

STUDENT COMMENTS

INSURANCE PROTECTION AGAINST CIVIL DEMONSTRATIONS

Since the summer of 1964, Negro communities in eight large cities have experienced mob violence resulting in widespread damage.¹ The most recent of these outbursts occurred in the Watts section of Los Angeles. In an area covering forty-six square miles, the cost of property destruction approximated forty million dollars.² The purpose of this comment is to examine the insurance ramifications of such civil demonstrations.

From an insurance point of view, the first obstacle faced by a property owner in a district prone to civil demonstrations is the possible unavailability of insurance in the event that insurers anticipate a recurrence of violence. Although it has been asserted that owners of private homes and business establishments in these areas have experienced little difficulty in obtaining policies,³ there are indications to the contrary. One Los Angeles insurance agent has charged that businessmen in that city are faced with the decision of many first-line insurance companies to refuse to write policies in southern Los Angeles.⁴ Similar problems have been reported in other racially tense cities.⁵ Moreover, one who has succeeded in obtaining a policy in these areas is not secure. The same threat of violence which has led underwriters to refuse to issue new policies has reportedly caused cancellation and refusal to renew existing policies.⁶ And, even where policies are made generally available, insurers have yet another means by which they can avoid assuming the risk of civil demonstrations. They can make it financially impractical for a property owner to pay the insurer's rates for covering those risks. While it has been suggested that the incidence of prohibitive rates has been minimal,⁷ reports from Philadelphia, New York, and southern Los Angeles indicate the contrary.⁸

Assuming that the property owner has been able to obtain a policy at reasonable rates, he faces yet another obstacle in the possible operation of the exclusion clause. The standard fire policy covers all fire damage, including that caused by riot.⁹ If the assured desires additional protection, the "extended coverage plan" insures against all non-fire losses, even those caused by riot.¹⁰

¹ Governor's Comm'n on the Los Angeles Riots, *Violence in the City—An End or a Beginning?* at 2 (1965).

² State of California, Department of Insurance Press Release, Aug. 20, 1965.

³ State of California, Department of Insurance Press Release, Sept. 21, 1965.

⁴ N.Y. Times, Aug. 16, 1965, p. 16, col. 8.

⁵ Boston Herald, Oct. 3, 1965, p. 7, col. 6.

⁶ Elizabeth Daily Journal (N.J.), Oct. 6, 1965; Wall Street Journal, Oct. 4, 1965, p. 14, col. 3.

⁷ State of California, Department of Insurance Press Releases, Sept. 2, 1965 & Nov. 22, 1965.

⁸ Boston Herald, *supra* note 5; Wall Street Journal, *supra* note 6; N.Y. Times, *supra* note 4.

⁹ E.g., Mass. Gen. Laws Ann. ch. 175, § 99 (1958).

¹⁰ Extended Coverage Endorsement No. 4, Uniform Standard New England Form No. 758 (1962).

However, in both the standard fire policy and the extended coverage plan, and in any policy obtainable,¹¹ there is a clause excluding the insurer's liability if the loss results from insurrection.¹² Hence the problem of the policyholder becomes clear: is the outburst a *riot*, making the insurer liable, or is it an *insurrection*, as this term is used in the exclusion clause?

A "riot" is generally said to have occurred when two or more persons have joined in committing an act, lawful or unlawful, in a violent or tumultuous manner.¹³ Most of the cases, however, further require that the tumult have a private objective,¹⁴ such as the destruction of the property of an individual,¹⁵ as opposed to a public objective. In the latter case the violence is directed against society or civil authority, such as an organized rebellion against the government.¹⁶ Even when it is established that the objective of the group was the settlement of a private quarrel, a riot cannot be said to have occurred unless the result or effect of this settlement is a public disturbance.¹⁷ For example, if two or more persons secretly break into a home at night and destroy some property, no riot will have taken place unless these actions terrified the general populace or in some way produced a public disturbance.¹⁸ Hence a riot can be defined as the activity of two or more persons acting in pursuit of a private objective resulting in public turmoil.

A difficulty often arises in determining whether public turmoil has resulted from a private or a public objective. Violence aimed at the settlement of a labor dispute,¹⁹ or an attempt to prevent a business enterprise from operating,²⁰ is clearly privately motivated. Other cases pose difficulties. In *Commonwealth v. Runnels*,²¹ a group of about fifty persons attacked a public town house, seized the ballot boxes, and prevented the holding of an election. And in *United States v. Stewart*,²² the defendants used violence to thwart the mayor's efforts to have the polls opened. In both criminal actions, the court held that a riot had occurred. Since opposition to the voting process would appear to be directed against society or government, it can be argued that these outbursts had public objectives and hence were not riots. However, neither court discussed the public-private dichotomy. A possible reason for

¹¹ Although insurers are generally authorized to insure against such risks as war and insurrection, see Mass. Gen. Laws ch. 175, § 47 (1932), as a practical matter they usually do not do so. Vance, Insurance § 153, at 871 (3d ed. 1951).

