

CURRENT LEGISLATION

INSURANCE IN URBAN CORE AREAS: AN ANALYSIS OF RECENT STATUTORY SOLUTIONS

I. INTRODUCTION

Very few of the proposed solutions for urban poverty and blight¹ have directed attention to the difficulty confronting residents and property owners within the urban core area in procuring property insurance.² This comment will attempt to delineate the problem and to give special focus to the importance of an effective insurance system and to the current lack of insurance in the core areas. Various responses to the problem, past and present, will then be examined in depth, and particular emphasis will be devoted to the Federal Urban Property Protection and Reinsurance Act of 1968³ and several state remedial statutes.⁴ Finally, an original scheme will be proposed as a solution combining the most effective features of existing efforts.

¹ See, e.g., M. Harrington, *The Other America: Poverty in the United States* (1965); H. Humphrey, *War on Poverty* (1964); Shostak, *An Overview of Current Administration Policy, in New Perspectives on Poverty* 30 (W. Gomberg & A. Shostak ed. 1965); Gans, *Some Proposals for Government Policy in an Automating Society*, 30 *The Correspondent* Jan.-Feb., 1964, at 74; Myrdal, *The War on Poverty*, *The New Republic*, Feb. 8, 1964, at 26; *The Voice of the Ghetto, A Report by the Massachusetts State Advisory Committee to the United States Commission on Civil Rights* (July, 1967). The foregoing books, articles, and report are not a complete bibliography of proposals but are listed merely to give the general direction and orientation of proposed poverty reforms.

² See generally, *Meeting the Insurance Crisis of our Cities, A Report by the President's National Advisory Panel on Insurance in Riot-Affected Areas* (1968) [hereinafter cited as *Advisory Panel*]; *Comment, Insurance Protection Against Civil Demonstrations*, 7 *B.C. Ind. & Com. L. Rev.* 706 (1966); *Note, Riot Insurance*, 77 *Yale L.J.* 541 (1968); *N.Y. Times*, Sept. 30, 1967, at 42, col. 8.

The Advisory Panel has concluded, after months of exhaustive research and investigation in which systematic surveys were conducted in Boston, Cleveland, Detroit, Newark, Oakland and St. Louis, that the lack of property insurance pervades not only urban core areas, but also towns and cities throughout the United States outside the urban core areas. The survey disclosed, for example, that more than 35% of the businessmen surveyed in the Roxbury section of Boston, an urban core area, had no fire insurance while 74% had no burglary and theft insurance. *Advisory Panel* at 2-3.

³ Pub. L. No. 90-448, tit. XI and XII (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2894. Page numbers are cited throughout to the advanced sheets.

⁴ *Basic Property Insurance Inspection and Placement Plan*, ch. 574, 1968 Cal. Laws (Cal. Leg. Serv. 1026 (West 1968)). *District of Columbia Insurance Placement Act*, Pub. L. No. 90-448, tit. XII, §§ 1201-13 (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909-15. *Urban Property Insurance, Act 1840*, 1968 Ill. Acts (Ill. Leg. Serv. 13 (Smith-Hurd 1968)). *Urban Area Insurance Placement Facility*, ch. 731, 1968 Mass. Laws (Mass. Leg. Serv. 588 (1968)). *P.A. 262*, 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497 (1968)). *Ch. 129*, 1968 N.J. Laws (N.J. Leg. Serv. 436 (1968)). *New York Fire and Extended Coverage Insurance Joint Underwriting Association*, ch. 131, 1968 N.Y. Laws (N.Y. Leg. Serv. 190 (McKinney 1968)). *Pennsylvania Fair Plan Act, Act 233*, 1968 Pa. Laws (Pa. Leg. Serv. 592 (1968)).

The statutes of Delaware, Virginia and Puerto Rico will not be discussed.

II. THE NECESSITY OF PROPERTY INSURANCE

The necessity of property insurance would seem to be self-evident. Without property insurance, the assets of individuals and corporations are exposed to the risk of loss from natural and man-made hazards beyond their control.⁵ Also, to a great extent, the stability and growth of private enterprise depend upon the maintenance of reasonable and adequate property insurance coverage.⁶ If a company is unable to insure its property against fire and other perils, it must retain sufficient liquid assets to pay for losses when they occur. This requirement restricts a company's ability to make new capital investments out of retained earnings or to declare and pay regular dividends. Adequate property insurance, on the other hand, allows a company to pay dividends or to invest its surplus in new capital projects, free from the possibility that a fire or other catastrophe might impair or destroy its solvency. The necessity of adequate insurance protection is magnified in urban core areas, for these areas are attempting to develop *new* industry, housing, and retail outlets.

Merchants and entrepreneurs are naturally reluctant to invest substantial sums of money in the core areas when the distinct possibility persists that insurance will not be available as a risk-shifting device, or available only at exorbitant rates.⁷ Self-insurance, insuring one's own property by setting aside a fund for that purpose, although a possible alternative, is not very helpful. It requires a vast amount of capital which can be put in restricted reserves for immediate use in the event of a loss. Such risk retention by urban core industries and retail establishments would be suicidal, for many of these business are marginal even with adequate insurance.⁸ The prospect of self-insurance is certainly no incentive for private enterprise to expand its role in the development of new industry and housing within the urban core area.

The necessity of adequate insurance coverage within the urban core area is manifested also by the effect of the absence of such insurance on the economic and social well-being of these areas.⁹ The insurance problem cannot be examined in a vacuum. Any proposal for insurance reform must consider the fact that the lack of insurance is integrally related to other urban problems such as lack of financing, unemployment, and physical deterioration.¹⁰

If a corporation or other business is interested in the construction of a building or store in the urban core area, it is imperative that banks and other financial institutions provide the necessary funds. However, these institutions are unwilling to accept mortgages on property unless the property is adequately covered by insurance.¹¹ Further, even though coverage has been

⁵ Advisory Panel at 1.

⁶ Ch. 129, § 1, 1968 N.J. Laws (N.J. Leg. Serv. 436 (1968)).

⁷ Advisory Panel at 2.

⁸ Note, Riot Insurance, *supra* note 2, at 542.

⁹ "Without insurance, buildings are left to deteriorate; services, goods, and jobs diminish. Efforts to rebuild our nation's inner cities cannot move forward. Communities without insurance are communities without hope." Advisory Panel at 1.

¹⁰ Assembly Concurrent Resolution No. 23, N.J. Leg. Serv. 635-36 (1967).

¹¹ Advisory Panel at 2.

The major types of property insurance are: (1) fire insurance, (2) vandalism and

acquired and the mortgage has been placed, the threat of disorders may lead to a subsequent cancellation¹² or non-renewal¹³ of the policy or to an increase in premium rates.¹⁴ Once coverage is cancelled or not renewed, foreclosure of the mortgage on the property is usually imminent.¹⁵ This result in turn leads to a sale of the foreclosed property at a deflated price, for prospective buyers are not likely to invest great sums in property lacking insurance coverage. Once this process is set in motion, an acceleration of physical deterioration within the urban core area occurs because of the impracticality of costly repairs on uninsured property. The cycle closes with a further constriction of insurance coverage, for deteriorated property enhances the risk of loss from fire and other perils. Businessmen, entrepreneurs and real estate investors are unwilling to assume such high risks and consequently will not undertake substantial capital projects within the afflicted area.¹⁶

The lack of insurance coverage inhibits the expansion of existing core industries and businesses.¹⁷ Companies will defer expansion unless adequate and reasonable insurance coverage is forthcoming. In fact, the cancellation of insurance or the imposition of exorbitant rates will cause retail businesses to contract their inventory in the expectation of minimizing losses if a riot or fire should occur. Naturally such a vigilant attitude is not conducive to the maintenance of a healthy and productive economic climate within the urban core area.

As businesses contract or close down because of the lack of finance, workers become unemployed. Job opportunities, already insufficient, diminish so that inhabitants of the urban core area must seek new jobs elsewhere. In the interim, incomes of families decrease or disappear so that it becomes difficult for the families to maintain their former economic status. As incomes and property values decrease, tax revenue from the area diminishes. City and state poverty programs, already hampered by a lack of funds, will be further burdened unless new fiscal programs are developed to amass the necessary capital. This burden will undoubtedly lead to the imposition of higher taxes with its concomitant dampening effects on the private sector of the economy. In short, then, in the absence of genuine reform the ongoing lack of

malicious mischief, (3) extended coverage endorsement which provides protection against damages arising from wind storm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles and smoke, and (4) burglary and theft insurance. Advisory Panel at 18-20. For an example of a standard fire policy, see N.J. Stat. Ann. § 17:36-5.20 (1963); N.Y. Ins. Law, § 168(6) (McKinney 1966).

¹² Comment, Insurance Protection Against Civil Demonstrations, *supra* note 2, at 706.

¹³ Assembly Concurrent Resolution No. 23, N.J. Leg. Serv. 635 (1967).

¹⁴ Note, Riot Insurance, *supra* note 2, at 543.

Several states have statutory restrictions on the power of insurance companies to cancel insurance or increase rates. See, e.g., Mass. Gen. Laws Ann. ch. 175, § 187(c) (1958) (procedural restrictions on cancellation); N.J. Stat. Ann. § 17:29A-7 (1963) (restrictions on premium rates).

¹⁵ Wall Street Journal, Aug. 31, 1965, at 6, col. 2.

¹⁶ See ch. 129, § 1, 1968 N.J. Laws (N.J. Leg. Serv. 436 (1968)); Assembly Concurrent Resolution No. 23, N.J. Leg. Serv. 635 (1967); H.R. Rep. No. 1585, 90th Cong., 2d Sess. (1968), U.S. Code Cong. & Ad. News 3137-38; Advisory Panel at 1.

¹⁷ Advisory Panel at 1.

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property insurance in the urban core will continue as a major cause in the widening cycle of urban decay.¹⁸

III. CAUSES OF LACK OF PROPERTY INSURANCE

Before discussion of the several solutions devised to combat the lack of property insurance in the urban core area, it is necessary to examine the various causes underlying the problem. Basically, the response of insurance companies to underwriting risks within core areas has been dictated by one overriding factor: underwriting insurance in urban core areas is not *considered* profitable.¹⁹ Since an insurance company exists for the benefit of the stockholders if it is a stock company, or of the policyholders if it is a mutual company, a wise underwriting policy militates against insuring risks with a high loss ratio.²⁰ It must be emphasized that the basis upon which underwriting decisions are made is not only the unprofitability of a line of insurance in fact, but also the consideration or assumption that certain coverage will be unprofitable.²¹

Since property insurance in the urban core areas is generally considered unprofitable by insurance companies, its marketing by agents and brokers is very limited.²² There are very few insurance agents within these areas and those who do market insurance there are severely restricted by well defined rules of exclusion.²³ Since agents are usually paid on a commission basis, and since they have only a limited amount of time to procure new policies, they will obviously maximize their earnings by concentration of their efforts on the less time-consuming and more lucrative business.²⁴ It often requires a gargantuan effort by an agent before he can successfully place a certain risk from within the urban core area.²⁵ Such patience and perseverance is rarely forthcoming from agents primarily concerned with large commission fees. The

¹⁸ Although the lack of property insurance is not the only cause of urban poverty, it is a significant factor, the alleviation of which is essential if other poverty reforms are to be successful.

¹⁹ "Although the property-liability insurance industry in the underwriting practices is saying that inner city business generally is bad and to be avoided, *it cannot show the extent to which this judgment is accurate.*" Advisory Panel at 32 (emphasis added).

²⁰ Underwriting profits are necessary to attract capital, to provide greater financial safety, and to support growth. The response of insurance companies to low profits on a particular line has been to raise rates, establish more stringent underwriting standards, or to withdraw coverage completely. Advisory Panel at 40.

²¹ Fire Insurance in Congested Areas, A Report to Governor Nelson A. Rockefeller (State of New York Insurance Department, March 7, 1967). See also Advisory Panel at 32. Thus, the unprofitability of insuring risks within certain urban core areas might actually be an unwarranted assumption, unsubstantiated by underwriting statistics. The Advisory Panel has recommended that each state institute a more detailed recordkeeping system so that more reliable information will be available when companies make underwriting decisions. Advisory Panel at 94.

²² Advisory Panel at 25.

²³ *Id.* Insurance companies often distribute underwriting materials which prohibit agents and brokers from insuring property if it is located within certain areas of the city called "red-line" or "knock-out" areas. *Id.* at 6, 30.

²⁴ See *Id.* at 5.

²⁵ See *Id.*

few agents who do attempt to place risks from these areas are often "rewarded" with immediate termination of the agency agreement.²⁶

An underlying cause of the problem, and one integrally related to underwriting decisions regarding property within the core, is the unavailability or the high cost of reinsurance for risks located within these areas.²⁷ Reinsurance, insurance under a contract by which the first insurer relieves himself from a part or from all of the risks and devolves it upon another insurer, is generally utilized by insurance companies to stabilize underwriting results, to protect capital, and to enlarge their capacity to provide coverage for potentially catastrophic losses.²⁸ One of the instrumental factors inducing an insurance company to provide coverage for high risks is its ability to utilize the reinsurance market, since a part or all of the risks will be borne by the reinsurer.

Since reinsurance is primarily offered by private enterprise, the same factors which inhibit direct insurers from undertaking a more extensive underwriting program in urban core areas also prevent reinsurers from entering the market.²⁹ The demands of the owners of reinsurance companies often conflict with the need for reinsurance of risks within the urban core area. If a line of insurance is *considered* unprofitable and beset by high risks, a reinsurance company will constrict its coverage.³⁰ The tightening of the reinsurance market has led to the concurrent constriction of the primary insurance market.³¹

The difficulty of obtaining insurance and/or reinsurance for risks located within the core areas is not a recent phenomenon.³² The insurance problem has existed in urban core areas for many decades. But the widespread civil disorders of the past few years were needed to dramatize the magnitude of the problem.³³ After the disorders, insurance companies underwriting within the urban core areas found it necessary to constrict further the amount of coverage³⁴ or to withdraw completely from the riot-affected areas.³⁵ This activity caught the attention of the legislature. However, an alleviation of the threat of riots will not necessarily solve the problem, since the problem antedates the occurrence of civil disorders.

IV. NECESSARY INGREDIENTS FOR A PROPERTY INSURANCE PLAN

A number of substantive factors must be considered in the assessment of the potential effectiveness and viability of any insurance plan for the urban

²⁶ *Id.*

²⁷ *Id.* at 4, 38-39.

