayer's Association, formed as a defensive organization in 1908, moved into an innovative experiment with insurance in 1914. Essentially, this Committee operated as an insurance company providing Landlord's Liability Insurance for the predominantly Jewish landlords of the Lower East Side whom the mainline insurance companies shunned.

In 1927, the State Insurance Department promulgated an amendment to the New York State Insurance Law which permitted a Taxpayer's Association to provide its membership with Landlord's Liability Insurance if the Association applied for a charter as an insurance company. In this way, the State Insurance Department could regulate their activities. The legislation which enabled the Protective and Defense Committee to become a formal insurance company also provided the opportunity for other landlords to form their own groups and undertake

parallel ventures. Several informants suggested that the idea of Taxpayer's Associations providing their own insurance spread several years prior to the legislation, but the majority of these Taxpayer's Associations were not particularly successful in that they were underfinanced and lacked the expertise for such an insurance undertaking. They also lacked a solid and cooperative membership body willing to aid in the venture. The enactment of the law was crucial in that it provided the mechanisms for the formalization of the taxpayer's organizations around the insurance function.

Among the new taxpayer's associations that formed during that period, there were three groups in Brooklyn, The Consolidated Taxpayers Association, The Williamsburg Taxpayers Association, and the Brooklyn Taxpayers Association, and one in the Bronx that eventually developed into full scale mutual insurance companies similar to the Greater New York Mutual. Within their first few years, however, the three Brooklyn companies each failed and the Insurance Department decreed that they consolidate as a condition of remaining in business. Consolidated Mutual Insurance company emerged as a result of this consolidation. These associations had as their basic membership Jews who had either migrated out of the Lower East Side or had been brought up in the outlying boroughs, and who had invested in real estate in these

areas. These landlords were affected by the same requirements for third party liability insurance.

In this chapter we will discuss the patterns of settlement of Jews in Brooklyn and the Bronx which were a necessary condition for the emergence of the Jewish landlord with limited holdings. We will also present a brief historical picture of the development of these other companies which also specialized in landlord's liability insurance and compare their growth patterns with that of the Greater New York Mutual for the twenty years between 1930 and 1950.

Jewish Settlement in Brooklyn and the Bronx

The settlement of large numbers of Jews, mainly East Europeans, outside the confines of the Lower East Side into other areas of New York, started in the early 1900's. The outmigration from these areas was facilitated by the opening of the Williamsburg Bridge in December of 1903, the Manhattan Bridge in December 1909, the expansion of the West Side subway into Brooklyn and the general improvement of ground transportation within this borough. "Perhaps the most traveled route out of the East Side was to Brooklyn, especially the Brownsville, New Lots and East New York sections."[1]

Jews first settled in the East New York section of Brooklyn in the 1850's. A majority of these early

settlers were of German extraction and were relatively affluent merchants, shopkeepers and skilled artisans. The expansion into nearby Brownsville was slow as it was seen as a farming community. Jews acquired property in Brownsville as early as 1886.[2] Many well-to-do Jews bought property in Brownsville, and, like Aaron Kaplan[3] they were so enamoured of the new area and so certain of its potential as valuable real estate property, that they convinced their friends to buy property. However, it was not until the last decade of the nineteenth century and the first two decades of the twentieth century that the growth became very rapid.

> By the early 1890's some four thousand Jews had settled in and near the Brownsville areas; by 1905 about fifty thousand. During the first four or five years of the century, land values rose spectacularly and immigrant Jews owning a few lots in Brownsville now became affluent realtors.[4]

Howe, in his description of the growth of Brooklyn as a center of Jewish population, quotes a 1903 account of the growth of the areas and the manner in which the real estate values soared:

> ...everybody laughed when you mentioned Brownsville. But today business is booming. They are buying and selling real estate like mad. Lots are sold by the hundreds; houses are sold and resold every minute. You can buy a house for four thousand dollars with a down payment of eight hundred dollars. A few days later you can sell it and make a profit of a few hundred dollars.[5]

The same account goes on to predict that "Brownsville will never have tenements. The houses are three stories, apartments have four or five rooms, with a bathtub for the kids."[6] However, that idyllic notion did not completely materialize. Between 1901 and 1907, hundreds of tenement houses were erected in Brownsville to provide affordable housing for the newcomers. Solid blocks of buildings were put up on Pitkin Avenue and Amboy Street.

An article in the Jewish Daily Forward, one of the sponsors of the 1907 rent strike on the Lower East Side graphically addressed the problem of the encroaching ghetto in the new areas of Brooklyn and the Bronx. The writer set out to explain the evolution of the ghetto to the Yahudim, the upper class German Jews who reprimand the poor by saying that "Jews should get out of cramped ghetto quarters," but who does not understand that, "such a mass movement cannot be made only by a man's will to do so." According to the article, the Jewish workers are forced to live in a ghetto no matter where it is located as, "the ghetto maker is already in the new area waiting for the workers and soon inaugurates his reign of darkness."[7] The Bronx and Brooklyn, the writer went on to point out, were still country areas at the turn of the century.

> ...the migration to these places could have been a deliverance from cramped ghettos. Living conditions there could have been the same as in suburban areas where rent was cheaper.... But, not in New York. Here people are more practical. The cut throats

> have seen in advance that the workers will move to these new areas en masse and they hurried to turn the suburbs into cities and hurried to build up the new Bronx and Brownsville in the style of terrible Hester Street like settlements.[8]

Although New York passed the Tenement House Law in 1901, which regulated the construction of houses containing three or more dwelling units, many of the houses in Brooklyn and the Bronx were started before the code went into effect and did not meet the minimum standards.[9] As more and more people moved into the Brownsville and East New York sections, they became extremely overcrowded and the overflow population migrated into adjacent areas of New Lots on the East and Flatbush on the South.[10] Because of a cheap, non-tenement type apartment house erected in new areas, it was anticipated in the 1930's that these areas would soon become the center of the lower middle class Jewish population. Harry Strongen, one of the pioneers in the formation of the Consolidated Mutual Insurance Company, was in the real estate business in Brownsville, and was one of the first real estate investors to encourage expansion into Flatbush.

Generally, the experience of the Jews moving into the new are of Brownsville as well as the other areas of Brooklyn was met by some measure of hostility from their Christian neighbors who fled areas in which Jews made any significant incursion. As early as 1892, the Brooklyn Eagle editorialized on the newcomers and their effect on the indiginous population:

> Since their advent, (i.e., the Jews) to this portion of town, not a day has passed without a fight of some kind. In fact many an unfortunate Christian who has had occasion to pass through the streets of Brownsville at night has been roughly handled.[11]

Many such editorials in the Brooklyn Eagle expressed the sentiment that the Jewish areas were not safe to enter, particularly for non-Jews, reflecting and exacerbating sentiments of anti-semitism which were a factor in the New York of the early twentieth century. Eventually, this hostility would be expressed in redlining, i.e., the denial of certain types of insurance to the owners of property in these areas.

The Bronx soon joined Brooklyn as an important center of Jewish settlement. Like the early Jewish settlers in Brooklyn, the Jews who migrated to the Bronx in 1540 were of German and Hungarian background. Those who settled in the Bronx and had a stake in the further development of this new area actively recruited new migrants. The Baron de Hirsh Fund actively encouraged settlement by buying sixteen lots on 137th and 138th streets for $69,000 for the construction of model tenements and clothing factories.[12] Here, as in Brooklyn, new sections went up almost overnight to satisfy the ever increasing demand for new homes. Prior to the annexation of the Bronx to the City of New York in 1898, it had consisted of small houses in small settlements. With annexation, however, electric

street railroads (trolley car lines) were built which opened the Bronx to a great deal of growth related to the availability of mass transportation.

Although the extension of the subway system took place in the late 1890's and there were Jews living in the Bronx by that time, it was not until somewhat later that extensive growth in the number of Jews migrating to the Bronx took place.

> A year or two after the trek to Brownsville, immigrant Jews started moving to the Bronx. Visiting the Bronx in 1903, a Yiddish journalist found it a "beautiful area... a suburb that could have sun, air and cheaper rents, but the greedy landlords, knowing the workers will have to move uptown, are putting up Hester Street tenements. Go take a look - the Bronx is becoming our new ghetto."[13]

By and large, the tenement house growth was limited to the lower East Bronx along the trolley lines. As Howe points out, "sections of the East Bronx, especially working class streets like Simpson and Fox, were hardly more tolerable than the East Side, but other areas did provide better housing, ..."[14] The Bronx tenements, except for the few model houses that went up periodically, were fashioned after the cheap flats in Harlem, i.e., a four or five story building with four families on a floor. When tenements were built in a street, occupants of small one family homes were driven out, the property values declined and the street was subsequently bought up by builders of tenements. Thus, the Lower Bronx soon

incorporated the ills of the Lower East Side. Growth of the Bronx was also unprecedented; from 1890 to 1900, the population increased from 74,085 to 200,547, with much of it crowded into the tenement house districts.[15]

In a process very similar to that in Brooklyn, Jewish small businessmen as well as some working class people, were among the investors in Bronx real estate. The poorer among them owned or leased tenements while the wealthier owned numbers of tenements or more desirable buildings in other sections of the Bronx.

The Consolidated Mutual Insurance Company in Brooklyn and The Security Mutual of the Bronx

The Consolidated Mutual Insurance Company was chartered by the State of New York in 1933,[16] literally as a consolidation of several smaller companies, The Consolidated Taxpayers Association, The Williamsburg Taxpayers Association and the Brooklyn Taxpayers Association. The story of Consolidated Mutual goes back to 1927, when these three small Taxpayer's Associations applied to the State Insurance Department for licenses to enable them to provide their membership with the same type of insurance coverage which the Greater New York Taxpayer's Association offered to its members. These new Taxpayer's Associations formed in geographically distinct, largely Jewish areas of Brooklyn. The Consolidated

Taxpayer's Association's membership was concentrated in Brownsville and East New York, The Williamsburg Taxpayer's Association, as its name implies, served the Williamsburg area and the Brooklyn Taxpayer's Association attempted to serve new areas of Brooklyn, such as Flatbush. Each of these groups received its charter as an insurance company in 1927 and thus became regulated by the State Insurance Department.[16]

An interesting question arises when considering the development of the three Brooklyn Taxpayer's Associations in the late twenties and an analogous situation in the Bronx, where one company was formed out of several smaller companies, namely, why did these landlords not respond to the original conflict situation in 1907 in a manner similaer to that of the landlords on the Lower East Side? After all, Brooklyn landlords were also affected by the initial rent strike in 1907. Perhaps the reason for the lack of initial reaction was a function of the fact that, at least from the published reports, the Brooklyn rent strike did not seem as personally threatening as was the strike on the Lower East Side. The strike in Brooklyn was managed by the Pants Workers' Union,[17] and while their rhetoric mirrored that of the Socialist party on the East Side, their actions seemed oriented more toward settling the strike rather than toward using the strike as a political weapon.

In addition, it seems that the landlords in Brooklyn settled their differences with the tenants with more facility than did the landlords on the Lower East Side. When the strikes in Brooklyn were reported by the Jewish Daily Forward,[18] the articles usually contained information that the strike was settled or that settlement was near as a committee was meeting with the landlord. Although mass meetings were held and many dispossess notices were sent, the Brooklyn strike did not seem to have the same dimentions as did the strike on the Lower East Side. There is no indication that in the Bronx Jewish landlords were affected by the strike and it seems quite possible that, if the strike did spread to the Bronx, it was certainly not widespread.

Another question arises relative to the rather delayed reaction of the landlords in Brooklyn and the Bronx to the withdrawal or outpricing of landlord's liability insurance in the 1914 emergency period. Initially, it seems that landlords in Brooklyn and the Bronx who were affected by the withdrawal of the mainline stock companies, joined the Greater New York Taxpayer's Association and derived their coverage from the Protective and Defense Committee. The Real Estate News,[19] in January of 1920, said that many of its members were in Williamsburg and other sections of Brooklyn. In the Bronx, the membership of the Association grew so large

that by 1929, a Bronx office was opened at 344 East 149th Street, the heart of the tenement house district, to better service the membership.[20] There was so much activity in the Bronx that the office retained a lawyer to help the landlords solve their emergent problems. Various informants have suggested that the emergence of the other Taxpayer's Associations were a function of a fair amount of rivalry. Some of the landlords involved with the Greater New York Mutual who lived and worked in Brooklyn or the Bronx decided that they could do the same thing and do it on their own terms. The idea was particularly appealing with the possibility of forming a licensed insurance company.

These three small companies, no matter why they were formed, lacked the extensive history of the Greater New York Mutual and, certainly, as Taxpayer's Associations they did not perform the broad spectrum of services for their membership. And, perhaps most important in terms of the potential for the successful operation of an insurance company, as the new taxpayer's associations were very small, they lacked substantial capital resources. Without capital resources, an insurance company does not have the capacity to build up the reserves required to pay claims or to fight claims in court.

These companies operated independently for three to four years during which time they realized the limitations

of their original boundaries and attempted to expand their territories by competing for business throughout the borough of Brooklyn. However, the expansion of territory did not substantially improve their financial standings. Economic conditions in the country were bad and many landlords were forced to run the risk of operating without insurance. Many fly-by-night companies opened and provided insurance for preposterously low rates as they did not pay claims and a surprisingly large number of landlords sought insurance from them.[21] Interestingly, informants indicate that most of these questionable companies were Jewish as well. These fly-by-night operations menaced the newly emerging Taxpayer's insurance companies in Brooklyn and in the Bronx as much as they interfered with the well established Greater New York Mutual. Within a short span of time, however, the State Insurance Department shut down the fly-by-night operations.[22] Even without the competition of these unlicensed companies, as financial conditions in the country continued to deteriorate these three companies could not garner enough business to accumulate the requisite reserves to continue functioning. As a result of their inadequate reserves, they were taken over by the State Insurance Department and put into rehabilitation.

It is interesting to observe that, at this juncture, the State Insurance Department had two possible recourses

to action: to order the companies into rehabilitation as it did or to liquidate the companies entirely. Liquidation would have been a reasonable action as the companies' reserves were inadequate and they were having difficulty meeting their obligations. However, according to one informant who was involved in the proceedings, the Insurance Department was willing to extend the resources required for rehabilitation of these small companies as it recognized the need for the existence of alternate sources to write landlord's liability insurance.[23] The established companies could not be compelled to write the insurance and, without the protection, landlords could not manage their property with impunity. Thus, the Department could offer the landlords no better alternative than insuring themselves through collective action.

The manner in which The Insurance Department rehabilitated these small companies was quite simple. At that period, mutual companies had the right to assess their policy holders a certain percentage of the premium if the company's obligations could not be met. This was one of the drawbacks of mutual insurance plans; the cost was variable rather than fixed and those insureds who operated in a very marginal way and needed the discount offered by the mutual companies could ill afford the assessment. The policies of these Brooklyn companies allowed for a fifty per cent assessment of one year's

premium. The Insurance Department called a meeting on the rehabilitation and it was decided that each policy holder must contribute this fifty per cent assessment. Those who refused to meet their contractual obligations were brought to court, a lien was placed on their buildings and the money was collected at the sale of the property. Although this was not a common occurrence, a few of the landlords operated their buildings on so small a margin that they were not able to absorb this extra cost.

In addition to collecting the assessment, the Insurance Department met with people who had outstanding claims against the companies. In light of the condition of the companies, many of the claimants settled their suits for a small percentage of what they had originally hoped to collect. Finally, the Insurance Department insisted that a condition of the rehabilitation must be the combination of the three companies into one operation which would be financially viable. As the Consolidated Mutual Insurance Company was the largest and according to informants its officers had the most political power, the other companies merged into it on May 1, 1933.

After rehabilitation, The Consolidated experienced a period of internal conflict deriving from the fact that the new organization was composed of people who had been the managers of their own companies and refused to accept a subservient position in the new enterprise. Some infor-

mants suggested that there ensued an impressive struggle for power between two warring factions represented by two families, each of which had controlled their own company prior to the Insurance Department's intervention. This conflict somewhat impeded the development of the company in the year after rehabilitation.

By 1934, however, the conflict was resolved when one of the contenders, Harry Strongin, gained control of the company and ousted those people whom he perceived as impeding the progress of the organization. Strongin was committed to the establishment of a strong respectable insurance company in Brooklyn. For the remainder of his time in office, Strongin and his wife were in complete autocratic control of the organization. His reputation in the field was as a despot and the direction of the company was strictly a one person operation.

Born in Manhattan in 1889, Harry Strongin moved to Brooklyn when he was young and entered the real estate business feeling very strongly that Brooklyn should be a commercial center. He was one of the first developers of Pitkin Avenue and was instrumental in the planning and construction of the East New York Terminal providing extensive storage facilities which would help realize the expansion of Brooklyn as a commercial area.[24] Because of his connections with the growing construction industry in Brooklyn (he was Vice President of the Associated Builders

of King County), the Consolidated Mutual was able to obtain business not only from the small Jewish landlords who needed liability insurance, but also from the builders who provided access to larger accounts with concomitantly higher premiums. Although the construction industry was largely Italian, a substantial portion was Jewish, and it was the Jews who were the early customers. Furthermore, because of the depression and the default of many building owners on mortgages, the Consolidated Mutual was able to buy up brownstones in Brooklyn from the banks, and, in addition to using these buildings for offices, when the economic conditions improved many of these buildings provided the company with its needed surplus capital.

Because of the commercial nature of some of the larger insureds which Strongin was able to cover and the requirements imposed upon the newly formed company by the Insurance Department, employees with some expertise became necessary. Prior to the merger, most of the functionaries in the small companies were fairly knowledgeable in the field of real estate, but their insurance expertise derived from on-the-job training. When the companies merged, the depression was in full swing and there were many experts in insurance who were unemployed; some of these were hired to provide the needed expertise. An outside comptroller was also hired to help formalize the system under which the new company would operate.

Approximately 99 per cent of this original group was Jewish. However, the company started changing its ethnic composition in about 1946 with its expansion into other areas of insurance which required expert underwriters. These new employees were recruited from the mainline insurance companies and tended to be either Italian or Irish.

The Production Department of the Consolidated Mutual which was responsible for expanding business and maintaining good relationships with the insureds, was originally composed of salesmen in a manner similar to that of the Greater New York Mutual. These salesmen were predominantly Jewish and many spoke Yiddish. It was recalled that one or two Italians were also on the early staff and canvassed the Italian neighborhoods. However, very early in the history of the Consolidated Mutual, the role of the salesman was eliminated. The impetus for the change came from the producers rather than the company, although it was a satisfactory arrangement to both parties. Those men who had been hired as sales personnel and had achieved some modicum of success in producing business for the Company, went into business for themselves as insurance brokers.

