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MINISTERS LIFE & CASUALTY UNION V. HAASE: THE NEW
TREND IN STATE REGULATION OF UNAUTHORIZED
MAIL-ORDER INSURANCE COMPANIES.*

John M. Manders**

I. Introduction

In a memorandum decision handed down on December 5, 1966, the United States Supreme Court sounded the death knell for the continued operation of the unlicensed mail-order insurance business by granting the appellee's motion to dismiss the *Ministers Life & Casualty Union v. Haase*¹ case for want of a substantial federal question.² In effect, the Court upheld the Wisconsin Supreme Court's decision that a state statute that both taxes and regulates unlicensed foreign mail-order insurers is constitutional.³

The attempt to regulate and control the solicitation and sale of insurance by unlicensed or unauthorized insurers is not a new problem for state insurance regulators. As early as the 1880's, a committee of the National Convention of Insurance Commissioners (NCIC) met to deal with the prevention of further activity by such insurers.⁴ It was then recommended by the NCIC that curtailment of such sales could best be accomplished by requiring each state to prohibit its domestic companies from engaging in insurance sales and solicitations where such companies were not authorized to transact an insurance business.⁵ This solution generated only nominal support among state legislators, mainly because each legislature was subject to local pressure and more interested in dealing with local problems. Insurance commissioners hesitated to propose or enforce regulations designed to benefit other states particularly when the company affected was local and authorized to transact business in its domiciliary state. Several other approaches were proposed by the NCIC,⁶ but nothing concrete was adopted

* Dedicated to the late Wade H. English, former examiner for the Iowa Insurance Department and a close personal friend, who after leaving the department labored long and hard for the cause of mail-order insurance as the treasurer of the Iowa State Traveling Men's Association.

The purpose of this article is not an attempt to compare the direct mail solicitation system of selling insurance with the more popular agency system, nor to evaluate and thereby favor an insurer's use of one system over the other. It is by no measure an attempt to lay all of the ills of the insurance industry at the doorstep of the mail-order companies. It is simply to show that when a small segment of a regulated business is permitted to remain outside the scheme of regulation, the practices of a few unscrupulous operations will ultimately cost the entire mail-order system its way of doing business.

** Counsel, Insurance Dept. of Iowa; B.S., Loras College, 1955; LL.B., Notre Dame Law School, 1961.

1 30 Wis. 2d 339, 141 N.W.2d 287 (1966).

2 385 U.S. 203 (1966). The question being whether the Wisconsin unauthorized insurance statute, Wis. Stat. Ann § 201.42, denied appellant insurance company due process of law by subjecting the company to an action in a state forum in which it was not "doing business." However, Justices Harlan and Stewart believed that probable jurisdiction should be noted, and the case set for oral argument.

3 WIS. STAT. ANN. § 201.42 (Supp. 1967). Specifically, this statute prevents any unauthorized insurer from doing any acts that would constitute an insurance business unless authorized to so act by statute.

4 For a comprehensive report on various types of abuses generally perpetrated against the buying public by unauthorized mailorder insurers, see Hanson & Obenberger, *Mail Order Insurers: A Case Study in the Ability of the States to Regulate the Insurance Business*, 50 MARQ. L. REV. 191-200 (1966). See also G. KLINE, REGULATION OF MAILORDER ACCIDENT AND HEALTH INSURANCE 48 (1949).

5 G. KLINE, REGULATION OF MAILORDER ACCIDENT AND HEALTH INSURANCE 48 (1949).

6 See *Id.* at 49-50.

by the convention until 1938 when it approved the Uniform Unauthorized Insurers Act.⁷ The general purpose of the Act was twofold: (1) to prohibit any person from acting as agent for unauthorized insurers or to aid in any way unauthorized companies in securing business within the state, and (2) to provide that the issuance or delivery of an insurance contract or policy to a resident of the state was equivalent to an appointment of the insurance commissioner by the insurer as its agent for service of process on any action arising out of such policy or contract. Only a few states enacted legislation similar to the provisions of the NCIC's uniform act.⁸

By 1941, the Laws and Legislation Committee of the National Association of Insurance Commissioners (NAIC)⁹ had developed what it believed to be a more comprehensive bill with greater powers vested in state insurance commissioners.¹⁰ However, before many states had an opportunity to adopt the NAIC-proposed legislation, the United States Supreme Court, in the precedent-shattering decision of *United States v. South-Eastern Underwriters Association*,¹¹ declared that the business of insurance was "interstate commerce" and subject to the regulatory powers vested in the Congress by the commerce clause of the United States Constitution. The Court thereby discarded the immunity long enjoyed by the insurance industry from federal regulation and control implied in *Paul v. Virginia*.¹²

II. To Regulate or Not to Regulate

A. *From Paul v. Virginia to United States v. South-Eastern Underwriters*

In its early days, the insurance business, particularly the fire and marine insurance business, was highly competitive, and this situation led to widespread abuses.¹³ States, in their attempt to protect the public interest, passed regulatory statutes designed to curtail these abuses. Such was the situation in Virginia in the middle 1860's when Paul, an insurance agent, brought an action to declare a Virginia statute regulating foreign¹⁴ insurance companies violative of the commerce clause of the United States Constitution. *Paul v. Virginia*¹⁵ provided a doctrine that for seventy-five years remained the lifeline for state insurance regulators. The United States Supreme Court held that "issuing a policy of insurance is not a transaction of commerce,"¹⁶ observing that insurance

7 *Id.* at 51.

8 Arkansas, Acts 1939, No. 181, §§ 1-9, 12 (repealed 1959); Louisiana, LA. REV. STAT. ANN. §§ 1251-56 (1959); North Carolina, N. C. GEN. STAT. § 58-164 (1965); South Carolina, S. C. CODE ANN. §§ 37-261 to 272 (1962); South Dakota, S.D. Code §§ 31-3901 to -3906 (1960). The lack of popularity for this proposed bill was due largely to the fact that it was not a product of the NCIC, but was presented to that group by the American Bar Association.

9 The present name of what was formerly the NCIC.

10 NAIC Proceedings 147-48 (1941).

11 322 U.S. 533 (1944).

12 75 U.S. (8 Wall.) 168 (1868) (issuing a policy of insurance is not a transaction in commerce).

13 *See* *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 544 nn. 19 & 20 (1944).

14 In insurance terminology "foreign" means domiciled outside the state and "alien" means domiciled outside the United States while "domestic" means domiciled within the state.

15 75 U.S. (8 Wall.) 168 (1868).

16 *Id.* at 183.

policies "are not commodities to be shipped or forwarded from one State to another, and then put up for sale."¹⁷ The opinion of the majority was that policies or contracts of insurance were "not executed contracts — until delivered. . . . They are, then, *local* transactions, and are governed by the *local law*."¹⁸ (Emphasis added.)

The ensuing years brought strength to the *Paul* doctrine, and later cases, using *Paul* as a foundation, went on to hold that the business of insurance was not commerce even if carried on across state lines.¹⁹ Through the years an impressive line of cases,²⁰ all adhering to or broadening the *Paul v. Virginia* doctrine, created a distinct impression among state regulators and some industry representatives²¹ that the Court in *Paul* had meant to restrict or even preclude Congress from exercising its commerce clause powers to directly regulate the business of insurance. This general impression was not only corrected in their collective minds by the *South-Eastern Underwriters*²² holding, but remarked upon by the Court in a later case: "correlatively [*Paul v. Virginia*] was taken widely, although not universally, to nullify federal authority until . . . answered otherwise. . . ."²³ In this later case, *Prudential Insurance Company v. Benjamin*, the Court went on to analyze *South-Eastern Underwriters* as a "reorientation of attitudes toward federal power in its relation to the business of insurance conducted across state lines."²⁴ Through the pen of Justice Black, *South-Eastern Underwriters* overthrew the *Paul* doctrine and the "attitudes" toward it by declaring that insurance is commerce²⁵ and, by applying the language in *Gibbons v. Ogden*,²⁶ held insurance to be *interstate* commerce subject to the regulatory powers of Congress.²⁷

While *South-Eastern Underwriters* was advancing through the courts, a special subcommittee of the NAIC on federal legislation was formed. At the December, 1944, meeting, the subcommittee reported out a bill²⁸ to the executive committee that was shortly thereafter recommended by the NAIC to Congress for passage. Nine months and three days after the *South-Eastern Underwriters* decision, Congress passed Public Law 15, commonly referred to as the McCarran-Ferguson Act,²⁹ which to a great degree embodied the recom-

17 *Id.*

18 *Id.*

19 *New York Life Ins. Co. v. Deer Lodge County*, 231 U.S. 495, 510 (1913); *Hooper v. California*, 155 U.S. 648, 654 (1895). *Deer Lodge* reaffirmed both *Paul* and *Hooper* since the Court again held the contract of insurance was not an instrumentality of commerce, but a personal contract not a commodity.

