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CANCELLATION OF FIRE INSURANCE POLICIES

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THERE are in use in the United States three principal forms of fire insurance policies, or some variation thereof made necessary by statute—the Massachusetts,² the old New York³ and the new New York⁴ standard

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² The Massachusetts standard cancellation clause adopted in 1887 reads as follows: "This policy may be cancelled at any time at the request of the insured, who shall thereupon be entitled to a return of the portion of the above premium remaining, after deducting the customary monthly short rates for the time this policy shall have been in force. The company also reserves the right, after giving written notice to the insured and to any mortgagee to whom this policy is made payable, and tendering to the insured a ratable proportion of the premium, to cancel this policy as to all risks subsequent to the expiration of ten days from such notice, and no mortgagee shall then have the right to recover as to such risks."

³ The old New York standard cancellation clause adopted in 1887 reads as follows: "This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice it shall retain only the pro rata premium."

⁴ The new New York standard cancellation clause adopted in 1918 reads as follows: "This policy shall be cancelled at any time at the request of the insured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by the Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand."

forms. These three standard forms of fire policy constitute the basis for the preparation of practically all the fire insurance contracts underwritten on property in this country. After noting the age of these three forms, especially the earlier two, it might reasonably be expected that a wealth of decisions would by now have been handed down respecting all parts of these important documents and such is the case. Here, however, will be treated only a few of the legal high lights of one clause in these forms and certain matters related thereto, namely, the cancellation clause. Because of prevailing economic disturbances threatening the financial collapse of some fire insurance companies and many assureds and the consequent jeopardizing of the interests of lenders by reason of inadequate or vanishing fire insurance protection, the cancellation of fire insurance policies develops considerable present importance.

The right of either party to cancel a policy of fire insurance is dependent upon the terms of the policy. In the earlier days of insurance no cancellation clauses were generally placed in the policies and, therefore, no cancellation except possibly by mutual consent could take place. The omission of a cancellation clause from the policy was sometimes embarrassing and troublesome to the assured, especially where the subject matter at risk was destroyed, before the termination of the policy, by a hazard or risk not covered or insured thereby. A case⁵ of this character, and one which tends to emphasize the importance of a cancellation clause, arose during the American Revolution and was decided by an English court in 1777. The policy in that suit, containing no cancellation clause, insured the ship "Isabella" for a period of twelve months from August 19, 1776 to August 19, 1777, the ship being warranted free from captures and seizures by the Americans. The ship sailed from London and was taken by an American privateer (a risk not insured against) about two months after the inception of the policy. Since a full year's premium had been paid and since only two months

⁵ *Tyrie v. Fletcher*, 2 Cowp. 666.

of the term of the contract had been exhausted, the assured naturally felt that a return of a portion of the premium paid would be in order. He sued for such return premium but was non-suited, the court, through Lord Mansfield saying, in part:

It was very proper to save this case for the opinion of the Court, because in all mercantile transactions, certainty is of much more consequence, than which way the point is decided; and more especially so, in the case of policies of insurance; because, if the parties do not chuse to contract according to the established rule, they are at liberty as between themselves to vary it. This case is stript of every authority. There is no case or practice in point; and, therefore, we must argue from the general principles applicable to all policies of insurance. And I take it, there are two general rules established, applicable to this question: the first is, that where the risk has not been run, whether its not having been run was owing to the fault, pleasure, or will of the insured, or to any other cause, the premium shall be returned: because a policy of insurance is a contract of indemnity. The under-writer receives a premium for running the risk of indemnifying the insured, and whatever cause it be owing to, if he does not run the risk, the consideration, for which the premium or money was put into his hands, fails, and therefore he ought to return it. 2. Another rule is, that if that risk of the contract of indemnity has once commenced, there shall be no apportionment or return of premium afterwards. For though the premium is estimated, and the risk depends upon the nature and length of the voyage, yet, if it has commenced, though it be only for twenty-four hours or less, the risk is run; the contract is for the whole entire risk, and no part of the consideration shall be returned.