The move to separate the producer from the operation of the business structurally seems to have several advantages. From the perspective of the salesman, the

broker's role was preferrable in that it offered a broader economic base. As a salesman, the role occupant was limited to one company and one type of business. As a broker, the role occupant could deal with a variety of companies and many different types of insurance. At that point, the Greater New York Mutual was in competition with the Consolidated Mutual in Brooklyn, and elsewhere for that matter, and would gladly accept landlord's liability insurance from any broker.

Furthermore, there was business to be found in Brooklyn which would be acceptable to the stock companies. For example, those landlords who needed liability insurance also needed fire, burglary, Workmen's Compensation and a variety of other types of insurance coverage, which they could place through one broker. This structural arrangement certainly seemed more satisfactory to the consumer as it facilitated dealing with insurance. This was a point that the State Legislature recognized when it eventually permitted a broad range of coverage in one policy.[25]

From the viewpoint of the company, at that stage in its development, the brokerage system eliminated the need to maintain a production staff whether or not it produced. It is interesting to note, however, that these Jewish brokers and the few Italians that comprised the original production staff, continued to do business,

almost exclusively, with the New York Mutuals. As a result, there developed an interacting network among the brokers, the company, and the insureds. This is substantially different from the mode of interaction in the stock companies where the broker may or may not be in continual touch with the insureds, and the insured is almost never in direct contact with the insurance company.

The Bronx presents a picture slightly different from Brooklyn and from the Lower East Side.[26] First, the tenement house area of the bronx was never as large as in these other boroughs. Second, for a period of time, the Greater New York Taxpayer's Association had a rather extensive membership in the Bronx. In April of 1929, however, a small Taxpayer's Association formed specifically to underwrite landlords liability in the Bronx and Harlem. Because of some initial difficulties in organizing, the company was not licensed until April of 1931. The Bronx and Harlem Taxpayer's Mutual Insurance Company, later named the Security Mutual, performed the same service for its areas as did the other mutual companies. Basically, it offered the same discount as the other companies. Several informants suggested that this Association came into existence to compete with the Greater New York Mutual. A few of the Bronx pioneers, who had substantial holdings and who were in contact with one another, decided to withdraw from the Greater New York

Mutual and write their own insurance. One of the suggested reasons was that they saw this as a possibly worthwhile business venture as the Greater New York Mutual was growing substantially. One of the prime movers of the company had extensive insurance expertise, he was in the brokerage business since 1918, and by 1934 he had assumed the Presidency of the company. Competition with the other mutuals operated through a network of friendships among the Harlem and Bronx landlords and contacts with insurance brokers.

To a large extent, the operating philosophy of each of these companies was patterned on that of the Greater New York Mutual. Their price structures were identical; their charge for insurance coverage was discounted at twenty per cent below the manual rate, that is the rate established by the rating bureau and generally charged by the established companies for comparable coverage. These companies were able to charge low rates because they adopted the same rigid underwriting standards that governed the Greater New York Mutual. Each building was inspected for violations of the law and potential hazards. To retain coverage on a property, the landlord had to meet all the requirements set down by the company's inspectors. Where the landlord refused to cooperate or was slow to comply, policies were immediately cancelled. In addition, every attempt was made to settle claims out

of court, and, when a case went to court, it was defended vigorously.

Where these companies differed from The Greater New York Mutual, however, was in the amount of interaction between the company and its policy holders and, flowing from this, the degree of cooperation that could be expected from the membership. After all, The Greater New York Mutual Insurance Company had its roots in an ongoing voluntary association, formed in a time of crisis, whose members were committed to the organizations goals, and who, for the most part, accepted their organization's position that the good of the collectivity was more important than the need of any one member. Generally, the customers of these other insurance companies were not as committed to the principals underlying the mutual concept, they were committed to being able to obtain the insurance coverage at a minimum rate.

A clear picture of the relative size and activity of these companies can be gained by observing their growth patterns in Table 5 for the Consolidated, Table 2 for the Greater New York, and Table 3 for the Nationwide Premium Volumes. In 1930, Consolidated's premium income of $155,000 represented barely .2 per cent of the market share. By 1950, Consolidated's premiums grew to 78 per cent of the Greater New York level writing $2,226,000 compared to $2,859,000 for The Greater New York. In terms

of market share, this figure represents .89 per cent, slightly below Greater New York's 1.1 per cent. Consolidated's rate of growth, however, was much more impressive than The Greater New York Mutual's. While Greater New York grew consistently during this twenty year period, Consolidated experienced periods of dramatic gain. For example, between 1935 and 1940 Consolidated increased its business by 309 per cent. From 1940 to 1945 Consolidated grew 40 per cent and again in the post war period, from 1945 to 1950, it grew 96 per cent as seen in Table 6.

Consolidated Mutual also stayed essentially true to its beginnings. An examination of Table 7 reveals that until 1945 the company's entire book of business, i.e., all its premium volume, was in landlord's liability. In 1945, Consolidated strayed from its 100 per cent dedication to Public Liability insurance with the following percentage distribution: Worker's Compensation 6.9 per cent, 89.4 per cent Liability and Other 3.7 per cent. The figures for 1950 were: Worker's Compensation 14.1 per cent, Liability 82.6 per cent and Other 3.3 per cent. It would seem that Consolidaded Mutual acquired a competitive edge over The Greater New York Mutual by offering related insurance coverages to attract the liability business, a step which the Greater New York consistently refused to do, as it preferred to stick to its area of expertise.

Security Mutual which started business in Harlem and The Bronx, was initially the smallest of the companies. By 1935, the company was writing $179,000 in premium, barely 10 per cent of the Greater New York's premium volume and a mere .02 per cent of the nationwide premium as can be seen by comparing Table 8 and Table 2. By 1950, however, The Security Mutual had matched the Greater New York in premium volume with $2,845,000 compared to $2,859,000 but with a distinct difference. Security Mutual's general liability writings were only 50.3 per cent of its total writings, as shown in Table 9, compared to 100 per cent for the Greater New York, as can be seen in Table 1. The balance was Worker's Compensation, 19.4 per cent, Automobile Liability, 18.6 per cent, and Other 11.7 per cent. This was a trend evidenced for at least five years previously and represents a diversification far broader than that sought by Consolidated Mutual during the same period. A conclusion that may be drawn is that The Greater New York and Consolidated in the period up until 1950 sought to grow with the special need that had brought them into existence while the management at Security sought to create an insurance company independent of its origins. It has been suggested by several informants that, from the first, Security Mutual management was more intent on being a regular insurance company, and that when Public Liability Insurance did not advance its growth

rapidly, it was forced into other lines of insurance for competitive reasons, offering extra inducements to potential landlord's liability insurance buyers.

Conclusion

In the late twenties, the idea of landlords forming their own Taxpayer's Associations to provide themselves with landlord's liability insurance spread to Brooklyn and the Bronx. The spread of the idea was facilitated by the fact that the State Insurance Department licensed Taxpayer's Associations to provide public liability insurance for landlords. The spread of the idea was also a function of the fact that a few of the landlords in Brooklyn and the Bronx who were members oif the Greater New York Taxpayer's Association and who acquired their coverage from the Association, decided to undertake a similar project. In Brooklyn, three Taxpayer's Associations were licensed as mutual insurance companies, however, they were not financially stable and they lacked adequate reserves. As a consequence, the State Insurance Department took them over and stipulated that they would have to merge as a condition of their continued operation. The Consolidated Mutual Insurance Company, which was the composite group, opened its doors in May of 1933. In the Bronx, The Bronx and Harlem Taxpayer's Association formed to compete with the Greater New York Mutual which had been extremely active in the Bronx.

The newly emerged mutual insurance companies mirrored the Greater New York Mutual in most aspects of their composition. They were all predominantly Jewish, most of their insureds were Jewish and the brokers from whom they obtained business were Jewish. They also operated in the same way to some extent. The main point of difference would seem to be in their being less conservative than the Greater New York Mutual. While the Greater New York Mutual stubbornly pursued its committment to landlord's liability insurance, these other companies branched out as far as possible. The Bronx and Harlem Taxpayer's Mutual (Security Mutual) was the smallest and the first to venture beyond its original concept. The Consolidated Mutual wrote landlord's liability insurance until 1945 and then extended its activities. Neither company was as conservative in its underwriting nor in its investments as was the Greater New York Mutual. In the next chapter we will discuss three other mutual insurance companies, The Public Service Mutual and the Empire Mutual, both of which specialized in insurance for Taxi Drivers, and the Cosmopolitan Mutual which specialized in obtaining Worker's Compensation insurance for Kosher Butchers.

Chapter V

Footnotes

1. Howe, Op. Cit., p.131

2. Alter F. Landesman, The Birth, Development and Passing of a Jewish Community in New York, (New York: Bloch Publishing Co. 1969), p.37.

3. Brooklyn Eagle, January 1909, page number not readable.

4. Howe, Op. Cit., p.132.

5. Ibid., p.132.

6. Ibid., p.132.

7. Jewish Daily Forward, December 24, 1907, p.4

8. Ibid., p.4

9. Landesman, Op. Cit., p.40. There are also articles about this in the Brooklyn Eagle, dates of the newspapers and page numbers were not discernable. They are available at the Brooklyn Historical Society.

10. Michael B. Scheler, "The Redistribution of Jews of New York City" in Reflex, 1929, Vol. V, #4, pp.68-73.

11. Landesman, Op.Cit., p.59

12. Bernard Postel, "A Short History of Jews in the Bronx" in Bronx County Historical Society, January, 1965, Vol. 11, #1, p.8

13. Howe, Op. Cit., p.132

14. Ibid., p.132. These working class sections of the Bronx are areas which today are burnt out and unhabitable.

15. Postel, Op. Cit., p.8

16. The information about Consolidated Mutuals history was accumulated through interviews with informants at Consolidated Mutual and two lawyers who were involved in the original negotiation.

17. Jewish Daily Forward, December 10, 1907, p.3

18. For example, Ibid., p.3

19. Real Estate News, January 1920, p.15

20. Real Estate News, September 1928, p.8

21. Real Estate News, January 1982, p.5

22. Real Estate News, February 1928, p.15, July 1928

23. Information given by a lawyer familiar with negotiations.

24. Leon Wexelstein, Building up Greater Brooklyn, (Brooklyn, N.Y.: Brooklyn Historical Society, 1925), pp. 217-218

25. This will be discussed in detail in Chapter VII

26. The information in this section comes from interviews.

CHAPTER VI

THE OTHER RISKS NOBODY WANTED: THE EMERGENCE OF THE COSMOPOLITAN MUTUAL, THE PUBLIC SERVICE MUTUAL AND RED CAB MUTUAL (EMPIRE MUTUAL) INSURANCE COMPANIES

Changing social and legal definitions of responsibility in the area of housing in the early part of the twentieth century provided the need and the opportunity for Jewish landlords to take innovative action and provide themselves with insurance by establishing mutual insurance companies. Jewish landlords, however, were not the only group which was affected by these changing social mores and legal requirements and which were faced by the increasing need for liability insurance in the face of the unwillingness of the established companies to undertake the risk. Two other groups of Jewish businessmen, Taxi Drivers and Kosher Butchers, faced with an analogous need for insurance, also took this pioneering path to secure their own protection. In this chapter, we will discuss the new legal requirements for Workmen's Compensation insurance and for Automobile Liability insurance. We will also examine the Cosmopolitan Mutual, which was formed to write Compensation policies for Kosher Butchers, and two companies, Empire Mutual and Public Service Mutual, which emerged to provide Taxi Drivers with automobile liability insurance.

The view that an employer had an inherent social responsibility to his employees was again a reflection of the changing climate of opinion in this country in the early twentieth century, namely, that government, on all levels, had an obligation to mandate conditions under which the more defenseless members of society could be afforded some modicum of protection.

Until the early nineteen hundreds, the common law governed any liability which an employer had to an employee for injury which arose out of the conditions of employment. Under this rule of common law, a master was only liable to his servants for injuries at work to the extent that the master was negligent. The master's liability did not extend to the injuries sustained through the negligent acts of other of his servants.[1] Furthermore, negligence was defined narrowly as:

> ...the want of ordinary or reasonable care and reasonable care was held to be only that degree of carefulness and precaution for the safety of human life and limb which was customary among employers.[2]

To some extent, since 1837, there developed a body of judge made law which established special rules concerning liability for accidents in the workplace.[3] Gradually, reasonable care came to mean the provision of a safe place to work, reasonably safe tools and appliances, reasonable care in hiring practices, reasonable care in carrying out

the work and a duty to warn new and inexperienced employees as to the nature of the dangers inherent in the work situation.[4] To the extent that the employer did not observe these rules, he was open to negligence suits. However, if the employee's actions in any way, no matter how inconsequential, contributed to the accident, the employer had the defense of contributory negligence.

The legal position of the employer was supported by a number of other rules: The rule of no liability without fault which required that the employee establish the accident as the direct fault of the employer; the rule of assumption of risk, i.e., that an employee assumes a certain amount of risk when he enters an employment agreement and that he should be aware of the nature of the job; finally, the fellow servant rule which absolved the employer of all responsibility for whatever his employees did. As a result of these rules, approximately seven-eighths of all work injuries were not eligible for legal relief.[5] For those whose cases met the strict criteria for legal action, actual suits were limited in that it was extremely expensive to sue, compensation was limited by the fact that fully half of the award went to lawyers fees and, further, cases often were drawn out for years, with the injured workman receiving no compensation. The greater number of those injured at work, then, became public charges.

In the first decade of the twentieth century, during the administration of President Theodore Roosevelt, there was some national recognition of the problems of the injured worker. Roosevelt felt that some system of compensation which would reduce the burden on the working man and shift responsibility to the employer was a necessity in an industrialized society.

> It is neither just, expedient, nor humane; it is revolting to judgement and sentiment alike that financial burden of accidents occurring because of the necessary exigencies of their daily occupation should be thrust upon those sufferers who are least able to bear it. When the employer starts in motion agencies which create risks for others, he should take all the ordinary and extraordinary risks involved.[6]

Many European countries, notably England, had dealt with this problem which was intensified with growing industrialization, through a system of workers' compensation insurance. President Roosevelt authorized the United States Bureau of Labor to undertake a series of studies to see whether workers' compensation insurance operated efficiently in those countries which had instituted the system and to draw up plans for a national insurance system. Ultimately, however, resolution of the problem was left to the individual states.

New York was among the pioneering states in the enactment of workers' compensation laws. In 1909, the state legislature passed a law (Chapter 518), which

established a commission whose purpose it was:

> to make inquiry examination and investigation into the working of the law in the State of New York relative to the liability of employers to employees for industrial accidents, and into the comparative efficiency, cost, justice merits and defects of the laws of other industrial states and countries, relative to the same subject, and as to the causes of the accidents to employees.[7]

The commission, known as the Wainwright Commission, recommended a workers' compensation act modeled on the English Workers' compensation Act of 1897, which was adopted in 1910.[8] For the early nineteen hundreds, the act was revolutionary in its concept; it mandated the employer's absolute liability, i.e., the mere happening of an accident in the work situation created the liability. The law stipulated that the employer must provide insurance or give other security for the payment of claims. The act was challenged as being unconstitutional in 1911. In the case of Ives v. South Buffalo R. Co., 201 N.Y. 271, 94 N.E. 431 (1911).[9] Although the South Buffalo Railroad admitted all the allegations brought against it relative to the injury of Ives, a switchman, they maintained that the law was unconstitutional in that it contravened certain provisions of the State and Federal constitutions, i.e., depriving them of property without due process. Justice J. Werner of the Appellate Division of the New York State Court, presented the ruling decision

of a divided court.

> The statute, judged by our common-law standards is plainly revolutionary. Its central and controlling feature is that every employer who is engaged in any of the classified industries shall be liable for any injury to a workman arising out of and in the course of the employment by "a necessary risk or danger of the employment of one inherent in the nature thereof; ***provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman."[10]

He argued that while there certainly were cogent economic and sociological reasons in support of the theory of a workers' compensation law, nonetheless, in its essence, the law does indeed deprive the employer of his rights under the constitution.

> ...If such economic and sociologic arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures and the guarantees of the constitution are a mere waste of words.[11]

Justice Werner, therefore, concluded that:

> ...in its basic and vital features the right given to the employee by this statute, does not preserve to the employer the "due process" of law guaranteed by constitutions for it authorizes the taking of the employer's property without his consent and without his fault.[12]

New York State's first Workers' Compensation Law was thus

declared unconstitutional.

In the same year as the Wainwright Law was found to be unconstitutional, the Triangle Shirt factory caught fire and one hundred and forty six workers were killed and many more injured.[13] A state factory investigation commission was quickly established to look into the conditions under which employees in the garment industry were forced to work. Out of this investigation came a strong recommendation that some type of workers' compensation was necessary in New York State. By 1913, the State Constitution had been amended and the State Legislature, led by Alfred E. Smith and Robert Wagner, passed a second Workers' Compensation Law. This law was declared constitutional by the same court which had rejected the earlier law in the instance of Jensen v. Southern Pacific Co., 215 N.Y. 514 (1915)

> This subject should be viewed in the light of modern conditions not those under which the common law doctrines were developed which almost universally favors a more just and economical system of providing for accidental injuries to employees as a substitute for wasteful and protracted damage suits, usually unjust in their results either to the employer or the employee and sometimes to both. Surely it is competent for the State in the promotion of the general welfare to require both employer and employee to yield something toward the establishment of a principle and plan of compensation for their mutual protection and advantage.[14]

Workers' Compensation was the first type of social

insurance adopted in the United States. In some respects it is unique; its principal underwriters are private insurers, although there is some variation in the rules from state to state.

Cosmopolitan Mutual Insurance Company

Just as Jewish Real Estate owners found themselves in the awkward position of not being able to secure the required insurance to safely remain in business, so retail and wholesale Kosher butchers faced the same dilemma in regard to securing Workers' Compensation insurance. When the law requiring Workers' Compensation from all employers was initially passed, insurance companies which entered the Workers' Compensation market were willing to entertain the risk of writing insurance for butchers; Compensation was a new form of insurance and experiential data was still to be gathered and evaluated. Butchering, however, in the early twenties was not a neat business, knives, saws and cleavers were wielded with abandon, under uncontrolled and unprotected circumstances. Shop floors were strewn with greasy blood stained saw dust and chicken feathers which not only looked unpleasant but which made the floors extremely slippery. In the late nineteen twenties, another extremely hazardous instrumentality was introduced into the butchering business, a new chopping machine. This machine made the work easier but infinitely

more dangerous as workers' hands were continually being caught in its mechanism.

With the high accident rate in the industry exacerbated by the increase in accidents attendant upon the use of the new chopping machine, insurance companies were reluctant to renew Workers' Compensation policies. As Table 10 indicates, in 1930, Workers' Compensation insurance did not account for a substantial proportion of the insurance industry's income, and the company underwriters certainly did not want to accept risks which they increasingly recognized would have losses.