20 *Colgate v. Harvey*, 296 U.S. 404 (1935); *Bothwell v. Buckbee, Mears Co.*, 275 U.S. 274 (1927); *New York Life Ins. Co. v. Dodge*, 231 U.S. 495 (1913); *New York Life Ins. Co. v. Cravens*, 178 U.S. 389 (1900); *Noble v. Mitchell*, 164 U.S. 367 (1896); *Hooper v. California*, 155 U.S. 648 (1895).

21 See Brief for Health Insurance Association of America as Amicus Curiae, *American Hosp. & Life Ins. Co. v. FTC*, 243 F.2d 719 (5th Cir. 1957), *aff'd*, 357 U.S. 560 (1958).

22 *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944).

23 *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 414 (1946).

24 *Id.* at 414.

25 *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 553 (1944).

26 *Id.* at 550-51, quoting from *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 189, 194 (1824). "Commerce, undoubtedly, is traffic, but it is something more; it is intercourse Commerce is interstate . . . when it 'concerns more States than one.'"

27 *Id.* at 553.

28 NAIC Proceedings 18-49 (1945).

29 15 U.S.C. §§ 1011-15 (1964).

mendations of the NAIC. Through the McCarran-Ferguson Act, Congress declared

that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.³⁰

Congress further proclaimed that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business."³¹ Thus, the traditional system of insurance regulation and taxation destroyed by *South-Eastern Underwriters* was reinstated by the McCarran-Ferguson Act.

B. *Post South-Eastern Underwriters Cases*

It was not until June 3, 1946, that the United States Supreme Court was given an opportunity to comment on the McCarran-Ferguson Act. On that date, the Court handed down two decisions,³² both of which involved questions concerning the constitutionality of certain regulatory powers granted state insurance commissioners by state law in areas specifically covered by the McCarran-Ferguson Act.³³

In the first case, *Prudential Insurance Company v. Benjamin*,³⁴ Justice Rutledge, speaking for the majority, held that a three percent premium tax levied *only* against foreign companies and not against domestic carriers was not discriminatory against interstate commerce and in favor of local trade. The Court said:

Congress intended to declare, and in effect declared, that *uniformity* of regulation and of *State taxation*, are not required in reference to the business of insurance by the national public interest, . . . [and] do not place on interstate insurance business a burden which it is unable generally to bear or should not bear in the competition with local business.³⁵ (Emphasis added.)

Commenting upon Congress' intention to delegate its power of insurance regulation to the states, the Court observed that

it clearly put the full weight of its power behind *existing and future state legislation* to sustain it from any attack under the commerce clause to whatever extent this may be done with the force of that power behind it, subject only to the exceptions expressly provided for.³⁶ (Emphasis added.)

³⁰ 59 Stat. 33-34 (1946).

³¹ *Id.* at 34, § 2(a) (1946).

³² *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408 (1946); *Robertson v. California*, 328 U.S. 440 (1946).

³³ 15 U.S.C. §§ 1011, 1012(a).

³⁴ 328 U.S. 408 (1946).

³⁵ *Id.* at 431.

³⁶ *Id.* The exceptions expressly provided for make reference to sections 1012(b) and 1013(b) which could leave the business of insurance subject to certain federal statutes — Sherman Act, Clayton Act, and Federal Trade Commission Act — if not regulated properly

The Court did not rely directly upon the McCarran-Ferguson Act in the second case, *Robertson v. California*,³⁷ because of the nature of the case.³⁸ But Justice Rutledge, in delivering the opinion of the Court, indicated that application of the McCarran-Ferguson Act "would dictate the same result."³⁹ This case involved a California statute requiring any person who acted as agent for an insurance company to be licensed by the state in order to represent the company. The Court held generally that the regulation of the insurance business rested with the states. The reference to the McCarran-Ferguson Act was to the language in section 2(a) that "every person engaged therein, shall be subject to the laws of the several States"

A number of less important decisions followed in the wake of *Prudential Insurance Company v. Benjamin*, most of which dealt with some aspect of state taxation. All were sustained as valid forms of taxing power granted the states through the McCarran-Ferguson Act.⁴⁰

Two other cases that deserve notation in the area of the commerce clause considerations are *North Little Rock Transportation Company v. Casualty Reciprocal Exchange*⁴¹ and *Darr v. Mutual Life Insurance Company*.⁴² In *North Little Rock Transportation Company*, the Eighth Circuit invoked the McCarran-Ferguson Act and indicated that the Arkansas casualty rating law did not constitute a "fixing" of automobile liability insurance rates in violation of the Sherman Act. The Court of Appeals upheld the Arkansas statute as a proper regulatory function within the meaning of the McCarran-Ferguson Act.⁴³ The *Darr* case is important because it points out that the courts may be reluctant to extend the states' powers to something more than existed before *South-Eastern Underwriters*. In *Darr*, the United States Court of Appeals for the Second Circuit affirmed the lower court's decision that home office employees of the Mutual Life Insurance Company were subject to the Fair Labor Standards Act of 1938,⁴⁴ since the products they handled, *i.e.*, the insurance policies, were produced for interstate commerce. In effect, the Second Circuit applied the specific exemption set out in section 1014 of the McCarran-Ferguson Act⁴⁵ and refused to exempt insurance from federal control in an area that was not being

by the states in the areas of monopoly and discriminatory trade practices. However, section 1013(b) makes the business of insurance always subject to the provisions of the Sherman Act as it applies to boycott, coercion or intimidation.

37 328 U.S. 440 (1946).

38 It was an appeal from a California statute making it a misdemeanor to act as agent for a nonadmitted insurance company. Since it was a criminal proceeding on acts committed in June of 1944, and the McCarran-Ferguson Act was not approved until March of 1945, the *ex post facto* law prohibition would control. *Id.* at 461.

39 *Id.* at 462.

40 *Aetna Ins. Co. v. Hobbs*, 328 U.S. 822 (1946); *Pacific Mut. Life v. Hobbs*, 328 U.S. 822 (1946); *Prudential Ins. Co. v. Hobbs*, 328 U.S. 822 (1946). All of these were *per Curiam* decisions affirming the holding in *Prudential Ins. Co. v. Benjamin*.

41 181 F.2d 174 (8th Cir.), *cert. denied*, 340 U.S. 823 (1950).

42 169 F.2d 262 (2d Cir.), *cert. denied*, 335 U.S. 871 (1948).

43 15 U.S.C. § 1012(b) exempts insurance from Sherman Act to the extent it is regulated by state law, except for the provision relating to boycotts, coercion or intimidation pointed out in note 36 *supra*.

44 29 U.S.C. §§ 201-19 (1964).

45 59 Stat. 34, § 4 (1946). "Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance . . . known as the National Labor Relations Act, . . . as amended, known as the Fair Labor Standards Act of 1938"

regulated by states. The United States Supreme Court denied certiorari in both cases.

C. Summary

Although there are numerous other cases involving collateral issues of state versus federal control of insurance and the boundaries possessed by each, no decision subsequent to passage of the McCarran-Ferguson Act and the Supreme Court decision affirming that Act⁴⁶ has been successful in eroding the Court's support and validation of Congress' delegation to the several states of the general power to regulate and tax the business of insurance. Considerable controversy, however, has raged over whether the states' powers are limited to the regulatory authority obtained and approved in the pre-*South-Eastern Underwriters* decisions or whether the McCarran-Ferguson Act was intended as a broad base upon which the states could develop an ever increasing amount of authority to regulate and tax the business of insurance. This quantitative question of "how much" state power was actually granted by Congress through the McCarran-Ferguson Act becomes a crucial one when applied to the issue of state jurisdiction over foreign companies transacting business on an unlimited interstate basis. Did Congress really intend to make insurance regulation static and fixed as stated in the congressional committee report which accompanied the McCarran-Ferguson Act to the floor of the House?

It is not the intention of Congress in the enactment of this legislation to clothe the States with *any power* to regulate or tax the business of insurance *beyond* that which they *had been held to possess prior to the decision . . . in the South-Eastern Underwriters Association case.*⁴⁷ (Emphasis added.)

Or were the very words of the bill sufficient in themselves to indicate that Congress wanted state regulation to continue and be a viable force meeting the tests and challenges upon the public interest constantly made by ever-changing insurance products and methods of marketing?

III. Due Process — Doing Business — And State Interests in the Contract

A. Limitations on Regulatory Jurisdiction

Whatever Congress' intent, the insurance regulators, through their national association, proceeded to meet the responsibilities of continued regulation head on by recommending to the states the adoption of certain model legislation.⁴⁸ Model laws drafted by the NAIC were an attempt by the association to pro-

46 *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408 (1946).

47 H.R. REP. No. 143, 79th Cong., 1st Sess. 3 (1945).

48 All-Industry Casualty and Surety Rating Regulatory Act, NAIC Proceedings, 397-424 (1946); Unauthorized Insurers Process Act, *see* NAIC Proceedings, 315-16, 498-500 (1949), also NAIC Proceedings, 165-68 (1941); Unfair Trade Practices Act, NAIC Proceedings (1940); Unauthorized Insurers False Advertising Process Act, NAIC Proceedings, 169-71 (1951).

mote uniform legislation in the several states in order to facilitate the operations of the numerous companies that do business on a national scale. Today most state casualty and surety rating laws are patterned after the NAIC's All-Industry Model Bill. The Uniform Unauthorized Insurers Process Act⁴⁹ has been passed in all the states in substantially the same form as it was adopted by the NAIC.⁵⁰ Both laws have been tested and upheld,⁵¹ thereby continuing to narrow the areas in which state regulatory powers were kept at the level of the pre-*South-Eastern Underwriters* period.

