STATE REGULATION OF INSURANCE RATES

BY

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INTRODUCTION

The stretching out of the long arm of the state to regulate and control the prices to be charged for insurance is a single incident in a legislative program, very wide-spread in scope, fairly modern in development, and at present proceeding at an accelerated rate. Legislation inevitably is colored by the national ideology, and that ideology has undergone and is still undergoing a profound change. The older of us can still recall the individualistic ideology that prevailed throughout most of the 19th century, and the emphasis laid in it upon free competition and the law of supply and demand. Prices, it was thought, followed a natural law, and legislative attempts to interfere with the operation of that law were not merely useless but positively harmful.

The ideology of today is essentially collectivistic, with an opposition still running between private collectivism and state or national collectivism. The characteristic business entity is today not the individual but the corporation; employment is consummated in increasing measure not with individual employees but with members of a union. Associations of business organizations, of producers, of consumers, for this or for that purpose, constitute an increasing portion of economic life. That is what is meant by the term, private collectivism; and the State and Nation, sending out ever-increasing forces of regulatory and policing officials, and themselves performing actual economic activities, constitute what is meant by public collectivism. The individual becomes more and more a cog in a machine, and the economic theories of the individualistic period assort but ill with conditions of today.

Conditions of today are the result of a continuous growth in that direction. Competition is a form of warfare, and its consequences are frequently only slightly less harmful to the victor than to the vanquished. The natural result is, that combatants seek allies, and by organization seek to achieve a common victory. But when such an organization is formed, competition between members of the organization ceases; and if the organization wins

a definite superiority over the field, no real competition is left. Similarly, once such an organization has practical control of the sources of supply, the law of supply and demand ceases to operate.

The possibility of these combinations being used to the public detriment was very present to the minds of legislators of the past generation, taking the form of anti-monopoly and anti-trust laws. These may be taken as the natural reaction of the individualistic ideology to a situation wherein the individual might be powerless before the organized gang. But it is not possible to curb by such means a wide-spread and very general economic movement. Once the principle of alliance and combination is established, it is very difficult for legislatures or courts to divorce the alliances, still more difficult to set the individual members fighting again. An unrestrained competition is no very healthy thing. Up to a certain point it makes for rivalry and progress; but carried to the extreme it is a brutal crushing of the weak by the strong, and leaves the battle-grounds strewn with economic corpses, with many of the victors in sorry case, nursing sore wounds, and at once handicapped for efficient service, and compelled to seek recoupment of loss in higher prices. The law of supply and demand, operating blindly and unrestrained, creates periods of over-production, necessarily followed by periods of idleness, alternations of hopeful activity and black depression. These conditions are thoroughly bad for the community and entail a huge wastage. To eliminate combinations is likewise to eliminate any hope of realizing the economy and efficiency possible through transacting business in large units or through joint services.

There has developed a certain tendency, by no means universal, or generally accepted, but wide-spread enough to be distinct and noticeable, to regard combination within limits as on the whole a good thing for the community, and to permit the same within restrictions and under supervision. One of the most effective restrictive methods is control of prices.

Control of prices is a common and necessary thing in times of great public emergency. In normal times, freedom of bargain and sale is generally regarded as desirable. From very ancient times some control was practiced over the charges of businesses public in character, such as the common inn, the common carrier, the grist-mill and the like. This developed during the last century

into a very general tendency to control the rates charged by public utilities, and this led to control of prices charged by businesses whose functions were essentially of a private nature, but which, by virtue of conditions, might be regarded as "affected with a public use." Presently, a very wide-spread emergency control of prices seems in the making; and the present view of the courts would appear to be that the legislative power to control prices is very broad indeed, and that ordinarily they will not undertake to overrule a legislative declaration that such control is in the public interest.

Insurance occupies a peculiar position. An insurance company is not a public service company, but it is, accordingly to good legal precedent, engaged in a business affected with a public use. The right of legislatures to regulate its rates, its policy forms and its methods of doing business is no longer a controversial issue. On the other hand, insurance rates are not related to ordinary laws of supply and demand. Certain limitations to the amount of insurance a company can write are dictated by prudence; other limitations have been set up by statute in the form of provisions limiting the amount that can be insured in a single policy, in the form of reserve requirements and other provisions relating to financial conditions. Certain limitations to the price that should be charged are found in the fact that soliciting, issuing, servicing and underwriting a policy entail a certain cost, and in the other fact that the policy undertakings entail a certain hazard of loss, which must be estimated with a high degree of accuracy. But these limitations are not so exact or rigid as to inhibit a lively competition for business, and at times a reckless and unscrupulous competition as well. Insurance companies have been driven to resort to combination to avoid the more disastrous results of competition. In so doing they have found themselves assailed as conspirators against the public welfare, sometimes under the common law, sometimes under anti-trust statutes. This phase has been succeeded by the recognition of a certain public interest in controlling the evils of competition; by the legitimization of rating organizations, and by provision for controlling rates, establishing rating standards, and setting up machinery for filing, approval, modification and application. This development has been by no means uniform; and is in most states confined to specific lines.