Although all parts of the meat industry, Kosher as well as non-Kosher, had approximately the same type of loss experience, the Kosher butchers had more of a problem. One of the founders of the Cosmopolitan Mutual said that, in his perception at the time, there was a substantial amount of anti-Semitism that entered into the insurance companies' decision to reject Workers' Compensation business for most of the Kosher butchers. He felt that Kosher butchers were uniformly redlined while the non-Kosher butcher's business was evaluated on an individual basis. It was also pointed out that the larger wholesale butchers, including a few of the largest Kosher wholesalers, had substantial amounts of other insurance business which they wrote with certain companies. These companies were willing to accommodate customers to retain

other, more profitable business. However, this leverage was not available to the smaller wholesalers or the retailers.

The problem of unavailability of Workers' Compensation Insurance was taken up at a meeting of the Kosher Butchers Association. Several of the members proposed that the Association provide its own insurance by forming a mutual insurance company. The projected company would be financed by a $50,000 contribution from each of the several branches of the Association. Thus, on April 19, 1924, the Butchers Mutual Insurance Company was licensed by the State of New York to write Workers' Compensation Insurance in the meat industry. The Board of Directors of the new company was composed of a representative from each branch of the Association. Their specific function was to manage the affairs of the company, set policies, and oversee its financial operations. A few butchers who were particularly concerned with the new project and had helped to launch it were given top management positions. The day by day operations of the company, however, were placed in the hands of experienced insurance specialists who had ties with the Butcher's Association.

Although the Butcher's Mutual was Jewish in origin, within the first few years its ethnic characteristics changed. The Butcher's Mutual had a product to sell which

was needed throughout the entire industry, and gradually, more and more of the butchers and their associations wanted to participate. Thus, a number of non-Jews were added to the original Board of Directors.

The operating philosophy of the Butcher's Mutual was similar to that of the other mutuals, i.e., reduce risk. Just as The Greater New York Mutual concentrated on safety in buildings and the factory mutuals controlled safety in the factory workplace, so the Butcher's Mutual undertook a safety campaign. As the most dangerous instrument was the chopping machine, the company worked with the Globe Manufacturing Company to change the design of the chopper. The solution was quite simple; a shield was added so that hands could not be caught in the machine. In addition, the company waged a campaign for safety in the use of knives and cleavers and made a clean store a requisite for the issuance of policies. With these safety factors in place, The Butcher's Mutual was able to write the insurance at a discount and still make a profit.

For the first few years, the company grew very slowly despite the fact that the product was in demand. Premiums on Workers' Compensation Insurance were relatively low and, to sustain the operation of the company, it expanded into insuring retail grocers and into the field of plate glass window insurance. Both these areas were ones in which members of top management had had some experience

and in which they had substantial personal contacts who would provide the business. Here again the initial pool of customers were Jewish.

During its very early years, the premium volume written by The Butcher's Mutual was relatively low, so low in fact, that it did not warrant inclusion in Best's Reports. As Table 11 and 12 show, by 1930, however, the volume reached $193,000 and grew appreciably with each succeeding five year interval. In 1935, the premium volume was $505,000, which represented a growth rate of 162 per cent, and in the period from 1935 to 1940, the company's premium volume expanded 306 per cent to $2,051,000, of this in excess of 75 per cent was attributable to Workers' Compensation. Although exact figures are not available as to the distribution among the three classes of business, it was suggested that during the first few years, all the business was Workers' Compensation and that gradually the company moved into the insurance of plate glass and retail grocers. The company's early participation in Public Liability probably represents liability for possible injury to customers of butcher shops and retail groceries. The Automobile Liability insurance written represents acceptance of exposures on the delivery trucks used in the industry as well as on personal automobiles and a few taxi cabs.

The five year period from 1940 to 1945 was one of

slight retrenchment in the meat industry because of the war and the attendant meat rationing. This is reflected in a decline in Workers' Compensation premiums and a slight decline in overall premium volume as shown in Table 12. This was also a period in which the company sought to diversify. Table 13 indicates that for the ten years from 1940 to 1950 there was a trend in the reduction of Workers' Compensation from 70.8 per cent of all business written in 1940 to 61.8 per cent in 1950, although the gross premium for Compensation increased from 1940 to 1950 by over 200 per cent from $1,453,000, to $3,037,000, as can be seen in Table 11.

At the same time, the volume of Public Liability insurance increased from 8.6 per cent to 12.6 per cent of all business written and Automobile Liability from 12.1 per cent to 17.8 per cent, as shown by Table 13. One of the factors involved in the company's moving into other areas was that Workers' Compensation for butchers was no longer as difficult to obtain because of the new safety features of the Globe machine and the general emphasis on safety in the industry. Their next logocal move was to accept exposures on delivery trucks used in the industry as well as on personal automobiles and a few taxi cabs.

Another indication of their desire to expand into other areas of the insurance market is that in January of 1947, the company's name was changed to the Cosmopolitan

Mutual Casualty Company of New York.

Automobile Liability Insurance

The question of who should bear the social costs of accidents which arose through the use of the automobile has been a recurrent social problem since the use of the first car in 1899. In the beginning of the twentieth century, the legal rules which obtained in respect to the automobile grew out of the English rulings with regard to the horse and buggy. Although it was generally agreed that the operation of an automobile had many more dangers than the operation of a horse drawn carriage, nonetheless, the automobile was not regarded as an inherently dangerous machine.[15]

> The modern automobile, properly equipped with brakes, and assembled in harmony with the plans underlying the construction is not inherently a dangerous machine. In the hands of a reasonably intelligent and careful operator, it involves no greater hazards to the public than a team of horses attached to a wagon[16] (Quackenbush v. Ford Motor, 167 App. Div., 433, 435 (1915)).

Any injury to persons or property was governed by the tort law. According to the tort law, the person who is found negligent has to bear the cost of the accident, i.e., the cost of his defense and the payment of damages assessed against him by the court as well as his own damages.

In 1902, only three years after the first automobile was used, the first automobile policy was issued and

insurance became one of the ways of dealing with the potential risk of economic losses through involvement in traffic accidents.[17] In the early part of the twentieth century, however, the use of automobile insurance was not widespread and the majority of motor vehicle operators were not insured.[18] As a consequence of the dearth of insurance coverage, even though the individual had a legal responsibility to pay for damages in case of an accident in which he was deemed negligent, judgments were often difficult, if not impossible to collect. All individual car operators did not voluntarily act in a socially responsible mode.

The manufacturer of the automobile, moreover, was responsible only to the purchaser of the vehicle. If a passenger was injured because of faulty construction, the company was not responsible. The injured party had to sue the owner of the car as the only responsible person. In 1916, however, the automobile was found by Justice Cardozo to be an inherently dangerous instrumentality, reversing the 1915 ruling in Quackenbush v. Ford Motor. In the case of McPherson v. Buick Motor Co., (217 N.Y. 382, 111 N.E. 1050 (1916), Justice Cardozo said:

> "If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by

> persons other than the purchaser and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully."[19]

This decision extended the liability of the manufacturer to someone other than the buyer, i.e., a passenger, for the faulty construction.

By the end of the First World War, despite the growth of liability insurance and the newly extended liability of the manufacturer of the automobile, the number of accidents in which the victim was forced to bear all the economic and physical burdens was high enough to be regarded as a social problem by members of the State Legislature. Their object was to find some way of dealing with the problem of compensating the victims of automobile accidents, and the means proposed by these legislators was compulsory automobile insurance. Thus commenced an ongoing negotiation among the State Legislature, consumer groups, the insurance industry and other interested groups which would last forty years and terminate finally with the passage of The New York State Compulsory Automobile insurance bill in 1957.

Although Bills for compulsory automobile insurance were introduced regularly in the New York State Legislature,[20] it was not until 1922 that a financial responsibility law was passed, but that only applied to vehicles commercially transporting passengers. According to the

terms of that law, the vehicle had to be insured, or, alternately, the driver had to post a $2500 surety bond.[21] In the following years, amendments were added to the Bill which substantially undermined its original intent. In 1927 a very strong compulsory auto insurance law was proferred in the Senate, however, it was withdrawn at the request of the insurance commissioner.

> I was successful in prevailing upon Senator Strauss to withdraw his strong support for a compulsory automobile insurance bill. And in turn we were to receive the cooperation of the Casualty Insurance Companies on an extensive safety program, but, unfortunately, the casualty and surety interests did not live up to their agreement.[22]

By 1929, the problem had grown to such an extent that the State Legislature authorized Columbia University Council for Research in the Social Sciences to undertake a study on compensation for automobile accidents. The report of that committee, "The Ballentine Report,"[23] was submitted in 1932, and recommended that New York adopt a type of compulsory no fault insurance plan patterned along the lines of Workers' Compensation. The study found that the then current method of treating with the problem of compensating the victim of the traffic accident through the tort liability system was patently inequitable. There existed large areas of economic waste, particularly as a result of inappropriate settlements. Very often, a person who was barely injured recovered large amounts of money,

while others, often severely injured, recovered nothing. Under-compensation was most common in low income families with the least amount of capacity to cope with the attendant problems.[24] The irresponsible, uninsured motorist caused individual hardship and a drain on the society; a solution had to be consistent with social justice and a mandatory non-fault plan would seem to be the logical solution.[25]

Following submission of the "Ballentine Report", several Bills were introduced into the State Legislature for varied forms of compulsory insurance; none passed.[26] Public hearings were held on the proposed bills and the insurance industry as well as representatives of business, farmers groups and the Bar Associations were consistently opposed to any legislation involving mandatory automobile insurance. Columbia University Research Group, the Woman's City Club, The United Auto Leaque of Owners and Drivers and The Citizen's Union Committee appeared to support the case for the necessity of a compulsory insurance plan but at that point, 1938, consumer pressure did not have the power which it gained in more recent years.

In July of 1940, another legislative committee for the revision of the Insurance Law convened. Their purpose was to consider compulsory automobile insurance. The Superintendent of Insurance appeared before the committee

and made a strong statement in favor of a bill similar to that of Workers' Compensation, however, he agreed with legislators that the cost might be prohibitive and that he did not think that the bill had a chance of passing.[27] The Superintendent of Insurance proposed the formation of an assigned risk plan which would make it possible for drivers who were uninsurable for various reasons to obtain insurance. As a result of the Superintendent of Insurance's proposal, the Hampton Bill was introduced into the State Legislature. This Bill required that all insuring companies be members of an assigned risk bureau or a compulsory pool from which questionable risks would be assigned in proportion to the volume of business which each company did in the preceding registration year.[28]

Although the insurance lobby opposed the mandatory aspect of this Bill and was instrumental in defeating it, the industry voluntarily established an assigned risk plan. Under their voluntary plan, a person who is a "bad risk" and is rejected from a regular company, may be assigned to one of the cooperating insurers on a basis which will spread the "bad risks" evenly among the participating insurers. Before the enactment of the compulsory insurance law in New York State, which required the obtaining of insurance form prior to vehicle registration, it was possible for the assigned risk plan to reject "uninsurables." The only alternative for these

drivers was to seek auto insurance on the "excess and surplus" market (usually foreign insurers or marginal domestic companies), at very high rates, or not be insured at all. In most cases this meant that "very bad risks" would go uninsured, and the probability of these drivers being involved in accidents was relatively high. With more and more cars being driven, after the Second World War, the problem of the uninsured motorist reached new dimensions.

As a further result of the work of this Legislative Committee, another, stronger Financial Responsibility Act was passed.[29] Patterned on the New Hampshire Safety Responsibility Law, the operation of the law commences after an accident has taken place. The person who is found culpable in an accident either paid a judgment immediately or produced a letter of judgment agreeing that he will pay. Failure to comply with the judgment can result in a suspension of driver's license. In addition, certain "high risk" categories of drivers were required to show proof of insurance coverage prior to issuance of a license.

The Red Cab Mutual (Empire Mutual)

The emergence and growth of the Red Cab Mutual (later the Empire Mutual) and the Public Service Mutual which we will discuss below, parallels the demands for automobile

insurance set by the State Legislature. The first requirement for mandatory automobile insurance was written into section 242 B of the Highway Law of 1922. Under terms of this law, which applied only to public carriers, the taxi owner was required either to carry Liability insurance with a minimum protection of $2,500,[30] or to post a personal indemnity bond for that amount of money to insure that they could meet obligations arising from traffic accidents.

During the period from 1923 to 1925, several mutual insurance companies formed specifically to provide this coverage for taxis. These new companies not only wrote the liability insurance but they also participated in a pool which issued surety bonds which guaranteed judgments to a limit of the $2,500 specified by the new legislation. From their inception, these new mutual companies went into competition with the stock companies and offered much lower prices. However, they did not have the advantage of being able to control the insured as did The Protective and Defense Committee of The Greater New York Mutual Taxpayer's Association. Automobile Liability insurance was a relatively new genre of insurance, a creature of the advancing technological age, coupled with the evolution of societal mores dictating increased social responsibility. Neither the taxicab industry nor the insurance safety engineers had evolved an efficient way to control the

increasing number of accidents and injuries that occurred with the expanded use of the automobile. These new taxi cab mutuals did not modify risk to lower prices; they merely lowered prices to capture the business. Because of their pricing structure, poor underwriting, and lack of potential customers resulting from massive non-compliance with the new law,[31] these companies soon went out of business.

With the demise of these mutual companies, the taxi fleet owners, the class of taxi drivers who were forced to comply with the new law to stay in business, faced the necessity of providing themselves with Automobile Liability Insurance or surety bonds, and the only available source for this coverage was the few stock companies which had entered the market. Their rates, however, were too high to be absorbed as a business expense and still allow a reasonable profit. Therefore, dealing with stock companies was undesirable and an alternative means to secure protection was necessary. In 1925, two new mutual insurance companies were formed to offer the taxi industry the requisite alternative; The Red Cab Mutual Casualty Company, incorporated February 6, 1925 and The Public Service Mutual Casualty Corporation, June 24, 1925.

The Red Cab Mutual came into existence in a manner analogous to that of The Greater New York Mutual. Several

years prior to the formation of the company, a group of predominantly Jewish taxi fleet owners joined together in a cooperative trade association to deal with the myriad of problems which plagued the taxi industry. One of the main problems which emerged in the 1920's was the need for Liability coverage. As the mandatory protection was not available at a reasonable price, the decision was taken to provide their own insurance. Unlike The Greater New York Mutual, however, the fleet owners did not attempt to do this themselves; they employed insurance experts and provided the funding for the operation.

For the twenty five year period between 1925 and 1950, The Red Cab Mutual devoted itself exclusively to Automobile Liability insurance with the bulk of its business deriving from the taxi cab industry. During this period, The Red Cab Mutual, although serving the needs of a number of the New York cab owners, drivers, and possibly other motorists, on a nationwide basis accounted for only about .022 per cent of the total Automobile Liability business written, as can be seen in a comparison between Table 14 for Empire Mutual and Table 3 for Nationwide Statistics. In absolute terms, during its first fifteen years, this relatively small company showed a continuous though modest rate of growth. Although precise statistics are not available for the three year period from 1925 to 1928, Table 15 indicates that from 1930 to 1935, the

company grew 14 per cent; during the next five year period, it grew 13 per cent. From 1940 to 1945, however, the rate of growth increased to 48 per cent and by the end of the next five year period, a dramatic 274 per cent growth is apparent.

Several factors are responsible for the acceleration of the growth of The Red Cab Company, from 1937 known as The Empire Mutual Casualty Company, and from 1953 until today known as The Empire Mutual Insurance Company. First, and perhaps most important, in 1942 there was a complete change in management. At that time, Herman Bloch, an insurance broker and long associate of Public Service Mutual Insurance Company, became affiliated with the Empire Mutual. Although he did not become President until 1967 when he replaced his brother as Vice President and Director of the company, he instituted most of the changes that were responsible for the growth and development of the organization.

As a company which specialized in writing Taxi insurance and hard to place auto risks, particularly in the inner city where a substantial portion of its business was, Empire Mutual developed a very intricate underwriting procedure. The list of risks which they would accept or reject was based on a very careful evaluation of their past experience rather than related to the experience of other insurers.

The Empire Mutual had one distinct advantage in being specialists only in automobile insurance, if they turned down a customer because of high risk, they did not stand to lose his other insurance business. Many other insurers were forced into writing undesirable auto business as an accomodation to good customers. In addition, Empire Mutual paid claims very slowly, often delaying payment for years.[32]

Disfunctional, however, to the growth of the premium volume of the Empire Mutual was the concomitant growth of assigned risk business. The assignment of the "bad risks" by the assigned risk program is proportional to the amount of voluntary automobile liability insurance written by the company. It would seem to be an irony for Empire Mutual to be rewarded for the success of their careful selective practices by an increase in the undesirable business forced upon them.

The first industry-wide assigned risk loss statistics were not compiled until the 1973 underwriting year with the foundation of the Automobile Perils Service Office.[33] The combined statistics from 1973 to 1981 demonstrate clearly that Assigned Risk business loss experience has consistently been responsible for turning auto insurance from a profitable to a losing proposition.[34]

Most insurance companies continue to write auto insurance at a loss because they must offer a complete

range of insurance products to their clientele. However, for a company like Empire, specializing in auto liability insurance, this can only have disastrous results. Another change came about when The Empire Mutual moved away from its devotion exclusively to Automobile Liability insurance. Table 16 demonstrates that in 1950, 82.3 per cent of the premium earned derived from Automobile Liability insurance, with the balance coming from: Compensation 14.8 per cent, General Liability, including landlord's liability, 2.7 per cent and Other 0.2 per cent. It is interesting to note that in 1950 when the statistics are separable between taxis and other vehicles, Empire Mutual wrote $2,218,000 (Table 14) for taxi business out of a total Automobile Liability premium of $2,812,000 for 82.3 per cent of all insurance written. One of the possible factors which motivated the movement into protections other than taxi liability was the decision that the company should accommodate the other needs of their clientele, particularly that for Workers' Compensation. This was a direction taken by the other New York City mutual companies as well, some earlier, some later. In addition, business other than taxi liability accrued to The Empire Mutual during this period as it took over a small company, The Mutual Casualty Insurance Company, September 30, 1946.

Public Service Mutual

Unlike The Empire Mutual Insurance Company, where the impetus for forming an insurance company came from the fleet owners who needed the coverage, the impetus for Public Service Mutual derived from the entrepreneurial spirit. Like The Empire Mutual, the idea for Public Service Mutual came from the new law which required taxi cab drivers to carry liability insurance; however, this was an instance of money looking for an opportunity to go into business, and the new law providing the opportunity. The pioneers in Public Service Mutual were Jewish accountants who had some contacts with fleet owners as clients and who were conversant with the insurance business; they immediately recognized this as an ideal situation for the start of an insurance company. The Mutual seemed the best format at the time, as in that way the company was able to offer discounts and compete with the newly formed Red Cab Mutual.