Practically every fire insurance contract issued in this country today contains a cancellation clause. Some are still issued abroad without such clause.⁶ In policies containing cancellation clauses, the right to cancellation seems to be absolute and no reasons need be assigned by

⁶ See "Copies of Standard Policies, etc." published in 1932 by Lloyd's Underwriters' Fire and Non-Marine Association.

either party for terminating the contract. The motive prompting cancellation is immaterial.⁷

Cancellation of fire insurance policies may be effected in several different ways; for example, by the insolvency of the insurance company itself, by mutual agreement between the assured and the company, by request of the assured at any time, or by the company serving the required amount of notice on the assured.

Among large buyers of fire insurance and in the business of fire insurance itself there is now considerable interest manifested in the subject of involuntary cancellation of fire insurance policies occasioned by judicial adjudication of insolvency of the insurance company. A recent case⁸ says that "the weight of authority supports the proposition that upon the judicial adjudication of the insolvency of a stock insurance company and the appointment of a receiver, the outstanding policies of the company are ipso facto cancelled and that claim for loss thereafter occurring is not a provable claim against the company. The policyholders are creditors for the value of their policies at the time of the breach thus occurring, which in most cases is the pro rata return premium."

There are, however, some apparent exceptions to this rule. Several of the southern states require a fire insurance company, as one of the conditions precedent to its entry into and license from the state, to file a surety bond with a designated officer conditioned upon the company's paying its obligations incurred therein. Where, therefore, an Illinois company, doing business in the State of Louisiana was forced into receivership and liquidation through proceedings in an Illinois court, Louisiana residents being without actual notice of the Illinois decree appointing the receiver and decreeing liquidation, a resident of Louisiana, holding a policy of the company issued in Louisiana insuring property in that state, could, even

⁷ *Camp v. Aetna Insurance Company*, 170 Ga. 46; *Pearson et al. v. General Casualty and Surety Company*, 107 N. J. L. 509.

⁸ *National Union Fire Insurance Company v. Bynum*, 183 Ark. 1100.

after the appointment of the Illinois receiver, recover a Louisiana judgment for a loss occurring after the date of the receivership and could satisfy the same by proceeding against the sureties on the company's bond filed in Louisiana when the company became licensed in that state.⁹ This case and similar cases therein cited seem to have been decided on the ground that the Illinois court did not have jurisdiction over the person of the Louisiana policyholder and especially where the latter had no notice of the Illinois decree and hence no opportunity to protect himself by obtaining other insurance.

In that class of cases where the policies are cancelled by mutual agreement, the notice of cancellation is deemed waived by both parties and cancellation is considered effective immediately. This class of cases frequently develops under interesting although intricate circumstances. In this country a very large part of the fire insurance business is carried on through local agents of the companies who respectively reside in the localities where the properties to be insured are owned and situated. The individual local agent may hold a license from each of several companies. An owner of property in the locality where the agent may reside may instruct the agent to insure and to keep insured certain property. The agent will, therefore, be acting in a dual capacity; he will be the assured's agent to procure and to keep in force a policy of insurance on the property, and he will be the insurance company's agent to write up and deliver the policy and collect the premium. If, therefore, an assured gives specific instructions to the local agent who happens to be agent of several different companies to keep assured's property covered by insurance, such local agent, as agent for the assured, may, when the company who has insured the property instructs him to cancel the policy, surrender to the company such policy for immediate cancellation and immediately rewrite a new policy in another company represented by him. In the event of a loss after the

⁹ *Federico Macaroni Manufacturing Company v. Great Western Fire Insurance Company et al.*, 173 La. 905.

new policy is written but before the customary five day cancellation period on the old policy has elapsed, the company issuing the new policy is the one to pay the loss. The New York Court of Appeals recently summed up the principle here involved as follows:

It is a principle of almost universal acceptance that where an assured has applied for insurance to an agent having authority to write policies for many companies, has left to the agent the selection of the companies, with instructions to maintain the insurance in an amount stated, and the agent has undertaken so to act, the agent, upon notice from his companies to cancel, has power to waive for the assured the five day period of cancellation, to cancel the policies at once, and immediately to write new policies in other companies for the assured, so that the new policies become at once effective.¹⁰