B. The Doing Business Concept

The problems of regulation have been compounded by an additional complication. When Congress referred the regulation and taxation of insurance back to the states, it was interpreted by the Supreme Court to mean that the states must regulate the business of insurance within the framework of existing federal constitutional provisions.⁵² This has created a problem for state insurance departments faced with the continued resistance, and in many instances, total disregard by some unauthorized insurance companies to any form of regulation or taxation, other than in their state of domicile. This resistance to control in states where an unauthorized mail-order carrier may have a large number of policyholders is based on the old concept that no state has jurisdiction over a foreign corporation if it does not meet the requirements of "doing business" within the state, and, therefore, such a corporation cannot be subject to the laws, regulations or taxes of that state. In the long-followed case of *Pennoyer v. Neff*,⁵³ it was held that in order for a state to have valid jurisdiction under the due process clause of the fourteenth amendment, the defendant was required at least to be "present" and properly served with notice or make a voluntary appearance. For a foreign corporation, "presence" was "doing business" in the state, and the amount of contact that was required before such a company was considered to be "doing business" became the gauge by which the courts measured and determined whether due process has been satisfied.⁵⁴

What constituted doing an insurance business in a state by a foreign unauthorized company was determined in the pre-*South-Eastern Underwriters* cases by what "occurrences" actually took place in a state. Early insurance litigation on "doing business," including what are now referred to as the "trilogy cases" of *Allgeyer v. Louisiana*,⁵⁵ *St. Louis Cotton Compress Company v.*

49 This bill will be discussed in some detail later in the article. See text accompanying note 139 *infra*.

50 2 NAIC Proceedings 511 (1961).

51 *North Little Rock Transp. Co. v. Casualty Reciprocal Exchange*, 181 F.2d 174. (8th Cir.), *cert. denied*, 340 U.S. 823 (1950), which upheld Arkansas' All-Industry Rate Law as not violating the price fixing provision of the Sherman Act; see also *Parmalee v. Iowa State Traveling Men's Ass'n*, 206 F.2d 518 (5th Cir. 1953) which upheld the substitute service of process provision in the Florida Unauthorized Insurers Process Act, FLA. STAT. ANN. §§ 626.0503-0509 (1960).

52 *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 430 (1946).

53 95 U.S. 714 (1877).

54 *International Harvester Co. v. Kentucky*, 234 U.S. 579, 583 (1914).

55 165 U.S. 578 (1897).

*Arkansas*⁵⁶ and *Connecticut General Life Insurance Company v. Johnson*,⁵⁷ focused upon the questions of (1) the place at which the elements or incidents required to make a binding contract came into being, and (2) the place at which the obligations under the insurance contract were to be performed. These elements of formation, performance, and discharge became in varying combinations the core of the "conceptualistic" principle for determining whether a transaction or series of transactions constituted "doing business," thereby subjecting the foreign mail-order insurance company to the jurisdiction and regulation of the state. Repeated utilization of the "conceptualistic" thesis in cases involving foreign insurance corporations led the Supreme Court to conclude in *Minnesota Commercial Men's Association v. Benn* that "an insurance corporation is not doing business within a state merely because it insures lives of persons living therein. . . ."⁵⁸

C. State Interest in Insurance Contracts

The initial signs of change in the Supreme Court's attitude toward the expansion of regulatory power to matters not wholly within the state came in *Osborn v. Ozlin*.⁵⁹ This case did not revive the in personam jurisdiction question since the defendants were all registered or authorized⁶⁰ to transact insurance business in the state and thereby "present" and doing business. The dispute centered upon the question of jurisdiction over the subject matter, contracts covering risks located in Virginia, negotiated out-of-state by licensed, non-resident agents. The defendant nonresident agents argued that the contracts were formed and to be performed outside Virginia and could not be subject to Virginia regulations. The argument was similar to the one made in *Connecticut General Insurance Company v. Johnson*.⁶¹ In *Connecticut General* California attempted to tax reinsurance contracts between two life insurance carriers. The contracts were wholly negotiated and to be performed outside California; however, the reinsurance treaties affected California risks. The Court held the California tax void under the due process clause of the fourteenth amendment. The important factual distinction between *Connecticut General* and *Osborn* is that in *Connecticut General* California was imposing a tax on an out-of-state contract, while in *Osborn* Virginia was attempting to enforce a scheme of general control over risks covered in the state by insurance contracts on the grounds that the state had substantial interests in protecting risks on property located in the state. The Virginia statute in question was designed to protect local risks covered by out-of-state contracts sold by nonresident brokers by requiring that resident agents be made a part of the transaction for the required "servicing" of such casualty risks. For this the resident agent was to receive a part of the commission paid to the nonresident broker.

56 260 U.S. 346 (1922).

57 303 U.S. 77 (1938).

58 261 U.S. 140, 145 (1923).

59 310 U.S. 53 (1940).

60 The suit was brought originally by the insurance company and its licensed agent. *Id.* at 60.

61 303 U.S. 77 (1938).

In *Osborn*, the Court formally recognized for the first time that out-of-state insurance contracts can have realistic effects upon interests located within the state,⁶² and that the mere fact that state regulation may have "repercussions beyond state lines" is not per se an unwarranted exercise of power by the state.⁶³ The Court saw that a state can have "definable interests"⁶⁴ in the business of insurance totally transacted outside the state.

Shortly after the decision in *Osborn*, the Court heard *Hoopston Canning Company v. Cullen*,⁶⁵ and substantially reiterated the "interests" theory of *Osborn* by recognizing that regardless of where the isolated factors of formation or performance may take place, definite consequences arising from the contract can affect interests within the state. It was said that "this interest may be measured by highly realistic considerations such as the protection of the citizen insured or the protection of the state from the incidents of loss."⁶⁶

When first viewed by the astute jurist, *Osborn* and *Hoopston* must have looked like a mutation from the traditional concept of due process as it related to foreign corporations, since they were, in fact, a radical departure from the "conceptualistic" approach used by the Court in earlier insurance due process cases. Only after the Supreme Court's 1945 landmark decision in *International Shoe Company v. Washington*⁶⁷ did it become obvious that *Osborn* and *Hoopston* were shades of things to come, and were not just distinguishable exceptions made by the Court for the purpose of setting up a separate standard to aid the states in the regulation of the interstate insurance business. *International Shoe* weighed the aging concepts of due process and found them wanting in the balance of "substantial justice." From this now-famous and often-quoted decision comes the equally famous "minimum contacts" rule:

Due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain *minimum contacts* with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."⁶⁸ (Emphasis added.)

Substantial justice and fair play is, to say the least, a broad principle from which to administer due process.⁶⁹ However, the logic used to arrive at this new principle was specific and properly directed at the shortcomings in the old "presence" concept. "Presence," as previously defined, was deemed by the Court to be something more than what was required for due process. Under the new rule, "presence" extended to the activities "continuously" and "systematically" carried on by the defendant within the state. With this liberalized approach to due process, the Court laid to rest *Pennoyer v. Neff*⁷⁰ and the "conceptualistic" theory developed in *Allgeyer*, and followed closely in *St. Louis*

62 *Osborn v. Ozlin*, 310 U.S. 53, 63 (1940).

63 *Id.* at 62.

64 *Id.* at 65.

65 318 U.S. 313 (1943).

66 *Id.* at 316.

67 326 U.S. 310 (1945).

68 *Id.* at 316.

69 See Justice Black's criticism of the new concept in a separate opinion, *id.* at 326.

70 95 U.S. 714 (1877).

Cotton Compress, Connecticut General Insurance and Benn, because this theory was predicated on the physical presence or voluntary consent alternatives established in *Pennoyer*.

The first opportunity to apply the new concept of due process to the mail-order insurance business came in *Travelers Health Association v. Virginia*.⁷¹ The Virginia Corporation Commission sought a cease and desist order against a foreign insurance company to prevent it from making further sales in the state until such time as the company became licensed to do business in the state. Travelers Health Association, a Nebraska domiciled mail-order insurance carrier, maintained its only office in Nebraska. It solicited new members, issued certificates of insurance and paid claims through the use of the federal mails only. The company contended that all of its business activities were conducted outside Virginia and relied heavily on the conclusions reached in *Minnesota Commercial Men's Association v. Benn*,⁷² a case following the "conceptualistic" theory developed in *Allgeyer*, to support its position. It was pointed out by Travelers that its business operation was identical to that of the Minnesota Commercial Men's Association and, therefore, the Court should reach the same conclusion as it did in the *Benn* case since Travelers was not present in Virginia nor had it consented to service of process. To this the Court replied: "Metaphysical concepts of *implied consent* and *presence* in a state should not be solidified into a constitutional barrier against Virginia's simple, direct and fair plan for service of process on the Secretary of the Commonwealth."⁷³ The Court, citing *Osborn, Hoopeston* and *International Shoe*, reached the conclusion that Travelers Health Association was properly served and was subject to the administrative cease and desist proceedings. This decision is doubly important to insurance regulators because it approves a form of substituted service of process upon a nonlicensed mail-order insurer and, at the same time, holds that such carriers are subject to regulatory proceedings.