²⁸ *Id.* at 36.

²⁹ *Cf. id.* at 37-38.

³⁰ See *id.* 4-5, 35-38; Hearings Before the President's National Advisory Panel on Insurance in Riot-Affected Areas 72-73 (1967) (remarks of David J. Dykhous).

³¹ Advisory Panel at 39-40.

³² *Id.* at 1, 5.

³³ The riots and civil disturbances which followed in the aftermath of the assassination of Rev. Dr. Martin Luther King, Jr. involved more than 110 cities and resulted in more than \$45,000,000 of insured losses. *N.Y. Times*, April 10, 1968, at 37, col. 2; *N.Y. Times*, April 13, 1968, at 13, col. 3.

³⁴ Advisory Panel at 3.

³⁵ Note, Riot Insurance, *supra* note 2, at 541.

core areas. First, the burden or risk of loss must be spread among a sufficiently large number of persons so that a particular loss will not affect the solvency of any individual or company.³⁶ The efficacy of an insurance plan depends upon its ability to spread the risk of loss and to shift the risk of loss from those who cannot afford the incidence of loss to those who are able to absorb losses if and when they occur. One common method of spreading the risk is the use of reinsurance.

Second, an insurance scheme must consider the deterrent effect which it will have on the particular insured risk.³⁷ Since many of the insured losses within urban core areas have resulted from man-made causes, an efficient insurance plan should provide a measure of deterrence to prevent future outbreaks of civil disturbances. Part of the burden should fall on those best positioned to curb these disorders, that is, the taxpayers of the municipality where the disorder occurs. It is hoped that this financial burden will encourage the taxpaying class to alleviate the conditions within the urban core which foment riots and to control disturbances when they do occur. The difficulty arises because those in a position to deter future outbreaks are seldom the people that have the financial capacity to absorb the risk of loss. Municipal budgets are already inadequate to cope with the burgeoning demands of urban development, let alone the cost of reimbursing property owners for riot damage.³⁸ The optimum solution is to balance the factors of risk dispersion and riot deterrence so as to maximize economic and social benefits.³⁹ In the short run, it is possible for an insurance scheme to concentrate on the element of spreading, but any long range plan must also consider deterrence. If civil disturbances continue unabated, the cost of insurance premiums will continue to soar, and will thereby make it inexpedient to purchase property insurance.

Third, an insurance plan must provide incentives for an owner to improve the condition of his property. It is dysfunctional to provide insurance coverage for any property, regardless of its condition. If the property does not meet certain minimum standards of insurability, it should not be covered by insurance.⁴⁰ In this regard, it is critical to emphasize that insurability of a

³⁶ Cf. Advisory Panel at 11. See also Note, Riot Insurance, *supra* note 2, at 541-42.

³⁷ See Note, Riot Insurance, *supra* note 2, at 542, 547, 555-58.

³⁸ The cities are highly dependent upon property taxes to provide the bulk of its revenue. The problem with this source is that property taxes are relatively unresponsive to changes in income. As the cost of providing public services has greatly increased, tax revenues have increased only slightly. Another problem is that population shifts in the post-war period from the cities to the residential suburbs has left many cities with a shrinking tax base. Report of the National Advisory Commission on Civil Disorders 393 (N.Y. Times ed. 1968).

³⁹ It might be possible to utilize the techniques of linear programming (i.e., a theory of maximization of a large number of variables subject to constraints) to discover the optimum solution. However, since spreading and deterrence are only two of the factors involved and since there are a number of other variables, the solution might be theoretically optimum but realistically below the optimum. The scope of this comment is too limited to explore the possible construction of mathematical and statistical models. For a concise and accurate explanation of linear programming techniques, see Henderson & Shlaifer, *Mathematical Programming*, in *New Decision-Making Tools for Managers* 30 (E. Bursk and J. Chapman ed. 1963).

⁴⁰ Standards of insurability should be set either by statute, by regulation by the

risk should not be determined by environmental factors, for these are beyond the control of the property owner.⁴¹ However, if a property hazard can be corrected, the issuance of insurance should be conditioned upon its correction.

Fourth, an insurance plan should offer incentives to businesses seriously interested in capital investment within the urban core area. The plan must attempt to remove the stigma currently attached to ownership of core property and to make the area as attractive a location for investment as other areas of the city. To this end, the plan should allow the property owner to insure his property to the fair market value. Also, the premium rates must be reasonable and the insurance coverage must be readily accessible. Finally, there must be certain procedural safeguards in the plan to assure all property owners of impartial and fair dealings with insurance companies.

V. PRIOR SOLUTIONS TO THE INSURANCE PROBLEM IN THE URBAN CORE AREA

This section will examine the various solutions used in the past and being used presently in some states to combat the insurance problem. The most obvious, and certainly the most simplistic, "solution" is to let the loss fall on the person or property damaged.⁴² This result is not satisfactory in the case of urban core buildings, for the burden will ultimately fall upon the slum dwellers themselves through the incidence of higher rents and prices.⁴³ The present ill feeling, between the residents on the one hand and the landlords and merchants on the other, will be intensified. Instead of deterring rioting and civil unrest, this arrangement would probably contribute to the incidence of disturbances as the residents experience an unremitting sense of exploitation. Further, this system provides an insufficient spreading of losses. The losses will be borne by the affected merchants and their customers. Marginal businesses might very well become insolvent, for it is unlikely that higher prices could absorb the full impact of the losses. Finally, a system placing the loss on the property damaged offers no incentive for capital investments within the urban core area.

A second solution to the problem is exemplified by the common law and statutes of a number of jurisdictions which shift the burden of loss to the rioters themselves. Generally, an individual is liable in tort for any damages which he willfully perpetrates upon a person⁴⁴ or upon his property.⁴⁵ Some states even allow recovery against a participant in a riot on the basis of a conspiracy to commit the wrong.⁴⁶ Statutes in a few states extend liability to a

state insurance commissioner, or by the companies themselves. In order to prevent the adoption of arbitrary standards, it is preferable to have the standards set by the first two methods.

⁴¹ Advisory Panel at 11.

⁴² Note, Riot Insurance, *supra* note 2, at 541-42.

Self-insurance is to be distinguished from letting the loss fall on the injured party. The existence of self-insurance implies that the property owner has devised a *plan* to meet the contingency of financial loss. Letting the loss fall on the injured party is simply risk retention; there is no assurance that the property owner has devised a scheme to cushion the effect of a financial loss.

⁴³ *Id.* at 542.

⁴⁴ W. Prosser, *Handbook on the Law of Torts* §§ 7-12 (3d ed. 1964).

⁴⁵ *Id.* §§ 16-27.

⁴⁶ In *DeVries v. Brumback*, 53 Cal. 2d 643, 2 Cal. Rptr. 764, 349 P.2d 532 (1960),

rioter even where there is no evidence of a conspiracy.⁴⁷ Although this solution places the burden upon those involved in the disorder, it is not an effective remedy. In the states requiring an injured person to prove a conspiracy as a predicate to liability, it would be a practical impossibility to gather the evidentiary proof to satisfy this burden. In the states which allow recovery against any participant regardless of the existence of a conspiracy, the injured party must still prove that the damage was caused by a riot, as opposed to an insurrection or rebellion.⁴⁸ It is often difficult to prove that the loss was caused by a riot because of the subtle distinctions which courts⁴⁹ and legislatures⁵⁰

the court states the common law rule that civil liability for injuries resulting from a conspiracy of which the tortfeasor is a member will result even though the tortfeasor did not join the conspiracy from its inception. It might be asked whether the holding in this case can be extended to include people who join mass civil demonstrations.

⁴⁷ Nothing in this article shall be construed to prevent a person whose property has been destroyed or injured by a mob or riot from maintaining an action against each and every person engaged or in any manner participating in the mob or riot.

N.J. Stat. Ann. § 2A:48-5 (1952).

Nothing in this act shall be construed to prevent the person or persons whose property is injured or destroyed from having and maintaining his or their action against all and every person engaged or participating in said riot or mob, to recover full damages for any injury sustained: *Provided*, That no damages shall be recovered by the party injured, against any of said rioters, for the same injury for which compensation shall be made by the county.

Pa. Stat. Ann. tit. 16, § 11823 (1956). Accord, S.C. Code Ann. § 16-109 (1962).

These foregoing statutes also allow a municipality, which has paid damages resulting from a riot, to recover against any person who participated in the riot regardless of the existence of a conspiracy. N.J. Stat. Ann. § 2A:48-7 (1952); Pa. Stat. Ann. tit. 16, § 11824 (1956); S.C. Code Ann. § 16-111 (1962).

⁴⁸ A parallel problem exists today for a claimant under the Extended Coverage Endorsement of the Standard Fire Policy in which losses occurring as a result of an "insurrection" or "rebellion" are specifically excluded from coverage. See, e.g., N.Y. Ins. Law § 168 (6) (McKinney 1966).

Insurrection is distinguished from rout, riot, and offenses connected with mob violence by the fact that in insurrection there is an organized and armed uprising against authority or operations of government, while crimes growing out of mob violence, however serious they may be and however numerous the participants, are simply unlawful acts in disturbance of the peace which do not threaten the stability of the government or the existence of political society.

⁴⁶ C.J.S. Insurrection and Sedition § 1 (1946). See *Home Ins. Co. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954). But see *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894), where insurrection is defined as "... the open and active opposition of a number of persons to the execution of law in a city or state."

For excellent and exhaustive articles on this subject see: Comment, *Insurance Protection Against Civil Demonstrations*, *supra* note 2; Johnson, *The Insurer and Civil Disorders*, 35 *Ins. Counsel J.* 408 (1968); Note, *Riot Insurance*, *supra* note 2.

⁴⁹ E.g., A riot has been defined as

A tumultuous disturbance of the peace by three persons or more assembling of their own authority with an intent mutually to assist one another against anyone who shall oppose them in the execution of some enterprise of a private nature, and afterward actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful.

Symonds v. State, 66 Okla. Crim. 49, 54, 89 P.2d 970, 973 (1939). See also *State v. Abbadini*, 38 Del. 322, 192 A. 550 (1937).

⁵⁰ E.g., "Any use of force or violence, disturbing the public peace, or any threat to

have made in defining riots. If the injured party is able to satisfy the substantive requirements of liability, it is doubtful, in most instances, whether he would gain more than a pyrrhic victory, for the liable party will probably be judgment proof. This solution also fails to provide the necessary spreading of the loss, for the loss will be absorbed by either the injured party or the rioter. Finally, it affords no protection to the owner whose property is destroyed by non-riot means.

A third solution is municipal liability for damages caused by mob violence or riots. Such municipal liability has been imposed either by the common law⁵¹ or by statutes.⁵² Municipal corporations, at common law, have generally been considered immune from liability for the torts of their officers and employees when the harm resulted from the exercise of the municipality's governmental, as opposed to proprietary, functions.⁵³ Many courts have abrogated this immunity by judicial decision.⁵⁴ Such judicial remedies have had limited success because a number of states have enacted legislation which has emasculated the decisions⁵⁵ and because the injured party is usually required to allege and prove the elements of a cause of action for negligence.⁵⁶ Since courts are usually loathe to set up standards of care for states and municipal-

use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot." Cal. Penal Code § 404 (West 1955).

⁵¹ E.g., *Molitor v. Kaneland Community Unit Dist.* No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959); *Schuster v. City of New York*, 5 N.Y.2d 75, 154 N.E.2d 534, 180 N.Y.S.2d 265 (1958). Generally, see W. Prosser, *Handbook on the Law of Torts* § 125, at 1004-13 (3d ed. 1964).

⁵² At present there are fourteen states which have statutes providing for municipal liability for loss due to riots. Conn. Gen. Stat. Ann. § 7-108 (1960); Kan. Stat. Ann. § 12-201 (1964); Ky. Rev. Stat. Ann. § 411.100 (1963); Me. Rev. Stat. Ann. tit. 17, § 3354 (1965); Md. Ann. Code art. 82, §§ 1-3 (1965); Mass. Gen. Laws Ann. ch. 269, § 8 (1959); Mo. Ann. Stat. §§ 537.130-160 (1953); Mont. Rev. Code Ann. § 11-1503 (1968); N.H. Rev. Stat. Ann. § 31:53 (1955); N.J. Stat. Ann. §§ 2A:48-1 to -7 (1952); Pa. Stat. Ann. tit. 16, §§ 11821-26 (1956); R.I. Gen. Laws Ann. § 45-15-13 (1956); S.C. Code Ann. § 16-107 (1962); Wis. Stat. Ann. § 66-091 (1961).

The New York municipal liability statute, N.Y. Gen. Munic. Law § 71 (McKinney 1965), has been suspended by the New York State Defense Emergency Act of 1951, N.Y. Unconsol. Laws § 9193(3) (McKinney 1961). The Emergency Act was to remain in effect until July 1, 1952, but it has been amended at various times so that its duration will extend at least until July 1, 1971. Ch. 115, 1968 N.Y. Laws (N.Y. Leg. Serv. 157 (McKinney 1968)). For an extended discussion of the troubled history of this statute, see 50 Cornell L.Q. 699 (1965).

⁵³ *Bailey v. Mayor of New York*, 3 Hill 531, 15 N.Y. Com. L. Rep. 674 (Sup. Ct. 1842). See James, *Tort Liability of Governmental Units and Their Officers*, 22 U. Chi. L. Rev. 610 (1955); Smith, *Municipal Tort Liability*, 48 Mich. L. Rev. 41 (1949).

⁵⁴ E.g., *Hargrove v. Town of Cocoa Beach*, 96 So. 2d 130 (Fla. 1957) (prisoner in town jail suffocated by inhalation of smoke caused by negligence of jailor); *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961) (hospital held liable for negligence of its staff which injured patient).

⁵⁵ E.g., Cal. Gov't Code §§ 814-95 (West 1966); Mich. Stat. Ann. § 3.996(107) (Pocket Supp. 1968). See also Johnson, *The Insurer and Civil Disorders*, 35 Ins. Counsel J. 408, 416 (1968).

⁵⁶ See, e.g., *Molitor v. Kaneland Community Unit Dist.* No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959).

ities,⁵⁷ the riot victim is afforded very little protection in the common law jurisdictions.