The assured, on the other hand, may himself deliver the policy to the company or to its agent and at once secure his return premium. The policy is then cancelled and no loss is covered thereafter. Ordinarily where the assured addresses a letter to the company requesting cancellation and encloses the policy for surrender, the policy remains in force until it is actually received by the company and any loss occurring while the letter and policy are in transit in the mails is covered.¹¹ Where there are several different interests insured under the same policy, it cannot be cancelled by any assured so as to affect individual interests without the consent of each. For instance, the mortgagee whose interest is insured with that of the mortgagor in the same policy and who holds it as security has no power to cancel it,¹² and likewise the mortgagor cannot cancel so as to affect the mortgagee's interest therein.¹³

¹⁰ *Rose Inn Corporation v. National Union Fire Insurance Company et al.*, 258 N. Y. 51.

¹¹ *Wagner & Erling Company v. Fort Dearborn Casualty Underwriters, Inc., et al.*, 57 S. D. 194.

¹² *Bache v. Great Lakes Insurance Company*, 151 Wash. 494; *Continental Insurance Company v. Parkes*, 142 Ala. 650.

¹³ *General Insurance Company of America v. Allen*, 40 Fed. (2) 384.

If the volume of litigation be taken as an index to importance, the most important phase of the subject of cancellation is that branch having to do with cancellations initiated and effected by the insurance company itself. The courts lean toward holding a policy of insurance in force in practically all cases where the company has not precisely followed all the terms of the cancellation clause permitting it to retire from, or relieve itself of, the risk before the policy period has fully expired.¹⁴ The notice must be direct, peremptory, explicit, and unconditional; no expression of desire, wish, or intention to cancel in the future will be sufficient.¹⁵ A reference to the new New York form of cancellation clause shows that the notice of cancellation shall state that the return premium, if not tendered, will be refunded on demand. In a comparatively recent Michigan case,¹⁶ the failure of the company to make such statement in the notice when attempting to cancel was fatal to an effective cancellation and a loss thereafter accruing within the policy term was covered. One court has even gone so far as to say that since no provision is made for sending notice by registered mail, the sending of a notice in that fashion is unsafe since it materially reduces the chance of assured receiving the letter, and failure of the postal authorities to find and to deliver to the addressee so as to secure his receipt prevents effective cancellation.¹⁷

Notices of cancellation emanating from the company's office or from the office of one of its agents should be signed with the company's name and addressed to each and all of the several parties having an interest in the insurance policy. If there are two or more assureds or parties in interest, such as persons designated in the

¹⁴ *Pomerantz v. Mutual Fire Insurance Company of Chester County*, 279 Pa. 479; *Molyneaux v. Royal Exchange Assurance*, 235 Mich. 678.

¹⁵ George Richards, *A Treatise on the Law of Insurance* (3rd Ed.), par. 286, citing *Van Tassel v. Greenwich Insurance Company*, 151 N. Y. 130, and other cases.

¹⁶ *Molyneaux v. Royal Exchange Assurance*, 235 Mich. 678.

¹⁷ *Werner et al. v. Commonwealth Casualty Company*, 9 N. J. Misc. R. 963. See also same case, 109 N. J. L. 119.

policy to receive the proceeds, notices must be sent to each of them. The insurance world is familiar with two general clauses, usually in the form of endorsements or riders attached to the printed forms of standard policies whereby mortgagees are designated as interested parties in the contract of insurance. One of these clauses is the union or standard mortgage clause; the other is the simple loss payable clause. Under the union or standard mortgage clause, the mortgagee is, by express stipulation, entitled to notice of cancellation; ordinarily any cancellation notice sent to the assured but not to the mortgagee named in the union or standard mortgage clause would be ineffective to cut off such mortgagee's rights to recovery on the policy; but even under the simple loss payable clause a mortgagee is likewise entitled to notice of cancellation.¹⁸ The cases supporting this principle seem to proceed on the theory that since the cancellation clause does not specify to whom notices shall be given, it is no more than just that the insurance company or its agents should notify all parties named in the policy of the intended cancellation.¹⁹