Another significant case is *Parmalee v. Iowa State Traveling Men's Association*.⁷⁴ This case in the Fifth Circuit was a test of the Florida Unauthorized Insurers Process Law,⁷⁵ which in most respects is identical to the Unauthorized Insurers Process Act designed and submitted by the subcommittee on unauthorized insurers to the NAIC at its mid-winter meeting in 1951.⁷⁶ Basically, this statute gave to a Florida resident the power to bring an action by means of substituted service against an unauthorized insurer when the action arises from the contract of insurance.⁷⁷ Iowa State operated its mail-order business in much

71 339 U.S. 643 (1950).

72 261 U.S. 140 (1923).

73 *Travelers Health Ass'n v. Virginia*, 339 U.S. 643, 649 (1950).

74 206 F.2d 518 (5th Cir. 1953).

75 FLA. STAT. ANN. §§ 626.0503-0509 (1960).

76 NAIC Proceedings 165-68 (1951).

77 FLA. STAT. ANN. § 626.0505 (1960):

Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein; (2) the solicitation of applications for such contracts; (3) the collection of premiums, membership fees, assessments or other considerations for such contracts; or (4) any other transaction of insurance, is equivalent to and shall constitute an appointment by such insurer of the commissioner and his successors in office, to be its true and

the same manner as Minnesota Commercial Men's Association and Travelers Health Association of Nebraska, and brought this action to have the substituted service of process provision declared unconstitutional, contending that it violated due process of law as secured by the fourteenth amendment. The United States Court of Appeals for the Fifth Circuit, relying upon the constantly growing line of precedents expanding the new concept of due process, held the statute and the substituted service provided therein as sufficient to satisfy due process.⁷⁸ Since the force of the Florida statute is only upon suits arising out of the contract, challenging its constitutionality would have no effect upon the *Travelers Health Association* decision since that case related to the jurisdictional powers of insurance commissioners over unauthorized insurers. The state insurance regulator in situations illustrated by the *Iowa State Traveling Men's Association* case acts only as an agent of the unauthorized insurer for the limited purpose of receiving service.

Finally, in 1957, the Supreme Court ordered Texas to extend full faith and credit to a sister state's judgment rendered against an unauthorized carrier pursuant to a substituted form of service. In *McGee v. International Life Insurance Company*⁷⁹ a claimant beneficiary to a life insurance contract, issued to a resident of California by a mail-order insurer, brought an action on the contract in a California court using that state's substituted service as provided by statute. California's exercise of jurisdiction was affirmed as not having denied due process to the respondent:

It is sufficient to say for purposes of due process that the suit was based on a contract which had substantial connection with that state. . . . It can not be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims.⁸⁰

IV. The Dual Standard for Regulation and Taxation of Insurance

A. Todd Shipyards Decision

Into the relatively clear and untroubled waters of realistic due process standards, as they affect state power to regulate and tax insurance, the Supreme Court thrust *State Board of Insurance v. Todd Shipyards*.⁸¹ This case remuddied the waters by giving new vitality to the old argument that Congress, through the McCarran-Ferguson Act, intended to make such regulatory powers static and fixed as they existed prior to the *South-Eastern Underwriters* decision.

This action was brought by the Texas State Board of Insurance against the Todd Shipyards Corporation for failure to pay a premium tax established by

lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary, arising out of any such contract of insurance; and any such act shall be signification of the insurer's agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

78 *Parmalee v. Iowa State Traveling Men's Ass'n*, 206 F.2d 518, 521 (5th Cir. 1953).

79 355 U.S. 220 (1957).

80 *Id.* at 223.

81 370 U.S. 451 (1962).

statute⁸² on insurance that the corporation had purchased from an unauthorized alien insurance company.⁸³ The Court, after meticulously setting forth the facts surrounding the insurance transaction,⁸⁴ reverted to the "conceptualistic" theory of doing business and held the statute unconstitutional. Relying almost totally upon the House report that accompanied the McCarran-Ferguson Act to the floor of the House, the majority applied the reasoning of the pre-*South-Eastern Underwriters* trilogy⁸⁵ embracing the "conceptualistic" test for the establishment of due process standards. It was the opinion of the Court that an "explicit, unequivocal"⁸⁶ intent was made manifest by Congress not to displace the trilogy, *Allgeyer, St. Louis Cotton Compress, and Connecticut General Insurance*.

Briefly, your committee [Sub-Committee of the House] is of the opinion that we should provide for the continued regulation and taxation of insurance by the States, *subject always . . . to the limitations set out in the controlling decisions of the United States Supreme Court, as, for instance, in Allgeyer v. Louisiana . . . St. Louis Cotton Compress Co. v. Arkansas . . . and Connecticut General Insurance Co. v. Johnson . . . which hold, inter alia, that a State does not have power to tax contracts of insurance or reinsurance entered into outside its jurisdiction . . .*⁸⁷ (Emphasis added.)

In concluding, the Court said:

Here Congress tailored the new regulations for the insurance business with specific reference to our prior decisions. Since these earlier decisions are part of the *arch* on which the new structure rests, we refrain from disturbing them lest we change the design that Congress fashioned.⁸⁸ (Emphasis added.)

Although this was not the first time the Court had referred to this House report,⁸⁹ it was the first time the Court ever applied the report to determine how much power the McCarran-Ferguson Act gives the states and how much is retained by Congress in the regulation and taxation of insurance.

82 TEX. REV. CIV. STAT. ANN. art. 21.38, § 2(e) (1963):

If any person, firm, association or corporation shall purchase from an insurer not licensed in Texas a policy of insurance covering risks within this state in a manner other than through an insurance agent licensed . . . under the laws . . . of Texas, such person . . . or corporation shall pay to the Board [of Insurance] a tax of five per cent (5%) of the amount of the gross premiums paid by such insured for such insurance.

83 The alien insurance company involved in this case was Lloyds of London which has subsequent to the Todd Case become licensed to transact insurance business in Texas.

84 State Bd. of Ins. v. Todd Shipyards, 370 U.S. 451, 454-55 (1962):

The insurance transactions involved in the present litigation take place entirely outside Texas. The insurance, which is principally insurance against loss or liability arising from damage to property, is *negotiated and paid for* outside Texas. The policies are *issued* outside Texas. All losses arising under the policies are *adjusted and paid* outside Texas. The insurers are *not licensed* to do business in Texas, have *no office . . . in Texas, do not solicit business* in Texas, have *no agents* in Texas, and do not investigate risks or claims in Texas.

The insured is not a domiciliary of Texas, but a New York Corporation doing business in Texas. (Emphasis added.)

85 Connecticut General Life Ins. Co. v. Johnson, 303 U.S. 77 (1938); St. Louis Cotton Compress Co. v. Arkansas, 260 U.S. 346 (1922); Allgeyer v. Louisiana, 165 U.S. 578 (1897).

86 State Bd. of Ins. v. Todd Shipyards, 370 U.S. 451, 455 (1962).

87 *Id.*

88 *Id.* at 458.

89 See Prudential Ins. Co. v. Benjamin, 328 U.S. 408, 431 (1946).

B. Examination of the Todd Reasoning

It is extremely difficult to follow the Court's logic in *Todd* after the *International Shoe* and *Travelers Health Association* cases, not to mention *Osborn* and *Hoopeston*, even after recognizing the fact that none of these cases were solely concerned with a tax question. However, this distinction alone should be of small consequence, since the McCarran-Ferguson Act and the congressional committee report were concerned with both regulation and taxation of insurance and spoke of each on equal terms. Neither the committee report nor the bill itself conditioned one aspect of state power more than the other. Both indicated that "regulation and taxation" should always be subject to the limitations set out in the trilogy of *Allgeyer*, *St. Louis Cotton Compress*, and *Connecticut General Insurance*.⁹⁰

If the Court intended to bind itself to the "design that Congress fashioned,"⁹¹ it seems a bit late since the Court had ample opportunity to do so in *Prudential Insurance Company v. Benjamin*⁹² and *Travelers Health Association v. Virginia*.⁹³ Each case dealt with insurance regulation, and each was concerned with powers being exercised by insurance regulators that would violate the due process concept developed in the trilogy cases. Yet no mention is made of either case in *Todd*. Furthermore, how do *Osborn* and *Hoopeston* properly fit into this revived atmosphere of "conceptualism"? The Court gave little consideration to this point: "Here, unlike *Osborn* . . . the insurance companies carry on no activities within the State of Texas."⁹⁴

Dismissing these important insurance cases with such a statement is merely begging the question. The "activities" found in *Osborn* and *Hoopeston* were merely a means to an end; the conclusion in each of these cases was reached only after the Court decided to adjust the due process standards deemed necessary to hold the insurer "doing business." What the Court failed to do in *Todd* was to distinguish the two situations, if that in fact can be done, and explain why it used one standard of due process for *Osborn* and another for *Todd*. It appears that the decision in *Todd* has made a two-way street out of the "new structure" upon which the Court rests the "arch" of prior conceptualistic decisions. Further indication of the Court's failure to recognize that Congress did not distinguish between regulation and taxation powers is evidenced by its making no attempt to reconcile *Todd* with *Travelers Health Association*. One can only view the Court's silence as an implied design to have one set of due process standards for insurance regulation and quite another measure for insurance taxation.