On the other hand, most of the statutes providing for municipal liability as a result of riot damage do not require the plaintiff to allege and prove negligence.⁵⁸ However, the statutes vary in their scope. Massachusetts, for example, allows an injured party who has had property damage exceeding 50 dollars to recover against the municipality three-fourths of his total damage if he has been diligent in seeking to avoid the harm.⁵⁹ If the owner's negligence or improper conduct contributes to the injury, he will be barred from recovery in most states.⁶⁰ Connecticut, Kentucky and Maryland, unlike the other states, and similar to the common law jurisdictions, have imposed liability only when the claimant can establish negligence by the municipality in failing to suppress the violence.⁶¹

Several administrative problems presently hinder the successful operation of these statutes as risk-shifting devices. The statutes requiring the property owner to prove negligence are not very helpful, for courts in these jurisdictions will also be reluctant to establish standards of due care for municipal employees.⁶² The minimum and maximum recoveries do not allow a person in many instances to recoup even a small portion of his damages. The notification⁶³ and statute of limitations⁶⁴ provisions in some statutes are too brief. In most states, the plaintiff has the burden of proving that the harm was caused by a riot as defined by the applicable state statute⁶⁵ or the relevant case law.⁶⁶

In addition to problems posed in the determination and litigation of claims, it is questionable, in light of competing needs for the limited municipal financial resources, whether these statutes as presently constituted, will remain in force.⁶⁷ The impact of a widespread riot could seriously endanger the

⁵⁷ See *Raven v. Coates*, 125 So. 2d 770 (Fla. App. 1961); *Fette v. City of St. Louis*, 366 S.W.2d 446 (1963).

⁵⁸ Kan. Stat. Ann. §12-202 (1964) (lack of negligence by municipality may be shown in mitigation of damages); Me. Rev. Stat. Ann. tit. 17, § 3354 (1965); Mass. Gen. Laws Ann. ch. 269, § 8 (1959); Mo. Ann. Stat. §§ 537.130-160 (1953); Mont. Rev. Code Ann. § 11-1503 (1968); N.H. Rev. Stat. Ann. § 31:53 (1955); N.J. Stat. Ann. §§ 2A:48-1 to -7 (1952); Pa. Stat. Ann. tit. 16, §§ 11821-26 (1956); R.I. Gen. Laws Ann. § 45-15-14 (1956); S.C. Code Ann. § 16-107 (1962); Wis. Stat. Ann. § 66.091 (1961). See E. McQuillin, *Municipal Corporations* § 53.147 (3d ed. rev. 1963).

⁵⁹ Mass. Gen. Laws Ann. ch. 269, § 8 (1959).

⁶⁰ E. McQuillin, *supra* note 58.

⁶¹ Conn. Gen. Stat. Ann. § 7-108 (1960); Ky. Rev. Stat. Ann. § 411.100 (1963); Md. Ann. Code art. 82, §§ 1-3 (1965).

⁶² See *Raven v. Coates*, 125 So. 2d 770 (Fla. App. 1961); *Fette v. City of St. Louis*, 366 S.W.2d 446 (1963).

⁶³ E.g., Conn. Gen. Stat. Ann. § 7-108 (1966) (notice of the damage to the property must be filed within 30 days after the occurrence of the riot).

⁶⁴ E.g. N.J. Stat. Ann. § 2A:48-2 (1952) (3-month statute of limitations).

⁶⁵ E.g. Me. Rev. Stat. Ann. tit. 17, § 3355 (1965). Also, see notes 48, 49 & 50 *supra*.

⁶⁶ E.g., *City of Madisonville v. Bishop*, 113 Ky. 106, 67 S.W. 269 (1902).

⁶⁷ California, Illinois and Louisiana have repealed their municipal liability statutes. Cal. Laws ch. 81, § 1 [1949] Cal. Stat. 259-60 (repealed 1963); Law of July 28, 1961, § 25-3 [1961] Ill. Laws 1983 (repealed 1967); La. Acts, No. 51 [1855] La. Acts. 346 (repealed 1966).

financial integrity of a city treasury.⁶⁸ In order to satisfy municipal liability judgments, cities would have to raise property taxes or local income taxes each time they were faced with substantial claims.⁶⁹ These surcharges would be imposed on property owners within the urban core area, as well as without, and might seriously affect the already tenuous position of property owners within the core area.

Another problem with municipal liability statutes is that they fail to provide the spreading of the risk which is essential to an effective insurance system. The losses are paid primarily from tax revenues so that the financial burden extends only as far as the city limits. Also, these statutes do not offer the urban core property owner any incentive to improve his property, for it is irrelevant to a claimant's right to recovery that his property was in substandard condition prior to the loss.

The major asset of municipal liability lies in its potential deterrent effect upon future disorders. Since local government has the primary responsibility to maintain law and order, it is best situated to control the outbreak of disorder and to alleviate the underlying conditions fostering unrest within the urban core. The citizens of a city faced with the impending cost of municipal liability claims will hopefully be more vigilant in demanding the scrupulous enforcement of laws. However, this deterrent effect is mitigated because municipal fiscal problems often require cities to resort to state subsidization in order to pay outstanding claims. The state taxpayers who are paying for the subsidies through the imposition of higher state taxes are often the people who can do very little to rectify the situation. Most of these taxpayers live outside the municipality where the disorder has occurred so that they wield little political power in the determination of municipal policies.

A fourth solution is to retain the present system of private insurance underwriting as it exists in other areas. As indicated previously, this system has proven inadequate to meet the special problems of insuring urban core property.⁷⁰ Property owners have had great difficulty in obtaining necessary coverage and those who have been successful have paid exorbitant premiums.⁷¹ Under this system, the incentive to improve property is lacking because of the insurance industry's notorious practice of refusing insurance on the basis of the location of the property, and not on the particular characteristics of the risk.⁷² The spreading of the risk is minimal because insurance companies tend to shy away from urban core areas and because reinsurance is unavailable.

As a result of the ineffectiveness of the normal insurance market, many cities and states have developed yet another solution, "Urban Area Plans."⁷³

⁶⁸ See Note, *Riot Insurance*, 77 Yale L.J. 541, 554 (1968); note 33 *supra*.

The precarious financial position of municipal treasuries is dramatically demonstrated by the fact that one of the major cities of the United States, Philadelphia, is near bankruptcy. *The Boston Globe*, Feb. 17, 1969, at 4, col. 1.

⁶⁹ It is also possible for cities to float bond issues in order to pay for its losses, but many cities are legally forbidden to issue bonds without the consent of the electorate. Voters usually reject such referenda.

⁷⁰ Advisory Panel at 1.

⁷¹ *Id.* at 2.

⁷² H.R. Rep. No. 1585, 90th Cong., 2d Sess. (1968), U.S. Code Cong. & Ad. News 3137-38.

⁷³ According to the Advisory Panel, "Urban Area Plans" were in effect in thirteen

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The earliest plan was developed in Boston in 1960,⁷⁴ and has served as the prototype for plans implemented in other states. Under the Boston plan, an applicant unable to secure insurance coverage at normal rates applies to the New England Insurance Rating Association and requests an inspection of his property. Within two to five days after the request, the inspector, in the presence of the property owner or his representative,⁷⁵ conducts a thorough inspection of the premises. The inspector then informs the property owner of what repairs, if any, must be done prior to successful placement with an insurance company. After the owner has completed the recommended repairs, he notifies the Rating Association, whereupon a reinspection of the property is made. If the property is acceptable after the initial inspection or reinspection, the Rating Association submits a report to the insurance company selected by the applicant. The insurance company has three available options. It may underwrite the risk, decline the risk, or underwrite the risk upon the fulfillment of certain conditions.⁷⁶ The insurance company is then obligated to inform the Rating Association of its decision. Each month, the Rating Association files a report with the Massachusetts Insurance Department stating the responses of each insurance company to the requests for property insurance. The Boston plan has had mild success in obtaining insurance for property owners in the urban core area.⁷⁷

The major attribute of Urban Area Plans is the requirement of an inspection of the property prior to a declination of the risk. Through the strict supervision and moral suasion of an insurance commissioner, a company, although not legally obligated to accept a risk even if it meets the current standards of insurability, will be somewhat reluctant to reject a risk solely on the basis of its location.⁷⁸ Another asset of these plans is their provision for conditional acceptance of a risk. This feature offers a property owner an incentive to improve his property.

The major drawback in these plans is their voluntary nature. As the risk of loss in urban core areas increases because of rioting, it is natural that companies will be less willing to participate in the plan. As companies withdraw their coverage, fewer companies remain to absorb potential losses and consequently there will not be sufficient dispersion of the risk. A second problem with these plans is that they offer very little deterrence to the outbreak

states as of Dec. 1, 1967: California, Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania and Wisconsin. Advisory Panel at 56.

⁷⁴ *Id.*

⁷⁵ The presence of the property owner or his representative was considered essential to insure that the inspector had the owner's "unqualified consent" to be on the property (thus foreclosing any possible trespass action) and that the owner had notice of improvements needed to remove fire hazards. Advisory Panel at 58.

⁷⁶ The conditions usually take the form of the reparation of fire hazards or security deficiencies or the installation of preventive devices such as sprinkler systems or burglar alarms.

⁷⁷ Advisory Panel at 59-61.

⁷⁸ Because there is no statutory obligation to join the Urban Area Plans, the insurance companies are legally free to decline participation in the plans. However, as a practical matter, companies are loath to incur the wrath of the state insurance commissioner.

of future violence. The losses incurred by the insurance companies will ultimately fall upon the policyholders and stockholders, who are seldom the instigators of the violence or those best situated to prevent future disorders.

VI. FEDERAL REINSURANCE PROGRAM

Although the Urban Area Plans have deficiencies, they have provided the impetus for the enactment of federal and state statutory solutions.⁷⁹ The Housing and Urban Development Act of 1968⁸⁰ provides for a federal reinsurance program in riot-affected areas, the Urban Property Protection and Reinsurance Act of 1968.⁸¹ This program, recommended by the President's National Advisory Panel on Insurance in Riot-Affected Areas,⁸² provides the groundwork for rebuilding in riot-stricken cities. One purpose of the Act is to encourage and to assist state insurance departments and property insurance companies in the formulation and implementation of statewide programs capable of providing reasonable property insurance for all insurable risks.⁸³ A second purpose is to provide federal reinsurance against extraordinary losses resulting from riots and to place an appropriate share of the financial losses upon the states.⁸⁴ The offering of federal reinsurance is contingent upon the participation of an insurance company in a state program designed to make property insurance more readily available in urban core areas.⁸⁵

The federal statute requires a state to form and organize an "all-industry placement facility."⁸⁶ The function of this facility is to place insurable risks with property insurers within the state and to obtain from them insurance up to the insurable value of the risks.⁸⁷ The statute does not indicate whether a pool of all property insurance companies within the state is necessary. It appears that states have an option between a pooling arrangement or a joint association. The distinction between these two possible approaches is more one of form than one of substance. A pooling arrangement consists of a combination of insurers, a pool, who share profits and losses in an amount equal to the relative amount of property insurance business transacted within the state.⁸⁸ The pool is an entity separate from its members which underwrites the risks itself. On the other hand, a joint association does not underwrite the risks; it merely acts as a conduit between the property owner and its member insurance companies. It places the insurance with the member insurers according to an equitable formula, and the companies themselves underwrite the risks.

⁷⁹ Statutes cited notes 3 & 4 *supra*.

⁸⁰ Pub. L. No. 90-448 (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2793.

⁸¹ This is the name of the specific titles applicable to insurance in the urban core areas. Pub. L. No. 90-448, tit. XI and XII (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2894.

⁸² H.R. Rep. No. 1585, *supra* note 72, at 3137.

⁸³ Pub. L. No. 90-448, § 1102(b)(1) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2894.

⁸⁴ Id. § 1102(b)(2), U.S. Code Cong. & Ad. News 2894.

⁸⁵ Id. § 1211(a), U.S. Code Cong. & Ad. News 2894.

⁸⁶ Id. § 1212, U.S. Code Cong. & Ad. News 2899.

⁸⁷ Id. § 1212(2), U.S. Code Cong. & Ad. News 2899.

⁸⁸ For an exposition of the organization and operation of pooling arrangements see Haugh, Insurance Pools, in *Property and Liability Insurance Handbook* 969 (Lang & Gregg ed. 1965).

The federal statute does not dictate what the exact wording of state programs and statutes should be, but it lists several mandatory provisions which must be included in the state plan if its participating insurers are to qualify for federal reinsurance.⁸⁹ Risks cannot be declined or written at surcharged rates unless an inspection of the property is made and the company determines on the basis of the inspection that the risk does not meet reasonable underwriting standards at the applicable premium rate.⁹⁰ Requests for inspections can be made by the insurer, agent, broker or property owner, and can be made orally.⁹¹ An inspection of a tenant's personal property and of the building in which it is located can be conducted without the presence of the building owner.⁹² A copy of the inspection report should be sent by the inspection facility to the insurer or to an "all-industry placement facility" as may be chosen by the property owner.⁹³ After determining whether the risk is insurable, the insurer must promptly forward to the inspection facility an action report, indicating acceptance, conditional acceptance or rejection of the risk.⁹⁴ If the insurer declines the risk or accepts it conditionally, it must send a copy of the inspection and action reports to the property owner and to the state insurance department.⁹⁵ It must also inform the owner of his right to appeal the insurer's decision to the insurance commissioner.⁹⁶

If accepted, the policy must be written promptly after inspection and it must be coded so that records can be kept of the operation of the state plan.⁹⁷ The inspection facility must file periodic reports with the state insurance department and the Secretary of Housing and Urban Development (HUD) stating the number of risks inspected, accepted, accepted conditionally and declined by each insurance company.⁹⁸ Notice must be given to a policyholder a reasonable time prior to the cancellation or nonrenewal of insurance on any risk eligible under the state plan to allow sufficient time for the owner's application to be processed for coverage under the plan.⁹⁹ The insurers, agents and brokers are required to undertake a continuous education program to

⁸⁹ Pub. L. No. 90-448, § 1211(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2898-99.

⁹⁰ Id. § 1211(b) (1), U.S. Code Cong. & Ad. News 2898.

⁹¹ Id. § 1211(b) (2), U.S. Code Cong. & Ad. News 2898.

⁹² Id. § 1211(b) (3), U.S. Code Cong. & Ad. News 2898. This provision is to be contrasted with the Boston Urban Area Plan, see p. 661 & note 75 *supra*.

⁹³ Id. § 1211(b) (4), U.S. Code Cong. & Ad. News 2898.