In the purchase of insurance, practically always three, and very often, in the large centers of population, four persons are connected with such a transaction. These are the assured, the company's agent, and the company itself. A fourth party may be the assured's broker. For the purposes of this discussion the assured and his broker stand on one side of the transaction and the company and its agent on the other. While the assured's broker is held in law to be the assured's agent in all transactions and negotiations relating to effecting the insurance,²⁰ he is by the great weight of authority not assured's agent to accept on behalf of the assured a notice of cancellation,

¹⁸ *Lattan v. Royal Insurance Company*, 45 N. J. L. 453; *Lee et al. v. New Hampshire Insurance Company*, 154 N. C. 446; *Rawl v. American Central Insurance Company*, 94 S. C. 299; *Glasscock et al. v. Liverpool, London & Globe Insurance Company*, 188 S. W. 281.

¹⁹ *Lattan v. Royal Insurance Company*, 45 N. J. L. 453.

²⁰ *Ritson v. Atlas Assurance Company, Ltd.*, 181 N. E. 393.

unless such broker has plenary authority or is specifically authorized to make such acceptance.²¹

The amount of the notice must be that which is stated in the cancellation clause. The effective date usually stated in the notice or the date that the notice is mailed are not controlling. The time only begins to run from the day the notice is actually received by the assured who must generally be allowed the full period provided for by the cancellation clause, computed commencing with the next ensuing day²² after assured has received the notice.

Actual receipt of the notice by the assured seems to be necessary to effect a cancellation.²³ The insurance companies, in their anxiety to secure assured's signature on a receipt to evidence cancellation, frequently send notices of cancellation by registered mail. This practice often defeats effective cancellation where assured cannot immediately be found by the postman, who returns it after a time to the sender.²⁴ In some policies, particularly those on automobiles, the company sometimes adds to the cancellation clause a sentence which says, "Notice of cancellation mailed to the address of the assured stated in this policy shall be a sufficient notice."²⁵ Even under this additional language to the cancellation clause, it is not, in the writer's judgment, safe to assume that cancellation is, by the mere act of mailing the notice, effected the requisite number of days after the letter is delivered by the postman at the address of assured stated in the policy. Delivery at the address named in the policy is not synonymous with actual receipt by assured. The courts might well take the position that such phraseology

²¹ *Kinney v. Rochester German Insurance Company*, 141 Ill. App. 543.

²² *Penn Plate Glass Company v. Spring Garden Insurance Company*, 189 Pa. St. 255. See also *Hartford Fire Insurance Company v. Tewes*, 132 Ill. App. 321; notes, 39 L. R. A. (N. S.) 829; *German Union Fire Insurance Company v. Fred G. Clarke Company*, 116 Md. 622.

²³ *Werner et al. v. Commonwealth Casualty Company*, 9 N. J. Misc. R. 963. See also same case in 109 N. J. L. 119.

²⁴ See cases under footnotes 23 and 25.

²⁵ *American Automobile Insurance Company v. Watts*, 12 Ala. App. 518.

merely identifies the method to be used in effecting cancellations, since there are other methods; for instance, telegraph, telephone, word of mouth or registered mail, the designation of any one of which methods would still leave open the question as to whether actual receipt of the notice of cancellation were necessary. The principal reason upon which it is thought that actual receipt is necessary even under the additional clause just quoted is that that time (that is, the day of actual receipt) is the most logical and reasonable day of departure for computing the five day cancellation period. The courts might, no doubt, hold it unreasonable, owing to the great distances in this country, to measure the five day period from the time the insurance company mailed the notice; and no date being mentioned in the policy from which to compute the five day period it is reasonable to suppose that the courts would compute it five days from the time the assured actually received the notice, or in any event five days after a time when, under the circumstances, it is reasonable to suppose he should have received it.