C. Criticism of Todd

To criticize *Todd* is not necessarily to disagree with the Court's decision, but rather to take issue with the method employed to reach that decision. Careful examination of the facts surrounding the insurance transaction in that case, which the Court set out in great detail, clearly indicates that it was doing something

90 H.R. REP. NO. 143, 79th Cong., 1st Sess. 3 (1945).

91 State Bd. of Ins. v. Todd Shipyards, 370 U.S. 451, 458 (1962).

92 328 U.S. 408 (1946).

93 339 U.S. 643 (1950).

94 State Bd. of Ins. v. Todd Shipyards, 370 U.S. 451, 453 (1962).

more than establishing the grounds necessary to apply the "conceptualistic" test of due process. If the concepts theory of *Allgeyer* concerns place of issue, delivery and place of performance of the contract, why was the Court so careful to point out that the insurer had no office or place of business in Texas, had no agents in the state, made no form of solicitation and did not investigate claims or risks in Texas, and that there was in fact no contact or connection between Texas and the insurance transaction except that the property covered was located in Texas?⁹⁵ All this sounds very similar to the Court's review of the amount of "activity" carried on by a company within a state to determine whether a given situation creates the "minimum contacts" necessary to satisfy due process and "substantial justice." Had the Court applied the minimum contacts standard instead of the concepts theory, it could just as easily have arrived at the same conclusion, but more importantly, would not have disrupted the logical scheme of insurance due process litigation.

This is precisely what the Court did do in the recently decided case of *National Bellas Hess, Incorporated v. Department of Revenue of Illinois*.⁹⁶ In delivering the opinion of the Court, Justice Stewart stated the facts concerning the company's relationship with Illinois:

[National] does not maintain in Illinois any office, distribution house, sales house, warehouse or any other place of business; it does not have in Illinois any agent, salesman, canvasser, solicitor or . . . representative to sell or take orders, to deliver merchandise, to accept payments, or to service merchandise it sells; it does not own any tangible property, . . . it has not advertised . . . in newspapers, on billboards, or by radio or television in Illinois.⁹⁷

Although the point was somewhat belabored, the Court made it clear that it could not find any contact between National and Illinois other than the use of federal mails and common carriers. Upon these facts, the Court held that usage of the mails and common carriers in the course of interstate business was insufficient contact to find National "doing business" in Illinois. Therefore, the use tax imposed by statute upon Illinois citizens who purchased from National through the mails, created an "unjustifiable local entanglement"⁹⁸ constituting a burden on interstate commerce. The Court, relying upon the logic of *Wisconsin v. J. C. Penney Company*,⁹⁹ felt that since Illinois gave nothing to National or to Illinois citizens in the way of protection, the state therefore could not ask for anything in return. Perhaps the Court finds taxation without regulation to be tyranny.

A vigorous and penetrating dissent was filed by Justices Fortas, Black and Douglas. In essence, the dissenters believed that the "nexus test" developed in *Miller Brothers Company v. Maryland*¹⁰⁰ should have controlled in *National*. The "nexus test" is simply viewing the activities of the company and determining

95 *Id.* at 454-55.

96 386 U.S. 753 (1967).

97 *Id.* at 754 (quoting from the Illinois Supreme Court opinion in the same case, 34 Ill. 2d 164, 166-67, 214 N.E.2d 755, 757 (1966)).

98 *Id.* at 760.

99 311 U.S. 435-44 (1940).

100 347 U.S. 340 (1954) (dissenting opinion).

if by its business procedures the company regularly and continuously engages in "exploitation of the consumer market."¹⁰¹ Although Maryland's imposition of a tax was struck down, the dissent distinguished the facts of *Miller Brothers* from *National*, pointing out that the patrons of Miller Brothers Department Store, located in Delaware, went across state lines to purchase merchandise which was later shipped or delivered by common carrier into Maryland, while the National Bellas Hess Company systematically and regularly mailed catalogues into Illinois for the purpose of exploiting the Illinois consumer market.

Consider the parallel in the facts between *Todd* and *Miller Brothers* and then superimpose the "nexus test" of *Miller Brothers* upon the *Todd* situation, remembering that in *Todd* the insured went to the insurer for their casualty and liability coverage. It becomes elementary, assuming the Court remained consistent, that it would have reached the same decision as it did in *Todd* but without going against the current test for determining whether due process has been met.

In summary, the Supreme Court, while reaching the proper decision in *Todd* by using the wrong approach, did apply the proper approach in *National Bellas Hess* but arrived at the wrong conclusion. It would seem that the insurer's total lack of "contacts" with Texas in *Todd* is sufficient to distinguish that case from the mail-order insurance cases; however, *Todd* did a great deal to disturb the relatively settled arguments about static pre-South-Eastern Underwriters regulation powers. In view of *Ministers Life and Casualty Union v. Haase*,¹⁰² it appears that *Todd* will be restricted to its particular fact situation.

V. *Ministers Life & Casualty v. Haase*—The New Trend

Ministers Life was the first significant insurance litigation after *Todd* which tested the limit of state insurance commissioners' powers. This action, brought by a Minnesota domiciled mail-order insurance company and financed by three trade associations, was to test the constitutionality of the Wisconsin Unauthorized Insurers Act adopted in 1961.

A. *The Wisconsin Unauthorized Insurance Act. v. The NAIC Unauthorized Insurers Process Act*

To understand how the *Ministers* decision, in affirming the Wisconsin act, expanded the regulatory powers of state insurance supervisors over that intended by the Model Process Act, it is important to note the basic differences between the two acts.¹⁰³ The Model Process Act, as recommended in 1948¹⁰⁴ and re-recommended in 1951,¹⁰⁵ was designed, as its name implies, only to establish a satisfactory form of substitute service upon mail-order insurers in actions arising out of the contracts made by such insurers with citizens in states where the company was not authorized to do business. The Wisconsin act¹⁰⁶ aims at more

101 *Id.* at 347 (dissenting opinion).

102 30 Wis. 2d 339, 141 N.W.2d 287 (1966).

103 Wisconsin Unauthorized Insurance Act shall hereinafter be referred to as the "Wisconsin Act." The Unauthorized Insurers Process Act shall hereinafter be referred to as the "Model Process Act."

104 NAIC Proceedings 315-16 (1949).

105 NAIC Proceedings 165 (1951).

106 WIS. STAT. ANN. § 201.42 (Supp. 1967).

than just the general protection of its citizens after contracts have been made with such companies. It is designed to subject the company to all the insurance laws of the state in order to prevent the unwarranted abuses generally attributed to mail-order business. It declares unlawful any of the described acts of doing an insurance business as set out in the statute, "whether effected by mail or otherwise," unless the company is authorized by the insurance commissioner to so act. Venue of an act committed by mail is at the point where the matter is delivered and takes effect.¹⁰⁷ Fundamentally, the Wisconsin act is a form of preventative medicine not previously tried by any state, and it actually makes unauthorized insurance sales or solicitations by any company, mail-order or otherwise, illegal.

While the Model Process Act provided for one situation in which substituted service was appropriate,¹⁰⁸ the Wisconsin act provides for two. The first is identical in form and intent to that of the Model Process Act (actions based upon the contract of insurance); the second is based upon the mail-order insurers doing "any act . . . as set forth"¹⁰⁹ in the Act which amounts to "doing the business of insurance." Such actions constitute the appointment of the Secretary of State as process agent in suits or administrative actions brought by the insurance commissioner or the state.¹¹⁰ By this method Wisconsin can do for

107 WIS. STAT. ANN. § 201.42(2)(a) (Supp. 1967):

Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, due or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner presenting or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.
7. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.
8. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.
9. Any other transactions of business in this state by an insurer.

108 Section 2. Unauthorized Insurers Process Act, NAIC Proceedings 166 (1951).

109 WIS. STAT. ANN. § 201.42(4)(a) (Supp. 1967).

110 *Id.*

its citizens everything that was intended under the Model Process Act and considerably more, *i.e.*, it can enforce *all* the state statutes and regulations governing and controlling the business of insurance in Wisconsin. This procedure enables the insurance commissioner to act on behalf of the state to protect its citizens when it is discovered that some unscrupulous carrier, using questionable claims or sales practices, is exploiting the citizenry. Likewise, any insurance company unable to meet the state's financial requirements for insurers can be prevented from contacting the public by use of the mails. In so acting, the state can prevent widespread harm before it becomes measurable. It is far more realistic to place this power with the state, since it already has the duty to regulate insurance, than to provide only the "self-help" right of action granted in the Model Process Act to the individual citizen who may be harmed by a particular insurance carrier's refusal to honor the terms of a contract.