There are, however, laws more general in scope; and in no state are these all-comprehensive.

This paper, originally written some 16 years ago, has required considerable revision, and must appear, not as a whole, but in parts. Those 16 years have witnessed a profound change in theories of constitutional law, and in the governmental organization of the nation, which has made a long advance from a confederation of states essentially autonomous toward a nation integrated about the federal organization. Some things then written are today out-of-date; a similar interval would doubtless require what is now written to be revised. There has, however, been a growth along the line indicated, namely toward a more extensive use of regulation and supervision of rates, a more general acquiescence in the fact that competition in insurance must in the public interests be kept within reasonable limits. This can be done in part by regulatory laws; in part it must be achieved by the cooperation of the companies themselves, acting in unison for common ends.

The Anti-Compact Principle

The combinations of insurance companies for the purpose of establishing joint policies as to rates and kindred matters arose from a consciousness of the evil effect of competition. Where competition was achieved by means of favorable rating treatment for desirable business, the approximate result was a departure from the principle that rates are to be made on some basis which comes somewhere near a scientific evaluation of the hazards involved, and the other principle that risks of the same sort ought to receive identical rating treatment. These were principles, not necessarily of law, but of common sense and of natural equity. Competition meant fair license for big and powerful companies to underbid the small and weak. It made for precarious financial conditions of all companies; and it made for the big risks getting more favorable rating treatment than the little ones. When competition was affected by means of bidding for the services of agents, it meant that the cost of doing business was ever on the increase, and sooner or later an increase in rates must follow. Where competition was affected by means of policy forms, it in-

troduced into the business a most undesirable situation, imposing on the purchaser of a policy the necessity of reading it very carefully indeed, and tainting the whole business with a degree of discredit. There were, therefore, reasons why the companies or some part of them should desire agreements on these points, and some of these reasons were also in the public interest.

But attempts to affect such agreements brought opposition from several sources. Big purchasers of insurance liked a competitive system out of which a shrewd and important purchaser might extract a substantial advantage. Small purchasers were easily moved into opposition by the cry of monopoly. Agents objected to being deprived of a chance to bid for business, and still more to having their commissions held to a uniform scale. Non-bureau companies objected to methods used by bureau companies, designed to make it difficult for them to stay outside. The result was a deal of litigation followed by a deal of statute writing.

Litigation at Common Law:

Attempts to invoke common law principles as a foundation for private actions for damages or for injunctive relief, or for prosecutions or informations in the nature of *quo warranto* were generally unsuccessful. Rating compacts were no doubt contracts in restraint of trade; but such contracts were illegal at Common Law only in the sense that the courts, on considerations of public policy, would refuse to enforce rights claimed thereunder. So long as they were for the advantage of the parties thereto, and not aimed at a particular person or class of persons, there was no right of action for damages, even if one sustained actual injury thereby.[1]

Similarly, while at common law conspiracy was an indictable offense, and also an actionable tort, conspiracy consisted in a combination of two or more persons to do a criminal or unlawful act, or a lawful act by criminal or unlawful means. If the end or the means would have been legal for a single company, neither was rendered illegal by the mere fact that several companies were acting in unison.[2]

[1] Williston on Contracts, Section 1664 A
[2] Joyce on Monopolies, Sections 3, 4

Monopoly as such was not a common law offense. The Common Law in fact understood by monopoly a grant under letter-patent of the Crown. Abuse of crown monopolies led to a widespread opposition thereto; but the only monopolies which were positively illegal at Common Law or under ancient statute were those comprehended by the terms *Engrossing, Regrating,* and *Forestalling,* all limited to conspiracies affecting victual or other marketable commodities.[3]

Thus, while in New Jersey an information brought on common law grounds resulted in an injunction, and while like results followed in lower court proceedings in Indiana and Ohio, the general course of judicial decisions was to the effect that a rating compact, as such, was not positively illegal as to its ends, and if no illegal means were involved was not a sufficient foundation for an action for damages, a bill seeking injunctive relief, an indictment or an information.[4]

On the other hand, where, as in the case of Continental Insurance Co. *v.* Board of Fire Underwriters of the Pacific, cited in note 4, there was an attempt, collateral to the agreement, by agents of the companies involved, to use a boycott against those insuring with a non-member company, or to make unfair assault on its business, those acts might be the subject of an injunction, as would the agreement itself had it contemplated the use of such methods, which are in themselves illegal.