Public Service Mutual did not have a ready pool of customers, as does a mutual company which indeed starts mutually, it merely had a pool of potential customers. The founders of the company went out and solicited business from the fleet owners and from individual taxi drivers. In the beginning, the largest part of company activity was selling and following up on premium payments, particularly from owner-drivers who resented the need for insurance and

had a reputation for not maintaining their insurance. One of the people who was instrumental in funneling business to Public Service Mutual at the start was Herman Bloch, who, as we pointed out, eventually became associated with Empire Mutual in 1942, retaining that association until 1977 when the Company was put into rehabilitation by the State Insurance Department. Bloch was a Jewish insurance broker who, with an Irish partner, ran a fair sized brokerage business. Both partners had extensive contacts in the taxi industry, particularly with Jewish and Irish owners and drivers, who were willing to give their insurance business to Bloch's company. Bloch, in turn, wrote this business with The Public Service Mutual. In large measure, it was this business that he took away from Public Service when he became an officer of Empire Mutual.

From its beginnings through the late 1930's, Automobile Liability insurance was the sole line of business written by Public Service. Although statistics are not available in that period to separate taxi business from other vehicles, in an interview with the now deceased President of the company, he suggested that to the best of his knowledge, the bulk of the early business consisted of Jewish cab owners and drivers with a sprinkling of Irish and Italian owners and drivers. Initially, Public Service Mutual started with a larger book of business than The Red Cab Mutual and expanded at a faster rate. As may be seen

from Tables 14 and 15 for Empire Mutual and Tables 17 and 18 for Public Service Mutual, the premium which they received on Automobile Liability grew 41 per cent from 1930 to 1935 going from approximately $500,000 to $721,000. From 1935 to 1940, their premium income from Automobile Liability again increased 86 per cent, this despite the fact that the company was gradually diversifying into Workers' Compensation and General Liability insurance. Their diversification was done experimentally by adding one new line at a time and retaining those that proved profitable. In 1940, Table 19 shows, Automobile Liability still constituted the bulk of business, 89.8 per cent, with Workers' Compensation 6.7 per cent and General Liability a small 3.5 per cent. By 1945, not only had Auto Liability increased by some 48 per cent, but Workers' Compensation was now 20.4 per cent of their business and General Liability 26.1 per cent.

Despite the interference with its taxi business caused by the defection of Mr. Bloch, Public Service increased its overall Auto Liability insurance business 25 per cent between 1945 and 1950, and its total book of business by 51 per cent, as can be seen in Table 18. The available 1950 statistics are severable between taxis and other vehicles. In 1950 Public Service wrote 45 per cent or $1,117,000 worth of insurance for taxi cabs and the remaining 55 percent or $1,382,000 for other types of

vehicles. Obviously, Empire Mutual was much stronger in the taxi cab business. By this point, however, Public Service continued to expand and maintain a good financial profile without the added taxi business.

Part of the other business of Public Service was insuring the Jewish children's camps in the Catskills and other areas as well as the Catskill resort hotels. For many years, one large regional hotel, The Concord, had a resident on-premises representative of the Public Service at all times, so that claims could be dealt with immediately. The rationale underlying this was similar to that of the Greater New York Mutual landlords going to see tenants immediately after an accident. If care and concern are shown to a customer who has an accident, then it will not be magnified by feelings of hostility towards the hotel (or the landlord). In addition, if a claim is settled immediately and a release is obtained, then there is less chance of the claimant being advised to sue the hotel for large sums of money.

Conclusion

During the 1920's, new legal requirements for Workers' Compensation and Automobile Liability Insurance provided the impetus for the formation of several, predominantly Jewish, Mutual insurance companies to open in New York City. Cosmopolitan Mutual opened to write

Workers' Compensation insurance for Kosher butcher and The Red Cab Mutual (Empire Mutual) and Public Service Mutual were formed to write auto liability insurance. All of these companies expanded during the twenty years from 1930 to 1950, the first period for which usable statistics are available. Further, all of these companies diversified, some early in their existence, some later. By 1950, they were all relatively successful.

Initially, the mutual insurance company is formed by people in an industry to meet the emergent needs of that industry, In that sense, it is a derivitive institution; it requires the needs of the industry for its birth. Eventually, however, mutuals assume an independent existence. They no longer just write the type of business they were formed to write; the road to financial success lies in many directions and, as a functioning insurance company, they seek to take the road to self-perpetuation.

Top management, generally, remains in the hands of those who formed the company; the pioneers have power for long periods of time and often pass it down to their progeny. Aiding these pioneers are management teams composed of people who come from the industry as well as lawyers and insurance brokers. These people tend to become ensconsed in their positions. The Mutual, in theory, belongs to the policy holders, but control lies in the hands of the management clique, supported by a handful

of influential brokers who wield power through the potential ability to obtain voting proxies of their clientele. Business associates and relatives are added to the managing group, solidifying the power base and creating a group with a vested interest in the continued existence of the company. Of course, the continued success of a mutual company requires the underwriting capabilities, loss control and premium discounts that will attract business, so that the entrenched management must continue to provide the service that buyers of mutual insurance demand. This is the only way in which they can justify the continuity of their controlling interests.

In the proceeding chapter, we will discuss a series of later laws which had a profound effect upon the insurance industry. We will then consider the six companies from 1950 to date and see in what manner they were affected by these changes.

Chapter VI

Footnotes

1. Ruling was established in a landmark case in England, Priestly v. Fowler, Meison and Welsby's Reports (1837).

2. E. H. Downey, Workers' Compensation, (New York: The Mac Millan Company, 1924), p.143.

3. The rationale for the courts becoming involved is that they are interpreting the contract of employment.

4. James Harrington Boyd, Compensation and Industrial Insurance, (Indianapolis: Bobbs-Merrill Co., 1913) p.10

5. Downey, Op.Cit., p.144

6. Ibid., p.143

7. New York State Law, Chapter 518, 1909, in Mc Neice, Op.Cit., p.605

8. New York State Labor Law, Article 14a

9. In Mc Neice, Op.Cit., p.605

10. Ibid., p. 608

11. Ibid., p. 609

12. Ibid., p. 609

13. Richin, The Promised City, Op.Cit., p. 254

14. Mc Neice, Op.Cit., p.528

15. 42 Corpus Juris Secundum, 16, p.614

16. Mc Neice, Op.Cit.

17. Frederick Hoadley, "Growth and History of Automobile Insurance", address delivered before the Insurance Society, December 19, 1923.

18. Ibid.

19. Mc Neice, Op.Cit., p.458

20. Mildred C. Csontos; Compiler, Compilation of Reports, legislative hearings, court cases, letters and articles on the various subjects to be considered in the enactment of the Legislation, December 1941.

21. Ibid.

22. Ibid., p.12

23. Columbia University, Council for Research in the Social Sciences, Report to Study compensation for Automobile Accidents, 1932.

24. For an excellent discussion of the problems inherent in claims adjusting see H. Lawrence Ross, Settled Out of Court, (New York: Aldine Publishing Co., 1980).

25. Ballentine Report in Csontos, Op.Cit., p.22. For an excellent discussion of the whole situation see, Walter J. Blum and Harry Kalner, Jr., Public Law Perspectives on a Private Law Problem; Auto Compensation Plans, (Boston: Little Brown, 1965).

26. Csontos, Op.Cit., p.79

27. Ibid., p.79

28. New York State Legislature, Chapter 872, Laws of 1941, Insurance (1942).

29. Insurance Advocate, August 25, 1923, p.34

30. Ibid., August, 1927, p.711; September 1927, p.962.

31. New York Times, September 27, 1977, p.36

32. "The Auto Insurance Residual Market", Best's Review, August 1982, p.12

33. Ibid., p.12

34. Best's, Op.Cit., 1951.

CHAPTER VII

NEW LAWS AND THEIR EFFECTS ON THE COMPANIES, MULTIPLE LINE INSURANCE,MANDATORY AUTOMOBILE INSURANCE, ASSIGNED RISK PLAN AND THE F A I R PLANS.

The Greater New York Mutual Insurance Company grew out of the unmet needs for insurance of a limited population, Jewish landlords on the Lower East Side. The other Jewish Mutuals in New York City also emerged to meet the unmet insurance needs of limited populations: Jewish landlords in Brooklyn and the Bronx, predominantly Jewish cab drivers, and obviously Jewish kosher butchers. For the first twenty years of their existence, these companies continued to meet these specific demands of their clientele. To a greater or lesser degree there was expansion, but, it tended to be within the same general population. Certainly, through the competitive market, there was some exchange of customers, but essentially, there were no dramatic shifts in the type of customers or in their mode of operation.

From 1949 on, however, The Greater New York Mutual as well as the other Jewish Mutuals were confronted with

several radical changes in the insurance industry which challenged their very basis of existence. These changes were of two distinct orders. One type of change was structural and internal to the social system of the insurance industry. The other change was external to the system and derived from societal pressures upon the industry to become a partner in the solution of extant social problems. Both types of changes had considerable impact on the New York Mutuals.

The internal, structural change was considered one of the most important developments of the century in the property-casualty insurance field; it permitted any company, previously limited to a specific class of insurance, to underwrite all the classes of business within the definition of property-casualty insurance. Pressure for the enabling legislation came from within the industry and, when finally enacted, the new legislation affected the organizational structure and operating practices of most insurance companies. The Jewish mutuals were reluctant to respond to this unsought change, however, eventually, they were forced to confront the choice of adapting to the new conditions in the industry in order to retain their competitive position, or to go out of business.

The changes in the insurance industry which came about as a result of external political pressure were of a

different nature and affected the Jewish mutuals in varied ways. The insurance industry has been defined by the Supreme Court as one which is "affected with the public interest"[1] and in this light, has moral obligation to act in the public interest. The pressure upon the insurance industry to assume this responsibility was exerted in several ways: through legislation, through the implied threat of legislation and through regulations of the State Insurance Department. In the diverse areas which constitute the province of property-casualty insurance, losses arising from riot, fire, crime and the use of the automobile have been increasing in frequency and severity, particularly in urban areas such as New York City. Concomitantly, the ability of insurance companies to provide coverage economically to all those who need and want such insurance at a reasonable price has diminished, at least in the view of the company underwriters. To some extent, company underwriters have modified the risk inherent in these lines of insurance by exclusionary underwriting, i.e., only insuring those areas that have the least potential of adverse experience. Just as insurance companies would not write tenement house liability insurance in the 1920's, so underwriters are reluctant to write riot, fire, crime and automobile insurance in so-called high risk areas. Just as Jews were adversely affected in the early part of the century, so

Blacks, Puerto Ricans and other minority groups are affected today. Insurance companies call this selective underwriting; outsiders call this redlining.

Yet, despite the resistance shown by insurance companies to the writing of these high risk classes of business, insurance is essential from the viewpoint of our society; it serves as a device for solving complex social problems. Without insurance, how would the economic burdens caused by the automobile accident be borne? Without insurance, how would the inner cities be rebuilt after riot and arson? Increasingly, since 1950, a solution to the problem of providing insurance to these economically untenable risks has been provided ultimately by the collective action of the insurance industry, either spurred on or mandated by law. The purpose of this chapter is to examine these externally induced changes in the insurance industry and observe the impact of these changes on the Jewish Mutuals.

Internal Structural Changes In The Insurance Industry

On April 19, 1949, The Mitchell Bill was signed into law by Governor Thomas E. Dewey. The passage of this legislation not only heralded a profound philosophic change in the attitude of the State Legislature, but also brought about one of the most revolutionary structural changes in the operation of the insurance industry.

According to the provisions of this law, companies doing business in New York State were now allowed full multiple-line underwriting powers. This meant that property insurance could be written along with one or more of the traditional casualty lines. A fire insurance company, for example, could now write public liability insurance, or a company specializing in landlord's liability could now write the fire insurance on the same buildings. Ultimately, the way was opened for stock companies to compete with the Jewish mutuals for the more desirable Landlords Liability insurance business which the mutuals had acquired over the years because of their premium discounts.

One hundred years before, in 1849, the State of New York passed a general insurance act which firmly separated the writing of Life and Health insurance from other areas of insurance.

> No company making insurance on the health or lives of individuals shall be permitted to take any other kind of risks; nor shall the business of life insurance and of health insurance be in any wise connected or united in any company making insurance on marine or fire risks.[2]

Under the terms of this act, fire and marine insurance could be written by the same company, however, by 1853, the interpretation of the sense of the legislation was that even these two forms of property insurance should be

the province of separate and distinct companies:

> The spirit and express provisions of these acts, and the history of their enactment, evince a settled determination on the part of the legislative power to separate Fire, Marine and Life insurance companies into distinct corporations making each organization subject to many regulations peculiar to itself, and applicable only to its own separate department. In the opinion of the Superintendent, this separation is sound, prudent and wise, and should be maintained as the invariable legislative policy of the State; and all applications of Fire companies for Marine powers, and vice versa, should be resolutely denied.[4]

This New York ruling was extremely important as any company wishing to do business in New York required a license. To be licensed in New York State:

> ...(1) domestic companies could not do outside of New York any insurance which they were prohibited from doing in the state; (2) foreign and alien companies could not do <u>outside</u> New York any business prohibited to New York companies.[5]

Out of State or foreign insurers, whose state or country permitted them to write multi-line policies, had to agree not to use these powers anywhere in order to be authorized to write insurance in New York. As an important center of the American insurance industry, New York's laws had far reaching influence and served to enforce New York's mono-line philosophy throughout the United States.

Changes in New York's attitude towards multi-line

insurance emerged slowly. In the 1940's a nationwide committee, the "Multiple-Line Underwriting Committee" (called the Diemand Committee) was formed by The National Association of Insurance Commissioners to consider whether broad multiple-line laws would be in the public interest.[6] Ultimately, the Committee recommended that states adopt a partial type of multiple-line underwriting. For example, the Committee deemed it in the public interest that:

> ... an insurance company should be able to write all the automobile liability and physical damage perils in one policy. The reason for this is that the automobile owner prefers one policy (as indicated by the popularity of the "combination automobile policy") and is better served by it than by many separate policies.[7]

New York did not respond to this recommendation immediately.

In 1945, the decision of the Supreme Court in the South East Underwriters Case, established that the federal government had the power to legislate matters dealing with insurance if the states were not adequately meeting their obligations in this regard. This ruling prompted the New York State Insurance Commissioner to deal with the inconsistencies inherent in the multi-line rulings in New York and the various states. Under his discretionary powers, the Commissioner allowed an out of state company to write more than one line of insurance in its own state. Initially, partial multi-line laws were passed in New York

and, finally, the multi-line law was put into operation in New York in 1949. At the present time the multi-line philosophy prevails nation-wide, although many small companies still prefer voluntarily to limit their activities to one particular line of insurance.

With the statutory restrictions on multi-line underwriting set aside, many insurance companies undertook the process of transformation required to establish their credentials as multi-line underwriters. The requisite changes took place in two main ways; a mono-line company might amend its charter to allow it to write new lines of insurance, or several mono-line companies might merge into one new organization.[9] The degree of organizational changes needed to incorporate these new lines of business was variable. Often very little change occurred, other times extensive organizational and philosophic changes ensued.[10] For groups of companies or fleets, the introduction of the multi-line concept was the basis merely for effecting certain corporate economies by eliminating the need of operating parallel independent corporations.

Response of the Jewish Mutuals to Continued Structural Changes in the Industry

Initially, none of the Jewish Mutual companies in New York City moved to reorganize themselves as multi-line

companies; they preferred to retain their identities as long as it was economically feasible. Tables 5 and 8 shows that between 1950 and 1960 neither The Greater New York Mutual nor the other landlord's liability Jewish Mutuals moved into the Fire business or the Commercial Multi-Peril lines of insurance. However, in the same period, Greater New York Mutual increased its annual premium in liability insurance from under three million dollars to almost fourteen million, an increase of almost 400 per cent. This was consistent with the experience of the other New York Jewish Mutuals, and echoed similar growth nationwide for liability insurance which was 385 per cent. See Table 2. This suggests that the growth for The Greater New York Mutual was a function of increased awareness in the period of the need for liability insurance and, perhaps, of the increase in premium rates incumbent upon the growth of awards being granted by the nation's juries.

It would appear that in the early days of the structural change, it was not necessary for these companies to expand into these untried fields, as they experienced substantial growth within their traditional specialties. The movement of The New York Mutuals into the multi-line field came with the next development in the industry, the multi-peril policy. If writing all types of insurance in one company is more convenient for the

insureds, to say nothing of more profitable for the insurer, would not one policy covering many risks be even more convenient and possibly more profitable? After all, the Diemand Committee had suggested this as a rationale for the existence of the multi-line company.[11] Following from these new laws, then, new types of insurance contracts came into being known as multi-peril policies under which several types of perils, formerly written under separate policies, were now combined in one policy.

In 1960, on the recommendation of the Inter-Regional Insurance Conference,[12] a new comprehensive multi-peril policy was originated. Known as the Special Multi-Peril Policy or Commercial Multi-Peril Policy, it was initially tailored to suit the insurance needs of the motel industry.[13] Throughout the next few years, the form was gradually extended to meet the diverse needs of other insureds. The crucial aspect of this development for The Greater New York Mutuals as well as for the other Jewish mutuals which specialized in landlord's liability insurance was that under the Special Multi-Peril policy it was possible for the stock companies to provide, in a single policy, a major portion of an insured's property and liability insurance needs at a discount, and this change impinged competitively upon the type of business in which Jewish mutuals were engaged.

Within a short period of time, because of its

benefits for both parties, the Special Multi-Peril policy was a preferred way to write many classes of insurance risks including apartment houses. The advantage to both insured and insurer was largely financial. The insured was in a position to secure more insurance for less money and the insurer was able to spread its risks more effectively, thus mediating financial results.[14] The ability to spread their risks allowed stock companies to enter markets they had heretofore shunned, and to do so by offering competitive prices. It was at this juncture that the stock companies entered into direct competition with The Greater New York Mutual as well as with other mutual insurance companies.

Even in the face of these dramatic changes in the structural environment which permitted competition from the stock companies, the Greater New York Mutual moved into the multi-line field reluctantly and selectively. In the 1961 annual report to the members of the Greater New York Taxpayer's Association, the insurance company's cautious attitude towards new lines of business was restated.

> It is noteworthy that we have been cautious about expanding into new lines of business merely for the sake of expansion. However, many of our friends, the brokers, have been asking us to expand into other fields. A study has been undertaken by the Board of Directors and this matter is now receiving careful searching scrutiny.[15]

It would appear, however, that by the 1960's, a posture of extreme caution in regard to expansion into the multi-peril field was dysfunctional to the Greater New York Mutual. In effect, one might postulate that a crossroad had been reached in the organization's existence. The original organizational goal of the Protective and Defense Committee was to provide member landlords with the insurance protection the mainline company denied to them. With the passage of time and the formalization of the Protective and Defense Committee into a mutual insurance company, the goal of providing landlord's liability insurance remained the same, but, in addition, the goals of the developing insurance company would also seem to include staying in business.[16] At this juncture, if they continued to operate within their original parameters, the existence of the company might well have been placed in jeopardy as the brokers, upon whom the company depended for business, in all probability would have placed their business with companies which wrote the multi-peril policy in the best interest of their clients. The company had been subject to considerable pressure by the brokers to expand into this area as the officers of the company made clear in their annual report.