The final distinction between the two acts is in the area of taxation. Whereas the Model Process Act levies no tax, the Wisconsin act exacts a premium receipts tax of three percent on gross premiums charged Wisconsin residents by mail-order companies.¹¹¹ This is done on the premise that taxation of such companies helps to maintain an equitable distribution of the costs of regulation.

In effect, the Wisconsin act makes no distinction between authorized and unauthorized companies as far as the exercise of regulatory power and taxation is concerned. The law does require, however, that any acts of doing an insurance business if done by an unauthorized mail-order company, constitute a violation of the law subjecting such violator to severe fines.¹¹²

B. The Ministers Life & Casualty Operation in Wisconsin

Ministers, originally a traveling men's association selling to an exclusive group of traveling salesmen, was in its sixty-fourth year of business at the time the litigation began in Wisconsin.¹¹³ The company was not licensed and had no agents in Wisconsin; all solicitation of new business was either on a direct-mail basis, or through advertisements in national and religious publications. The company paid all claims from its home office, and notices of premiums due were sent by mail from the home office in Minnesota. It had no office in Wisconsin nor did it directly own any property there. On the other hand, Ministers had a large volume of annual mail contact with the state's citizens.¹¹⁴

The Wisconsin Supreme Court immediately posed the issue of whether this "continuous and systematic . . . business conduct . . . [is] so related to the purpose of regulation and bears such relationship to Wisconsin in respect to the state's interest in such activity and the subject of insurance that [Wisconsin]

111 *Id.* at § 201.42 (11) (a).

112 *Id.* at § 201.42 (13) (a), (b).

113 The company is no longer an association; it is now a mutual legal reserve life company competing unconditionally in the life insurance market place.

114 General mailing is sent to between 60,000 and 140,000 eligible persons some six times a year and a special mailing to between 6,000 and 8,000 selected individuals approximately 12 times a year. In Wisconsin approximately 25,000 mail solicitations are made annually to approximately 3,600 residents. *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 289 (1966).

may regulate and tax it?"¹¹⁵ After stating the issue, the court systematically proceeded to dissect the claims made by Ministers in support of its contention that the Wisconsin act was unconstitutional on the grounds that it violated both the commerce clause and the due process clause.¹¹⁶

C. Ministers on the Commerce Clause

The main thrust of the insurance company's argument was directed at subsection three of the Wisconsin act that prohibits unauthorized mail-order insurers from continuing to operate by use of the mails unless the company becomes licensed to do an insurance business in Wisconsin.¹¹⁷ It was Ministers' position that the statute created a "new power" never before possessed by state regulators and that the power went beyond the intent of the McCarran-Ferguson Act. Ministers contended that the McCarran-Ferguson Act fixed or froze the amount and extent of state insurance regulation at the level of the pre-*South-Eastern Underwriters* decisions, and that any exercise of an expanded regulatory program amounted to usurpation of authority reserved to Congress, thus violating the commerce clause. Ministers was not attacking the constitutionality of the new concepts of due process and their development, but merely said that they should not apply to insurance cases since such application would grant power to the states not authorized in the McCarran-Ferguson Act.

The court indicated that it was impossible to make a "practical difference"¹¹⁸ between an application of "dated" due process standards and the limited or frozen power interpretation that Ministers puts on the McCarran-Ferguson Act in developing its commerce clause argument. Both arguments led to the same place because what was really to be decided was whether Ministers was doing business in Wisconsin, and if it was, then due process was satisfied. The real question centered on the standards to be applied in making that determination. Finding no contention on the part of Ministers challenging the basic power of the states to regulate insurance, but only a dispute as to "how much" power was possessed by the states, the court dismissed the commerce clause objection by briefly reviewing *Paul v. Virginia*,¹¹⁹ *United States v. South-Eastern Underwriters Association*,¹²⁰ and the McCarran-Ferguson Act as each established the relationship between state regulation of insurance and the commerce clause. The court concluded its discussion with a quotation from *Prudential Insurance Company v. Benjamin*: "[Congress] put the full weight of its power behind existing and future state legislation to sustain it from any attack under the commerce clause. . . ." ¹²¹

115 *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 290 (1966).

116 *Id.* at 291.

117 WIS. STAT. ANN. § 201.42(3) (Supp. 1967).

118 *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 291 (1966).

119 75 U.S. (8 Wall.) 168 (1868).

120 322 U.S. 533 (1944).

121 *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 292 (1966). (1966).

D. Ministers on the Todd Case

Although Ministers relied heavily upon the reasoning in *Todd* to support its position that state power to regulate and tax insurance was frozen at the level of the pre-*South-Eastern Underwriters* cases, the court did not find its argument persuasive. The Wisconsin court found the decision in *Todd* to stem from extraordinary circumstances and was quick to point out that there were "no contacts" of any nature by the insurer in *Todd*, and that this was a decisive factor in the outcome of the case. The court felt that *Todd* had merely used the trilogy to establish the "outer limits"¹²² of the requirements of due process. The new concepts of due process were not overruled in *Todd*; in fact, they were not really discussed. Thus, the court in *Ministers* interpreted *Todd* to have applied *Allgeyer*, *St. Louis Cotton Compress* and *Connecticut General* primarily because of the similarity in the fact situations. The use of these cases was not an unequivocal embrace of the old standard over the new concept of due process.

We think the outer limits of the vital and ever-growing standards of due process were defined in *Todd* to be the holdings in a trilogy of cases, but we do not read *Todd* as freezing state regulation to the type then extant and as forever barring within these outer limits the expansion of the regulation of the insurance industry by states to meet the ever-growing social needs and problems of modern civilization.¹²³

Recognizing the presence of multiple standards, concepts or tests to establish due process which can effectively co-exist within the "outer limits" of *Allgeyer's* "contacts concept" and *Benn's* "presence theory" of "doing business," the court in *Ministers* made the test dependent upon the individual fact situation. Perhaps it is more than just facts that determine the test? It would appear that the particular category drawn into question through the litigation, i.e., regulation-tax-protection, could well be the determining factor in deciding what standards of due process will be applied.

The *Ministers* court pointed out another very important reason why the *Todd* case used *Allgeyer*, *St. Louis Cotton Compress*, and *Connecticut General*: these three cases were specifically cited by Congress at the time they passed the McCarran-Ferguson Act as a "for instance" example of the framework within which insurance regulation should be kept. Since the trilogy was only a "for instance" guide,¹²⁴ these cases were not exclusive; other pre-*South-Eastern Underwriters* cases such as *Osborn* and *Hoopeston*, embodying the "activities," "consequences" and "substantial interests" test to establish due process, could be applied. The Wisconsin court observed that *Todd* did not overrule *Osborn* or *Hoopeston*, and in fact, the Court in *Todd* "might well have reached the same result on the facts, applying the *Osborn-Hoopeston* philosophy."¹²⁵

This analysis of *Todd* by the Wisconsin Supreme Court would seem to effectively eliminate that case as a controlling force in mail-order insurance liti-

122 *Id.*

123 *Id.*

124 *See State Bd. of Ins. v. Todd Shipyards*, 370 U.S. 451, 455 (1962).

125 *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 293 (1966).

gation involving due process. *Todd* through *Ministers* is now severely restricted to its specific fact situation.

E. Ministers on Benn

The other major case employed by Ministers to advance its position was *Minnesota Commercial Men's Association v. Benn*,¹²⁶ a pre-*South-Eastern Underwriters* decision declaring mail-order insurers not present and not doing business in a state by application of the contacts concept of due process as developed by the trilogy. For years, this decision has been cited successfully by mail-order carriers as the controlling case exempting them from state regulation. *Benn* was an obvious and logical citation in Ministers' argument, for if *Todd* did in fact affirm the concept of frozen regulatory powers at the pre-*South-Eastern Underwriters* level, then the only standards and powers that could presently be exercised by the states would be those developed and granted before *South-Eastern Underwriters*. Ministers contended that Minnesota Commercial's method of operation, which had been declared not "doing business," was controlling because (1) it embraced a pre-*South-Eastern Underwriters* concept of due process for insurance cases involving jurisdictional questions, and (2) for all intents and purposes the method of business used by Minnesota Commercial was identical to Ministers' procedure in Wisconsin.¹²⁷

But since the court did not find the frozen or limited powers theory of insurance regulation a palatable argument, it was therefore obvious that it would not confine itself to an application of the "presence concept" of *Benn* as the only possible standard of due process for insurance litigation involving jurisdictional questions.

