## RATING SYSTEM FOR NEW YORK WORKMEN'S COMPENSATION RISKS UPHELD

A case has just been decided in the Supreme Court at Syracuse upholding the rating system for New York workmen's compensation risks and sustaining the condition A of the policy which provides for the adjustment of the rate after the issuance of the policy. This is the first of its kind since the present system was established and will be of considerable interest to compensation underwriters.

The action upon which the decision was rendered was that of the United States Casualty Company vs. E. K. Fenno, and was for the collection of premium on a workmen's compensation policy at rates established by the Workmen's Compensation Inspection Rating Board. The rates were based upon the manual in force June 30, 1916, modified by application of the experience rating plan which produced a debit of 20 per cent. above the manual rates.

The assured refused to pay the premium on the basis of rates established by the board, alleging that the policy was accepted by him conditionally, subject to promise by representatives of the company that he would get what he described as a credit rating, meaning thereby a rating downward or below the manual rates. This promise was alleged to have been made to him by the United States Casualty's general agent at Syracuse, Fred Le Roy, and also by the officials of the company at its home office. He also attempted to introduce as evidence his objection to the valuation which was made by the Rating Board, involving the question whether a certain injury to an employee of the assured was or was not a total disability case. He also claimed credit for some $300 on monies advanced to General Agent Le Roy, secured by assignment of commissions due the agent of the United States Casualty. He also tried to secure a judicial construction of "Condition A" of the policy which deals with the effective date of the adjusted rate promulgated by the board. His contention was that such adjusted rate cannot be made effective from policy date but from date of promulgation.

The United States Casualty and its general agent denied that the policy was delivered subject to any, special agreement and introduced a letter from Dr. Keelor to the general agent to the effect that the risk would be subject to experience rating if it qualifies under the rule, and that the company could not foretell what the adjusted rate would be, or whether the rates will be above or below the manual. The company further proved that the assured accepted the policy and paid a premium of $1,000 on account, filed claims under it and had notices posted that he was insured, as provided by the law.

The court permitted no evidence to be introduced regarding details of the valuation after hearing the general methods outlined by Manager Leon S. Senior of the Rating Board and H. E. Ryan of the New York Insurance Department as to the organization of the board and the methods and general rating system under which workmen's compensation rates were adopted. At the conclusion of the trial the court ruled that there was no question for the jury to consider and directed a verdict for the plaintiff for the full amount of the claim. Justice Emerson in his decision, which was delivered orally, said in part:

"Now the defendant testifies that on the 31st day of August, 1916, he saw a letter from the president of the company to Mr. Le Roy, in which the president said that they had made the rates 20 per cent. less on this policy. In the first place I have a very serious question in my mind as to whether or not it was competent for the president, even though he is the managing director of the concern, to make any agreement fixing a different rate of compensation than that which is fixed by the Compensation Inspection Rating Board for the reason that the public is interested in the matter. Were it between individuals a different rule would apply, but here is a case where the public is interested in having a premium of a sufficient size so that the reserve which is required in order to maintain this protection for the workmen that are injured shall be kept up to a proper point, and to the end the insurance law provides that the Superintendent of Insurance, if in his opinion the rates are less than necessary to keep up this reserve, many refuse to allow the rates that the company proposes to make in the case.

"Now, in regard to the time that the new rating should be given effect. Provision A of the policy provides that "Such changes of classifications and rates shall be effective as of the date of the policy, except that a schedule rate based upon inspection made more than three months after the date of the policy shall be effective only as of the date of the report of such inspection. Upon the evidence of the case I must hold that there are two methods provided. One is inspection, which amounts to examination of the physical condition of the plant to ascertain just what the perils are that are being covered by the terms of these conditions, and the other is an experience value, which is a valuation which is based not upon the inspection of the plant, but upon the previous experience of the party insured, and as to the first or physical inspection of the plant the condition applies that if this shall be made over three months after the issue of the policy the change will take effect at the time of the inspection. As to the experience valuation, I find that no such condition is here, and as this change is conceded to have been made upon an experience valuation, it seems to me that the change under the terms of the policy, took effect as the date of the policy."