By 1962, the decision had been taken that the Greater New York Mutual would be a multi-peril company.

> With the addition of fire facilities, the company began writing special multi-peril policies and put a large dollar volume of this type of business on its books. The company's entry into this line of business was well received by the brokerage fraternity and the Company has established an enviable reputation with its producers for the manner in which it is handling this important class of business.[17]

Another extremely important decision was made by the Board of Directors in 1962 which dramatically changed the direction of the company and moved it into the circle of insurance companies which were oriented to nationwide business. The Board determined that, with the new multi-line underwriting facilities, the company had the means and the need to extend its territory beyond the metropolitan area of New York, and it gradually opened out of state offices and offered its facilities to brokers in other parts of the United States. One of the ways in which the Company attempted to compete with the stock companies was to offer the Standard Multi-Peril Policy at a double discount to brokers who did extensive business with them. As the broker is the middleman between the company and the insureds, the maintenance of a good working relationship with the broker is of prime importance. It is the broker who makes the selection of the Company in which to place the insured's risk, particularly when he is placing desirable business. Most often, this decision is based on cost as the broker must

offer a competitive price to his client. In instances where the price structure of the mutual and the stock company is identical, the company with which the broker elects to deal is a function of his relationship with the company. Because of the competition which the stock companies presented in the 1960's, The Greater New York Mutual attempted to devise some means of encouraging their high volume producers to continue to maintain the relationship.

> One of the problems which the Board of Directors confronted in 1962 was to provide an adequate return to those brokers in the City of New York who were giving the country a large volume of business. The Board of Directors developed a unique program which is a milestone in the insurance industry by providing for a special Contingency Commission Arrangement or Profit Sharing Plan effective July 1, 1962 covering all forms of public liability and Workmen's Compensation Insurance exclusive of premiums developed under safety group plans. Under this plan the Company will share any profit it derives on the business of its largest producers on the most generous of terms.[18]

It seems then that the first approaches which the Greater New York Mutual evolved to deal with the problems of the stock companies impinging on their territory was to attempt to shore up their previous competitive position. First, they tried to reestablish their competitive price structure by offering competitive discounts. Further, they took an innovative step by extending the mutual

concept to include their more active brokers in a profit sharing plan.

With this new capacity to offer a multi-peril policy at a discount and its movement out of the confines of New York City, The Greater New York Mutual substantially shifted away from its origins as a company which was, for the most part, ethnically contained and limited to one class of business, and moved into the mainstream of insurance activity. In 1968, this shift became more pronounced with the formation of the Insurance Company of the Greater New York, a stock company owned by the Mutual, which was "licensed to write the same classes of business underwritten by the mutual company."[19] The company, however, "does business on the basis of a different commission schedule and does not write general liability on a deviation."[20] It's prices, therefore, are in line with the other stock companies.

The Greater New York Mutual was the last of the Jewish Mutuals to make this shift. The pioneer was the Public Service Mutual which expanded beyond New York as early as 1939. Consolidated Mutual, Cosmopolitan Mutual and Security Mutual moved into the neighboring states of New Jersey and Connecticut in 1953, and continued to expand periodically. Empire Mutual followed in 1957 and Greater New York, finally, in 1962.

One means to assess the position of The Greater New

York Mutual since its entrance into the multi-peril field is to observe its pattern of growth and change revealed by the statistics for that period. Between 1960 and 1965, as shown by Table 2, all the growth experienced by the Greater New York Mutual in the traditional liability field was by inclusion as the liability portion of premiums for multi-peril policies. In 1960, the company wrote about fourteen million dollars in liability premium and no multi-peril. In 1965, they were still writing about fourteen million in liability plus five million in multi-peril, for a total of nineteen million for the two classes combined. The period after 1965 looked good in terms of multi-peril taken alone, with premium increasing nicely, but the cost, as shown by Table 2, was a commensurate decrease in pure liability premiums. The table shows that stagnation would have set in for Greater New York, were it not for their strong expansion into Workers' Compensation, which was responsible for half their growth from 1955 to 1960 and all of their growth after 1960. It would appear, at least in retrospect, that Greater New York took on the multi-peril policy to keep from losing business, but expanded vigorously into Workers' Compensation for the sake of the growth which is a sine qua non of keeping an insurance company viable.

Analysis of the changes for the Greater New York Mutual is best perceived within the context of the changes

which were experienced by all of the Jewish mutuals competing for the same business, in the same market with very much the same appeal to the clientele.

Tables 5 and 8 show similar patterns for the relationship of premiums for traditional liability policies and premiums for multi-peril policies from 1960 to 1970 for the Consolidated and Security Mutuals. Public Service Mutual, although not one of the traditional landlord's liability companies, had the same growth mix in the 60's, as shown by Table 17, with liability premiums basically standing still and all the growth in the multi-peril format, reflecting the competition with the stock companies.

Recruitment Of Personnel as a Response to Multi-Line Underwriting

One consequence of the structural change in the insurance industry to multi-line underwriting was an increased amount of job mobility in the industry. Several interviewees suggested that the appearance of job mobility in the industry seemed to be a result of two parallel developments in the fifties and sixties. The first was the move to multi-line underwriting; the large majority of underwriters and adjustors working in mono-line companies had learned their trade on the job, and were, in the main, familiar only with their accustomed class of business.

Expansion frequently meant recruiting people from companies which wrote other types of business. The second factor which encouraged job mobility was the move towards mergers in the sixties[21] which made many experienced people redundant and provided a ready pool of personnel for the new and growing needs of insurance companies. The appearance of job mobility in the insurance industry seems notable as prior to this period there was very little external job mobility in the industry; employees were loyal to their companies and the companies generally kept people on the job "for as long as they had the strength to show up in the office every morning."[22] Experienced workers who sought to change companies were looked upon as bad risks, and their job applications were not well received. Certainly, a second move in one life time was considered an indication of possible instability and unreliability. Thus, the two parallel developments of structural change and mergers started a trend towards job mobility that had long marked other industries.

When the Greater New York Mutual and the other Jewish mutuals finally reorganized as multi-line companies, they were forced to recruit trained personnel outside of their usual employment pool. They needed employees experienced in the lines of insurance which the companies had not previously handled. Many of the early employees of the company were trained on the job and did not have broad

insurance expertise. For the most part, the employees attracted away from the establishment companies by the Jewish mutuals have been chiefly Italian, with some Irish. The hypothesis was offered that the Italians and Irish were more willing to leave jobs where their ethnic identity limited their advancement potential and that they were willing to go to Jewish companies which offered higher level positions to them, and where they could envision advancement, as in all of the Jewish mutual companies some non-Jews were in high management positions. It is interesting to note in this regard that one of the companies, Public Service Mutual, employed a large number of Chinese. This was idiosyncratic as the late President of the company was a sinophyle, interested in collecting Chinese art and learning Chinese language and philosophy.[23]

Changes In The Insurance Industry Brought About by External Pressures

The structural changes in the insurance industry, which started in 1949, caused fundamental changes in the New York Mutuals; they expanded their offerings, they moved outside of New York City, and, to some extent, outside the ethnic community, and they recruited a new type of employee, one who had attained experience working for other insurance companies. Two other changes in the

insurance industry which influenced the companies to varied degrees, derived from the action of the State Legislature, and affected the writing of automobile and fire insurance in New York State.

Automobile Insurance

Compulsory automobile insurance was introduced into New York State starting in the fifties in several phases. In 1944, the insurance industry, at the behest of the State Legislature, formed an assigned risk plan. Through this plan, people who were "uninsurable" could obtain auto liability insurance, albeit at a higher rate. Applicants were assigned to the insurance companies in numbers proportional to the amount of auto insurance being written voluntarily by the insurance companies. The plan guaranteed that everyone could buy insurance; it did not guarantee that everyone would buy insurance.

Because of the mounting number of automobile accidents and the large number of uninsured motorists operating vehicles in New York State, the State Legislature, in response to increasing pressure from constituents and consumer groups concerned with this growing problem, became interested in enacting a compulsory auto insurance law. By 1957, despite considerable resistance from the insurance industry,[24] a compulsory automobile liability insurance law was

passed. Shortly after the Act was passed, it was extended to provide protection for insured drivers injured by those not insured, i.e., hit and run drivers, out of state drivers, irresponsible car owners with lapsed insurance, etc. To this end, a special fund was established, financed through a premium collected on policies, which indemnified the victim.

The compulsory automobile liability insurance laws passed in New York as well as in other states, merely improved the tort system of reparations.

> General compulsory insurance laws were intended to close gaps in auto victim recovery which are due to the insolvency of motorists. They were not intended to close the gaps in recovery due to the incidence of liability under the existing rules of law.[25]

With compulsory automobile insurance then, there still remained the necessity to judge fault. The main difference is that the insurance company pays the judgment once it is obtained.[26]

By 1967, with the number of automobile accidents continually increasing and with concerted pressure from consumer advocates, the New York State Legislature commissioned a study on the compensating of victims of automobile accidents. Reported to the Governor in 1970, its main recommendations were:

> (1) emphasis should be placed on reimbursement of a victim's economic losses rather than for pain and

> suffering, (2) all victims should be afforded recovery of their economic losses without regard to fault, (3) benefits for net economic losses should be for the full amount and not subject to scheduled limits, (4) insurance to cover these losses should be compulsory, and, (5) there should be strict liability for commercial vehicles (trucks and taxis), that is, the insurer of the private passenger auto would be reimbursed by the insurer of the commercial vehicle.[27]

The New York State Legislature did not act upon the report in 1970, and it was not until 1974 that a form of no-fault insurance was passed in New York State. Although any type of no-fault plan was opposed by the American Bar Association and the Association of Trial Lawyers, this New York plan was supported by such former adversaries as the Consumers Union, various labor organizations, the American Society of Insurance Management and many of the established stock insurers, as well as their representative trade associations. "No-fault insurance had a less difficult road to tread than did compulsory auto insurance."[28]

The one consistent theme which emerged from the search for an equitable means to deal with the economic losses which occur as an aftermath of the traffic accident is that it is a social problem; the analogy is continually made to Workmen's Compensation. The problem being inherent in the use of the automobile by society. Moreover, it is defined as a social problem whose

resolution lies with the institution of insurance. The insurance industry, voluntarily or not, has joined with the federal and state governments in working towards a practical solution to the problem.

Compulsory automobile insurance in New York State had a differential effect on the six subway mutuals. Essentially, the companies which specialized in landlord's liability insurance did not go into the auto liability market, and, therefore, were effected the least. The Greater New York Mutual chose not to enter the market to any substantial degree. As can be seen from Table 1, automobile liability premium never exceeded 4.2 per cent of the total company premium for Greater New York. In all probability, the Greater New York Mutual merely made auto liability insurance available as an accommodation to its General Liability, Multi-Peril and Compensation clientele. As the non-voluntary participation in the assigned risk pool was proportional to the voluntary auto insurance writing of each insurance company, significant detrimental impact of risk assignment was essentially avoided by Greater New York .

Consolidated Mutual seems to have followed a similar underwriting pattern.

Security Mutual also had previously deemphasized auto insurance, with the 1955 premium at only 3.5 per cent of its total writings. The new law seemed to result in some

boost in auto liability insurance, with the percentage allocation going to 9.1 per cent in 1960. See Table 9.

Compulsory auto liability insurance in New York State significantly affected the Empire Mutual whose speciality had always been auto liability insurance with over 74 per cent of its premiums in this class of business in 1955, as per Table 16. Between 1955 and 1960, the first years when the impact of the new law upon the industry would be experienced, Empire Mutual increased its automobile liability premiums by 147 per cent.

Once again a subway mutual was able to succeed by filling a gap left by the insurance establishment. Insurance brokers, informants advise, who had to place auto insurance for previously uninsured car owners, found the establishment companies unwilling to accept drivers who had not previously been insured, unless the drivers had connections with presently insured commercial risks. Empire Mutual had strict underwriting rules, with long lists of excluded classes of drivers, but they specifically did not exclude drivers who had previously been uninsured. Their position was also significantly enhanced by their competitiveness; at a period when it was often difficult to obtain auto insurance, Empire was actually offering a premium discount.

The other automobile centered company was Public Service Mutual, but they had been expanding in other

areas, with auto liability premium down to just under 50 per cent of total in 1955. Following the compulsory insurance laws, their auto liability premium increased between 1955 and 1960 from only $2,123,000 to a new total of $7,390,000. See Table 17.

Cosmopolitan Mutual as can be seen by Tables 11 and 12 seems to have gone after its share of this new business, increasing its writings by 258 per cent from $2,255,000 to $8,067,000 between 1955 and 1960.

Fire Insurance

The relative availability of fire insurance and extended coverage,[29] emerged as a social problem of considerable moment following the urban riots of the late 1960's. The problem was not new; indeed, it had developed gradually over the years with insurance companies declining to renew or to write fire insurance in areas which they referred to as, "congested urban areas," an euphemism for the predominantly Black and Puerto Rican inner cities. The reasons for this refusal were complex. In part, the refusal to write fire and extended coverage in the inner city reflected the industry's desire to write the new homeowner's multi-peril policies in the growing suburban areas; industry underwriters saw this as desirable business.[30] In part, the desire to avoid possible high risk business was a function of the so-

called decline in the profitability in the insurance industry during the sixties.[31] Much of this decline was due to poor underwriting results.

> It is sometimes hard to believe that during the longest and biggest boom ever enjoyed in the general economy, the insurance companies writing property-liability business suffered their longest cycle of underwriting frustration. The stock companies collectively have not made a satisfactory underwriting profit since 1955 and many have operated in the red underwritingwise more often than in the black....
>
> It is quite remarkable that during these years the companies were able to finance a growth that allowed them to approximately double their premiums and maintain capacity despite increasing size of the risk exposure, inflation and adverse underwriting results. (Best's 1968 IX).[32]

In a study of fire insurance coverage in the inner city, Maurice B. Baker, a Vice President of the Commercial Union group of companies, summed up the position of his companies and others in the industry. "When the industry is in a very difficult period, as it is now, naturally, we look to avoid classes of property which may be money losing propositions."[33] No matter what the specific rationale for refusal of the inner city risks, the underlying factor was that underwriters judged urban core areas as bad risks; in effect, and often in actual practice, they were redlining the areas. This underwriting decision had its parallel in the past when

companies refused to write liability insurance in approximately the same areas, at least in New York City, which were, at that time, occupied by Jews. These original refusals precipitated the formation of the Protective and Defense Committee and eventually, of the three insurance companies which wrote landlord's liability insurance.

Extensive complaints by Black and other minority businessmen resulted in several investigations of the underwriting practices of the fire insurance industry. Although these investigations failed to prove the allegation that a pattern of discrimination existed in the declination of urban core fire insurance and extended coverage in New York City, Buffalo, and several other cities around the nation, the industry, anticipating government intervention, put into effect an Urban Areas Plan. According to this plan, a risk could only be refused conditionally as the property owner had to be told how he could upgrade his property to make it insurable. In New York a copy of this report also had to be sent to the Insurance Department.[34] However, this plan was only partially effective, and short lived, as the federal government intervened following the civil disorders in Newark and Detroit in 1967, when a substantial amount of the existing insurance coverage was cancelled and many companies refused to entertain new risks in riot or

potential riot areas. In New York, for example, The Royal Globe Insurance Companies attempted to cancel their entire book of inner city properties. Although the New York courts prevented the Royal Globe from taking this action and made it impossible for any insurance company writing business in New York to effect mass cancellation, it became increasingly impossible for businesses and property owners in the inner city to obtain insurance.

In 1968, President Johnson set up a panel, chaired by Richard J. Hughes, a former Governor of New Jersey, to inquire into the unavailability of insurance in the inner cities and to make recommendations as to how the problem could be resolved quickly. One of the recommendations of the Hughes panel was that the federal government allay the fears of the insurance industry that it would have tremendous losses due to riots in the inner cities and offer the industry low cost, non-cancellable reinsurance, i.e., to insure the insurance companies which participated in Fair Access to Insurance Requirements Plans. These FAIR plans would be designed by the states to cover risks which had been refused on the voluntary market. Very soon after the FAIR plans were put into effect, the congress passed The Urban Property Protection and Riot Reinsurance Act which confirmed the federal support of the FAIR plains. The act underlined the importance the Hughes panel attached to the necessity of insurance for

rebuilding the nation's inner cities,

> The vitality of many American cities is being threatened by the deterioration of their inner city areas; responsible owners of well maintained residential business and other properties in many of these areas are unable to obtain adequate property insurance coverage against fire, crime, and other perils; the lack of such insurance coverage accelerates the deterioration of these areas by discouraging private investment and restricting the availability of credit to repair and improve property therein; and this deterioration poses a serious threat to the national economy; and the national interest demands urgent action by the congress to assure that essential lines of property insurance will be available to property owners at reasonable costs.[35]

The New York State FAIR plan was adopted in October, 1968. Known as the New York Property Insurance Underwriting Association, it is owned by the property insurance companies writing risks in New York State. Membership in the pool is mandatory. Participation is "based on the relative amount of fire and extended coverage (including the fire and extended coverage components of multiple peril package policies) written in this State by each insurer."[36] Profits and losses are shared by the pool members in direct ratio to their participation. Although the pool was originally intended to offer insurance at the standard rates, it was also designed to be self sustaining. Therefore, as losses increased, rates were raised. In addition,

> ... the plan has become a dumping ground

> for all marginal or undesirable hazards. Thus high risk classifications such as bars, bowling alleys, and restaurants are being forced into the plan because insurance companies refuse to insure them outside these plans. The losses that these properties are suffering as well as losses resulting from the inclusion of properties with environmental hazards are costing the pool millions of dollars in underwriting losses.[37]

As the rates are dependent on the loss experience, they are constantly being raised with an adverse effect on just the population the FAIR plan was devised to assist. However the rates have never kept up with the losses.[38]

The Greater New York Mutual responded to the introduction of the FAIR Plan in a positive manner. Many of the brokers who dealt with the company for many years in landlord's liability insurance were facing substantial difficulty in placing their fire insurance perils; the pool would provide insurance for these brokers. It would appear that, to some extent, the pool allowed the Greater New York Mutual to sidestep the issue of redlining. The effect of the FAIR plan on the other two companies with extensive business in the urban core is problematic. Several informants suggested that both Consolidated Mutual and Security Mutual were hurt by the FAIR plan as they were not really in a financial position to participate in the plan and share the large losses which the FAIR plan experienced in its early days.