⁹⁴ Id. § 1211(b) (5), U.S. Code Cong. & Ad. News 2898. The report must indicate the amount of coverage that the company will write. If the company requires a surcharge, it must specify what improvements must be made by the owner before the surcharge will be removed. If the company accepts the risk conditionally, the improvements necessary must be clearly specified. If the company declines the risk unconditionally, the reasons must be given in the report. Id.

⁹⁵ Id. § 1211(b) (6), U.S. Code Cong. & Ad. News 2899.

⁹⁶ Id.

⁹⁷ Id. § 1211(b) (7), U.S. Code Cong. & Ad. News 2899.

⁹⁸ Id. § 1211(b) (8), U.S. Code Cong. & Ad. News 2899.

⁹⁹ Id. § 1211(b) (9), U.S. Code Cong. & Ad. News 2899. The company must also inform the insured of the procedure to be followed in order to obtain an inspection under the state plan. Id.

assure that property owners are fully cognizant of their rights under the plan.¹⁰⁰

The federal statute also solicits industry cooperation by requiring each insurer desiring federal reinsurance to file a pledge of full participation in the state plan.¹⁰¹ Any insurer participating in the reinsurance coverage must not prohibit any agent or broker from soliciting business through the state plan.¹⁰²

Once a state complies with the above rules, the property insurers participating in the state program can then seek federal reinsurance against property losses from civil disorders.¹⁰³ The insurer must contract for reinsurance with the Secretary of HUD.¹⁰⁴ The details of the reinsurance plan are that a participating insurer must pay HUD $1\frac{1}{4}$ percent of the premiums collected in each state on basic property insurance.¹⁰⁵ If riot claims occur, a company must pay toward the claims up to 2 percent of all the property insurance premiums derived from the state, with HUD paying the remainder from its pool of premiums collected from other participating companies.¹⁰⁶ If these funds fail to cover the loss, other property insurance companies within the state must contribute up to their 2 percent limit.¹⁰⁷ If this amount is still insufficient to pay outstanding claims, the state where the riot occurred would have to contribute up to 5 percent of the total premiums collected by all the property insurers within the state.¹⁰⁸ Any losses in excess of this amount would be financed by funds borrowed by HUD from the United States Treasury.¹⁰⁹ These loans would be repaid by HUD from future reinsurance premiums.¹¹⁰

¹⁰⁰ Id. § 1211(b) (10), U.S. Code Cong. & Ad. News 2899.

¹⁰¹ Id. § 1213(a), U.S. Code Cong. & Ad. News 2900.

¹⁰² Id. § 1213(b), U.S. Code Cong. & Ad. News 2900.

¹⁰³ Id. § 1221(a) (1), U.S. Code Cong. & Ad. News 2900. The Secretary of HUD, upon petition from the state insurance department, has discretionary power to waive compliance with any of the provisions. Id. § 1214(b), U.S. Code Cong. & Ad. News 2900.

¹⁰⁴ Id. § 1222(a), U.S. Code Cong. & Ad. News 2901.

¹⁰⁵ Writing Insurance for Ghetto Property, *Business Week*, Oct. 26, 1968, at 68.

¹⁰⁶ Id.

¹⁰⁷ Id. at 70.

¹⁰⁸ Id.

¹⁰⁹ Id. This example will illustrate the mechanics of the reinsurance scheme. Assume only states A and B have qualified for participation in the federal reinsurance plan. State A has 3 participating insurance companies: X, Y, and Z. Companies X, Y, and Z collect 100 million, 50 million and 20 million dollars respectively in premiums from insurance applicants in State A. State B has 3 participating companies: Q, R and S. Companies Q, R and S collect 40 million, 10 million and 10 million dollars respectively from insurance applicants in State B. Reinsurance premiums from companies within State A would total \$2,125,000 ($1\frac{1}{4}\% \times (\$100 \text{ million} + \$50 \text{ million} + \$20 \text{ million})$). Reinsurance premiums from companies within State B would total \$750,000 ($1\frac{1}{4}\% \times (\$40 \text{ million} + \$10 \text{ million} + \$10 \text{ million})$). Total premiums in the reinsurance pool held by HUD would total \$2,875,000 ($\$2,125,000 + \$750,000$). If Company X in State A has riot claims of 15 million dollars, Company X would itself pay \$2,000,000 ($2\% \times \100 million). HUD would pay \$2,875,000 from its pool. Company Y in State A would pay \$1,000,000 ($2\% \times \50 million) and Company Z in State A would pay \$400,000 ($2\% \times \20 million). State A would contribute \$3,500,000 ($5\% \times (\$100 \text{ million} + \$50 \text{ million} + \$20 \text{ million})$). HUD would be required to borrow \$225,000 from the United States Treasury to make up the deficit.

¹¹⁰ H.R. Rep. No. 1585, *supra* note 72, at 3148.

To the extent that the federal statute induces states to enact urban core property insurance legislation and provides the necessary reinsurance for riot losses, it should have a curative influence on the lack of insurance in urban core areas. However, the insurance industry is not completely satisfied with the statute,¹¹¹ and their dissatisfaction might manifest itself in powerful lobbying efforts to prevent the adoption of state plans. The companies complain that the payment ceiling of 2 percent limits losses only within a particular state. If a company has losses in many states, it may still have to absorb entire losses without reaching the 2 percent limit in any one state.¹¹² Accordingly, the companies suggest that it would be wiser if the program had a limit on the losses which a company would be required to absorb nationwide.¹¹³ As currently formulated, the statute favors companies which market insurance in a few states. In general, companies feel that there is not enough revenue from the urban core insurance business to pay for the 2 percent retention.¹¹⁴

One of the major weaknesses of the federal statute is its failure to provide for municipal participation in the absorption of losses. The plan might destroy incentives among city officials and residents in riot-affected areas to limit the destruction caused by riots. Historically, the duty of maintaining civil peace has rested on the cities. It can be argued that the cities should have an obligation to pay riot losses commensurate with their responsibility of law enforcement. An amendment to the federal statute was introduced and rejected which would have provided for municipal participation in the distribution of losses under the insurance plan.¹¹⁵ The disadvantage in the requirement that the municipality pay part of the losses is its imposition of an additional monetary strain on city budgets.¹¹⁶ Nevertheless, where a city lies within a state not having a municipal liability statute, this amendment would have provided the necessary deterrence.

If a city is within a state having a municipal liability statute, the need for "built-in" city participation in the federal plan is nonexistent. In fact, municipal liability, because of its local administration, should have a greater impact for the deterrence of future riots. Also, it is probably wiser to allow the state and municipalities within the state to decide upon the specific allocation of riot losses.¹¹⁷ This course will provide the local flexibility necessary to meet the demands of a rapidly changing local situation.

Another weakness of the statute is its applicability only to losses occa-

¹¹¹ *Writing Insurance for Ghetto Property*, *supra* note 105, at 70. At the outset the payment ceiling was only 1%; it was subsequently raised to 2%. *Id.*

¹¹² *Id.* at 70.

¹¹³ See *Id.*

¹¹⁴ *Id.*

¹¹⁵ 114 Cong. Rec. 6460 (daily ed. May 27, 1968). The amendment was introduced by Senator Richard Russell of Georgia and was defeated 35 to 25 with 40 not voting. In brief, the amendment provided for the cities to contribute up to 5% of the premiums earned on property insurance as a backup to the state contribution of 5%.

¹¹⁶ See p. 655 & note 38 *supra*.

¹¹⁷ The federal statute does not explicitly demand that the states apportion their 5% participation limit among the municipalities within its jurisdiction. However, it was felt during the congressional debates that the states would voluntarily distribute any losses among its constituent municipalities. 114 Cong. Rec., *supra* note 115, at 6462 (remarks of Senator Sparkman).

sioned by riots. This restriction is replete with problems. Once again, the problem of defining "riots" and "civil disorders" emerges.¹¹⁸ Also, the problem of procuring adequate reinsurance existed prior to the widespread civil violence¹¹⁹ and will undoubtedly endure after the threat of rioting diminishes. A better system would reinsure all property within urban core areas, regardless of the cause of the loss.

Finally, the expense of maintaining the federal program might be very high in relation to the amount of activity in which the program engages. Since the amount of riot losses in any year can never be accurately estimated and since the impact of any particular loss is potentially large, it will be necessary to retain this federal reinsurance program until conditions have drastically changed within urban core areas. And the conditions will probably not change for many years. Eventually, this costly program could be phased out as private insurance companies indicate a willingness to absorb more of the risk.

Aside from these weaknesses, the federal statute has several positive attributes. The dispersion of risks provided in the statute by its reinsurance plan should mitigate the effect of any extraordinary losses from riots or civil commotion. Since the federal statute is not limited to urban core areas, it will allow a company to reinsure against riot risks which may be located outside the urban core area.¹²⁰ The statute also creates a central locus where insurance information and statistics from all states can be accumulated and compared. This pool of data will lead to the formulation and implementation of new actuarial devices and loss prevention techniques.

The most attractive feature of the federal statute is its prescription of the procedures which must be incorporated within a state plan prior to its qualification for federal reinsurance. These procedural safeguards will provide a strong foundation for construction of a fair and equitable state insurance scheme. In addition to the procedures outlined in the federal statute, the states should provide for the establishment of an inspection bureau independent of its "all-industry placement facility." It is critical to an effective insurance scheme that an objective and thorough inspection of the property be conducted, prior to the acceptance or rejection of any particular risk. Since the facility, by its very nature, will want to minimize its losses, it might refuse to insure property on the basis of factors extrinsic to the definition of insurability. An independent inspection bureau will eliminate this possible abuse. Also, it will adhere more closely to the underwriting standards and inspection guidelines and will obviate the necessity of appealing unfavorable decisions to the state insurance commissioner.

The state statutes should also provide for a mandatory inspection of the property upon the applicant's proof that he has been denied coverage in the normal insurance market by two or three companies. The objective of this procedure is twofold. First, it will prevent a property owner from obtaining an inspection until he has made a serious attempt to use the normal market. This effort in turn will lower the total costs of inspections. Second, the procedure apprises the property owner of exactly what steps must be taken in

¹¹⁸ See pp. 657-58 & notes 48-50 *supra*.

¹¹⁹ See p. 654 *supra*.

¹²⁰ Pub. L. 90-448, § 1211(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2898.

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order to qualify for coverage under the state plan. Many of the state statutes already enacted indicate that an applicant must make a "diligent effort" to obtain insurance in the normal market.¹²¹ It is submitted that the proposed procedure will prevent the abuse which might result from such an undefined standard.

VII. STATE STATUTORY PLANS

The federal statute has offered states an incentive to formulate remedial legislation. Thus many state insurance statutes have recently been enacted. In this section, eight of these statutes¹²² will be examined with attention to their similarities and differences, attributes and weaknesses.

All these statutes establish means through which property owners in urban core areas should have access to property insurance without payment of exorbitant rates. Aside from the many procedural distinctions, basic differences of approach are taken to accomplish this objective. Some of these statutes require the establishment of a pooling arrangement;¹²³ others require the formation of a joint association with the function of aiding property owners and tenants to acquire property insurance.¹²⁴ The latter usually provide for the concomitant organization of a joint reinsurance association whose function is to reinsure risks meeting certain prescribed standards.¹²⁵ All the

¹²¹ Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10093, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1205(a)(3)(B) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2911 (reasonable effort); Urban Property Insurance, Act 1840, § 524(1), 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, § 2(3), 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)) (reasonable effort); P.A. 262, § 24.12925(2)(b), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 501 (1968)); Ch. 129, § 8(b)(1), 1968 N.J. Laws (N.J. Leg. Serv. 436, 439 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 653(1)(a), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 192 (McKinney 1968)).

¹²² Statutes cited note 4 *supra*. Some states have obtained the benefits of the federal statute by Fair Plans, mandatory on all insurers, which were promulgated by the insurance commissioner (e.g., Oregon), or by voluntary Fair Plans established by the insurance companies (e.g., Ohio).

¹²³ P.A. 262, § 24.12920, 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 499-500 (1968)); Ch. 129, §§ 3-4, 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 652, 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)).

The Michigan statute has a unique provision which stays the implementation of the pooling arrangement if an acceptable voluntary plan of operation has been filed with the Michigan Insurance Commissioner. If the Commissioner is dissatisfied with the proposal, he is authorized to implement the pooling arrangement. P.A. 262, § 24.12950(1), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 506-07 (1968)).

¹²⁴ Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10094, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1204 (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910; Urban Property Insurance, Act 1840, § 525, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, § 2, 1968 Mass. Laws (Mass. Leg. Serv. 588 (1968)); Pennsylvania Fair Plan Act, Act 233, § 201, 1968 Pa. Laws (Pa. Leg. Serv. 592, 594 (1968)).

¹²⁵ Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10095, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1028 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1206 (Aug. 1, 1968), U.S. Code Cong. & Ad. News

statutes, however, require property insurers within the state to participate in the program as a condition of doing property insurance business within the state.¹²⁶

A. Constitutionality

The mandatory nature of these statutes gives rise to the possibility that an insurer might challenge the statute as violative of the due process clause of the fourteenth amendment of the United States Constitution. The leading case in this area is *California Auto Ass'n Inter-Ins. Bureau v. Maloney*.¹²⁷ The Insurance Association was an incorporated association authorized to write automobile insurance for selected risks. The Association refused to comply with a California statute¹²⁸ establishing an assigned risk plan for drivers unable to obtain insurance through ordinary methods.¹²⁹ The insurance commissioner subsequently suspended the Insurance Association's license, whereupon the Association sought a writ of mandate annulling the suspension.¹³⁰ The Association challenged the suspension on the ground that the statute, by forcing insurers to enter into high risk contracts and to incur liabilities against its will, was taking the Association's property without due process of law.¹³¹ Specifically, it argued that the statute required it to change its type of business from a cooperative company with a select membership to a company insuring the general public.¹³²

2909, 2911-13; Urban Property Insurance, Act 1840, § 526, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, § 4, 1968 Mass. Laws (Mass. Leg. Serv. 588, 589-90 (1968)); Pennsylvania Fair Plan Act, Act 233, § 203, 1968 Pa. Laws (Pa. Leg. Serv. 592, 597 (1968)). In Pennsylvania, the joint association or placement facility also offers reinsurance.