Benn's "presence concept" of doing business may be conceded to no longer have vitality in the field of jurisdiction for service of process in view of *International Shoe Co. v. Washington* . . . whose minimum-contact theory of jurisdiction was proclaimed only a few years after the decision in *Osborn* and *Hoopeston* in the related field of states' jurisdiction to tax and regulate.¹²⁸

F. Ministers on Osborn and Hoopeston

After total rejection of Ministers' position, the court indicated that it found *Osborn* and *Hoopeston* to be "sufficient authority for Wisconsin's jurisdiction to regulate the type of insurance business presented by the instant facts . . ." ¹²⁹ Both cases¹³⁰ involved state insurance regulatory jurisdictional questions of due process, and both held that the great public interest involved, as well as the

126 261 U.S. 140 (1923).

127 Neither company had any physical contacts with the state in which they were being sued except through the use of the federal mails. The only distinction between the two companies was that Ministers was no longer an association, as was Commercial Men's Association, but had converted to a mutual legal reserve life insurance company.

128 *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 294 (1966).

129 *Id.*

130 See text accompanying notes 59-80.

realistic future consequences that evolve from insurance contracts regardless of how or where negotiated, made it the business of the state to protect its citizens and their property by regulation of the industry.

Ministers turned upon the Court's application of the prevailing limits of due process initiated and developed by *Osborn* and other current insurance regulation cases rather than tax cases such as *Todd* and *Connecticut General*. It found the fact situation in *Ministers* to be closer to those involved in *Osborn* and *Hoopeston* than that involved in *Todd*. But, although the court spent some time outlining facts and the value of facts in determining jurisdictional questions, it made it clear that facts were only a means to an end, the end being the proper choice and application of the standards or tests of due process. The court felt mail-order contact on a large scale such as in *Ministers* was a systematic and continuous method of "doing business," and that the law should treat it as such: "In common parlance and in any enlightened sense, it cannot be said that Ministers does not do business in Wisconsin."¹³¹

By pointing out the need to examine the facts of each case to determine the proper application of a due process test, the court was skating on very thin ice. It could not have been the close similarity of facts, as the court indicated, that made them select *Osborn* and *Hoopeston* as the foundation for the decision, for the fact situation in the rejected *Benn* case was also identical to that in *Ministers*. Rather, it appears that it was the objective of the statute in question that made *Osborn* and *Hoopeston* more appealing than *Benn* or *Todd*. *Benn*, as we have seen, was based on two thirds of the trilogy, one decision of which held a statute unconstitutional because it imposed premium taxes on out-of-state contracts without any attempt to regulate and protect,¹³² while the other struck down a statute imposing a fine upon Louisiana citizens for making insurance contracts out of the state that affected Louisiana property owned by the citizen.¹³³ These two cases of the trilogy, as did the *Todd* and *Connecticut General* opinions, dealt with statutes that made no attempt nor displayed any appreciable interest in protecting the citizens of the state through insurance regulation. The purpose of each statute was only to provide the state with a form of taxation when it had no basic interest in the regulation of the business being taxed.

On the other hand, *Osborn* and *Hoopeston* attempted to enforce a scheme of general control over insurance contracts covering risks within the state, and the primary purpose of the statute in each of these cases was determined to be the protection of the citizenry. In the instant case, the court found *Ministers* to be an operation affecting risks within the state by its systematic mail-order contacts with Wisconsin, and *Osborn* and *Hoopeston* provided the vehicle or "test" by which the Wisconsin insurance regulators could be permitted to regulate this unauthorized mail-order company without violating the due process clause.

131 *Ministers Life & Cas. Union v. Haase*, 141 N.W.2d 287, 295 (1966).

132 *St. Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346 (1922).

133 *Allgeyer v. Louisiana*, 165 U.S. 578 (1897).

G. Summary

The enactment of the Wisconsin Unauthorized Insurance Act and the resultant litigation caused by its enforcement accomplished much to resolve the long-standing clash between two powerful interests with conflicting opinions on how one segment of the insurance industry should be operated. *Ministers* represents the insurance regulator's ultimate victory in the continuous war waged between state control and the mail-order insurers; it might well turn out to be the last major battle between these two formidable opponents. Although there may be more tests of the "new power" by mail-order companies not yet convinced of the changing tide,¹³⁴ it would appear safe to say that the days of the unauthorized mail-order company are limited.

Ministers has settled the dispute that has raged since the passage of the McCarran-Ferguson Act over what the intent of Congress was toward future state regulation of insurance. It has unequivocally repudiated the "frozen powers" concept by saying this is not what *Todd* represented, and if it did, it cannot effectively co-exist in an atmosphere of vital and adequate state regulation. If Congress intended the states to regulate this business, and do a proper job, it could not have been so nearsighted as to create a paradox by limiting the regulator to a fixed and rigid set of powers with which to meet the problems in a world of changing ideas and concepts. *Ministers* recognizes the problems of the regulator and pushes aside the dated arguments advanced to impede the state regulator from doing an adequate job.

This case is also important because it clears the legal air of all the questions and implications raised by the *Todd* case. It puts the due process in regulation and tax litigation back into its proper perspective by explaining *Todd* and the "arch" upon which it rests as the "outer limits" within which can comfortably fit other tests and measures of due process necessary to keep pace with changes.

From the regulators' point of view, the most important ramification of this decision is its holding constitutional a statute that in effect says that if you want to "mess around" in our state you had better be licensed and authorized to so act; and if you refuse, we have the power to prevent your continued activity in this state. In essence, the Wisconsin approach puts everyone doing business in that state, regardless of their marketing methods, on equal terms. This ensures a fair and competitive market with equal observance and protection of the laws for all.

VI. Developments since *Ministers*

A. State Legislation

Since the passage of the Wisconsin act, eighteen additional states¹³⁵ have passed or considered passage of new legislation designed to expand state control

¹³⁴ See, e.g., *People v. United Nat'l Life Ins. Co.*, 427 P.2d 199, 58 Cal. Rptr. 47 (1967).

¹³⁵ California, Minnesota, Michigan and Oregon passed new statutes more comprehensive than the Model NAIC Unauthorized Insurers Process Act shortly after Wisconsin's action. Iowa, Texas, Colorado, Florida and West Virginia adopted broader laws for dealing with unauthorized insurers' violations during their respective 1967 legislative sessions. The Ohio, Vermont, Alaska and Alabama departments presented some form of new legislation but at

over unauthorized mail-order companies.¹³⁶ All but a few of these states made no serious attempt to broaden their laws until 1967. Wisconsin-type legislation did not become immediately popular among state regulators because (1) all the states had adopted some form of law substantially patterned after the Model Unauthorized Insurers Process Act, and (2) the Wisconsin law was a radical departure from the Model Act and had not been established as constitutional as had the Model Act.¹³⁷ It was only after the *Ministers* case that regulators began to give consideration to the use of such an approach to the problem.

Four major types of legislation have evolved over the last six years, two approaches as recent as 1967.¹³⁸ The oldest is the approach of the NAIC which predates *Ministers* by some ten years.¹³⁹ It was the approach taken by California in 1961 when it passed the model NAIC Unauthorized Insurers False Advertising Process Act. It was designed to complement and to work in conjunction with the already existing model Unauthorized Insurers Process Act. The two statutes combined give the insured an opportunity to obtain substituted service on such carriers by serving the insurance commissioner and also allow the insurance department to obtain jurisdiction over unauthorized companies by authorizing an employee of the department to serve the commissioner. This approach, however, limits department action to administrative proceedings only, and further limits the scope of the hearing primarily to the subject of false and misleading advertising. If after the hearing it is determined that the company is in violation of the law, the statute provides only one remedy to the regulator, a cease and desist order. Judicial appeal is available to both parties.

This approach is considerably more confining than the Wisconsin law that requires licensing and compliance with all insurance laws and regulations as a prerequisite to doing business, and also makes available to the commissioner all the legal, equitable and administrative forms of redress if an unauthorized carrier violates the laws or attempts to conduct business in the state without authorization. It is questionable whether the NAIC-California approach, which was born of compromise, actually works to prevent the various kinds of abuses attributed to the unauthorized carrier.

The Illinois Insurance Department designed a bill which is a variation of the Wisconsin theme. The bill¹⁴⁰ was introduced on March 8, 1967, by Representative Yourell and became known as the Illinois approach. It requires any company doing any of the acts defined in the bill as an insurance business to

the time of this article it was either pending in committee or voted to be carried over to the 1968 session. Maryland, North Dakota, Illinois and New Mexico presented plans to their legislatures in 1967 but the bills died in committee.

136 It was pointed out earlier in this article, text accompanying note 50 *supra*, that all the states have adopted the Model NAIC recommended legislation which provides to an insured the right to maintain an *action on the contract* of insurance. The service is a substituted form much the same as provided in the nonresident motorist service of process statutes held constitutional in *Hess v. Pawloski*, 274 U.S. 352 (1927). The additional legislation discussed in note 135 *supra*, was either patterned after the Wisconsin law or a variation of that law.

137 *Parmalee v. Iowa State Traveling Men's Ass'n*, 206 F.2d 518 (5th Cir. 1953).