Litigation Under General Anti-Trust Laws:

Almost every state has a general anti-trust law, some fairly sweeping in their terms. Attempts have been made from time to

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[3] Joyce on Monopolies, Sections 5, 7, 11

[4] 21 A.L.R. 543
State ex rel *McCarter* v. *Firemen's Fund Insurance Co.,* 73 Atl. 80, 29 L.R.A.N.S. 1194 (N. J.)
Continental Ins. Co. v. *Board of Fire Underwriters of the Pacific,* 67 Fed. 310
Queen Ins. Co. v. *State,* 22 S.W. 1048, 24 S.W. 397 (Texas)
Harris v. *Commonwealth,* 73 S.E. 561 (Va.)
McGee v. *Collins,* 100 So. 430 (La.)
Louisville Board of Fire Underwriters v. *Johnson,* 119 S.W. 153 (Ky.)
Booker and Kinnaird v. *Louisville Board of Fire Underwriters,* 224 S.W. 451 (Ky.)
Aetna Ins. Co. v. *Commonwealth,* 51 S.W. 624 (Ky.)
People ex rel *Pinckney* v. *N. Y. Board of Fire Underwriters,* 7 Hun. 248 (N. Y.)

time to bring proceedings under anti-trust laws in cases where the law did not specifically refer to insurance. If the anti-trust law, as is frequently the case, is aimed at combinations affecting production of or trade in the necessities of life, commodities, manufactured products or articles of use, merchantable in character, or have specific application to trade and commerce, it is tolerably certain that it does not apply to insurance; and such was the holding in cases in Florida, Kentucky and Virginia. In Mississippi, on the other hand, the court found the Act of that state broad enough to cover insurance agreements, and in Iowa, the court ruled that insurance was a "commodity," within the meaning of the Anti-Trust Act.[5]

Special Anti-Trust Provisions and Litigation Thereunder:

Special anti-trust provisions directed specifically at insurance are not uncommon, either as part of the anti-trust laws, or as isolated provisions in the insurance laws. They were more common in the past than at present, and a deal of the litigation thereunder is old. This may be taken as an indication of a somewhat different legislative and administrative view as to rating compacts of insurance companies, and also undoubtedly reflects to the fact that legislation specifically authorizing the maintenance of rating bureaus has become increasingly common.

Appendix 1, hereto annexed gives in brief, the anti-trust laws of the several states. Here it will suffice to note, State by State, the specific provisions that have been inserted in the statutes with regard to insurance, or that have figured in litigation.

Alabama:

Alabama formerly had a provision, cited as Code 1896, Sections 2619, 2620, Code 1907, Sections 4954, 4955. This provision has apparently been repealed, but while on the books gave rise to a

[5] *Werth* v. *Fire Companies' Adjustment Bureau,* 171 S.E. 255, Certiorari Denied, 290 U.S. 659 (Va.)
Brock v. *Hardie,* 154 So. 690 (Fla.)
Aetna Ins. Co. v. *Commonwealth,* 51 S.W. 624 (Ky.)
International Harvester Co. v. *Commonwealth,* 99 S.W. 637
American Fire Ins. Co. v. *State.* 22 So. 99 (Miss.)
Beechley v. *Mulville,* 70 N.W. 107 (Iowa)

number of cases, one going to the Supreme Court of the United States, where its constitutionality was upheld. The statute was directed at fire insurance, and in substance authorized the holder of a policy issued by a company which was a member of a tariff association to recover 25% of the face of the policy in addition to any loss; and exempted the policyholder from the necessity of filing notice or proof of loss. As interpreted, the 25% was upon the amount recoverable under the policy.[6]

Arizona:

The Anti-Trust Law, Code 1939, Section 74-101, includes in its definition of trusts, combinations "To control the cost or rate of insurance." The provision has not figured in litigation.

Arkansas:

Digest, 1937, Section 9408, states that an insurance company is permitted to do business in the state on compliance with the insurance laws "Provided, that such corporation is not a member of or a partner to any pool, trust, agreement, combination, confederation or understanding made in this state or elsewhere to regulate, fix or maintain insurance premiums on property in this state."

The original form of this provision, contained in the so-called Rector Anti-Trust Law, was dangerously broad in its terms, and was held by the courts to justify the exclusion of a corporation which was a member of a ratemaking association to fix any rate on any insurance, whether on Arkansas property or on property entirely outside the state. The provision as redrafted permits companies to employ the services of a common rating expert, and as assessment made against a company employing such a common expert having in charge the administration of the Dean Analytical Schedule was in a later case held valid.[7]

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[6] *Continental Insurance Co.* v. *Parkes,* 39 So. 204
Firemen's Fund Insurance Co. v. *Hellner,* 49 So. 297
Aetna Insurance Co. v. *Kennedy,* 50 So. 73
Southern States Fire Insurance Co. v. *Kronenberg,* 74 So. 63
German Alliance Insurance Co. v. *Hale,* 219 U.S. 307

[7] *State* v. *Lancashire Fire Insurance Co.,* 51 S.W. 633
Hartford Fire Insurance Co. v. *State,* 89 S.W. 42
National Union Fire Insurance Co. v. *Dickinson,* 194 S.W. 254

Georgia:

The Constitution, Section 2-2504, contains a provision denying the General Assembly authority to authorize corporations to make any contract or agreement which may have the effect or be understood to have the effect of lessening competition or encourage monopoly, and such contracts or agreements are declared illegal and void.