The one single factor which insurance companies most frequently fail to observe when endeavoring to cancel fire insurance policies is the return of the unearned paid premium in cash with the notice of cancellation. Under the old New York and Massachusetts standard forms it is almost universally, either by decisions or by statutes, held to be a condition precedent that the company return with the notice of cancellation the cash unearned paid premium.²⁶ The reason for this rule seems to be that the

²⁶ The following are the states wherein, by reason of court decisions or provisions in the statutes, the company must tender the unearned premium with the notice of cancellation before the cancellation becomes effective: *Alabama*—Insurance Companies v. Raden, 87 Ala. 311. *Arizona*—Hartford Fire Insurance Company v. Stephens, 18 Ariz. 339; Section 57 (1927) Insurance Laws. *Arkansas*—Southern Insurance Company v. Williams, 62 Ark. 382. *Connecticut*—Section 4109 Insurance Laws. *Florida*—First National Fire Insurance Company of United States v. Burnett, 79 Fla. 424. *Georgia*—Globe and Rutgers Fire Insurance Company v. Walker, 150 Ga. 163. *Illinois*—Annes v. Carolan, Graham, Hoffman Inc., 336 Ill. 542; Hartford Fire Insurance Company v. Tewes, 132 Ill. App. 321; Kinney v. Rochester German Insurance Company, 141 Ill. App. 543; Aetna Insurance Company v. Maguire et al., 51 Ill. 342. *Indiana*—Indiana Insurance Company v. Hartwell, 100 Ind. 566. *Iowa*—Harrington et al.

assured ought immediately be furnished funds with which to purchase other insurance to replace that being cancelled.

As shown above, the fire insurance business in this country is largely carried on by local agents, each of such agents very often representing several companies. It sometimes happens that the assured will secure several policies, one in each of several companies represented by the agent and pay the agent for some but not for the others. Thereafter, the agent, being unable to secure payment of the unpaid policies, will send out notices of cancellation with respect to all policies, both paid and

v. Bremer County Farmers' Mutual Insurance Association, 203 Iowa 282. *Kentucky*—Continental Insurance Company v. Daniel, 25 Ky. L. 1501. *Louisiana*—German Fire Insurance Company v. Tooley, 9 Or. App. (La.) 78. *Maine*—Bard v. Fireman's Insurance Company, 108 Me. 506. *Maryland*—German Union Fire Insurance Company v. Clarke, 116 Md. 622. *Massachusetts*—White v. Connecticut Fire Insurance Company, 120 Mass. 330. *Missouri*—Dubinsky v. Hartford Fire Insurance Company, 196 S. W. 1045; Chrisman & Sawyer Banking Company v. Hartford Fire Insurance Company, 75 Mo. App. 310. *Nebraska*—3208 (7807) Insurance Laws; *New York*—Tisdell v. New Hampshire Fire Insurance Company, 155 N. Y. 163. *Oklahoma*—St. Paul Fire and Marine Insurance Company v. Peck, 40 Okla. 396; Taylor v. Insurance Company of North America, 25 Okla. 92. *Oregon*—Section 22 (i); (6394) Insurance Laws. *Pennsylvania*—Baldwin v. Pennsylvania Fire Insurance Company, 206 Pa. 248; Goseh v. Firemen's Insurance Company, 33 Pa. Super. 496. *Tennessee*—Continental Insurance Company of New York v. Perry, 138 Tenn. 205. *Washington*—Section 108 of Insurance Laws; Snavely v. London Assurance Corp., 128 Wash. 47.

CONTRA: *California*—Mangrum and Otter, Inc. v. Law Union & Rock Insurance Company, 172 Cal. 497. *Michigan*—Webb v. Granite State Fire Insurance, 164 Mich. 139. *New Jersey*—Davidson v. German Insurance Company, 74 N. J. L. 487. *Ohio*—Phoenix Mutual Fire Insurance Company v. Brecheisen, 50 Ohio 542. *Texas*—Austin Fire Insurance Company v. Polemanakos, 207 S. W. 922. All the cases mentioned in this note were decided under facts involving the old New York form of cancellation clause. Only three decisions have been found construing the new New York form. These decisions are: Molyneaux v. Royal Exchange Assurance, 235 Mich. 678; Pomerantz v. Mutual Fire Insurance Company, 279 Pa. 497; and Hamilton Ridge Lumber Corporation et al. v. Boston Insurance Company, 133 S. C. 472. Therefore in those states now using the new New York form of policy, except those states having specific statutory regulations governing cancellations, it is still problematical as to the stand which the courts are likely to take regarding the tender of unearned premiums with the notice of cancellation. In those states where the new form has supplanted the old and wherein the courts have said that tender must be made before cancellation becomes effective, notwithstanding the new form, which makes it optional with the company to make tender, the courts of such states are still liable to hold such tender necessary as a matter of public policy.

unpaid, without tendering the return premium on the paid policies, and will attempt to apply the return premium on the paid policies against the earned premium on the unpaid policies. This procedure will, under the rule being discussed, result in cancellation of the unpaid policies but will leave in force the paid policies because of the agent's failure to remit the return premium thereon with the notice of cancellation.