The Seventies: Financial Problems

The decade of the 1970's was a period of extensive change for the New York City mutuals. By the end of the seventies, half of the companies had been declared insolvent by the insurance department and were either liquidated or in the process of being liquidated. Only two of the six, The Greater New York Mutual and the Public Service Mutual retained their sound financial position, although they too had problems. The Empire Mutual, the other remaining company, was rehabilitated by the Insurance Department, largely due to an infusion of 25 million dollars from Baldwin-United, a Cincinatti based financial holding corporation. Although the Empire Mutual will continue to write automobile insurance in New York, an important reason that the company was rehabilitated, and a substantial portion of the management will be retained, the company ultimately will be under the supervision of the new financial sponsors. It should be noted that in 1977, the State replaced the top management of the company.[39]

There were many reasons for the financial problems of the four troubled mutuals, some known, some unknown, and from the outside, unknowable. Perhaps the most penetrating observation came from a lawyer informant when he said, "they have run their course, this is the end of an era." He suggested that their specific markets were

saturated, that the need that they fulfilled could now be fulfilled, to some extent at least, by the stock companies, and that expanding out of New York City had not really resolved their problems. The only hope that he envisioned for the future of the companies was consolidation into one strong company. However, when interviewed in the mid seventies, he felt that that probably would not happen because of in-house politics and large egos. In effect, of course, this has been happening very gradually. Initially, Security Mutual was taken over by Empire Mutual. With the liquidation of the Cosmopolitan Mutual and the Consolidated Mutual, much of the business was taken up by the Public Service and the Greater New York Mutual.

Many of the evident financial problems were related to an unfavorable security market. As an insurance company invests a portion of its surplus in securities it can offset some underwriting losses with profits from its investment portfolio. When underwriting losses combine with a falling security market, the insurance company may be faced with an inadequate surplus to cover future claims, as happened to Cosmopolitan Mutual. The source of Cosmopolitan's problem seemed to be its expanded underwriting of automobile insurance following the enactment of compulsory insurance law. A letter from the Insurance Department to the company spells this out

clearly.

> ... a review of the company's latest available experience indicates that some 25% of the company's countrywide premium volume is derived from its automobile insurance business; that the loss experience on this auto business has been the major cause of the company's recent severe underwriting losses and surplus decline; that as a result of its extremely poor auto underwriting experience, the company has been forced to sell long term securities at a loss in an unfavorable market.[40]

In an attempt to rectify their financial situation, the company asked for and received permission of the department to cancel, across the board, all its private passenger automobile business[41] on the anniversary date of the policies. They did not, however, receive permission to decline business from the assigned risk plan. The company went from rehabilitation to liquidation on November 24, 1980.[42]

Security Mutual and in some ways Consolidated Mutual, were victims of the decline of the center city. The Security Mutual was a product of the Bronx; its insureds owned tenement houses in the South Bronx, and, in later years, in the more affluent Upper Bronx. In the years prior to its liquidations, its underwriting losses were substantial.[43] In addition to larger claims, the population which the Security Mutual dealt with either sold their property or abandoned it completely. When Empire Mutual took over the book of business from

Security, it attempted to maintain the good risks and shed the bad ones. In a study of redlining in the Bronx in 1978, Attorney General Robert Abrams reports that the companies most often cited for redlining in the Bronx include Empire Mutual and the Consolidated Mutual.[44] It is ironic to observe that the companies which were formed to serve these urban core areas now redlined them due to severe underwriting losses. Consolidated Mutual not only had poor underwriting experience in the Bronx, but a substantial amount of its business was in the Brooklyn urban core which also experienced substantial losses.

Empire Mutual Insurance company (and its subsidiary AllCity) trace the source of their financial problems to unexpectedly high losses on stolen and damaged cars. In an extensive article telling the "Story of a Failing Insurer"[45] the New York Times interviewed state officials and insurance industry sources and pieced together the history of Empire's problems. It is to be noted that executives from Empire Mutual refused to be interviewed. According to the Times, Empire Mutual was in difficulty for at least seven years and they were "courting financial difficulties by expanding coverage in high risk areas." The then Commissioner of Insurance, Thomas Harnett, is quoted as having said, "companies could have responded to the warnings by diversifying their business or cutting back on their business."[46] Instead annual statements show

that they added policy holders and continued to concentrate their auto coverage in New York City. During this period, there were many complaints to the Insurance Department about the long delay or refusal to pay claims. The advent of no-fault insurance had a detrimental financial effect on the company, as it was placed in a position where it was forced to pay claims immediately instead of fighting each claim and then delaying years before it paid. Prior to no-fault insurance, the company had only paid 15 to 18 per cent of the claims filed against it in any year.[47]

Empire's financial problems were also exacerbated by taking over the Security Mutual's problems and in addition, having a heavy investment in New York City municipal bonds. The accounting firm which investigated the company indicated that its portfolio was not professionally managed.

Another source of problems for the Empire, according to the New York Times,[48] was the fact that Herman Bloch, the President of Empire and its subsidiary, also owned the brokerage house which fed the Empire business. In addition, another big brokerage house, the major recipient of commissions from Empire Mutual, is half owned by a director of Empire Mutual. While this is not illegal, it is a situation in which there is a conflict of interests. However, a spokeman for the brokerage house

said that he only submitted business to the company which fell within its underwriting guidelines and that the premium money was remitted to the company within 90 days which is the practice in the industry.

The financial impairment of the Cosmopolitan, Consolidated and Security Mutuals appears to have resulted in a shift in the class of business written by the Greater New York in the late seventies. The Greater New York entered the Workers' Compensation market; in fact, this class of business became responsible for the company's growth from 1950 to 1960. This was a new venture for the company, and they used the mutual price edge to compete for this profitable business. Generally, compensation was written only for customers who also purchased their liability insurance from the Greater New York Mutual. However, from 1975 to 1980, the Greater New York Mutual experienced a burst of thirteen million dollars in annual compensation premiums. See Table 2. Not only had the Greater New York Mutual doubled its 1975 compensation volume, but this class of business provided 52.1 per cent of the 1980 premium income compared to only 41.7 per cent for liability and multi-peril combined as can be seen by Table 1. This increase equalled approximately one half of the aggregate Workmen's Compensation premium volume set adrift by the closing down of the Consolidated, Cosmopolitan and Security Mutuals in the same time span. As

Table 17 indicates, the other half of the premium volume appears to have been picked up by the Public Service Mutual, a company which had written this class of business since its start. It is interesting to note despite the fact that the Greater New York Mutual was interested in writing Compensation business previously in the three bankrupt Jewish mutuals, conservative underwriting of liability insurance by the company seems to have come forward again, as the statistics suggest that the Greater New York Mutual did not take any of the liability or multi-peril business abandoned by the defunct companies, as can be seen in Table 1.

Although the Greater New York Mutual as well as the Public Service Mutual continued to be financially healthy during the 1970's, they were not without financial difficulties. The source of a portion of their difficulties as well as the problems of all the companies stemmed from a change in the method of pricing insurance in New York State. On January 1970, New York instituted an open rating plan for insurance companies which meant that insurance could be priced individually by each insurance company, instead of the previous joint pricing practices. By 1974, the Greater New York Mutual was experiencing considerable pressure from the large companies. In his 1974 report to the Association, Mr. Rosenthal, President of the Company, pointed out that with

open rating,

> Large insurance companies began to quote and write business at rates which, in our view, were based upon considerations alien to the underwriting of insurance and based upon policies which we, as a conservative institution, could not follow.[49]

In addition to the problems deriving from open rating, the financial problems of the company were also a function of increasing claim costs under Workmen's Compensation, general liability and commercial multi-peril policies.[50] Despite these evident problems, Best's Insurance Reports accords the company an A (excellent) financial rating. Public Service Mutual has many of the same type of financial problems, however, it too received a very good (B+) financial evaluation.

Conclusion

No matter what its original impetus for going into business, the functioning of an insurance company takes place within the social system of the insurance industry. Significant changes in the social system of the industry, therefore, will have an effect upon the operation of individual companies. During the past three decades, the changes in the insurance industry have been extensive and radical. For the first time, New York State permitted any insurance carrier in Property and Casualty insurance to write all lines of Property and Casualty

insurance, a change which New York had resisted for one hundred years. This change allowed insurance companies to become more competitive and enter markets they had previously shunned. In addition, in this same time span, the State Legislature passed a compulsory automobile insurance law, a modified no-fault compensation plan for victims of automobile accidents and a Fair Access to Insurance Plan which attempted to guarantee that fire insurance would be available in urban core areas by setting up a mandatory pool of New York insurers. Finally, New York permitted an open rating arrangement whereby each company could set its own rates in response to the competitive market.

The Greater New York Mutual, as well as the other subway mutuals, were forced, sooner or later, to respond to these changes. Because of its essentially conservative stance and its committment to landlord's liability insurance, the Greater New York Mutual resisted participating in the changes going on in the industry, however, when a change came about which brought into existence a multi-peril policy, and the company faced substantial competition, it too became a multi-line underwriter. For the most part, the other companies entered the multi-peril field at about the same time or slightly earlier than the Greater New York Mutual. At this juncture, the Greater New York Mutual also commenced

underwriting out of the confines of New York City, thus moving beyond its origins. It was the last company to undertake this shift.

The immediate impact of the legislation requiring compulsory automobile insurance of all New York State drivers, was a large pool of potential customers who had never carried insurance. Because of the reluctance of the established companies to write insurance for those previously not insured, the Empire Mutual and the Public Service Mutual had an expanded market. At this point, the Cosmopolitan also increased its automobile underwriting. Unfortunately, both the Empire and the Cosmopolitan suffered severe financial losses during this period. The Cosmopolitan because of poor underwriting and the Empire because of further change in the auto insurance law to no-fault insurance, which required that the company pay immediately rather than delaying claims while fighting the case in court.

Initiation of the Fair Access To Insurance Requirements Plan also resulted in a large number of customers for fire insurance, customers which the insurance companies had previously rejected. In New York City, a significant portion of the declined business was in the urban core areas, the same areas in which the Jewish Mutuals had had their start providing liability insurance. To some limited degree, in recent years, these

companies had been providing fire insurance in these areas. They had, however, experienced the same poor underwriting results as did the larger companies and were reconsidering this venture. While the Greater New York Mutual welcomed the FAIR plan as a solution to their clients' problem of unattainable fire insurance, informants suggested that participating in the FAIR plan exacerbated the financial difficulties of the Security Mutual and Consolidated Mutual. Certainly, writing insurance in these urban core areas added to their difficulties and prior to the inauguration of the FAIR plan, they were attempting to move out of this market.

From 1970 to 1980, the financial troubles that the New York Mutuals experienced were so severe that three of the companies were forced out of the market by the Insurance Department. A fourth company, Empire Mutual, was placed into rehabilitation. Only The Greater Mutual and the Public Service Mutual retained their original form. To some extent both Public Service and The Greater New York acquired the business left homeless by the demise of the other companies. In the next chapter we will discuss the participation of the companies in the Jewish community.

Chapter VII

Footnotes

1. German Alliance Insurance Company v. Lewis, 233 U.S. 380 (1914), cited in Robert I. Mehr, Emerson Cammack, Principles of Insurance, Op. Cit., p.772.

2. New York State Legislature, Chapter 308, Section 2, Laws of 1849, in David Lynn Bickelhaupt, Transition to Multiple Line Insurance Companies, (Homewood, Illinois: Richard D. Irwin, 1961) p.16.

3. At that period, casualty insurance was not yet a factor in the industry.

4. Bickelhaupt, Op. Cit., p.16

5. Ibid., p.17. In the New York State Insurance Law, companies domiciled in other States are called "foreign", "alien" companies are those domiciled in other countries, and New York companies are called "domestic."

6. Ibid., p.31.

7. Ibid, p.32. Auto physical damages, fire, theft, and collision was originally considered to be the province of fire companies.

8. Ibid., p.33.

9. Ibid., p.38.

10. Although it is not within the scope of this paper to consider the full range of structural changes, it would be interesting sociologically to examine power changes and effect on the industry.

11. Bickelhaupt, Op. Cit., p.35.

12. Mehr and Commack, Op. Cit., p.574.

13. Ibid., p.374.

14. The financial advantage of multi-line underwriting over mono-line is what retail merchants call loss leaders, that is, an insurer can agree to take a high risk at no profit or even at a loss, in order to attract the more profitable business from a grateful insured.

15. Real Estate News, March/April 1961, p.85.

16. For a discussion of the wide range of organizational goals see, Charles Perrow, "Goals in Complex Organizations", American Sociological Review, 26, #6 (December 1961), pp. 854-865.

17. Real Estate News, April 1963, p.115.

18. Ibid., p.116.

19. Real Estate News, March 1968, p.89.

20. Ibid., p.89.

21. This point is continually made in the introduction to Best's Insurance Reports from 1968 to the mid 1970's.

22. Interview with an insurance broker. The fact that job changes were frowned upon was in the culture of the industry. It was freely discussed among the employees of large companies. Further, when large insurance companies hired employees, they made that point.

23. Interview was conducted with the late President of the company who spent a substantial portion of the interview talking about his interest in China and the immense value of his Chinese employees.

24. The industry formed a Committee on Motor Vehicle Accidents in the Summer of 1951. The purpose of the Committee was to point out why the industry believed that compulsory auto liability laws were not in the public interest and showed not be adopted. Report to the State of New York of the Insurance Industry Committee on Motor Vehicle Accidents, Mimeographed 1951.

25. Bickelhaupt, Op. Cit., p.21.

26. For a popular discussion of compulsory auto insurance and problems inherent in insurance coverage see Andrew Tobias, Invisible Bankers, (New York: The London Press, Simon and Schuster, 1982), especially Chapter 11.

27. Mehr and Commack, Op. Cit., p.410.

28. Bickelhaupt, Op. Cit., p.410.

29. There are seven perils covered in the Extended Coverage, one of them is loss from riot and civil commotion.

30. See generally, Congressional quarterly: "Urban American Policies and Problems," 6-7, 1978.

31. For a thorough discussion of the problem see, Harvey Shapiro, Fire Insurance and The Inner City, (The New York City Rand Institute), February 1971.

32. Best's Op. Cit., 1968, p.IX.

33. Shapiro, Op. Cit., p.13.

34. Ibid., pp.7-14.

35. Meeting the Insurance Crisis of Our Cities, a Report by the President's National Advisory Panel on Insurance in Riot-Affected Areas, Washington, D.C., 1968 - p.3.

36. Report to Governor Nelson A. Rockefeller from the State Department of Insurance, on the market for fire insurance in the core areas of Buffalo and New York, December 29, 1967, p.37.

37. Mehr, Op. Cit., p.825. Also see Robert Abrams, The Insurance Industry: It Redlines Too, unpublished report, January 1978.

38. A strong attempt to bring the prices charged in the FAIR plain in line with the voluntary market has been made by Elizabeth Holzman, Democratic Congresswoman from Brooklyn. The Holzman amendment, signed into law in October of 1979 stipulated that the rates charged by the FAIR plan should be reduced to the level of the voluntary market by eliminating the self rating structure of the plan which permits prices to rise with the losses.

39. New York Times, September 27, 1977, p.36.

40. Insurance Advocate, August 16, 1980, p.8.

41. Such mass cancellations require permission from the Insurance Department.

42. Insurance Advocate, December 6, 1980.

43. New York Times, September 27, 1977, p.34.

44. Abrams, Op. Cit., p.5.

45. New York Times, May 9, 1977, p.49.

46. Ibid., p.4.

47. Ibid., September 27, 1977, p.35.

48. Ibid., p.35

49. Real Estate News, March 1979, p.10.

50. Best's Op. Cit., 1981, p.860.

CHAPTER VIII

FROM MARGINALITY TO RESPECTABILITY

With the formation of its Protective and Defense Committee, whose function it was to provide insurance for Jewish landlords on the Lower East Side, the Greater New York Taxpayer's Association took the first step towards penetrating the insurance industry in the role of provider of insurance, a role which was rarely occupied by Jews. The role of the Jew in the insurance industry has usually been that of the broker, a middleman between the client and the company.[1] The Protective and Defense Committee functioned for thirteen years until 1927 as a de facto insurance company on the margins of the industry when the Insurance Department, taking exception to their amateur, and hence unregulated status, brought about their transformation into the Greater New York Taxpayer's Mutual Insurance Association, officially bringing them into the environment of the insurance industry as a mutual insurance company providing landlord's liability insurance. Shortly afterwards, two other companies followed their lead and entered the insurance mutual market to provide landlord's liability insurance: Security

Mutual in the Bronx, and Consolidated Mutual in Brooklyn.

Some five years earlier, in 1922, two other essentially Jewish mutual companies had been formed to provide automobile insurance for taxi drivers who were unable to obtain coverage elsewhere, and, in 1924, the Kosher butchers formed their own mutual company to provide themselves with Worker's Compensation.

These six companies, although formed to write different types of insurance, shared certain commom characteristics. All six companies were formed to fill gaps created by emergent legal requirements for insurance against claims from third parties, which the established companies were loathe to provide. Five of the six companies were formed as self-help associations; only the sixth, The Public Service Mutual, entered the insurance business qua business.

From a historical perspective, it could be postulated that the companies moved from a position of marginality to that of respectability and responsibility. The marginal nature of their enterprise stems from three sources. First, as Jews in the early part of the twentieth century, they were ethnically marginal. Second, the pioneers who founded these companies were in marginal business; they owned one or two tenement houses, or one or two taxicabs or a retail Kosher butcher shop serving the ethnic community. As a consequence of the intersection of their

ethnically marginal position and their marginal position in the business community, eventually, they occupied a third marginal position as insurers. Initially, the pioneering efforts of the Protective and Defense Committee to provide insurance operated outside of the normal channels for insurance coverage; ultimately, the institutionalization of their efforts required the passage of a special law. The coverage which all of these companies wrote was marginal; it was located outside the parameters of acceptable risks for the mainstream companies.

From a sociological perspective, it seemed logical that, because of their shared characteristics, these companies could be regarded as a subsystem within the social system of the insurance industry. We were therefore, concerned with their relationship, if any, with the total industry and with the degree of interaction among the companies themselves, and with the Jewish community. Because of their shared position of marginality, we were also interested in their perceptions of their reputation as insurance companies.

Relationship With The Insurance Industry

One of the important characteristics of the insurance industry, until quite recently, was a substantial amount of group cooperation whose main goal was to discourage

destructive competition.[2] To this end, many vital tasks in the insurance industry were done cooperatively, such as rate making, standardizing policies, increasing underwriting facilities, and so on. The means by which this cooperation is achieved is through the proliferation of special purpose organizations. So many of these organizations have emerged that it is often said of insurers that, "they compete in a great spirit of cooperation."[3]

Some insurance companies, however, do not participate in these cooperative ventures. Many companies "do not believe that either the public interest or their own interest is best served by the cooperative action among insurers."[4] Others do not wish to be constrained by the necessity to conform to the dictates of the associations. Still others have an ambivalent attitude towards participation, and evaluate it on the basis of need, as was the case with the Jewish Mutual, according to information from respondents. Historically, participation was minimal.