The Georgia Code, Annotated, Section 56-219, prohibits combinations of insurance companies which tend to prevent or lessen competition in the business of insurance.[8]

Iowa:

Code 1939, Section 9010, contains a provision making unlawful combinations or agreements relating to the rates to be charged for insurance, the amount of commissions to be allowed to agents for securing or procuring the same, or the manner of transacting the insurance business within the state. The constitutionality of this statute was sustained in one case by the Supreme Court of the United States.[9]

Kansas:

General statutes 1935, Section 50-101, declares unlawful combinations "To control the cost or rates or insurance." This provision has figured in several cases, none of more than passing interest.[10]

Louisiana:

General Statutes 1939, Section 4173, states that it is unlawful for fire insurance companies to form combinations or contracts "For the purpose of governing, controlling or enforcing the rates charged for insurance on properties situated in the state." It specifically permits the use of common agents to supervise and advise of defective structures or to suggest improvements to lessen fire

[8] *Blackmon* v. *Gulf Life Insurance Co.*, 175 S.E. 798
[9] *Carroll* v. *Greenwich Insurance Co.*, 199 U.S. 401
Beechley v. *Mulville*, 70 N.W. 107
[10] In re *Pinkney*, et al, 27 Pac. 179
State v. *Phipps*, 31 Pac. 1097
Agricultural Insurance Co. v. *Aetna Insurance Co.*, 239 Pac. 974

hazards. It has not figured in litigation, the case of *McGee* v. *Collins,* 100 So. 430, involving merely the general legality of insurance compacts or combinations.

Michigan:

Michigan Statutes, Annotated, Section 24-99 *et seq.* (a) requires Fire and Marine Companies to execute and file undertakings not to enter into agreements, the object of which is to prevent open and free competition between companies and their agents in the business transacted in the state or any part thereof, (b) forbids the making of such contracts, (c) forbids agents' agreements to prevent competition. It has figured in one case.[11]

Mississippi:

As previously stated, the Mississippi Anti-Trust Law was held broad enough to inhibit insurance rating compacts. Subsequently a specific provision was added, prohibiting combinations to regulate or affect "The price or premium to be paid for insuring property against loss or damage by fire, lightning or tornado, or to maintain such prices when so regulated or fixed." This provision was involved in some striking litigation, in the form of a prosecution, and of a number of actions to recover penalties. The prosecution failed, the court holding that use by a company of an advisory rate did not constitute a violation of the law in the absence of allegation and proof of a compact with other companies. The actions for penalties led to the repeal of the provision by Act 1926, chapter 182.[12]

Missouri:

The Missouri Revised Statutes, 1939, Sections 8300-8304, contains a provision substantially the same as that quoted from Mississippi, the only difference being the use of the word "storm," instead of "tornado." There have been two very picturesque anti-

[11] *Hartford Fire Insurance Co.* v. *Raymond,* 38 N.W. 474
[12] *State* v. *Fidelity Union Fire Ins. Co.,* 88 So. 711
Aetna Ins. Co. v. *Robertson,* 88 So. 883
Nugent and Pullen v. *Robertson,* 88 So. 895

trust proceedings in Missouri; the first under the above provision as it appeared in the Act of 1907, c. 208, Section 1: an information in the nature of *quo warranto,* directed at the defendant companies for maintaining an illegal rating organization. The case is a classic in point of vigor of judicial language. The second case involved a *quo warranto* proceeding against fire insurance companies constituting three-fourths of those operating in Missouri, who had declared intention to cease to write business in Missouri on and after a certain date. This was after the passage of an act permitting companies to employ joint experts for ratemaking purposes, and the court held, and properly enough, that the repeal of acts inconsistent with this act did not operate to repeal the anti-trust act. There was question of course whether such a combination could properly come within the language of the statute as a combination to regulate or fix the price or premium to be paid for insurance. The court, however, held that it was an illegal combination.

A third case, brought against an underwriters' association by a former member, expelled for violating a rule against dealing with non-members, was a much milder affair. The court held the association had the right to make and enforce the rule, and that there was no violation of the anti-trust law.[13]

Nebraska:

Compiled Statutes 1929, Section 59-101, includes in its definition of illegal trusts, a combination "to prevent competition in insurance, either fire, life, accident or any other kind." Section 59-301 *et seq.,* further declares unlawful compacts of fire insurance companies "relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring insurance, or the manner of transacting the business of insurance within this state."

The provisions as to commissions and manner of transacting business were held unconstitutional in a case in the Federal courts; but this decision is undoubtedly wrong. There was another case involving this section, which figured in two different

[13] *State* v. *Firemen's Fund Insurance Co.,* 52 S.W. 595
State v. *Insurance Co. of America* et al, 158 S.W. 640
Bersch v. *Fire Underwriters' Ass'n. of St. Louis,* 241 S.W. 428

decisions of the Nebraska court; but the issues involved are highly technical.[14]

Ohio:

Page's Code, 1938, Section 9563-9564 requires revocation of license of companies which enter into compacts "for the purpose of controlling the rates charged for fire insurance on property within the state, or controlling the rate per cent amount of commission on compensation to be allowed agents for procuring contracts for such insurance on such property." The second section permits the use of common agents for certain purposes, and the whole statute is overlaid by the Fire Bureau Rating Law. It has not figured in litigation.