¹²⁶ Basic Property Insurance Inspection and Placement Plan, ch. 574, §§ 10094, 10095, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027-28 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, §§ 1204(c), 1206(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910, 2912. (The District of Columbia statute allows the insurance commissioner to fine the insurance company up to \$200 for failure to comply with the mandate of the program in lieu of revoking the company's authority to transact business if the commissioner deems it in the public interest); Pub. L. No. 90-488, § 1204(c) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910; Urban Property Insurance, Act 1840 §§ 525, 526(1), 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, §§ 2(1), 4, 1968 Mass. Laws (Mass. Leg. Serv. 588, 588-90 (1968)); P.A. 262 § 24.12920(1), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 499 (1968)); Ch. 129, § 3, 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 652(1), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)); Pennsylvania Fair Plan Act, Act 233, § 201(2), 1968 Pa. Laws (Pa. Leg. Serv. 592, 594 (1968)).

¹²⁷ 341 U.S. 105 (1951).

¹²⁸ Cal. Stats., ch. 39, at 525, as amended, Cal. Ins. Code § 11620 (West Pocket Part 1968). The statute required the insurance commissioner to establish an assigned risk plan and his plan included certain exclusions. For example, the insurers were not required to insure persons convicted for driving under the influence of alcohol more than once during the three-year period prior to the application for insurance. 341 U.S. at 107 n.1.

¹²⁹ 341 U.S. at 108.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

The Supreme Court gave short shrift¹³³ to this argument and stated that "the power of the state is broad enough to take over the whole business [of insurance] leaving no part for private enterprise."¹³⁴ The Court upheld the constitutionality of the statute on the ground that the state has the power in the public interest to require an insurance company to assume a proportionate share of the burden of insuring these higher risks¹³⁵ and that the diminution in value of the company's business as a result of participation in the plan did not amount to a "taking in the constitutional sense."¹³⁶ Because a state can adopt whatever economic restrictions or regulations are reasonably necessary to promote public welfare, a statute is constitutional if it has a reasonable relation to a proper legislative purpose and is neither arbitrary nor discriminatory.¹³⁷

Since 1940, the regulation of insurance companies has been considered within the public interest and thus subject to state regulation.¹³⁸ The existence in *Maloney* of a proper legislative purpose was evidenced by the problem which the statute was designed to alleviate. The California legislature had determined that certain drivers of motor vehicles had to insure themselves or show financial responsibility prior to registering their vehicles lest they be judgment proof in possible tort actions.¹³⁹ Many people were unable to obtain insurance or to show the requisite financial responsibility to register their vehicles. Since the livelihood of many of these people depended upon their ability to use the highways, the legislature enacted the statute in question, which enabled this class to obtain insurance through the assigned risk pool.¹⁴⁰

In demonstrating that the California statute was not arbitrary or discriminatory, the Court emphasized that there were several limitations on the obligations of an insurer under the plan. The premiums charged by the companies could be commensurate with the greater risk of the business.¹⁴¹ The risks under the plan had to be apportioned equitably among all automobile

¹³³ Justice Black wished to dismiss the appeal on the ground that the constitutional issue was frivolous. *Id.* at 111.

¹³⁴ *Id.* at 110.

¹³⁵ *Id.* at 109.

¹³⁶ *Id.* at 111.

¹³⁷ *Nebbia v. New York*, 291 U.S. 502, 537 (1934).

¹³⁸ See *Osborn v. Ozlin*, 310 U.S. 53 (1940). See also *Caminetti v. State Mut. Life Ins. Co.*, 52 Cal. App. 2d 321, 126 P.2d 165 (1942).

Since the passage of the McCarran-Ferguson Act, 59 Stat. 33 (1945), 15 U.S.C. § 1011-15 (1964), in the absence of congressional legislation specifically concerning insurance, the states may enact legislation regulating insurance.

¹³⁹ 341 U.S. at 106. In general, the California law at the time of *Maloney* and at present requires that a person who fails to pay a judgment of \$100 or more, arising out of an automobile accident, within 30 days after the judgment is rendered against him is to have his license suspended until the judgment is satisfied and until the judgment debtor can establish proof of his ability to pay claims arising from future accidents. See Cal. Vehicle Code §§ 16250-372 (West 1960).

¹⁴⁰ For a history of the events preceding enactment of the California assigned risk statute, see *California Auto Ass'n Inter-Ins. Bureau v. Downey*, 96 Cal. App. 2d 876, 216 P.2d 882 (1950), *aff'd sub nom. California Auto Ass'n Inter-Ins. Bureau v. Maloney*, 341 U.S. 105 (1951).

¹⁴¹ 341 U.S. at 108.

insurers in California.¹⁴² Uninsurable risks were eliminated;¹⁴³ policies issued could have 5000 to 10,000 dollar ceilings.¹⁴⁴

The rationale of the *Maloney* case can be extended to mandatory assigned risk property insurance plans established by the eight statutes in question. Since these statutes purport only to regulate the insurance industry and do not allow the states to take over the industry, they are subject to the requirement that they be reasonably related to a proper legislative purpose. The statutes are also subject to the due process requirement that they not be arbitrary or discriminatory.

The Advisory Panel has provided extended documentation of the serious lack of fire and extended coverage insurance in urban core areas which existed prior to the enactment of these statutes.¹⁴⁵ An adequate market for property insurance is necessary to attract private capital to the urban core area. Orderly community development depends upon the accessibility of property insurance at reasonable rates so that owners will be able to finance capital expenditures. Voluntary efforts to solve the problem have been helpful, but have not been sufficient to meet the needs of the situation. Thus, it is in the public interest for states to require insurance companies to underwrite the risks located in urban core areas.

With respect to the due process requirements, these statutes must be closely examined in light of the *Maloney* limitations necessary to avoid characterization as unconstitutionally confiscatory, arbitrary or discriminatory. All the statutes provide for an equitable apportionment of the risks among all property insurers within the state.¹⁴⁶ All of the statutes provide a formula for calculation of the extent of each company's required participation in the pool or placement facility.¹⁴⁷ New Jersey, for example, requires members of

¹⁴² Id. at 108-09.

¹⁴³ Id. at 109.

¹⁴⁴ Id.

¹⁴⁵ Advisory Panel, apps. A & B.

¹⁴⁶ Basic Property Insurance Inspection and Placement Plan, ch. 574, §§ 10090(d), 10094, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, §§ 1202(4), 1204 (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910; Urban Property Insurance, Act 1840, §§ 522, 523(3), 525, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, § 2(2), 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)); P.A. 262, § 24.12920(2), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 499 (1968)); Ch. 129, § 6, 1968 N.J. Laws (N.J. Leg. Serv. 436, 438 (1968)) (does not explicitly use the words "equitable apportionment," but states a participation formula which is in fact equitable); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 654, 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 192-3 (McKinney 1968)) (does not explicitly use the words "equitable apportionment," but states an equitable participation formula); Pennsylvania Fair Plan Act, Act 233, §§ 102(6), 201(b)(2), 1968 Pa. Laws (Pa. Leg. Serv. 592, 593, 594 (1968)).

¹⁴⁷ Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10095(c), 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1028 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1206(d) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2912; Urban Property Insurance, Act 1840, § 526(3), 1968 Ill. Acts (Ill. Leg. Serv. 13, 14-15 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, § 4, 1968 Mass. Laws (Mass. Leg. Serv. 588, 589-90 (1968)); P.A. 262, §§ 24.12926, 24.12927, 24.12928, 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 502-03 (1968)); Ch. 129, § 6, 1968 N.J. Laws (N.J. Leg. Serv. 436, 438

the pool to participate in the profits and losses in the proportion that the net direct premiums of the insurer written in the state during the preceding calendar year bear to the aggregate net direct premiums written by all members of the pool.¹⁴⁸ Since all the statutes attempt to distribute the risks in a fair and equitable manner, it cannot be argued that a statute discriminates against particular companies.

A further constitutional safeguard is provided by the requirement that the property meet certain reasonable underwriting standards;¹⁴⁹ however, the standards for determining insurability are not enumerated in most of the statutes.¹⁵⁰ They are usually left to the directors of the pool or placement facility who are expected to include them within their plan of operation.¹⁵¹ The insurance commissioner in each state is given broad power to review the standards set by the directors and can effectually dictate the underwriting standards to be utilized within the state.¹⁵² Thus, a question does arise whether these stat-

(1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 654(1), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 192-93 (McKinney 1968)); Pennsylvania Fair Plan Act, Act 233, § 201(f), 1968 Pa. Laws (Pa. Leg. Serv. 592, 595 (1968)).

¹⁴⁸ Ch. 129, § 6, 1968 N.J. Laws (N.J. Leg. Serv. 436, 438 (1968)).

¹⁴⁹ Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10094, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027-28 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, §§ 1204(a), 1206(c)(1)(F) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910, 2912; Urban Property Insurance, Act 1840, § 525, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, § 4, 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)); P.A. 262, § 24.12924(2), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 501 (1968)) (suitable standards); Ch. 129, §§ 2(e), 7(a), 1968 N.J. Laws (N.J. Leg. Serv. 436, 437, 438 (1968)) (insurable condition); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 652(3)(a), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)); Pennsylvania Fair Plan Act, Act 233, § 201(c), 1968 Pa. Laws (Pa. Leg. Serv. 592, 594 (1968)).

¹⁵⁰ The Michigan statute does not list all the standards, but does list more standards than any of the other statutes under examination. P.A. 262, § 24.12901(c), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 497-98 (1968)).

¹⁵¹ Basic Property Insurance Inspection and Placement Plan, ch. 574, §§ 10094, 10095(a), 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027-28 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, §§ 1205(a), 1206(c)(1) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2911, 2912; Urban Property Insurance, Act 1840, §§ 525, 526, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14-15 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, §§ 2(3), 4, 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)); P.A. 262, § 24.12924, 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 501 (1968)); Ch. 129, § 7(a), 1968 N.J. Laws (N.J. Leg. Serv. 436, 438 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 652(3)(a), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)); Pennsylvania Fair Plan Act, Act 233, § 201(c), 1968 Pa. Laws (Pa. Leg. Serv. 592, 594 (1968)).

¹⁵² Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10095(e), 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1028 (West 1968)); District of Columbia Insurance Placement Act, Pub. L. No. 90-448, §§ 1205(b), 1206(c)(2), (3) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910, 2912; Urban Property Insurance Act, Act 1840, §§ 525, 530, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14, 15 (Smith-Hurd 1968)); Urban Area Insurance Placement Facility, ch. 731, §§ 4, 5, 1968 Mass. Laws (Mass. Leg. Serv. 588, 589-90 (1968)); P.A. 262, §§ 24.12920(2), (4), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 499-500 (1968)); Ch. 129, §§ 7(b), (c), (d), 1968 N.J. Laws (N.J. Leg. Serv. 436, 438-39 (1968)); New York Fire and Extended Coverage Insur-

utes contain the necessary restrictions, for an insurance commissioner could, acting within the scope of the statute's mandate, set whatever standards he deemed feasible. It can be argued, however, that the insurance commissioner must adhere to reasonable standards of insurability. If the insurance commissioner's plan of operation appeared arbitrary, capricious or discriminatory, an affected insurer would then acquire a sound constitutional basis for challenging the statute.

Although all the statutes include provisions for equitable distribution of risks and for the adoption of reasonable underwriting standards, some are even more specific in their exclusion of particular risks. Michigan, for example, disqualifies property which fails to comply with state and local building codes to the extent that conditions on the property are reasonably related to the perils insured against.¹⁵³ California specifically excludes commercial risks from the scope of its insurance plan.¹⁵⁴ The District of Columbia statute allows insurers to employ deductibles, percentage participation clauses and other underwriting devices to meet special problems of insurability.¹⁵⁵ Pennsylvania allows insurers to assess surcharges for hazardous conditions existing on the property.¹⁵⁶ It would appear that the foregoing limitations, although not essential to assure the constitutionality of these statutes, provide strong rebuttal to an argument that these statutes arbitrarily force insurers to insure all risks regardless of the condition of the property. In sum, all the statutes would be constitutionally valid under the rule in the *Maloney* case. As an added precaution, a state contemplating the enactment of an assigned risk property insurance plan should consider the integration into its plan of some of the specific limitations mentioned above.

B. *Effectiveness of State Plans*

Aside from possible constitutional defects, each of these statutes must be examined for its effectiveness in (1) spreading the risk of loss, (2) deterring future civil disturbances, (3) offering incentives to improve property and (4) inducing companies to make capital investments within the urban core area.¹⁵⁷ Each of the statutes will also be evaluated in terms of some of the essential procedural safeguards outlined in the federal statute.¹⁵⁸

ance Joint Underwriting Association, ch. 131, §§ 652(3)(b), (c), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191-92 (McKinney 1968)); Pennsylvania Fair Plan Act, Act 233, §§ 201(c), (d), 1968 Pa. Laws (Pa. Leg. Serv. 592, 594-95 (1968)).

¹⁵³ P.A. 262, § 24.12901(c)(ii), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 498 (1968)).

¹⁵⁴ Basic Property Insurance Inspection and Placement Plan, ch. 574, § 10091(c), 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027 (West 1968)). Although this exclusion would seem to help the constitutionality of the legislation, it is submitted that commercial risks should be included with the scope of the statute for other important reasons. See pp. 678-79 *infra*.

¹⁵⁵ District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1204(a) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910.

¹⁵⁶ Pennsylvania Fair Plan Act, Act 233, § 202(4), 1968 Pa. Laws (Pa. Leg. Serv. 592, 596 (1968)). For an extensive listing of the property upon which a surcharge may be assessed, see The Sunday Bulletin, Philadelphia, Oct. 27, 1968, Fire Insurance Extended in Ghetto Areas, at 1, col. 3.

¹⁵⁷ See pp. 654-56 *supra*, for the necessary ingredients of a property insurance plan.

¹⁵⁸ See pp. 663-64 *supra*.

Although all the statutes have essentially the same purpose, they can be divided, for purposes of analysis, into three distinct categories. The first type examined is the pooling arrangement which directly underwrites risks within urban core areas. The second type establishes a placement facility or joint association to assist property owners in acquiring insurance. The third type is exemplified by the Michigan scheme which allows insurance companies to insure voluntarily risks within the urban core area.