The importance of cooperative ratemaking, however, became apparent as the companies grew, and their solution to the problem was to form their own Mutual Rating Bureau, although they actually ended up with the prices stipulated by the Stock Company Rating Bureau on liability insurance, but at a twenty per cent discount. By and large,

participation in other types of trade associations was also minimal in the early days. Several respondents said that many of the trade associations were closed clubs, and that, especially in the beginning, they felt they could not and did not belong.[5] With the further development of the companies, participation in various trade organizations increased. A few of the companies joined the American Mutual Insurance Alliance. One of the executives of Consolidated Mutual actually became a member of the Board. However, they did not retain this connection for an extensive period of time, as the Association really spoke to the insurance needs of the large companies and did not deal with the special problems of small insurers. More recently, some of the companies have membership in the Insurance Service office, a new organization formed in 1971 through consolidation of six national rating or service organizations. This had become one of the largest rating services in the insurance industry and is used extensively by the well established, prestigeful companies.

Another type of essential cooperative behavior is reinsurance activity. Insurance companies, particularly those as small as the Jewish mutuals, often do not have the financial capacity to bear the full risk for the amount of insurance which the customer requires. To accept only a portion of the risk would be inconvenient to

the customer and possibly encourage him to seek insurance elsewhere.[6] Instead of courting a loss of business, the company accepts the entire risk and buys reinsurance to cover that portion of the risk which it cannot undertake. Reinsurance may be obtained through an informal network among primary insurers or through professional reinsurance companies. In the early years, the Jewish companies had a great deal of difficulty in breaking into the informal network. They finally were able to obtain access to the network by engaging highly respectable reinsurance brokers as their intermediaries. It is interesting to note that the Jewish companies have the preponderance of their relationship with non-Jewish companies through the reinsurance market.

Relationship Among The Jewish Insurance Companies

The relationship among the New York mutuals is largely exercised through their joint participation in fund raising activities for Jewish causes. Through the years, there has been some relatively structured interaction among the companies relative to their problems as mutual insurers of high risk business in New York. Several informants reported that in the very early days of the companies, they had an informal group which met at specified times to discuss such problems as ratemaking and handling claims. These meetings took place before

ratemaking bureaus were legitimated[7] and the Insurance Department took exception to these meetings and they stopped. Subsequently, they were cooperatively involved in mutual ratemaking organizations and other insurance associations. Further, our informants pointed out that there is an extensive informal relationship among the companies sustained by the friendship of many of the old timers. Although their interaction is not necessarily oriented to business, a substantial amount of business is discussed and ideas exchanged. This is particularly true with all the contacts made during annual fund raising drives.

The participation of the Jewish companies in charitable activities for the Jewish community dates to the late 1930's when growing anti-semitism in the world at large and in the insurance community led the executives of the companies to feel that they should be identified as Jews in the insurance industry. "It was important to show them that Jews in the insurance industry work very hard to support Jewish causes, and that they are willing to be recognized as Jews. It is not enough to work for Jewish causes as individuals, that is expected. We must be identified as being in the insurance industry."[8] Through the efforts of the people in the Jewish companies, some Jewish insurance brokers and Jews in the Life Insurance industry, the insurance branch of the United Jewish Appeal

was established in the late nineteen thirties. At first, it represented Jews in both the Property/Casualty and Life Insurance branches of the industry. In the late nineteen forties, however, two separate groups were formed. By and large, the split was due to the fact that people in Life Insurance and those in the Property/Casualty industry have completely different business interests. When the two separate units were formed, the Jewish insurance companies assumed the responsibility of running the Property/ Casualty appeal drives. These drives take place within a social network which, in addition to the Jewish companies, includes Jewish brokers, and also non-Jewish brokers and company representatives with whom people in the companies may interact in the course of business.

The fund raising activities of the Property/Casualty industry are largely oriented to generating money for the State of Israel. One informant noted that in the early years of the appeal drives, fund raising was rather haphazard. It was only with the emergence of the State of Israel that the drives took on an organized focus. He felt that raising money for the State of Israel was generally appealing and that there was not controversy among the contributors, particularly the large contributors who felt that they should have substantial input, as to the allocation of the funds. For many years, funds have been raised through an annual dinner organized

by one of the companies. Each year, a different company accepts the responsibility. These fund raising dinners would appear to serve several latent functions in addition to their evident function of raising money. First, the company which sponsors the dinner confers status upon the person whom it selects to be chairman of the dinner. The announcement of the chairmanship of the dinner is of interest to the people in the social network of the Jewish insurance companies, and its implications are discussed. It is often an indication of upward mobility of the selectee and, as such, may alter the way in which he is regarded by those interacting with him. It would seem that the status conferred, to some degree, compensates the chairman for the extensive amount of additional work that he is expected to perform in the course of the year. The Chairman of the dinner is aided by several Committees and the chairmanship of these Committees also carries with it a certain degree of honor as well as extensive responsibility. Second, the Committees also serve to bring together people from all the companies as well as brokers. In performing their assigned roles on the committee, however, the opportunity is also present to discuss business.[9]

In addition to being a vehicle to confer status and to provide for interaction among participants, the dinners also appear to have a third function, that of social

control. Guests are invited to the dinner in the expectation that, in addition to the initial cost of the ticket, they will contribute substantial amounts of money to the United Jewish Appeal. Often, the guest is a company or a brokerage house, in which case the tables are paid for by the company, and employees of the organization attend the dinner as guests of their employer. It should be noted that the allocation of tickets to employees is also a measure of their status.[10] At the time designated for fund collecting, each guest, i.e., individual or company, is called upon and expected to announce his contribution to the assembled group. This announcement is of interest to all present; a smaller contribution than that given the prior year is an index that business has declined. Conversely, a larger contribution indicates good times. Every guest is made aware of this increase or decrease as it is publically mentioned. The contribution that each guest gives and its meaning for future business relationships is an important topic of conversation during the dinner.[11] Failure to accept the invitation is also regarded as an index of declining circumstances, and the donations of people who could not attend are announced to preclude this conclusion.

Finally, the dinner is used as a means to honor someone in the insurance industry who has not only worked for Jewish charities and the State of Israel, but has been

helpful to the companies. Very often, it is a non-Jew in a position of power in the industry, such as the Insurance Commissioner. It was pointed out that the person honored really worked very hard, and that this was a most sincere gesture.

Respectability

As Jews in a predominantly Protestant industry, writing a class of business that was extremely high risk and hence rejected by the established companies, the New York City Mutuals operated on the periphery of the insurance industry for many years. In the very early days, some of the companies had acquired the reputation of being "hard bargainers" and "reluctant claims settlers". In light of their marginal status in the industry for a long period of time, their gradual evolution into a more established position in the industry, and the eventual demise of some companies, unfortunately at the time of the research the companies which went out of business were in severe financial difficulties, we were interested in their perceptions of the respectability of the companies and in the question of whether they thought that there had been substantial changes on the way they were regarded by others now as compared to the earlier days.

Although respectability was defined by the respondents in various ways, there was complete unanimity

that financial standing was a most important element in an insurance company's reputation and, hence, in whether it had achieved respectability. The evaluation by Best's was cited as critical to a company's status. Within the environment of the insurance industry, Best's assesses the condition of each company annually and publishes the information in Best's Insurance Reports. These reports are regarded as authoritative and consulted by all in the industry. Best's also comments on the way in which the company is managed. For example, in reporting on the Greater New York Mutual, Best's underscored the respectability of the company.

> The company enjoys an excellent reputation. Its affairs have been well administered. Enviable operating characteristics are yearly additions made to net resources, the cautious development of underwriting committment and a most conservative investment portfolio.[12]

In discussing respectability, The Greater New York Mutual interviewee pointed out that the company's evaluation by Best's was Excellent and that this was evidence of their respectability in the industry.

Several respondents were in companies which were in the midst of severe financial crises. In their opinions, the companies had achieved financial respectability in the industry through the years, but they thought that their reputations were suffering from the current situation. A few respondents felt that the mutuals were steadily

declining and only a merger would revitalize them financially. There was some disagreement as to whether a financial decline in some of the companies would reflect on all.

Respectability was also defined in terms of responsibility. When respondents selected the criterial important in evaluating a company's respectability, for the most part, they used the large companies as reference groups.[13] The two areas which were selected as being most important were that of contracts and claims. "Contracts are very important in the insurance industry; they are the basis of its existence. When a company writes a contract - issues a policy - it should not be cancelled in mid-stream, the legitimate houses do not do that and we should not either. In the early days of the company, contracts often were cancelled, but this has not happened recently. The company has definitely become respectable."

The payment of claims also received considerable emphasis, perhaps because of the general reputation of these companies as slow to pay claims. It was generally agreed that to be respectable, claimants should not have to wait too long. "The claimant should not be jerked around by the company, large companies respond promptly and politely." To be respectable, claims also had to be honored even if there was some question as to whether the contract should have been written in the first place. "A

company can't renege on a claim, no matter what. If we trust the broker, and write the contract, even if there's a little hanky-panky in the way that the broker reported the business, once there's a claim, it has to be paid." There was also a great deal of concern about the fraudulent claim. "Fraudulent claims should not be paid. All claims should be thoroughly investigated. All the large companies do this. The whole industry is being plagued with phony claims and every one is becoming more alert to the problem."

Another index of respectability was the fact that the Insurance Department took the word of the company about its reserves and its financial standing. Although periodic examinations are undertaken by the Insurance Department, it is very important that the Department have trust in the annual reports submitted by the company.

Personal characteristics were also cited as aiding respectability. The fact that people in the company were personally honest was very important. They had to be above reproach. It was very important to avoid scandals, not just business scandals, but personal scandals as well. "The insurance business is like a small town; every body gossips and its best not to be the one they talk about."

Respondents were asked what they thought the impact of being a Jewish firm in an essentially non-Jewish

industry had upon their respectability. Several respondents indicated that their Jewishness was one reason why they had to be above reproach. One company executive took issue with identifying the firms as Jewish. He felt that labeling the companies denigrated them, after all, "no one refers to the big companies as Protestant." On the other hand, we also felt that it was important to be identified as Jews and with Jewish causes. He pointed to the fact that Jewish identity was much more important in the 1930's and 1940's when anti-Semitism was rampant in the insurance industry. Today, because of Israel, it was still important to have personal identity with the Jewish community but he felt that the companies should not be labeled. "When something negative is said about the companies, their Jewishness is pointed to." Several others also said that the companies had moved away from being completely Jewish. Many Christians held high executive positions and were on the Boards of Directors. The fact that the companies dealt with Christian brokers and had friends in the non-Jewish companies was also regarded as an important factor in respectability. Underlying most of the responses seemed to be the sense that being a Jewish firm was more significant in the early years than now. This may be a general reflection both of the fact that Jews in New York could no longer be considered marginal and that the companies have, to some

extent, moved out of their peripheral position on the industry.

One question which arose with regard to respectability was that of the extent to which trust payed a part in the interaction of the companies. Most respondents felt that their company could be trusted, they were responsible and dealing with them was as much a satisfactory experience as dealing with the larger companies. Brokers could depend upon an oral contact with them as much as with any other company. In return they trusted their brokers to give them all the necessary information and they dealt with each other fairly. We raised the question as to how much ethnicity entered into their perceptions of trust. Several respondents thought that perhaps in the beginning the companies were suspect because of their being Jewish and writing at a discount, "a thing their Jewish customers wanted", and people who could get insurance elsewhere did. "And that included some important Jewish real estate owners." But they had proven their worth. Now non-Jews deal with them, and they deal with a lot of non-Jews. The buying and selling of reinsurance was an area of their business which was particularized as dealing with non-Jews and having very trusting relationships.

Conclusion

Since the entrance of Jews into the role of insurer more than sixty-five years ago, the Jewish insurance companies have moved from a very marginal position barely on the periphery of the industry, into a position of legitimacy validated by the Insurance Department, and, eventually into a mainstream position. During this period, their relationship with the insurance community has somewhat mirrored their position in the industry. In the early days, they did not participate in the associational network of the industry, which serves so many important functions for insurance companies. It was only through time when structural changes in the industry effectively changed the underwriting operation of the companies, that they started to participate in the organizational network of the industry.

This has also affected the way that the people interviewed perceive the reputation of the companies. Through the years, the companies have moved into a position of respectability as they are responsible insurers. They operate in much the same way that the larger companies conduct their business. They can be trusted as much as the mainstream companies, and provide as good service for the brokers and customers. Financial standing is an important index of respectability in the industry, and, using this as a criteria, all of the

companies had achieved this mark of respectability by the 1970's. However, during the 70's, four of the companies experienced financial decline and there was some thought that investigations by the Insurance Department into the affairs of those companies might prove embarrassing to all. By and large, respondents felt that the fact that the companies were Jewish in origin was much more significant in their early days than today.

The companies have, through the years, taken an active role in the Jewish community, mainly by raising money for Jewish causes and through their agressive support of Israel. Initially, their participation seemed defensive, "we have to be identified as Jews, we can't let them get away with anti-semitism." Now, however, raising money for Jewish charities is an activity that is institutionalized in the culture of the companies. "It is important but not in the same way... It is something that Jews have the obligation to do." To a large extent, it would seem that these changes in perception of the change in the impact of being Jewish in the industry is a reflection of the changes which have occurred through time in the position of Jews in New York today.

Chapter VIII

Footnotes

1. For a discussion of middleman minorities see Edna Bonacich, "A Theory of Middleman Minorities" in American Sociological Review, V.38, October 1973. Also see Herbert H. Blalock, Towards a Theory of Minority Group Relations, (New York; John Wiley, 1967).

2. For a discussion of cooperation in the insurance industry see Mehr and Commack, Principles of Insurance, Op. Cit., pp. 608-613.

3. Ibid., p.608.

4. Ibid., p.608.

5. Unless otherwise specified, material in this chapter derives from interviews.

6. See discussion of reinsurance in Mehr and Commack, Op. Cit., p.190.

7. Ratemaking bureaus were legitimized in 1942 in the South-Eastern Underwriters Association Case. Before that time cooperative rate making was presumed to be in violation of the Sherman Anti-Trust Act.

8. Interview -

9. For many years, this researcher has been a participant observer in the annual fund raising dinners.

10. Much anxiety is provoked at exclusion from the dinner invitations in brokerage offices. In some cases it heralds unemployment.

11. This is often the only table conversation especially where there is a table of people who barely know each other.

12. Best's Insurance Reports, 1981, p.860.

13. For a discussion of reference group behavior see Robert Merton, Social Theory and Social Scrutine, Op. Cit., pp. 300-308.

Methodological Appendix

A sociological study of business enterprise whose design calls for interviews, presupposes a willingness in the part of busy executives to cooperate with the goals of the research. This means in large measure, that they take time out of their schedules to be interviewed, allow themselves to be quoted and make supplemental materials available. In doing research on small insurance companies, these problems are exacerbated by the fact that the top executives are also functionaries. They are hurried, have little time and, by and large, have little interest in sociology. This section deals with the problems encountered in the interviews, and as such it chronicles an important aspect of the research.

Before this research project was undertaken, a pilot study was done. A number of people in the industry whom I had known for a long period of time were interviewed. They promised to introduce me to others who could be of service, or, where applicable, they agreed to be reinterviewed if I undertook the project. During the time which elapsed between the initial study and the current research, two events occurred which ultimately affected the research. First, two people who had promised to introduce me to the top executives I wanted to interview,

withdrew their offers. They felt that this was not the time to do such a study and that somehow their relationships with the companies would be jeopardized by even suggesting that a sociological study of the companies could be done. Second, several of the companies were experiencing financial difficulties, and a few people who had access to the people in these companies thought it best not to contact them at the time as it would create strains for the companies. Although I was assured that no one would speak to me without a proper introduction, I approached the company executives directly, and, except for one company which was very troubled, I was granted interviews.

At the outset of the first interviews, there was some objection expressed to the use of a tape recorder during the interview. This was the period of the Nixon tapes and this way may have been one of the reasons; it was mentioned, in jest. As a result substantial portions of the interview material was lost.

Although the interviews were agreed upon, there was considerable discussion as to whether anything worthwhile from a sociological point of view could come from such a study. Attempts were also made to define what should or should not be included in the study. For example, a historical reconstruction was perfectly acceptable, but discussions of problems arising from ethnicity were

suspect. In several cases, the stipulation was made that material could be directly quoted only if the interviewee could have the right to approve or disapprove of what had been written. This was not acceptable to me. Because of the extremely small universe, and the fact that a person would be immediately known within the context of what was said, I made the decision to use all the material anonymously, although it should be noted that many of my informants were extremely helpful and willing to be quoted directly. I felt that this was the ethical decision to make, particularly in light of the fact that a few of the people who wanted prior approval had died during the course of the research and I did not think it was proper to disregard their wishes.

TABLE 1

PERCENTAGE DISTRIBUTION OF PREMIUM VOLUME FOR SELECTED CLASSES
AT FIVE YEAR INTERVALS 1930 TO 1980
GREATER NEW YORK MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL OF THREE CLASSES	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER
1930		100.0%		100.0%			
1935		100.0		100.0			
1940		100.0		100.0			
1945		100.0		100.0			
1950		100.0		100.0			
1955	9.2%	90.8		100.0			
1960	25.0	74.6		99.6			0.4%
1965	30.5	41.9	4.2%	76.6	2.7%	15.1%	5.6
1970	47.3	28.2	2.8	78.3	0.4	18.0	3.3
1975	37.0	21.5	3.5	62.0	1.0	33.3	3.7
1980	52.1	16.7	3.5	72.3	0.0	25.0	2.7

TABLE 2

PREMIUM VOLUME BY SELECTED CLASSES AT FIVE YEAR INTERVALS 1930 TO 1980
GREATER NEW YORK MUTUAL INSURANCE COMPANY
Amounts Expressed In Millions Of Dollars Carried to 3 Decimal Places

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER	TOTAL ALL CLASSES
1930		1.029					1.029
1935		1.533					1.533
1940		1.788					1.788
1945		2.092					2.092
1950		2.859					2.859
1955	0.864	8.478					9.342
1960	4.639	13.839				0.081	18.559
1965	10.388	14.243	1.411	0.903	5.132	1.921	33.998
1970	17.795	10.617	1.055	0.152	6.763	1.251	37.633
1975	13.583	7.905	1.284	0.363	12.208	1.349	36.692
1980	26.438	8.440	1.763	0.000	12.655	1.376	50.672

TABLE 3

PREMIUM VOLUME WRITTEN IN THREE SELECTED CLASSES OF INSURANCE AND IN TOTAL OF ALL CLASSES FOR STOCK AND MUTUAL INSURANCE COMPANIES IN THE UNITED STATES 1930 THROUGH 1975
(All Figures Stated In Millions Of Dollars - 000,000's Dropped)

YEAR	WORKMEN'S COMPENSATION		GENERAL LIABILITY		AUTOMOBILE LIABILITY		TOTAL ALL CLASSES	
	STOCK	MUTUAL	STOCK	MUTUAL	STOCK	MUTUAL	STOCK	MUTUAL
1930	161	47	38	4	127	17	1748	262
1935	124	62	52	8	142	45	1359	308
1940	166	96	87	14	219	70	1787	470
1945	308	169	120	22	257	87	2551	795
1950	439	258	207	43	652	216	5575	1827
1955	670	365	490	118	1791	704	7662	2385
1960	943	477	757	206	2910	1226	10527	3723
1965	1405	638	890	237	3663	1760	13855	5196
1970	2489	1003	1758	381	5885	3073	22430	8713
1975	4635	1479	3336	561	8228	3882	35618	11533

TABLE 4

PERCENTAGE INCREMENT AT FIVE YEAR INTERVALS FROM 1930 TO 1980
OF PREMIUM VOLUME FOR THREE SELECTED CLASSES AND TOTAL OF ALL CLASSES
GREATER NEW YORK MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL ALL CLASSES
1930		(1)		(1)
1935		49%		49%
1940		17		17
1945		17		17
1950		37		37
1955	(1)	197		227
1960	437%	63		99
1965	124	3	(1)	83
1970	71	-25	-25%	11
1975	-24	-26	22	-2
1980	95	7	37	38

(1) Base Year.