138 The Wisconsin approach, the NAIC approach, the Iowa approach and the Illinois approach.

139 NAIC Proceedings 165-71 (1951).

140 H.B. 750, Ill. Reg. Sess. (1967).

become licensed.¹⁴¹ The acts defined as doing business are almost identical to the acts constituting the transaction of insurance business under the Wisconsin statute.¹⁴² Violations are punishable by fine and are to be recovered by the county attorney in the county where such violation took place.¹⁴³ Failure by the company to comply with the law does not invalidate or impair the contracts made by the company while in violation of the law; however, the company is not permitted to maintain any action in equity or law to enforce any right, claim or demand arising out of such contracts.¹⁴⁴ The only power granted the commissioner of insurance by this proposed law is the power to obtain an injunction against such unauthorized carriers for violation of the law.¹⁴⁵

This approach, although resembling the Wisconsin law in purpose, is extremely restrictive in the remedies available to the insurance regulator. Perhaps injunctive relief is sufficient to prevent unauthorized carriers from acting within a state but there are occasions when other action can be more effective and simpler. It seems advantageous to have all the legal and equitable remedies, plus administrative hearings, available to deal with each situation as it occurs.

On July 1, 1967 House File 312,¹⁴⁶ as amended and passed by the Iowa Sixty-second General Assembly, became law. Although it resembles the Wisconsin approach in many respects, it represents in part a refinement of that statute insofar as it was designed to be directed only at the unauthorized mail-order business. Such was the intent of Wisconsin; however, observation and hindsight disclosed that other areas of the industry, because of certain marketing techniques, would technically be included in the Wisconsin law. Iowa, recognizing these situations, attempted to exclude them from the provisions of the mail-order law by specific exemption.¹⁴⁷ Iowa, for instance, was not interested in including the large industrial buyers in the new act, particularly when those buyers went to some foreign or alien carrier not licensed in Iowa to purchase their property and liability insurance. This is basically the *Todd* situation and Iowa, remembering that case, recognized the distinction between an unauthorized carrier continuously using the mails to solicit its general citizenry and the carrier who is approached by a large industrial buyer located in Iowa. Iowa felt that such highly sophisticated buyers do not need nor in fact desire the protection of the state in their insurance transactions, and for this reason, exempted this situation from coverage under the act. Such an exemption does not appear in the Wisconsin statute. Close examination of the two bills will disclose other situations excluded by the Iowa law that are outside the realm of mail-order carriers yet are forms of business that have "contacts" with the state and would technically be included in the Wisconsin statute; Iowa, however, did not feel that these situations warranted the regulation provided in the new statute.

141 *Id.* at § 121: "It is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in subsection (2) of this Section, without a certificate of authority from the Director"

142 WIS. STAT. ANN. § 201.42(2)(a) (Supp. 1967).

143 H.B. 750, Ill. Reg. Sess. § 121(3) (1967).

144 *Id.* at 121(4).

145 *Id.* at 121.1.

146 House File 312, Iowa Reg. Sess. (1967).

147 House File 312, Iowa Reg. Sess. § 5(5)-(9) (1967).

B. Subsequent Litigation

On May 4, 1967, the Supreme Court of California handed down *People v. United Life Insurance Company*,¹⁴⁸ a case that consolidated three separate actions brought by the California Insurance Department in the name of the people of California. All three companies¹⁴⁹ involved as defendants solicited and negotiated their insurance transactions "with California residents exclusively by mail from offices outside this state."¹⁵⁰ The interesting difference between this case and *Ministers* is the way in which the California Insurance Department brought the action. Instead of using the specific statutes designated for the control of unauthorized mail-order carriers,¹⁵¹ the department based its power to regulate and control such companies on the "general powers" vested in the insurance commissioner to bring an action in the name of the people of California whenever he had sufficient evidence to believe "that any person is violating or about to violate any provisions of this code"¹⁵² The provision of the insurance code "believed" violated was section 700,¹⁵³ requiring a license to transact business. Over the objections of the defendants that specific controls took precedence over general controls, the court held that California could constitutionally regulate such companies through application of the general powers and controls vested in the commissioner of insurance.

Most of the case dealt with the defendants' argument that due process had not been met and, therefore, that California could not constitutionally regulate the type of business carried on by the three defendants.

Through Justice Sullivan, the court presented an erudite opinion on the developing and expanding concepts of due process as they exist within the framework of state insurance regulation. The case is an excellent review of the history of due process as it relates to state regulation. It covers the entire gambit of cases starting with *Paul v. Virginia*¹⁵⁴ and ending with *Ministers Life & Casualty Union v. Haase*.¹⁵⁵ Considerable attention was given to examination of the pre-McCarran-Ferguson Act due process cases,¹⁵⁶ and the conclusion was that in re-examining these opinions the California Court saw "two separate yet consistent trends"¹⁵⁷ established by these cases:

The first, exemplified by the earlier trilogy of cases . . . emphasized the

148 427 P.2d 199, 58 Cal. Rptr. 599 (1967).

149 United National Life Insurance Company, licensed and incorporated in Arizona; Pioneer Life Insurance Company, licensed and incorporated in Illinois; and National Liberty Life Insurance Company, licensed and incorporated in Pennsylvania. *See id.* at 201, 58 Cal. Rptr. 601.

150 *Id.*

151 Actions Against Nonadmitted Insurers, CAL. INS. CODE §§ 1610-20; and the Unauthorized Insurers False Advertising Process Act, CAL. INS. CODE §§ 1620.1-1620.7.

152 CAL. INS. CODE § 12928.6.

153 CAL. INS. CODE § 700: "A person shall not transact any class of insurance business in this state without first being admitted for such class. . . ."

154 75 U.S. (8 Wall.) 168 (1868).

155 30 Wis. 2d 339, 141 N.W.2d 287 (1966).

156 Hoopston Canning Co. v. Cullen, 318 U.S. 313 (1943); *Osborn v. Ozlin*, 310 U.S. 53 (1940); *Connecticut Gen. Life Ins. Co. v. Johnson*, 303 U.S. 77 (1938); *St. Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346 (1922); *Allgeyer v. Louisiana*, 165 U.S. 578 (1897).

157 *People v. United Nat'l Life Ins. Co.*, 427 P.2d 199, 207; 58 Cal. Rptr. 599, 607 (1967).

place of making the contract sought to be taxed or regulated and, having found all activities relevant to the making and carrying out of the contract to have occurred outside the regulating state, invalidated all efforts of the latter to control them. The second, exemplified by the later cases of *Osborn* and *Hoopston*, laid emphasis on the contacts with the regulating state arising from the transactions involved and the interest of the state in such transactions consequent upon such relationship. . . . We say that these trends of decision are *consistent* because upon analysis the first category of cases actually represents situations where there were no contacts sufficient to support the jurisdiction of the regulating state.

We have therefore concluded that within the framework of the McCarran Act and in accordance with principles of due process prior thereto, interstate insurance transactions may properly be regulated when they have sufficient contacts with the regulating state so as to give the latter a substantial interest in the transaction.¹⁵⁸ (Emphasis added.)

It should be noted that the court assumed the companies' argument that the decision must rest upon pre-McCarran-Ferguson Act concepts. But the court found that more than one concept existed at that time and chose to apply one test over the other, in the instant case, because sufficient contacts created state interest in the companies' activities. In so acting, however, the courts may have given unintentional credence to the "frozen powers" doctrine so clearly dispelled in *Ministers*.

The other interesting contribution made by this case is the court's finding that the general powers and controls granted the insurance commissioner to regulate the business are a sufficient basis for the exercise of control over any person engaged in the business of insurance. In effect then, this case, if upheld by the United States Supreme Court, makes unnecessary the need for specific power grants to control unauthorized mail-order business.

VIII. Conclusion

It is clear that the courts have found that the power to regulate and tax the business of insurance rests with the states. It is a delegated authority subject to recall by Congress if the several states do not fulfill the "adequacy" condition set forth in the McCarran-Ferguson Act. Constant awareness of current problems affecting the public and a firm purpose to develop workable solutions to these problems is the only way the regulator can justify his existence. As it was so aptly stated in the *National* case, "[t]he insurance industry is regulated primarily for the benefit of those who make use of the services the industry offers."¹⁵⁹

But it can also be stated at this point that due process as it evolved in the context of insurance regulation has developed a dual personality: one set of tests or standards is applied if the regulator is attempting to regulate or, in regulating, incidentally taxes the regulated, but an entirely different set of due process standards is employed if he only attempts to tax an insurance transaction.

If the legal birth of state regulation began with *Paul v. Virginia*, at least

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 214, Cal. Rptr. at 614.

the feud between the regulators and the unauthorized carriers was ended with *Ministers* and *National*. Perhaps the conflict was symptomatic of an era in which aging concepts, conceived in simpler times and with little regard for the social side effects, had to be forever discarded for a form of adequate regulation to protect more complex interests in a more comingled world. The *Ministers* case undoubtedly ends the day of uncontrolled mail-order insurance, and in all likelihood, the next decade will find no mail-order carriers operating in any state in which they are not licensed to do business.