1. *Pooling Arrangements.*—The New Jersey and New York statutes authorize the establishment of a pooling association.¹⁵⁹ It has the express power to grant insurance coverage to qualified applicants, to reinsure qualified property insured by members of the association, and to cede reinsurance.¹⁶⁰ In addition, it is required to submit a plan of operation to the insurance commissioner.¹⁶¹ After the pooling association's plan of operation has been approved by the commissioner, a person who has an insurable interest in property and who is unable to obtain property insurance coverage through the normal market is entitled to apply to the association for coverage and for an inspection of the property.¹⁶² In New Jersey, the applicant's property must be situated within the urban core area,¹⁶³ whereas in New York the property can be located anywhere within the state.¹⁶⁴ If the applicant, in either state, is able to show that he has been unable to obtain property insurance in the normal market, that his property is insurable, and that there is no unpaid, uncontested premium outstanding on the property, the association is required to issue a policy for a one-year period.¹⁶⁵ Any unfavorable decision can be appealed as a matter of right to the state insurance commissioner.¹⁶⁶

¹⁵⁹ Ch. 129, §§ 3, 4, 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, §§ 652(1), (2), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)).

¹⁶⁰ Ch. 129, § 4, 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 652(2) 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)).

¹⁶¹ Ch. 129, § 7(a), 1968 N.J. Laws (N.J. Leg. Serv. 436, 438 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 652(3)-(a), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)).

¹⁶² Ch. 129, § 8(a), 1968 N.J. Laws (N.J. Leg. Serv. 436, 439 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, §§ 653(1)-(a), 651(5), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 192 (McKinney 1968)). (In New York, inspection of the property precedes the application for insurance to the pooling association.)

¹⁶³ Ch. 129, § 2(c), 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)). "Urban area" means any city or part thereof "... (1) which the Secretary of ... [HUD] has approved as eligible for an urban renewal project after a local public agency has been formed in that community to avail itself of a United States Housing and Urban Renewal Program or (2) designated by the [pooling] association with the approval of the commissioner or (3) which the commissioner may designate." Id. § 2(h) (N.J. Leg. Serv. 436, 437 (1968)).

¹⁶⁴ New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 651(5), 1968 N.Y. Laws (N.Y. Leg. Serv. 190 (McKinney 1968)).

¹⁶⁵ Ch. 129, § 8(b), 1968 N.J. Laws (N.J. Leg. Serv. 436, 439 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, §§ 653(1)-(a), (b), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 192 (McKinney 1968)).

¹⁶⁶ Ch. 129, § 8(c), 1968 N.J. Laws (N.J. Leg. Serv. 436, 439 (1968)); New York

There are several administrative weaknesses inherent in the pooling arrangements established in New Jersey and New York. Although the statutes provide for an inspection of the property at the request of the applicant,¹⁶⁷ they fail to state explicitly how or by whom the inspection will be conducted. It appears, however, that the association itself will be conducting inspections. A preferable alternative is to establish a special administrative agency (perhaps an adjunct of the state insurance commissioner's office) to conduct inspections and to forward reports to the association.¹⁶⁸

A second weakness of both statutes is their failure to elucidate the procedure which the association must follow after the inspection report has been received. Neither statute incorporates a procedure for notifying the applicant of the action which the pool intends to take with respect to the risk. Thus, an applicant could conceivably wait months before he were informed of the status of his application. The statutes do not indicate what period of time must elapse before an uninformed applicant may appeal to the commissioner. In New Jersey the plan of operation is required to specify the time interval,¹⁶⁹ whereas the New York statute fails completely to mention the proper procedure which an applicant may follow if no action has been taken by the pool.¹⁷⁰ These omissions will undoubtedly lead to frustration and confusion and it is critical that they be corrected by a requirement that the pool notify the applicant of its decision within a short period of time after the inspection.

A third weakness is that the statutes do not require the pools to provide explanation for rejections. Thus, an applicant might receive a rejection without even a hint of the cause. An applicant, in order to discover the reasons for the rejection of his property would have to resort to the time-consuming process of an appeal to the insurance commissioner. The statutes should be amended to provide the applicant with a detailed report of the reasons which prompted the pool to reject the risk. The applicant will then be advised immediately of what conditions on the property demand rectification and he will be able to alleviate the condition and to reapply for coverage. The report would also provide the incidental advantage of protecting an applicant against rejection on the basis of the location of his risk.

A fourth weakness is that the statutes do not offer the rejected applicant an immediate right to bring suit in a court of law. If the pool refuses to underwrite the risk, the applicant must appeal to the insurance commissioner for reversal.¹⁷¹ If the commissioner orders the pool to accept the risk and the

Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 655(1), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 193 (McKinney 1968)).

¹⁶⁷ Ch. 129, § 8(a), 1968 N.J. Laws (N.J. Leg. Serv. 436, 439 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 651(5), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 190-91 (McKinney 1968)).

¹⁶⁸ See p. 666 *supra*. Also, see the Michigan statute providing for an independent inspection bureau. P.A. 262, §§ 24.12910, 24.12901(b), 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 498 (1968)). Also see Advisory Panel at 92-94.

¹⁶⁹ Ch. 129, § 8(c), 1968 N.J. Laws (N.J. Leg. Serv. 436, 439 (1968)).

¹⁷⁰ Only where the plan of operation adopted pursuant to the statute defines non-action as an "appealable" matter will the applicant be entitled to an appeal to the commissioner. Ch. 131, § 655(1), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 193 (McKinney 1968)).

¹⁷¹ Ch. 129, § 8(c), 1968 N.J. Laws (N.J. Leg. Serv. 436, 440 (1968)); New York

pool still refuses, the applicant or insurance commissioner may then institute legal proceedings to compel the pool to accept the risk.¹⁷² This procedure constitutes an administrative quagmire. A preferable approach would allow a rejected applicant standing to sue without a preliminary appeal to the insurance commissioner.

Still another statutory deficiency is the absence of provision for acceptances conditioned upon the alleviation or rectification of a hazard existing on the property. One of the purposes of the statutes should be to offer incentives to the property owner to make necessary improvements on the property. Without conditional acceptances, the owner will probably receive an absolute rejection with no information as to what repairs are necessary. Under such circumstances, an owner is unlikely to invest money in repair or improvement. Although the New Jersey and New York statutes do not explicitly provide for these safeguards, it is possible that they could be incorporated into the plan of operation of their respective pooling associations.

A third general weakness of these statutes is their failure to define "insurability." Both statutes allow the pooling association to set up reasonable standards of insurability.¹⁷³ However, the two statutes specifically prohibit underwriting decisions to be made on the basis of the neighborhood or location of the risk.¹⁷⁴ Since the success of these plans hinges upon the adoption of reasonable standards of insurability, the standards should be outlined within the statutes themselves.

One of the major assets of these statutes is their provision for extensive recordkeeping. The association must file an annual statement with the insurance commissioner. It should contain detailed information regarding its transactions, financial condition, operations and affairs during the year.¹⁷⁵ The insurance commissioner is also authorized to obtain other information which he deems relevant to an evaluation of the plan.¹⁷⁶ The commissioner in New Jersey is required to submit an annual report to the state legislature advising them of

Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 655(1), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 193 (McKinney 1968)) (rejection appealable only if the plan of operation so designates).

¹⁷² The statutes explicitly provide for judicial review from orders of the commissioner. Ch. 129, § 12, 1968 N.J. Laws (N.J. Leg. Serv. 436, 440 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 655(2), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 193 (McKinney 1968)). However, in light of the overall purpose of the statutes, it would appear that the commissioner or the applicant would be able to institute legal proceedings to enforce the orders of the Commissioner.

¹⁷³ Ch. 129, §§ 2(e), 7(a), 1968 N.J. Laws (N.J. Leg. Serv. 436, 437, 438 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, §§ 651(5), 652(3)(a), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)).

¹⁷⁴ Ch. 129, § 2(e), 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 651(5), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 191 (McKinney 1968)).

¹⁷⁵ Ch. 129, § 15, 1968 N.J. Laws (N.J. Leg. Serv. 436, 440 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 657, 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 193 (McKinney 1968)).

¹⁷⁶ Ch. 129, § 15, 1968 N.J. Laws (N.J. Leg. Serv. 436, 440 (1968)); New York Fire and Extended Coverage Insurance Joint Underwriting Association, ch. 131, § 657, 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 193 (McKinney 1968)).

the status of the insurance plan.¹⁷⁷ This procedure is necessary to assure that rating of the property accurately reflects the incidence of loss within the urban core area. With this widespread dissemination of information, the probability increases that the underwriting decision will be made on the basis of thorough investigation and consideration of the risk. It will also help the insurers in the development of loss prevention techniques and underwriting devices. A further use of the information might be to inform the building code enforcement office of violations of city ordinances.

The most distinctive feature of the New York plan is its applicability to all insurable property within the state.¹⁷⁸ If civil strife should spread beyond the bounds of the urban core area, insurers would probably be as unwilling to underwrite outside the area as within it. The New York legislature has demonstrated farsighted anticipation of such a contingency. The added cost of the expanded coverage should be minimal, since, absent the actual expansion of violence, property owners outside the urban core area should be able to obtain their insurance through the normal market.

Another feature of the New York statute consonant with the plan's wide coverage is its applicability to manufacturing risks, as well as other commercial and private risks.¹⁷⁹ This applicability should offer encouragement to industrial companies considering the construction of manufacturing plants within the urban core area.

On the other hand, the New Jersey statute excludes from coverage all manufacturing risks within the urban core area¹⁸⁰ as well as all risks outside the area.¹⁸¹ Although the federal reinsurance statute allows a state to exclude certain manufacturing risks,¹⁸² a comprehensive statute should include manufacturing risks to promote the development and expansion of industry within the urban core area.

Aside from administrative virtues and deficiencies, it is important to examine the potential effectiveness of these plans. Because of the recency of these plans and the general method of operation outlined in the statutes, it is difficult to make a meaningful assessment. However, the New Jersey plan has several built-in devices which should provide a sound basis of spreading risks. It establishes a New Jersey Insurance Development Fund to supply a financial backup to the funds accumulated by the pooling association.¹⁸³ The Fund will be financed primarily from a surcharge on all property insured

¹⁷⁷ Ch. 129, § 17, 1968 N.J. Laws (N.J. Leg. Serv. 436, 440 (1968)).

¹⁷⁸ Ch. 131, § 651(5), 1968 N.Y. Laws (N.Y. Leg. Serv. 190, 190-91 (McKinney 1968)).

¹⁷⁹ *Id.* (by implication).

¹⁸⁰ Ch. 129, § 2(e), 1968 N.J. Laws (N.J. Leg. Serv. 436, 437 (1968)).

¹⁸¹ *Id.*

¹⁸² Pub. L. No. 90-448, § 1203(2) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2896.

¹⁸³ Ch. 129, §§ 18-23, 1968 N.J. Laws (N.J. Leg. Serv. 436, 440-42 (1968)). In brief, the insurance commissioner will determine the amount of losses which the association will retain. The Fund will reimburse the association for amounts in excess of this predetermined figure up to a maximum of 5% of the insurance premiums written on essential property insurance within the state. If the Fund is insufficient to pay all claims, the residue will be paid by an interest-free loan from the State Treasury.

within the state.¹⁸⁴ The surcharge will be assessed on all insured property owners, and insurance companies are strictly forbidden to absorb the surcharge.¹⁸⁵ Thus the burden of excessive losses is spread primarily among all insured property owners within the state. If the losses incurred in any particular year do not necessitate the use of money from the Fund, the surcharge will be abated for the next year.¹⁸⁶ If the losses exhaust the pool as well as the Fund, the surcharge will be assessed again in the following year to bring the Fund up to its statutory limit.¹⁸⁷

The success of this spreading technique depends to a great extent on the future riot experience of the urban core areas within New Jersey. As long as the situation does not worsen, it appears that this technique will be sufficient to absorb the losses without prohibitive increase of the insurance rates. On the other hand, if the incidence of riots increases, this system might lead to the regular imposition of high surcharges. Also, it is doubtful whether Congress, in providing for mandatory state participation in the distribution of losses within the federal reinsurance statute, would have considered the New Jersey Insurance Development Fund an acceptable state financial backup. The state itself is not really participating in the distribution of losses. It has shifted its responsibility to the insured property owners within the state. This arrangement will not provide the type of spreading which would have been available if the state had chosen to utilize its general tax revenues for the financial backup.

The New York statute has not provided for a financial backup to its pooling association. It is imperative that New York adopt such a backup if it is to qualify for federal reinsurance.¹⁸⁸ Once New York does establish a state financial backup to its pooling association and qualifies for federal reinsurance, the spreading of the risk of loss should be sufficient.

It is doubtful that the New Jersey and New York plans, by themselves, will be effective deterrent measures. The burden will ultimately fall upon the stockholders and policyholders of the insurance companies, and it is questionable whether these people are positioned to prevent or to curtail future riots within the urban core area. Stockholders are often residents of several states, and there is very little which an out-of-state resident can do to alleviate the riot conditions. Policyholders are in a somewhat better position to deter riots, but since they are located throughout the state, the only effective deterrent action could operate at the state level. Since the focus of law enforcement and the implementation of poverty reforms are primarily at the local level, deterrent measures must be applied at this level.

Since New Jersey has a municipal liability statute,¹⁸⁹ the deterrent

¹⁸⁴ Id. §§ 18-19 (N.J. Leg. Serv. 436, 440-41 (1968)). The amount of the surcharge will be determined annually by the insurance commissioner, but its aggregate amount shall not exceed 5% of the premiums written on essential property insurance during any year within New Jersey. Id. § 20 (N.J. Leg. Serv. 436, 441 (1968)).

¹⁸⁵ Id. § 20 (N.J. Leg. Serv. 436, 441 (1968)).

¹⁸⁶ Id. § 21 (N.J. Leg. Serv. 436, 441 (1968)).

¹⁸⁷ Id.

¹⁸⁸ Pub. L. No. 90-448, § 1223(a)(1) (Aug. 1, 1968), U.S. Code Cong & Ad. News 2902.

¹⁸⁹ N.J. Stat. Ann. § 2A:48-1 (1952).

effect lacking in the property insurance statute will probably be supplied by the municipal liability statute. Currently, consideration is being given to future amendment or abolition of this statute.¹⁹⁰ It is felt that, if the New Jersey and federal reinsurance statutes work effectively, the liability act will no longer serve a useful purpose.¹⁹¹ It has been recommended that the statute be amended by: (1) limiting the recovery of a claimant to 10,000 dollars, (2) eliminating the right of insured property owners to have redress against the municipality for losses due to mobs and riots and (3) eliminating the right of an insurance company, as a subrogee, to have redress against the municipality for such losses.¹⁹² Such an amendment will eliminate the healthy deterrent effect which a properly administered municipal liability statute can provide and will destroy the incentive of some property owners to bring their property up to standards of insurability. If a property owner realizes that acquiring insurance will deny him the right of recovery, he might opt for complete reliance upon the municipal liability statute. Although some amendments to the statute are sorely needed, such as a maximum liability limit, the proposed amendment will completely destroy its effectiveness.