Oregon:

Compiled Laws 1940, Section 101-142 declares unlawful compacts or joint acts for the purpose of controlling the rate to be charged, commissions or other compensation to be paid for insuring any risk or classes of risk in the state, or for the purpose of discriminating against any company manager or agent, because of plan or method of doing business, or affiliation or non-affiliation with any association or for any purpose detrimental to free competition or injurious to the insuring public.

South Carolina:

Code 1932, Section 6624 prohibits as conspiracies compacts to fix or limit "the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy."

South Dakota:

Code 1939, Section 31-2310, declares unlawful agreements "relating to rates charged for insurance on property against damage

[14] *Niagara Fire Ins. Co.* v. *Cornell,* 110 Fed. 816
State v. *American Surety Co.,* 133 N.W. 235, 135 N.W. 365

by fire or the elements, fixing minimum premiums for such insurance or the amount of commission allowed to agents for procuring it, or the manner of transacting such insurance business in the state."

Tennessee:

The Tennessee statutes formerly contained an anti-compact provision prohibiting agreements of fire insurance companies looking for maintenance of any specific rates to be charged for insurance on any property located in the state, the amount of commission to be allowed agents for procuring the same, or the manner of transacting fire insurance business within the state. The provision originally appeared in the Acts of 1905, chapter 479, section 1. This act was amended by Acts of 1919, chapter 8; this amendatory act was repealed by Acts of 1919, chapter 33. The next codification, section 3348a21, refers to the provision as if it had been repealed in its entirety, and it does not appear in later codifications.

Texas:

The Texas Anti-Trust Law, Vernon's Texas Statutes, sections 7426-7447, contains a number of provisions specifically applying to insurance. Section 7426 defines a trust as a combination, (1) to fix, maintain, increase or reduce the cost of insurance, (2) to prevent or lessen competition in the business of insurance, (3) to fix or maintain any standard or figure whereby the cost of insurance shall be in any manner affected, controlled or established, (4) to make, enter into, maintain, execute or carry out any contract (a) to make any contract of insurance at a price below or above a common standard or figure, (b) to keep the price of insurance at a fixed or rated figure, (c) to affect or maintain the cost of insurance, (d) to preclude free and unrestricted competition in insurance, (e) pooling interests in connection with insurance in such a way as to affect price, (5) to regulate, fix or limit the cost of insurance which may be undertaken.

This long and rather obscure series of provisions has been the theme of some litigation worth noting in detail. The case of

Palatine Insurance Company v. *Griffin,* 202 S.W. 1014, 235 S.W. 202, 238 S.W. 637, ran through several court stages. Griffin ran a grocery store. He had fires in his store December 26, 1911 and March 3, 1912, and a third on April 20, 1913. He and the adjusters disagreed as to amount of this last loss, and it was adjusted by appraisal. There was evidence that the adjusters had, pending the appraisal, told him he had better settle; that if he got on the blue book he would never get off, and that the fire looked suspicious. They made reports to the companies represented by them, and the companies on the basis of the reports cancelled their policies, not only on Griffin, but on the building into which he moved. This action was brought to recover damages for a conspiracy.

The court in the first case upset a verdict for the plaintiff on the grounds that, while a combination to refuse to grant insurance was no doubt an illegal conspiracy, the individual act of an adjuster did not constitute a conspiracy. This action was reversed in the second case. In the third case, the court remanded the matter for a new trial, but indicated the opinion that the refusal of insurance companies in combination to write insurance for one individual is illegal.

Potomac Fire Insurance Co. v. *State,* 18 S.W. 2nd, 929, (1929) was a proceeding by the state against certain insurance companies to restrain the carrying out of an agreement limiting agents' commissions on fire insurance business to 20% and agreeing not to accept business from an agent charging more than 20%. This was held a violation of Section 7426, being designed to affect the cost of insurance and to prevent or lessen competition.

Gaddy v. *Republic Insurance Co.,* 74 S.W. 2nd, 728 (1934) was an action for damages against several insurance companies, claiming an unlawful combination to refrain from doing business with the plaintiff. Gaddy, the plaintiff, was an agent, who was apparently behind in his accounts. The court intimated the extraordinary opinion that the anti-trust law prohibits acting in combination for any purpose, even an action which any of the parties might properly have taken for the legitimate protection of their interests. The court reversed a directed verdict for the defendants, save as to one company which went no further than to

advise the plaintiff to issue no more policies until he had remitted all unpaid balances due.

Gulf Insurance Co. v. *Gaddy,* 103 S.W. 2nd, 141 was a writ of error on the part of the companies involved in the above decision. In this proceeding more of the facts appeared. Gaddy was behindhand in his settlements, and wrote the Gulf Insurance Company, indicating that he hoped to receive credit to enable him to continue his business, but that he would on advice to that effect, discontinue the writing of business. The companies were in correspondence with Gaddy on this matter and some of the agents called on him jointly to check over the situation. The Gulf Insurance Company's agent was informed that the Fidelity-Phoenix intended to cancel Gaddy's license, and thereupon notified Gaddy his license was suspended.