TABLE 5

PREMIUM VOLUME BY SELECTED CLASSES AT FIVE YEAR INTERVALS 1930 TO 1980
CONSOLIDATED MUTUAL INSURANCE COMPANY
Amounts Expressed In Millions Of Dollars Carried to 3 Decimal Places

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER	TOTAL ALL CLASSES
1930		0.155					0.155
1935		0.199					0.199
1940		0.814					0.814
1945	0.088	1.138				0.047	1.273
1950	0.379	2.226				0.091	2.696
1955	1.828	6.293	0.007			0.078	8.206
1960	6.181	17.000	0.421			0.782	24.384
1965	13.261	22.803	2.938	1.341	3.167	4.530	48.040
1970	7.948	14.693	2.005	2.928	7.932	1.420	36.926
1975	5.061	7.060	2.313	0.488	7.877	2.428	25.227
1980	(1)	(1)	(1)	(1)	(1)	(1)	(1)

(1) Company Placed in Liquidation on May 31, 1979.

TABLE 6

PERCENTAGE INCREMENT AT FIVE YEAR INTERVALS FROM 1930 TO 1980
OF PREMIUM VOLUME FOR THREE SELECTED CLASSES AND TOTAL OF ALL CLASSES
CONSOLIDATED MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTOv LIABILITY	TOTAL ALL CLASSES
1930		(1)		(1)
1935		28%		28%
1940		309		309
1945	(1)	40		56
1950	331%	96		112
1955	382	183	(2)	204
1960	238	170	(1)	197
1965	115	34	598%	97
1970	-40	-36	-32	-23
1975	-36	-52	15	-32
1980	(3)	(3)	(3)	(3)

(1) Base Year.
(2) Trivial Auto Liability premium in 1955 ignored and 1960 chosen as base year.
(3) Company Placed in Liquidation on May 31, 1979.

TABLE 7

PERCENTAGE DISTRIBUTION OF PREMIUM VOLUME FOR SELECTED CLASSES
AT FIVE YEAR INTERVALS 1930 TO 1980
CONSOLIDATED MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL OF THREE CLASSES	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER
1930		100.0%		100.0%			
1935		100.0		100.0			
1940		100.0		100.0			
1945	6.9%	89.4		96.3			3.7%
1950	14.1	82.6		96.7			3.3
1955	22.3	76.7	0.1%	99.1			0.9
1960	25.4	69.7	1.7	96.8			3.2
1965	27.6	47.5	6.1	81.2	2.8%	6.6%	9.4
1970	21.5	39.8	5.4	66.7	7.9	21.5	3.9
1975	20.1	28.0	9.2	57.3	1.9	31.2	9.6
1980	(1)	(1)	(1)	(1)	(1)	(1)	(1)

(1) Company Placed in Liquidation on May 31, 1979.

TABLE 8

PREMIUM VOLUME BY SELECTED CLASSES AT FIVE YEAR INTERVALS 1930 TO 1980
SECURITY MUTUAL INSURANCE COMPANY
Amounts Expressed In Millions Of Dollars Carried to 3 Decimal Places

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER	TOTAL ALL CLASSES
1930		(1)					(1)
1935		0.179					0.179
1940		0.400					0.400
1945	0.170 (2)	0.521 (2)	0.170 (2)				0.861
1950	0.553	1.432	0.528			0.332	2.845
1955	1.767	5.256	0.261			0.206	7.490
1960	5.013	9.653	1.582	0.744		0.378	17.370
1965	6.901	8.776	3.593	1.678	2.883	2.427	26.258
1970	4.830	4.131	0.729	3.746	9.310	1.557	24.303
1975	(3)	(3)	(3)	(3)	(3)	(3)	(3)
1980	(3)	(3)	(3)	(3)	(3)	(3)	(3)

(1) Company not formed until 1931
(2) Estimated from distribution among the three classes in 1950.
(3) Security Mutual merged into Empire Mutual January 1, 1975.

TABLE 9

PERCENTAGE DISTRIBUTION OF PREMIUM VOLUME FOR SELECTED CLASSES
AT FIVE YEAR INTERVALS 1930 TO 1980
SECURITY MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL OF THREE CLASSES	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER
1930		(1)		(1)			
1935		100.0%		100.0%			
1940		100.0		100.0			
1945	19.7% (2)	60.6 (2)	19.7% (2)	100.0			
1950	19.4	50.3	18.6	88.3			11.7%
1955	23.6	70.2	3.5	97.3			2.7
1960	28.9	55.6	9.1	93.6	4.3%		2.1
1965	26.3	33.4	13.7	73.4	6.4	11.0%	9.2
1970	19.9	17.0	3.0	39.9	15.4	38.3	6.4
1975	(3)	(3)	(3)	(3)	(3)	(3)	(3)
1980	(3)	(3)	(3)	(3)	(3)	(3)	(3)

(1) Company not formed until 1931.
(2) Based on estimated distribution of premium among the three classes in 1945.
(3) Security Mutual merged into Empire Mutual January 1, 1975.

TABLE 10

RELATION OF PREMIUM VOLUME OF THREE SELECTED CLASSES OF INSURANCE TO TOTAL OF ALL CLASSES OF INSURANCE FOR STOCK AND MUTUAL COMPANIES IN THE UNITED STATES - 1930 THROUGH 1975

	STOCK- AS % OF TOTAL OF ALL CLASSES FOR STOCK COMPANIES				MUTUAL- AS % OF TOTAL OF ALL CLASSES FOR MUTUAL COMPANIES			
YEAR	WORKMEN'S COMPENSATION	GENERAL LIABILITY	AUTOMOBILE LIABILITY	TOTAL	WORKMEN'S COMPENSATION	GENERAL LIABILITY	AUTOMOBILE LIABILITY	TOTAL
1930	9.2%	2.2%	7.3%	18.7%	17.9%	1.5%	6.5%	25.9%
1935	9.1	3.8	10.5	23.4	20.1	2.6	14.6	37.3
1940	9.3	4.9	12.3	26.5	20.4	3.0	14.9	38.3
1945	12.1	4.7	10.1	26.9	21.3	2.8	10.9	35.0
1950	7.9	3.7	11.7	23.3	14.1	2.4	11.8	28.3
1955	8.7	6.4	23.4	38.5	15.3	5.0	29.5	49.8
1960	9.0	7.2	27.6	43.8	12.8	5.5	32.9	51.2
1965	10.1	6.4	26.4	42.9	12.3	4.6	33.9	50.8
1970	11.1	7.8	26.2	45.1	11.5	4.4	35.3	51.2
1975	13.0	9.4	23.1	45.5	12.8	4.9	33.7	51.4

TABLE 11

PREMIUM VOLUME BY SELECTED CLASSES AT FIVE YEAR INTERVALS 1930 TO 1980
COSMOPOLITAN MUTUAL INSURANCE COMPANY
Amounts Expressed In Millions Of Dollars Carried to 3 Decimal Places

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER	TOTAL ALL CLASSES
1930	0.150 (1)	0.018 (1)	0.025 (1)				0.193
1935	0.391 (1)	0.047 (1)	0.067 (1)				0.505
1940	1.453	0.176	0.249			0.173	2.051
1945	1.343	0.224	0.204			0.226	1.997
1950	3.037	0.618	0.874	(3)		0.385	4.914
1955	5.876	2.301	2.255	(3)		0.631	11.063
1960	6.226	4.398	8.067	0.462		2.058	22.211
1965	8.542	8.584	13.573	0.763	0.492	6.021	37.975
1970	13.070	8.216	5.811	0.399	2.873	4.778	35.147
1975	14.552	6.964	3.573	0.706	6.621	4.381	36.797
1980	(2)	(2)	(2)	(2)	(2)	(2)	(2)

(1) 1930 and 1935 distribution of premium among the three classes not available. Amounts shown are based upon the 1940 distribution.
(2) Company Placed in Liquidation on October 24, 1980.
(3) Subsidiary fire insurance company (subsequently merged with parent) wrote fire insurance. 1950 earned premium $110,000; 1955 written premium $385,000.

TABLE 12

PERCENTAGE INCREMENT AT FIVE YEAR INTERVALS FROM 1930 TO 1980
OF PREMIUM VOLUME FOR THREE SELECTED CLASSES AND TOTAL OF ALL CLASSES
COSMOPOLITAN MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL ALL CLASSES
1930	(1)	(1)	(1)	(1)
1935	162% (2)	162% (2)	162% (2)	162%
1940	272 (2)	272 (2)	272 (2)	306
1945	-8	27	-18	-3
1950	126	176	328	146
1955	93	272	158	125
1960	6	135	258	101
1965	37	59	68	71
1970	53	-4	-57	-7
1975	11	-15	-39	5
1980	(3)	(3)	(3)	(3)

(1) Base Year.
(2) 1935 and 1940 Increments based on estimated distribution of premium among the three classes in 1930 and 1935.
(3) Company Placed in Liquidation on October 24, 1980.

TABLE 13

PERCENTAGE DISTRIBUTION OF PREMIUM VOLUME FOR SELECTED CLASSES
AT FIVE YEAR INTERVALS 1930 TO 1980
COSMOPOLITAN MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL OF THREE CLASSES	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER
1930	77.4% (1)	9.4% (1)	13.2% (1)	100.0%			
1935	77.4 (1)	9.4 (1)	13.2 (1)	100.0			
1940	70.8	8.6	12.1	91.5			8.5%
1945	67.3	11.2	10.2	88.7			11.3
1950	61.8	12.6	17.8	92.2			7.8
1955	53.1	20.8	20.4	94.3			5.7
1960	28.0	24.3	36.3	88.6	2.1%		9.3
1965	22.5	22.5	35.7	80.7	2.0	1.3%	15.9
1970	37.2	23.4	16.5	77.1	1.1	8.2	13.6
1975	39.6	18.9	9.7	68.2	1.9	18.0	11.9
1980	(2)	(2)	(2)	(2)	(2)	(2)	(2)

(1) Based on estimated distribution of premium among the three classes in 1930 and 1935.
(2) Company Placed in Liquidation on October 24, 1980.

TABLE 14

PREMIUM VOLUME BY SELECTED CLASSES AT FIVE YEAR INTERVALS 1930 TO 1980
EMPIRE MUTUAL INSURANCE COMPANY
Amounts Expressed In Millions Of Dollars Carried to 3 Decimal Places

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER	TOTAL ALL CLASSES
1930			0.397 (1)				0.397
1935			0.452 (1)				0.452
1940			0.509				0.509
1945			0.751				0.751
1950	0.507	0.091	2.812			0.008	3.418
1955	1.733	0.839	8.334			0.330	11.236
1960	3.323	2.767	20.580	0.559		1.436	28.705
1965	4.143	3.898	34.043	1.065	0.867	7.574	51.590
1970	3.990	4.199	52.936	0.000	1.267	20.313	82.705
1975	4.068	6.224	50.488	0.600	10.587	27.204	99.171
1980	2.126	1.603	29.603	0.390	3.689	1.682	39.093

(1) Interpolated from 1928 and 1940 reports.

TABLE 15

PERCENTAGE INCREMENT AT FIVE YEAR INTERVALS FROM 1930 TO 1980
OF PREMIUM VOLUME FOR THREE SELECTED CLASSES AND TOTAL OF ALL CLASSES

EMPIRE MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL ALL CLASSES
1930			(1)	(1)
1935			14%	14%
1940			13	13
1945			48	8
1950	(1)	(1)	274	355
1955	242%	821%	196	229
1960	92	230	147	155
1965	25	41	65	81
1970	-4	8	56	60
1975	2	48	-5	20
1980	-48	-74	-24	-61

(1) Base Year.

TABLE 16

PERCENTAGE DISTRIBUTION OF PREMIUM VOLUME FOR SELECTED CLASSES
AT FIVE YEAR INTERVALS 1930 TO 1980
EMPIRE MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL OF THREE CLASSES	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER
1930			100.0%	100.0%			
1935			100.0	100.0			
1940			100.0	100.0			
1945			100.0	100.0			
1950	14.8%	2.7%	82.3	99.8			0.2%
1955	15.4	7.5	74.2	97.1			2.9
1960	11.6	9.6	71.7	92.9	2.0%		5.1
1965	8.0	7.6	66.0	81.6	2.0	1.7%	14.7
1970	4.8	5.1	64.0	73.9	0.0	1.5	24.6
1975	4.1	6.3	50.9	61.3	0.6	10.7	27.4
1980	5.4	4.1	75.7	85.2	1.0	9.5	4.3

TABLE 17

PREMIUM VOLUME BY SELECTED CLASSES AT FIVE YEAR INTERVALS 1930 TO 1980
PUBLIC SERVICE MUTUAL INSURANCE COMPANY
Amounts Expressed In Millions Of Dollars Carried to 3 Decimal Places

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER	TOTAL ALL CLASSES
1930			0.510 (1)				0.510
1935			0.721 (2)				0.721
1940	0.100 (4)	0.053 (4)	1.342 (3)				1.495
1945	0.600 (4)	0.346 (4)	1.992 (3)				2.938
1950	1.072	0.591	2.499			0.279	4.441
1955	2.184	2.752	5.267			0.348	10.551
1960	4.330	6.806	7.390	1.535		0.710	20.771
1965	6.090	7.670	14.164	2.249	3.233	6.034	39.440
1970	7.673	8.707	7.813	4.406	9.346	6.044	43.989
1975	6.787	6.320	8.229	1.448	18.729	10.812	52.325
1980	19.798	17.664	17.799	1.216	26.774	16.993	100.244

(1) Interpolated from 1928 and 1934 reports.
(2) Interpolated from 1934 and 1937 reports.
(3) Interpolated from 1937 and 1950 reports.
(4) Estimated allocation based on 1950 allocation.

TABLE 18

PERCENTAGE INCREMENT AT FIVE YEAR INTERVALS FROM 1930 TO 1980
OF PREMIUM VOLUME FOR THREE SELECTED CLASSES AND TOTAL OF ALL CLASSES
PUBLIC SERVICE MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL ALL CLASSES
1930			(1)	(1)
1935			41%	41%
1940	(1)	(1)	86	107
1945	500%	553%	48	97
1950	79	71	25	51
1955	104	366	111	138
1960	98	147	40	97
1965	41	13	92	90
1970	26	14	-44	12
1975	-12	-27	5	19
1980	192	179	116	92

(1) Base Year.

TABLE 19

PERCENTAGE DISTRIBUTION OF PREMIUM VOLUME FOR SELECTED CLASSES
AT FIVE YEAR INTERVALS 1930 TO 1980
PUBLIC SERVICE MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL OF THREE CLASSES	FIRE & ALLIED PERILS	COMMERCIAL MULTI-PERIL	OTHER
1930			100.0%	100.0%			
1935			100.0	100.0			
1940	6.7%	3.5%	89.8	100.0			
1945	20.4	11.8	67.8	100.0			
1950	24.1	13.3	56.3	93.7			6.3%
1955	20.7	26.1	49.9	96.7			3.3
1960	20.9	32.8	36.6	89.3	7.4%		3.4
1965	15.4	19.5	35.9	70.8	5.7	8.2%	15.3
1970	17.4	19.8	17.8	55.0	10.0	21.2	13.7
1975	13.0	12.1	15.7	40.8	2.8	35.8	20.7
1980	19.7	17.6	17.8	55.1	1.2	26.7	17.0

TABLE 20

PERIODIC INCREASE OF PREMIUM VOLUME FOR THREE SELECTED CLASSES OF INSURANCE AND IN TOTAL OF ALL CLASSES FOR STOCK AND MUTUAL COMPANIES IN THE UNITED STATES - 1930 THROUGH 1975

YEAR	WORKMEN'S COMPENSATION		GENERAL LIABILITY		AUTOMOBILE LIABILITY		TOTAL ALL CLASSES	
	STOCK	MUTUAL	STOCK	MUTUAL	STOCK	MUTUAL	STOCK	MUTUAL
1930	--	--	--	--	--	--	--	--
1935	-33%	32%	37%	100%	12%	165%	-22%	18%
1940	34%	55%	67%	75%	54%	56%	31%	53%
1945	86%	76%	38%	57%	17%	24%	43%	69%
1950	43%	53%	73%	95%	154%	148%	119%	130%
1955	53%	41%	137%	174%	175%	226%	37%	31%
1960	41%	31%	54%	75%	62%	74%	37%	56%
1965	49%	34%	18%	15%	26%	44%	32%	40%
1970	77%	57%	98%	61%	61%	75%	62%	68%
1975	86%	47%	90%	47%	40%	26%	59%	132%

TABLE 21

PERCENTAGE INCREMENT AT FIVE YEAR INTERVALS FROM 1930 TO 1980
OF PREMIUM VOLUME FOR THREE SELECTED CLASSES AND TOTAL OF ALL CLASSES
SECURITY MUTUAL INSURANCE COMPANY

YEAR	WORKERS COMPENSATION	GENERAL LIABILITY	AUTO LIABILITY	TOTAL ALL CLASSES
1930		(1)		(1)
1935		(2)		(2)
1940		123%		123%
1945	(2)	30	(2)	115
1950	225%	175	211%	230
1955	220	267	-51	163
1960	212	84	506	132
1965	25	-9	127	51
1970	-30	-53	-80	-7
1975	(3)	(3)	(3)	(3)
1980	3			

(1) Company not formed until 1931
(2) Base Year.
(3) Security Mutual merged into Empire Mutual on January 1, 1975

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