New York, on the other hand, does not currently have a municipal liability statute.¹⁹³ Thus, the impact of the riots will not be felt by those people who would be stimulated to resist lawlessness—the taxpayers of the municipality—and there will be no deterrent effect.

2. *Placement Facilities.*—The statutes which utilize placement facilities to apportion insurance risks have been divided, on the basis of similarities, into three groups. California is treated separately because of its uniqueness.

a. *The California Statute.* California's statute is somewhat different from the New Jersey and New York statutes because it calls for the establishment of an industry placement facility which will assist property owners in securing property insurance.¹⁹⁴ The facility, unlike the associations in New Jersey and New York, has the option of distributing the risks by means of assignment to its members or by a pooling arrangement.¹⁹⁵ The statute also establishes a joint reinsurance association consisting of all insurers licensed to write basic property insurance in California.¹⁹⁶ The reinsurance association is authorized to assume reinsurance of risks written by insurers in conformity with the program established by the facility.¹⁹⁷

The most glaring fault of the California statute is its restriction to residential property within the state.¹⁹⁸ Commercial property is not within the scope of this statute, and it will be necessary for the owners of such property

¹⁹⁰ Letter from the Division of Legislation Information and Research of the State of New Jersey to B.C. Ind. & Com. L. Rev., October 14, 1968.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See note 52 *supra*.

¹⁹⁴ Basic Property Insurance Inspection and Placement Plan, ch. 574, §§ 10091(e), 10094, 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027-28 (West (1968))).

¹⁹⁵ *Id.* § 10100.1 (Cal. Leg. Serv. 1026, 1029 (West (1968))).

¹⁹⁶ *Id.* §§ 10091(a), 10095 (Cal. Leg. Serv. 1026, 1026-27, 1028 (West (1968))).

¹⁹⁷ *Id.* § 10095(b) (Cal. Leg. Serv. 1026, 1028 (West (1968))).

¹⁹⁸ *Id.* § 10091(c) (Cal. Leg. Serv. 1026, 1027 (West (1968))).

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to seek insurance within the normal market unless an urban area plan is utilized to supplement the statute. Since the targets of rioters are usually commercial enterprises, the statute affords very little relief to the primary victims of the civil disturbances. Because of the statute's exclusion of all commercial risks, there is serious question whether California will qualify for federal reinsurance.¹⁹⁹ If this were the result, the statute, by itself, would not provide sufficient spreading of residential risks. Also, the statute offers no inducement to industries or retailers contemplating investments within the urban core area.

The California statute provides that any person having an insurable risk in residential property shall be able to apply for an inspection of the property by an independent inspection bureau²⁰⁰ if he has made a "diligent effort" to secure insurance through the normal market.²⁰¹ The statute does not define "diligent effort," and it is important that this omission be cured in the facility's plan of operation.²⁰² A property owner should be well advised of exactly what criteria will be used in the acceptance of risks.

This statute, like the two previous statutes, leaves most of the administrative details for determining insurability to the facility.²⁰³ Although this arrangement gives the plan flexibility, some general guidelines should be stated explicitly in the statute itself. For example, a prohibition against underwriting insurance on the basis of environmental conditions, as appears in the New Jersey and New York statutes, is so critical to the success of a property insurance statute that it should appear in the statute itself.

California does not have a municipal liability statute, and consequently the deterrent effect of the statute is minimal. The burden of loss will fall primarily upon the residential policyholders and the stockholders of the property insurance companies. The California statute is weak also with regard to the provision of notice to an applicant of unfavorable underwriting decisions. There is no provision for conditional acceptances, and thus the statute offers no incentive to improve the condition of one's property. There is also no provision requiring the insurer to give reasonable notice of cancellation or nonrenewal.²⁰⁴ These defects will disappear with the inclusion of such procedural safeguards within the plan of operation. On the whole, however, this statute is too general in nature and leaves too much to the discretion of the members of the facility, reinsurance association and insurance commissioner.

b. *Massachusetts and District of Columbia Statutes.* Massachusetts and the District of Columbia have enacted statutes which will enable insurers to qualify for federal reinsurance. Each statute creates a placement facility to

¹⁹⁹ Pub. L. No. 90-448, §§ 1203(a)(2), 1211(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2896, 2898.

²⁰⁰ Ch. 574, § 10091(d), 1968 Cal. Laws (Cal. Leg. Serv. 1026, 1027 (West 1968)).

²⁰¹ Id. § 10093(a) (Cal. Leg. Serv. 1026, 1027 (West 1968)).

²⁰² Id. § 10094 (Cal. Leg. Serv. 1026, 1027-28 (West 1968)) (empowering the facility to establish a plan of operation).

²⁰³ Id.

²⁰⁴ This is one of the mandatory provisions listed in the federal statute. Pub. L. No. 90-448, § 1211(b)(9) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2899.

help property owners within urban core areas obtain insurance.²⁰⁵ Upon proof that the applicant is unable to obtain insurance through the normal market, representatives of the facility will conduct an inspection of the property.²⁰⁶ After the inspection, the facility will attempt to place the property with its member insurers.²⁰⁷ In Massachusetts the insurers are obliged to inform the facility of their decision.²⁰⁸ Then the facility sends to the applicant a report informing him of which companies have agreed to accept the risk or whether acceptance is conditioned upon the completion of improvements to the property.²⁰⁹

The administrative provisions in the statutes are basically sound. The applicant is promptly told why his property cannot be insured or what repairs must be made if he still desires coverage. Another excellent provision is the Massachusetts requirement that inspection reports be sent to the building code department within the cities.²¹⁰ This practice will bring any salient violations of city ordinances to the attention of the department and it will allow the department to notify the owners of the violations before casualty occurs.

The major shortcoming of the Massachusetts statute is its failure to provide for the submission by the facility of periodic statistical reports to the insurance commissioner. Another is that inspections are conducted by representatives of the facility, rather than by an independent inspection bureau.

One of the main virtues of the Massachusetts statute is its provision for a pooling arrangement if, in the opinion of the insurance commissioner, the facility is not adequately filling the need.²¹¹ The pool, which is referred to as the "association," will be used for three purposes: (1) to insure risks from applicants unable to obtain coverage through the facility's efforts, (2) to assume reinsurance from members of the facility and (3) to cede reinsurance.²¹² It is hoped that the facility will be able to cope with the insurance needs, but the association might very well be needed if conditions worsen in the urban core areas.

Similarly, if the placement facility in the District of Columbia does not adequately fill the need, the insurance commissioner can establish an underwriting association which shall be authorized to assume and cede reinsur-

²⁰⁵ District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1204(a) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910; Urban Area Insurance Placement Facility, ch. 731, § 2, 1968 Mass. Laws (Mass. Leg. Serv. 588 (1968)).

²⁰⁶ District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1205(a) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2911; Urban Area Insurance Placement Facility, ch. 731, § 2(3)(a), 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)).

²⁰⁷ District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1204(a) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910 (if requested by applicant); Urban Area Insurance Placement Facility, ch. 731, § 2(3)(b), 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)).

²⁰⁸ Ch. 731, § 2(3)(c), 1968 Mass. Laws (Mass. Leg. Serv. 588, 589 (1968)) (by implication).

²⁰⁹ Id. §§ 2(3)(b), (c) (Mass. Leg. Serv. 588, 589 (1968)).

²¹⁰ Id. § 2(3)(c) (Mass. Leg. Serv. 588, 589 (1968)).

²¹¹ Id. § 4 (Mass. Leg. Serv. 588, 589 (1968)).

²¹² Id. § 4 (Mass. Leg. Serv. 588, 589-90 (1968)).

ance.²¹³ Unlike Massachusetts, the District of Columbia association will not be authorized to underwrite risks directly from the property owners.²¹⁴

Since Massachusetts and District of Columbia insurers will be able to obtain federal reinsurance, the spreading of risks should be adequate. The lack of any deterrent measures in the Massachusetts statute is somewhat ameliorated by the existence of a municipal liability statute in the state.²¹⁵ One question which has never been answered by the Massachusetts courts is whether the insurers are subrogated to the property owner's cause of action against the city. If that is not the case, the deterrent effect of the municipal liability statute will be minimal. The District of Columbia lacks a municipal liability statute and consequently has no effective deterrent measures. Since both statutes include within their scope commercial retail establishments,²¹⁶ the statutes should offer inducement to retailers and distributors contemplating an operation within the urban core area. As in most of the other statutes, however, manufacturing risks are excluded in Massachusetts.²¹⁷ Manufacturing risks are not specifically excluded in the District of Columbia and it appears that they may be underwritten along with other commercial risks if the facility so desires.²¹⁸

c. *The Pennsylvania and Illinois Statutes.* The Pennsylvania Fair Plan Act²¹⁹ has the most extensive procedural provisions and is the most explicit of the property insurance plans under review. The statute is patterned after the federal statute and contains all the mandatory provisions of the federal statute.²²⁰ Any property owner or tenant who cannot obtain fire and extended coverage insurance through regular channels may apply to the placement facility, directly or through a broker.²²¹ An inspection will then be made free of charge by an independent inspection bureau.²²² The inspection report is sent to the facility and the facility forwards it to the member insurers.²²³ Those requesting coverage will be notified promptly whether the property is insurable in its present condition or whether certain

²¹³ Pub. L. No. 90-448, § 1206 (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2911-12.

²¹⁴ Id. § 1206(c)(1), U.S. Code Cong. & Ad. News 2909, 2912. Although the statute does not *specifically* prohibit direct underwriting, it is concerned primarily with the reinsurance of risks from members of the facility. Since there is no authorization in the statute for direct underwriting, it is doubtful whether the association could legally engage in this activity.

²¹⁵ Mass. Gen. Laws Ann. ch. 269, § 8 (1959).

²¹⁶ District of Columbia Insurance Placement Act, Pub. L. No. 90-448, § 1204(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910; Urban Area Insurance Placement Facility, ch. 731, § 1, 1968 Mass. Laws (Mass. Leg. Serv. 588 (1968)) (by implication).

²¹⁷ Ch. 731, § 1, 1968 Mass. Laws (Mass. Leg. Serv. 588 (1968)).

²¹⁸ Pub. L. No. 90-448, § 1204(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2909, 2910.

²¹⁹ Act 233, 1968 Pa. Laws (Pa. Leg. Serv. 592 (1968)).

²²⁰ Act 233, § 202, 1968 Pa. Laws (Pa. Leg. Serv. 592, 595-97 (1968)).

²²¹ Id. § 202(1) (Pa. Leg. Serv. 592, 595 (1968)).

²²² Id.

²²³ Id. § 202(3) (Pa. Leg. Serv. 592, 595 (1968)).

improvements must be made.²²⁴ Besides placing risks with insurance companies, the facility is also authorized to assume and cede reinsurance.²²⁵

The Pennsylvania statute has the most comprehensive notification and recordkeeping requirements of all those examined. If insurance is refused or conditioned on completion of specified improvements, the applicant must be furnished with a copy of the inspection and action reports.²²⁶ The insurer must also advise the applicant of his right of appeal to the insurance commissioner.²²⁷ Written notice must be given to any person insured on the normal market or under the plan at least 20 days prior to the cancellation or nonrenewal of insurance on any risk eligible under the plan,²²⁸ and the notice must inform the person of procedures for obtaining insurance under the plan.²²⁹ The inspection bureau and placement facility must file with the insurance commissioner annual reports regarding its transactions during the year.²³⁰

The unique feature of the Pennsylvania statute is its creation of the Pennsylvania Civil Disorder Authority,²³¹ which is similar to the New Jersey Insurance Development Fund and which will qualify insurers in Pennsylvania for federal reinsurance. The Authority, which will be authorized to make such payments as may be required by the federal reinsurance facility,²³² will be financed primarily by the issuance of special bonds²³³ and by an annual assessment of all property insurers within the state.²³⁴ In this regard, it is subject to the same criticism as the New Jersey Insurance Development Fund, that is, that the state, through its failure to use general tax revenues, is not actively participating in the financial backup plan. Another problem with the assessment system is that the added cost of underwriting property insurance will make this business even more unattractive.

The Pennsylvania plan in conjunction with the federal statute should provide the necessary spreading of risks. Although the statute does not offer strong deterrent measures, a municipal liability statute is in effect in three counties.²³⁵ The incentive to improve property is built into the act by the provision for conditional acceptances.²³⁶ Also, the Pennsylvania plan of opera-

²²⁴ Id. § 202(4) (Pa. Leg. Serv. 592, 596 (1968)).

²²⁵ Id. §§ 203(a)(2), (3) (Pa. Leg. Serv. 592, 597 (1968)).

²²⁶ Id. § 202(4) (Pa. Leg. Serv. 592, 596 (1968)). The applicant may also obtain a copy of the inspection report prior to any decision on insuring the risk if he so requests. Id. § 202(3) (Pa. Leg. Serv. 592, 595 (1968)).

²²⁷ Id. § 202(4) (Pa. Leg. Serv. 592, 596 (1968)). An applicant may appeal within 30 days after any ruling or decision of the inspection bureau or placement facility to the commissioner. Id. § 208(a) (Pa. Leg. Serv. 592, 598 (1968)).

²²⁸ Id. § 202(9) (Pa. Leg. Serv. 592, 596 (1968)). Although this section is apparently aimed at persons presently insured in the normal market, a literal interpretation would make the section applicable to persons insured under the plan.

²²⁹ Id.

²³⁰ Id. § 206 (Pa. Leg. Serv. 592, 597 (1968)).

²³¹ Id. § 301 (Pa. Leg. Serv. 592, 598 (1968)).

²³² Id. § 304(a)(1) (Pa. Leg. Serv. 592, 599 (1968)).

²³³ Id. §§ 304(b)(3), 306 (Pa. Leg. Serv. 592, 599, 600 (1968)).

²³⁴ Id. §§ 401-02 (Pa. Leg. Serv. 602, 603 (1968)). The assessment will be 2% of the aggregate gross premiums received by all property insurers within the state. Id.