The court said, very sensibly, that this was not a conspiracy, but a necessary act, to prevent Gaddy from transferring to the Gulf Insurance Company the business of the companies who had suspended his license. The company had the right to terminate the agency at will, and the fact that the immediate cause for action was information that other companies were terminating their agencies did not affect that right. As to the Fidelity-Phoenix, the court indicated, that inasmuch as the company was bound to notify the Board of Insurance Commissioners of the revocation, and inasmuch as the notice of revocation, once on file was for the information of the public, the company did no wrong in notifying a number of the public of the fact.

The cases are illustrative of the pitfalls that lurk for the unwary—and even for the eminently wary — under an anti-trust law like that of Texas.

Vermont:

Public Laws, 1933, Section 7124 contains a prohibition of agreements of rating organizations or any two insurers to refuse to do business with or pay commissions to an authorized licensed insurance broker because such broker will not agree to secure insurance only at the rate of premium fixed by the Rating Association or by the parties to the agreement.

Washington:

Remington's Revised Statutes, section 7076, declares unlawful agreements for the purpose of controlling the rates to be charged for insuring any risk or classes of risks in this state or for the purpose of discriminating against or differentiating from any company, etc. by reason of its plan or method of transacting business or its affiliation or non-affiliation with any board or association of insurance companies or for any purpose detrimental to free competition in the business or injurious to the insuring public.

Section 7158 is designed to protect agents' commission in cases where a company indulges in "rate wars."

The above citations indicate fairly well that the anti-trust idea is by no means dead, although perhaps less in honor than it used to be. Some of the provisions quoted are intended to protect the public, some are very evidently intended to protect the agent; and in view of recent decisions in the Supreme Court of the United States, that is a legitimate legislative object.

On the other hand, some kinds of cooperation between companies are not merely useful to them, but distinctly in the public interest. If they cannot exchange information so as to debar the assured who is reckless, wilfully negligent, fraudulent or criminal, the public pays the cost, not merely in mounting insurance rates but in encouragement of a highly dangerous class which may at any time extend its operations beyond the insurance field. So, too, if they cannot eliminate an agent who does not pay his accounts, without running the risk of an anti-trust suit, as seems to be the case in Texas, the law is merely being perverted into a shield of financial irresponsibility. It is pretty generally admitted that companies ought to be able to take joint action looking towards loss prevention, for in that the public has a direct interest. And if they may do this, joint action to penalize inferior risks in the form of rate differentials is the only logical method of doing justice to the better risks. It is pretty generally admitted that there should be equality of treatment; that the big risks ought not to be able to get insurance on better terms than the small risks; but a system of free competition sets everybody to bidding for the business of the big risks. If it is desired that rates be made on a scientific basis, then the use of a common system of classifications, standard forms of coverage, and standard under-

writing rules and practices becomes necessary in order that a proper statistical basis be developed. If it is desired that insurance be as cheap as possible, then common services, and a standard commission schedule become necessary.

Thus in one way and another, the anti-trust principle has been evaded, over-laid by legislation entirely inconsistent therewith, and tends to fall more and more into the background. The citations given above, however, indicate fairly clearly that the principle is not dead, and that in some states it is still necessary for insurance companies to use a deal of caution.

ANTI-TRUST STATUTORY REFERENCES

The statutes cited herein are anti-trust provisions. Those italicized contain provisions specifically relating to insurance. The column headed "General Application" is intended to list the items as to which illegal combination is forbidden.

State	*Reference*	*General Application*
Alabama	Constitution, sec. 103 Code 1940, Title 57, secs. 106-108 Title 7, secs. 124, 125	"Articles of necessity, trade or commerce." "Article or commodity to be produced, manufactured, mined or sold"; article of commerce," "commodity."
Alaska	No reference, see United States	
Arizona	*Code 1939—74-101*	*"Cost or rates of insurance."*
Arkansas	Digest 1937, c. 113, secs. 9407-9433 *9408*	(General anti-trust Law) *"Insurance premiums on property in this state."*
California	General Laws 1937, Act 8702	"Trade or commerce," "Merchandise or any commodity," "Any article or commodity."
Colorado	Statutes, Consolidated, 1935 Vol. 4, c. 167, sec. 1.	"Trade or commerce or aids to commerce," "Merchandise, produce or commodities," "Merchandise, produce, ores or commodities," "Aids of commerce," "Any article or commodity of merchandise, produce or commerce." See *Clare* v. *Frink Dairy Co.*, 274 U. S. 445.
Connecticut	General Statutes, 1930. sec. *6352*	"Ice, coal or other necessity of life."
Delaware	Revised Code, 1935—sec. 5284	(General. Relates to conspiracies.)
Dist. of Col.	No reference, see United States	
Florida	Compiled General Laws, 1927 secs. 7944-7954	"Trade or commerce or aids to commerce," "Any business authorized by the laws of this State," "Merchandise, produce or commodities," "Any article or commodity of merchandise, produce or commerce."
Georgia	Georgia Code, Annotated. Constitution, sec. 2-2504 *sec. 56-219*	General. *"Preventing or lessening competition in the busniess of insurance transacted in this State."*
Hawaii	Revised Laws 1935, sec. 5720	(General. Relates to Conspiracy.)
Idaho	Code 1932 sec. 17-4013 sec. 47-101 to 117	"Any article of commerce, or produce of the soil, or of consumption by the people." "Trade or commerce."