If the company has issued two or more policies to the assured some of which have been paid for and some not, the company, when cancelling them, is not justified in applying the return premium on the paid policies against the earned but unpaid premium on the other policies.²⁷

What amounts to or constitutes payment of a premium so as to require the company to return a cash premium to the assured on cancellation is often difficult to determine. Although some diversity of opinion exists among the courts, there are reported some well considered insurance law cases tending to support the principle that the taking of a note from, or even perhaps the extension of credit to the assured by an agent, effectually precludes the cancelling of the policies without tender of the return premiums even if the note or debt is not paid at maturity, where it appears that the company has received remittance for the premium from the agent. This is apparently so, because an agent to collect has no authority to accept commercial paper or anything but cash in discharge of a debt due to his principal;²⁸ and a note so taken becomes an ordinary unsecured open account as between the assured and the agent;²⁹ as to the company, the premium has been paid (the agent having advanced it for the assured), so that assured no longer owes the company any money but owes the agent only. The company, therefore, when cancelling, must pay the return

²⁷ *Lattan v. Royal Insurance Company*, 45 N. J. L. 453.

²⁸ *Leader Realty Company v. Markham et al.*, 163 Mo. App. 314.

²⁹ *Buckley v. Citizens Insurance Company of Missouri*, 188 N. Y. 399.

premium in cash direct to the assured.³⁰ The act of the agent in extending credit to the assured or to assured's broker, amounts, in substance, to the "payment" of the premium.³¹ Ordinarily, the company, so long as the agent pays to it his accounts current, knows nothing of the relations between the assured and the agent, and as far as the company's books are concerned the premium is paid, so that tender of an unearned cash premium direct to the assured is pre-requisite to a valid cancellation.

Reference to the terms of the cancellation clause of the new New York standard form indicates that the return of premium may, but need not, be made with the notice of cancellation; but if the return premium is not so tendered with the notice, the notice must state that return premium is payable on demand. Failure of the company so to state makes the attempted cancellation ineffective.³²

Mention has already been made of the situation, as respects cancellation, where the insurance company becomes and is adjudicated insolvent. A correlative problem arises where the assured falls into the same difficulties. It is doubtful whether under any of its provisions, the adjudication of insolvency and the appointment of a receiver for an assured terminates or makes void a fire insurance policy written on any of the standard forms. There are only a few cases on this subject but they lend support to this view.³³ If the insurance is not terminated by the adjudication of insolvency and the appointment of a receiver, the latter under familiar rules of law would have a right within a reasonable time to elect to continue the existing insurance contracts; or as representative of the assured's estate, if the insurance is so terminated, he could consider the contracts of insurance as cancelled

³⁰ *Alliance Insurance Company v. Poss*, 40 Ga. App. 322. See also *Durin v. Aetna Life Insurance Company*, 240 N. Y. S. 463.

³¹ *White v. Connecticut Insurance Company*, 120 Mass. 330.

³² *Molyneaux v. Royal Exchange Assurance*, 235 Mich. 678.

³³ *Southern Pants Company v. Rochester German Insurance Company*, 159 N. C. 78; *Bowling v. Continental Insurance Company*, 86 W. Va. 164; *Greenwich Bank v. Hartford Fire Insurance Company*, 250 N. Y. 116.

and demand as assets due the estate the return of the paid premium thereon, figured, of course, at short rates.