²³⁵ Pa. Stat. Ann. tit. 16, §§ 11821-26 (1956).

²³⁶ Act 233, § 202(4), 1968 Pa. Laws (Pa. Leg. Serv. 592, 596 (1968)).

tion enables insurers to assess reasonable surcharges for unsafe conditions.²³⁷ The surcharge must be removed upon the correction of the unsafe condition.²³⁸ The statute, by inclusion of some commercial risks within its operation,²³⁹ offers inducement to retailers contemplating the operation of a business within the urban core area. Although this statute is far from perfect, it is the best overall solution adopted by a state legislature.

The Illinois statute is very similar to the Pennsylvania statute; the only major difference is its failure to enumerate all the procedures and safeguards listed in the Pennsylvania statute. The other difference is that Illinois differentiates between the placement facility and the reinsurance association,²⁴⁰ whereas Pennsylvania encompasses the functions of these two bodies within its placement facility.²⁴¹

In order to qualify for federal reinsurance, Illinois has established an Insurance Development Fund. Its function is to reimburse the federal government as required by the federal statute.²⁴² Unlike the provision for the Pennsylvania Civil Disorder Authority, however, the Illinois provisions do not mention the manner in which the Fund will be financed. The Illinois statute in combination with the federal statute should provide sufficient spreading of the risk of loss. Since Illinois does not provide explicitly for conditional acceptance, it offers little incentive for the improvement of property. Illinois, unlike Pennsylvania, excludes manufacturing risks from coverage,²⁴³ and thus offers no inducement for the construction of industrial plants within the urban core area. Finally, Illinois, unlike Pennsylvania, has no municipal liability statute. Consequently, the plan contains no effective deterrent measures.

3. *The Michigan Statute.*—The Michigan statute is unique in that it allows authorized insurers within the state to promulgate a voluntary plan of operation which, if accepted by the insurance commissioner, would temporarily forestall the establishment of the pooling arrangement.²⁴⁴ If a voluntary plan is not approved or if the operation of the plan is unsuccessful, the insurance commissioner has the authority to implement the mandatory pooling arrangement.²⁴⁵ The pooling arrangement is very similar to the one established in New

²³⁷ Id. § 202(4) (Pa. Leg. Serv. 592, 596 (1968)). See note 156 supra.

²³⁸ Id. § 202(4)(i) (Pa. Leg. Serv. 592, 596 (1968)).

²³⁹ The statute specifically includes manufacturing risks unless excluded by the commissioner and by implication includes other commercial risks. Id. § 103(2) (Pa. Leg. Serv. 592, 593 (1968)).

²⁴⁰ Urban Property Insurance, Act 1840, §§ 525–26, 1968 Ill. Acts (Ill. Leg. Serv. 13, 14 (Smith-Hurd 1968)). The reinsurance association's function in Illinois is to assume and cede reinsurance on risks written by insurers in conformity with the program of the placement facility. Unlike the facility in Pennsylvania, it will not be able to underwrite risks directly from the property owners. In this respect, it is similar to the Joint Underwriting Association in the District of Columbia. However, it differs from the latter in that the District of Columbia association will not be operational until the insurance commissioner decides that the placement facility is not adequate. See p. 680 supra.

²⁴¹ Act 233, § 201, 1968 Pa. Laws (Pa. Leg. Serv. 592, 594–95 (1968)).

²⁴² Act 1840, § 529 (Ill. Leg. Serv. 13, 15 (Smith-Hurd 1968)).

²⁴³ Id. § 523(1) (Ill. Leg. Serv. 13 (Smith-Hurd 1968)).

²⁴⁴ P.A. 262, § 24.12950, 1968 Mich. Public Acts (Mich. Stat. Ann. Current Material 497, 506–07 (1968)).

²⁴⁵ Id.

York,²⁴⁶ except that the Michigan pool may designate any of its members as servicing facilities.²⁴⁷ These facilities will be able to insure policies in lieu of the pool.²⁴⁸ The servicing facilities are also allowed to reinsure any eligible risks with the pool itself.²⁴⁹

The procedural safeguards in the Michigan statute are sound. An independent inspection bureau is established²⁵⁰ and a copy of the inspection report of the bureau must be made available to the applicant upon request.²⁵¹ If the pool determines that an applicant's property is not an acceptable risk, the applicant is entitled to a written statement setting forth the conditions which prevent it from constituting an acceptable risk and the measures which must be taken in order to qualify the property.²⁵² The statute thus offers the requisite incentive for improving property within the core area.

One of the shortcomings of the Michigan statute is its limitation on the amount of business in which the pool or its servicing facilities can engage.²⁵³ Once this limit has been reached, property owners are once again left to the uncertainties of the normal market.

The Michigan statute does not exclude manufacturing or commercial risks and thus offers a stimulus to the operation of such enterprises in the core areas. If the pool utilizes federal reinsurance, it should provide sufficient spreading of the risk of loss. However, because there is no municipal liability statute in Michigan there are no effective deterrent measures.

VIII. A PROPOSAL

In this final section, a plan will be proposed which attempts to incorporate the best features of the state and federal statutes previously examined. This plan considers the four substantive factors: spreading, deterrence, incentives to improve property and inducements to attract capital investments in urban core areas, and attempts to achieve the proper balance between them. The plan also includes the constitutional and procedural safeguards necessary to assure the fair treatment of both insurance companies and property owners within the state.

At the local level, a system of municipal liability should be codified, for only when a financial impact is felt within the riot-affected city will measures be taken to prevent recurrence of violence. Any person suffering property damage within the city as a result of rioting should recover from the municipality a sum equal to the replacement value of the damage or 10 percent of the fair market value of the property, whichever is less.²⁵⁴ A claimant should

²⁴⁶ See p. 673 *supra*.

²⁴⁷ Id. § 24.12920(3) (Mich. Stat. Ann. Current Material 497, 500 (1968)).

²⁴⁸ Id.

²⁴⁹ Id. § 24.12939 (Mich. Stat. Ann. Current Material 497, 505 (1968)) (by implication).

²⁵⁰ Id. § 24.12901(b) (Mich. Stat. Ann. Current Material 497 (1968)).

²⁵¹ Id. § 24.12910(3) (Mich. Stat. Ann. Current Material 497, 498 (1968)).

²⁵² Id. § 24.12925(3) (Mich. Stat. Ann. Current Material 497, 501 (1968)).

²⁵³ Id. § 24.12931 (Mich. Stat. Ann. Current Material 497, 504-05 (1968)). The annual premiums written directly by the pool or on its behalf by the servicing facilities shall not "exceed 10% of the aggregate premiums used as the basis for determining participation ratios in the pool."

²⁵⁴ Also the total liability of the municipality should be limited to \$10,000 times

not have to allege and prove negligence of the municipality; recovery will be absolute as long as the claimant did not participate in the violence or was not contributorily negligent in failing to mitigate his damages. The arbitrary distinctions between riots, insurrections and rebellions should be abolished, and a riot should be considered in existence when three or more persons together, and in a violent or tumultuous manner, assemble to do an unlawful act which disturbs the public peace.

Another predicate for recovery against the municipality should be that the damaged property be in insurable condition prior to the riot. A property owner wishing to qualify for this municipal liability coverage should be required to have the building code department in the city conduct an inspection of the premises once a year to determine whether the property is insurable.²⁵⁵ It is necessary that the property be insurable so that a property owner will not rely entirely upon the municipal liability statute for protection against riots. This plan will offer incentive to the property owner to maintain and improve his property, for he will be eligible for municipal liability coverage only if his property is insurable. Finally, the requirement that the building code department conduct the inspections will result in closer enforcement of city ordinances.

In order to take full advantage of the deterrent effect of the statute, insurance companies or pools should be subrogated to any rights which an insured property owner has against the city under the municipal liability act.

It is preferable that disputed claims be submitted to an impartial arbitration association (such as the American Arbitration Association) which will determine whether the claimant is entitled to recover and, if so, the amount of recovery. In arbitration proceedings, disputes are decided swiftly and inexpensively. The expenses of arbitration, including attorneys' fees, should be borne by the city unless the arbitrator determines that the claim is frivolous. There should be no right to appeal the arbitrator's decision.

Coincident with the municipal liability system, the state should create a financing system which will reimburse a municipality for a varying percentage of its losses under the municipal liability statute. This percentage should vary from year to year directly with the amount of riot damage within the city during the year, the quality and quantity of preventive measures taken by the city,²⁵⁶ and the fiscal status of the city. There are at least three reasons supporting such a system. First, it will provide a spreading of the risk of loss. Second, it will offer cities an incentive to implement preventive measures. Finally, it will prevent a complete depletion of a city's treasury.²⁵⁷

the number of claimants per riot. If this maximum liability is reached as a result of a particular riot, the proceeds should be distributed *pro rata*. The reason for the total liability and the maximum liability of the city for an individual claim is the prevention of municipal bankruptcy. See p. 659 *supra*.

²⁵⁵ The standards of insurability should be determined by the state insurance commissioner and should be applied to municipal liability inspections, as well as to insurance inspections. In this regard, it may be necessary for some cities to revise their ordinances defining building code violations.

²⁵⁶ E.g., increased police protection and better fire prevention techniques.

²⁵⁷ The ultimate solution to the fiscal dilemma of cities is the concept of regional government. Large cities, such as Philadelphia, have been "... shouldering the entire

Aside from municipal and state liability, states should create mandatory pooling associations of all licensed property insurers within the state. These pools should underwrite any insurable property within the state, regardless of the location of the property or the frequency of riots within the area. Inspections should be conducted at no cost to the property owner and an independent inspection bureau should inspect the property to determine its insurability. All denials of coverage should be conditional, unless the owner represents a significant moral risk²⁵⁸ or the property is beyond repair. Once the insurability of the property has been determined by the inspection bureau, the risk should be written by the pool for a period of one year. The policy provided by the pool should cover all property damage, including, but not limited to, damage caused by rioting.²⁵⁹ The consideration for the policy should be normal insurance rates, that is, those existing in the same city for that type of property outside the urban core area. The pool should not be allowed to use surcharges for hazardous conditions. If the property is in poor condition, a conditional acceptance should be given unless the property is irreparable.²⁶⁰ In order to lower the cost of such a pool, deductibles and percentage participation clauses might prove feasible. In fact, the amount of the deductible could vary to reflect the loss experience of the property owner.

Before a person should be eligible for coverage by the pool, he should be required to present documented proof to the inspection bureau that he has been denied coverage in the normal market. Perhaps two or three written rejections would satisfy this requirement. Although the normal market today will underwrite very few of the risks in the urban core area, it is hoped that in the near future the normal market will replace the pool as the primary source of insurance coverage. This development might occur as the threat of riots diminish and as the property within the area becomes less vulnerable

financial burden of regional improvements, benefits that accrue quite as much to the surrounding suburbs as to the inner city." *The Boston Globe*, February 17, 1969, at 4, col. 1. Regional government would enable the municipalities to expand their tax base to include the contiguous suburban areas where most of the affluent homeowners presently reside. This expansion of the tax base should have two immediate results. It would (1) increase municipal revenue to pay for expenses and (2) enable the cities to maintain or decrease the present real estate tax rates, and thus diminish or end the exodus by taxpayers. Admittedly, the concept of regional government is far from a reality and there are considerable legal and practical difficulties obstructing its implementation. It would require amendment of state constitutions, and it is likely that residents of the suburban areas would strongly resist such reform. Also, it is likely that the political leaders (mayors, aldermen, selectmen, etc.) of the suburban cities and towns will resist any attempt to dilute their power base. It would appear, however, that regional government is *the* ultimate solution and that state and federal subsidies are amelioratives which will not solve the modern municipal fiscal problem.

²⁵⁸ E.g., persons who are known arsonists and persons who have previously defrauded insurance companies.

²⁵⁹ For the definition of riot, see p. 685 *supra*.

²⁶⁰ If property is in poor condition, it is better to grant a conditional acceptance at normal rates than to accept the property in its present condition with a surcharge. One of the purposes of the inspection system is to provide incentives for property owners to rectify dangerous conditions. Moreover, for this purpose, accepting the risk with a surcharge is not as effective as a conditional acceptance.

to fire. The proposed system, in conjunction with other poverty programs, will hasten the return to a normal insurance market.

One of the most important components of a viable pooling arrangement is the maintenance of precise actuarial statistics. The insurance commissioner within each state should closely monitor the system and require the pool to compile all types of relevant statistics. Such statistics could be utilized by the pools to alter their present underwriting standards if these standards do not accurately reflect the incidence of loss. The statistics will also inform the companies of the time when it becomes profitable to insure these risks through the normal market.

In this system, the basic provisions of the federal reinsurance program would be employed to supplement the state and local measures and to spread the losses nationwide. If the pool is unable to obtain reinsurance through normal channels, it should be able to reinsure all losses within the urban core area by payment of a reasonable premium to the federal government. The present federal reinsurance statute limits reinsurance coverage to losses caused by riots;²⁶¹ however, it should cover all losses regardless of the cause. The plan utilized in the federal statute for distributing risks among the insurance companies, states, and federal pool should be implemented in the proposed system.²⁶² As the situation in urban core areas improves, the federal reinsurance system should be phased out and more responsibility placed upon state and local programs.

IX. CONCLUSION

The insurance problem in urban core areas, like other problems indigenous to the area, is not amenable to easy solutions. The recent enactment of the federal reinsurance program and of the state plans is a step toward solution. As noted earlier, these state statutes contain many infirmities needful of cure by the plans of operation before they will become viable and effective insurance schemes. Since federal reinsurance is available only to insurers doing business within states that have insurance plans acceptable to HUD, insurers in other states will still be unable to obtain reinsurance for riot risks. Furthermore, the federal and state statutes are merely stopgap measures reflecting a response to the widespread rioting which has occurred in recent years. In particular, the restriction of federal reinsurance to riot risks reflects a failure by Congress to recognize the enduring causes of the insurance problem in urban core areas.

The implementation of an insurance scheme such as the one proposed should provide a strong foundation upon which other poverty programs can be built. The relation between the lack of insurance and other urban problems must be recognized, and modifications and full adaptations in the proposed scheme should be made when necessary to mesh the insurance plan with other poverty programs.

ALAN S. KAPLINSKY

²⁶¹ Pub. L. No. 90-448, § 1222(b) (Aug. 1, 1968), U.S. Code Cong. & Ad. News 2894, 2901.

²⁶² See p. 664 *supra*.