State	*Reference*	*General Application*
Illinois	Smith-Hurd, Ann, Sts. c. 38, secs. 569-577	"Any article of merchandise or a commodity." "Any article, commodity or merchandise to be manufactured, mined, produced or sold in this State."
Indiana	Burns. Indiana Statutes 23-101 *et seq.*	"Merchandise or articles imported into the State." "Trade or commerce."
Iowa	Code 1939 c. 434 *sec. 9010*	"Articles, commodities and merchandise." *"The rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within the State."*
Kansas	General Statutes 1935 *secs. 50-101 et seq.*	"Merchandise, products or commodities." *"The costs or rates of insurance."*
Kentucky	Constitution, Sec. 198 (Anti-trust act repealed. See Act March 23, 1922, c. 71, p. 217)	"Any article."
Louisiana	Dart. General Statutes, 1939 secs. 4905 *et seq.* *secs. 4173 et seq.*	"Trade or commerce," "Merchandise, products or commodities," "Any commodity in general use." (*Fire insurance companies only*) *"For the purpose of governing, controlling or influencing the rates charged for insurance on property situated within this State."*
Maine	Revised Statutes 1930 c. 138, secs. 25-30	"Trade or commerce."
Maryland	No reference	
Massachusetts	Annotated Laws c. 93, secs. 1-14	"Goods, wares, or merchandise," "Any article or commodity in common use," "Any commodity in general use," "Goods or commodities," "Necessities of life."
Michigan	Michigan Statutes, Annotated, c. 278, secs. 28, 31 *et seq.* *secs. 28, 99 et seq.*	"Trade or commerce," "Merchandise or commodity," "Merchandise, produce or any commodity," "Any article or commodity of merchandise, produce or commerce," "Any article of machinery, tools, implements, vehicles or appliances," "Any avocation employment, pursuit, trade, profession or business." (*Fire and Marine Companies*) *"To prevent open and free competition between companies and their agents in the business transacted in the state or any part thereof."*
Minnesota	Mason's Minnesota Statutes 1927 sec. 10463	"Articles of trade, manufacture or use."

State	*Reference*	*General Application*
Mississippi	Code 1930 c. 68 secs. 3436-3437	"Restraint of trade," "Commodities (*Provision in Mississippi anti-trust law relating to insurance eliminated, Act 1926, c. 182*)."
Missouri	Revised Statutes, 1939, secs. 8300-8304	*"The price or premium to be paid for insuring property against loss or damage by fire, lightning or storm."*
Montana	Revised Codes, 1935 secs. 10901 *et seq.*	"Any article of commerce," "Merchandise or commodities," "Commodity or product in general use."
Nebraska	Compiled Statutes, 1929 *sec. 59-101* *secs. 59-301 et seq.*	*"To prevent competition in insurance either life, fire, accident or any other kind." (Fire insurance companies insuring property against casualties from the elements.) "The rates to be charged for insurance, the amount of commissions to be allowed agents for procuring insurance, or the manner of transacting the business of fire insurance within this state."*
Nevada	No reference	
New Hampshire	Public Laws 1926 c.168 secs. 1-9	"Trade or commerce," "Merchandise or commodity," "Merchandise, produce or commodity," "Any article or commodity of merchandise, produce or commerce," "Any article or commodity, or any article of trade, use, merchandise, commerce or consumption."
New Jersey	(Anti-trust law repealed, Act 1920 c. 143)	
New Mexico	New Mexico Statutes, 1929 secs. 35-2901 *et seq.*	"Trade or commerce," "Article of manufacture or product of the soil." (See Sec. 71-167.)
New York	McKinney's Consolidated Laws General Business Law sec. 340 *et seq.*	(No specific reference to insurance.)
North Carolina	Code 1939 secs. 2559 *et seq.*	"Trade or commerce," "Any article produced in this State by the labor of others," "Goods, wares, merchandise, articles or things of value."
North Dakota	Code 1913 c. 65, secs. 9950 *et seq.*	"Trade," "Property, merchandise or commodities," "Property, articles or commodities or merchandise, produce or manufacture," "Property, commodity or article of trade, use, merchandise, commerce or consumption."
Ohio	Page's Code, 1938 secs. 6390 *et seq.*	"Trade or commerce," "Merchandise or commodity," "Merchandise, produce or commodity," "Any article or commodity of merchandise, produce or commerce," "Any article or commodity or any article of trade, use, merchandise, commerce or consumption."