Receivers frequently continue existing insurance in force and question arises, therefore, whether the insurance company has a right to initiate cancellation of policies of fire insurance after the appointment of a receiver and the taking possession by him of the assured's estate without securing an order of court permitting to the company the privilege of effecting such cancellation. There appear to be no decided cases on this point. On principle, however, it would seem that the insurance company should have that right, because, if the contract of insurance was binding on the insurance company in all respects, including the receiver's right to cancel, it would appear to be equally obligatory on the receiver in the event that the company itself should desire to cancel. Certainly the receiver, in all fairness, should not be allowed to affirm the coverage provided to him by the policy but to disaffirm some parts of the policy such as the cancellation clause, which he did not like. If the receiver accepted the insurance, he, by a well known rule of law, must take the burdens imposed upon him by the contract as well as the benefits furnished to him thereunder. It would also seem true that as a matter of public policy insurance companies should have untrammelled right to cancel fire insurance when they feel their relations to assureds to be intolerable, even if a particular assured is an estate in a receiver's hands, for the reason that if the law develops in such a fashion that an insurance company, after the policy has once attached in favor of a receiver cannot cancel without permission, a thing which may be withheld, the insurance companies will be increasingly loath to write any insurance in the future for any receiver and thus deprive society, especially in periods of economic distress, of the protection which, in most cases, should be freely given.

Upon cancellation of the insurance contract the return premium is determined according to short rate and pro rata premium charges, the application of either of which

depends on who initiates cancellation. Fire insurance rates are customarily developed to write insurance during one, three or five year periods, the three year rate being two and one-half, and the five year rate, four times the annual rate. Rates for odd periods less than one, three or five years are very much higher than the rates for such standard periods. For that reason assureds would take out policies for standard periods at the low rates and then cancel the policy a short time after, thus obtaining short term insurance at the same low rate as standard term insurance. To discourage this practice and, further, to protect the company against loss by reason of early cancellation, it having incurred the expense incident to the writing of the policy, a custom has developed in the fire insurance business and is embodied in the cancellation clause³⁴ whereby the company, when the cancellation is initiated by the assured, is entitled to an earned premium based on short rates³⁵ for the time the policy was actually in force; and so as to discourage the company from cancelling a risk after it has run for a period less than one, three or five years, in order to secure a possible short rate against the assured, the cancellation clause allows the assured a return premium pro rata when the policy is cancelled at the instance of the company. The cancellation clauses, therefore, so far as premium charges are concerned, protect each party against improper motives for cancellation by the other.

Another point of interest germane to this subject, is the treatment of a return premium when the policy ceases or becomes void after it has once attached to the risk. Of the three standard cancellation clauses, the old New York standard clause³⁶ is the only one which provides for such a case. The assured, under that clause, will be entitled to a return premium if he conveys away the property insured so as to cause the insurance thereon in his

³⁴ See footnotes 2, 3 and 4 above.

³⁵ A short rate table, on account of its length, is not set out herein, but one may be obtained at practically any fire insurance agency.

³⁶ See footnote 3 above.

favor to cease, or if for some forfeiture on assured's part the insurance becomes void. It is doubtful, however, if assured could recover premiums on a policy containing such a clause where such policy was fraudulently procured by the assured.³⁷

Another point incidental to this subject concerns the case where the policy has attached to the risk and through some cause set in motion by the assured the policy is or may be forfeited. In such a case, the company, if it learns of the cause of forfeiture before loss, is said to be under the duty to initiate cancellation, and its failure to do so waives the forfeiture.³⁸

Although the standard cancellation clauses herein discussed do not provide for partial cancellation, that situation may occur in a case wherein the policy insures two different items of property and a total loss on one item occurs and is paid on that item. The policy is exhausted, reduced or cancelled to the extent of the amount paid on that one item but remains in force as to the other;³⁹ or partial cancellation may occur by reduction of the amount of the policy. In that case the company must serve the usual notice and return the paid premium applicable to the amount thus reduced before such partial cancellation is effected.⁴⁰

³⁷ *National Mutual Fire Insurance Company v. Duncan*, 44 Colo. 472. This was a case of fraudulent overvaluation of property made by assured.

³⁸ *Patten v. Springfield Fire & Marine Insurance Company*, 223 Mo. App. 1070. See also generally 26 C. J. 330, 414.

³⁹ *Globe & Rutgers Fire Insurance Company v. Chisenhall*, 162 Ark. 231.

⁴⁰ *Transit Lumber Company v. International Indemnity Company et al.*, 153 Wash. 594.