State	*Reference*	*General Application*
Ohio	*secs. 9563-9564*	*"The rates charged for fire insurance on property in this state, or . . . the rates percent amount of commission or compensation to be allowed agents for producing contracts for such insurance on such property."* (*See, however, 9593-1 et seq.*)
Oklahoma	Oklahoma Statutes Annotated Title 79, secs. 1 *et seq.*	"Trade or commerce," "Any commodity of general use."
Oregon	Compiled Laws, 1940 secs. 43-101 *et seq.*	"Commerce and/or food commerce."
	sec. 101-142	*"The rate to be charged or commissions or other compensation to be paid for insurance any risk or classes of risks in this state, or for the purpose of discriminating against or differentiating from any company, manager or agent, by reason of his or its plan or method of transacting business or his or its affiliation or non-affiliation with any board or association of insurance companies, managers, agents or representatives, or for any purpose detrimental to free competition in the business or injurious to the insuring public."*
Pennsylvania	No reference	
Rhode Island	No reference	
South Carolina	Code 1932 *secs. 6620 et seq.* (*sec. 6624*)	*"The price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy."*
South Dakota	Code 1939 secs. 13-1801 *et seq.*	"Trade," "Commodities," "Any product or commodity," "Any commodity in general use."
	sec. 31-2310	(*Fire insurance companies*) *"Rates charged for insurance of property against damage by fire or the elements, fixing a minimum premium for such insurance, or amount of commission to be allowed to agents for procuring it, or the manner of transacting business in this state."*
Tennessee	Williams Code, 1934 Title 14, c. 1, secs. 5880 *et seq.*	"Articles imported into the state, articles of domestic growth, domestic raw materials." "Products or articles manufactured in this state or imported into this state." (*For insurance anti-trust provision, formerly in Tennessee Laws, see Acts 1905, c. 479, sec. 1; Acts 1919, c. 8, c. 33.*)
Texas	*Vernon's Texas Statutes secs. 7426 et seq.*	(Numerous special references to insurance.)

State	*Reference*	*General Application*
United States	(Sherman Anti-Trust Act) 15 U.S.C.A. sec. 1 *et seq.*	"Trade or commerce among the several states or with foreign nations" (Secs. 1 and 2).
	am. Act Aug. 17, 1937, c. 690	"Trade or commerce in any territory of the United States or the District of Columbia, or in restraint of trade or commerce between any such territory and another or between any such territory or territories and any state or states or the District of Columbia or with foreign nations or between the District of Columbia and any state or states or foreign nations" (Sec. 3). "In restraint of lawful trade or free competition, in lawful trade or commerce in the United States of any imported article or of any manufacture into which the imported article enters" (Section 8, Tariff Act). "Trade or commerce among the several states and territories, insular possessions (except the Philippine Islands) and foreign nations" (Section 12, Clayton Act). "Commodities sold for consumption or resale" (Section 13, Clayton Act).
Utah	Revised Sts. 1933, Title 73	"Prices of professional service, any products of the soil, any article of manufacture and commerce, or cost of exchange or transportation," "Any article of merchandise or commodity," "Any article, commodity or merchandise to be manufactured, used, produced or sold in this state," "Any article of commerce," "Any part of trade or commerce."
Vermont	Public Laws 1933 sec. 5855 *sec. 7124*	"A monopoly or . . . (restraint of) competition in trade." *Rating organizations prohibited from charging licensing or other fees to brokers. Refusal to do business with, or pay commissions to, licensed broker who will not agree to secure insurance only at certain rates of premium pro*hibited.
Virginia	Code 1936, c. 185A secs. 4722 (5) *et seq.*	"Trade or business," "Merchandise or commodities," "Merchandise, products or commodities," "Article, thing or commodity of merchandise, produce, business or commerce intended for sale, barter, use, engagement or consumption in the state," "Any article or commodity or an article of trade, use, merchandise, commerce or consumption."

State	*Reference*	*General Application*
Virginia	sec. 4722 (21)	Combinations which would have been illegal under laws of United States, had commerce been interstate instead of intrastate.
Washington	Constitution, Art. XII, sec. 22	"Any product or commodity."
	Remington's Revised Sts., 1932	
	sec. 2382	"Trade or commerce."
	secs. 2333-1 *et seq.*	Collusive bids on public works or improvements.
	sec. 7076	*Same as Oregon provision.*
	sec. 7158	*(Companies engaging in "Rate wars" not to charge back to agents any part of their commissions.)*
West Virginia	Code 1937	"Agricultural products."
	sec. 1916	"Necessities of life."
	sec. 6112	
Wisconsin	Statutes, 1939	Trade or commerce.
	secs. 133-01—133-08	"Any commodity in general use," "Any product, commodity, or property of any kind."
	secs. 133-17—133-27	
Wyoming	Revised Statutes, 1931	"Any commodity in general use," "Commodity or manufacture," "Goods."
	117-201 *et seq.*	