¹² Mass. Gen. Laws Ann. ch. 175, § 99 (1958); Extended Coverage Endorsement No. 4, Uniform Standard New England Form No. 758 (1962).

¹³ *Walter v. Northern Ins. Co.*, 370 Ill. 283, 286, 18 N.E.2d 906, 907 (1939); Idaho Code Ann. § 18-6401 (1947).

¹⁴ "It seems to be agreed that the injury or grievance complained of and intended to be revenged or remedied by a riotous assembly must relate to some private quarrel only . . ." *Salem Mfg. Co. v. First American Fire Ins. Co.*, 111 F.2d 797, 802 (9th Cir. 1940).

¹⁵ *Spring Garden Ins. Co. v. Imperial Tobacco Co.*, 132 Ky. 7, 116 S.W. 234 (1909).

¹⁶ *Boon v. Aetna Ins. Co.*, 40 Conn. 575, 584 (1874).

¹⁷ *Commonwealth v. Zwierzelewski*, 177 Pa. Super. 141, 146, 110 A.2d 757, 760 (1954).

¹⁸ *Walter v. Northern Ins. Co.*, supra note 13, at 291, 18 N.E.2d at 910.

¹⁹ *Insurance Co. of North America v. Rosenberg*, 25 F.2d 635, 636 (2d Cir. 1928).

²⁰ *Commonwealth v. Paul*, 145 Pa. Super. 548, 554, 21 A.2d 421, 423 (1941).

²¹ 10 Mass. 518 (1813).

²² 27 Fed. Cas. 1339 (No. 16401a) (C.C.D. Pa. 1818).

this, other than their rejection of this dichotomy as a test, could be that it was clear to the court that the objectives of the violence were in fact not public. If in *Runnels* and *Stewart* the prevention of the elections was motivated by the participants' desire for personal revenge against those conducting the elections, then it would seem that the court could find riot and still observe the requirement of a private objective. But the underlying objectives were not mentioned. The *Runnels* court emphasized the combination of two or more participants²³ while the *Stewart* court treated this factor plus the element of a public disturbance.²⁴ If these cases did reject a private objective requirement, then it would appear that a riot is any assembly of two or more who act in such a way that members of the general public become terrified. As will be seen, while such a definition may suffice in a criminal proceeding, it is of little value in an insurance context, where the issue is not "riot or no riot," as in *Runnels* and *Stewart*, but rather "riot or insurrection." When it becomes necessary to distinguish between riot and insurrection, the private objective requirement for riot should be retained. Otherwise the definition of riot could in many instances easily encompass what should technically be termed an insurrection. By limiting the definition of riot to the use of violence to settle a *private* quarrel, and by defining insurrection as the violent manifestation of a *public* objective, we adopt the only test available which draws a workable distinction between riot and insurrection.

The term "insurrection" has been defined generally as an armed assembly of persons rising in opposition to established government or lawful authority.²⁵ This definition raises the fundamental question of the nature of the opposition required. One aspect of the problem is whether incidental or indirect opposition to government is sufficient. In *In re Charge to Grand Jury*,²⁶ the defendants were charged with willfully obstructing the execution of the mail transportation laws in so formidable a way as "for the time being to defy the authority of the United States."²⁷ This obstruction was held to be an insurrection which was defined as a "rising against civil or political authority,—the open and active opposition of a number of persons to the execution of law in a city or state."²⁸ This holding is subject to criticism since the defendants were involved in a local labor disagreement in which the court suggests that personal ambition and the satisfaction of private malice might have been the motivating factors. It could be inferred from this that the defendants did not have the public objective of attacking some phase of society or government, but rather were engaged in a *private* quarrel. The ensuing violence should then be termed a riot, not an insurrection. For, unless it is accepted that insurrection must involve *direct* opposition to the official acts of government, rather than the mere incidental resistance to such acts which may stand in the way of a private goal, any distinction between insurrection and riot is lost. It is difficult to conceive of a "riot" where the violence does not in some way result in resistance to

²³ Commonwealth v. Runnels, supra note 21, at 519.

²⁴ United States v. Stewart, supra note 22, at 1343.

²⁵ Hearon v. Calus, 178 S.C. 381, 399, 183 S.E. 13, 20 (1935).

²⁶ 62 Fed. 828 (N.D. Ill. 1894).

²⁷ Id. at 830.

²⁸ Ibid.

the execution of some law, even if it be only the law against breaching the peace or malicious mischief. The determination of insurrection should be governed, therefore, by an analysis of the public nature of the group's basic objective rather than by an observation of the incidental effects of any outburst.

If, then, the opposition must be direct, to what end must it be directed? It has been assumed thus far that any direct violence against government or society would be sufficient and that it is not necessary to have a movement which seeks to overthrow the government. Some cases support this assumption,²⁹ while, on the other hand, there is authority requiring a specific intention to overthrow the government.³⁰ This conflict must be resolved in order to determine when the exclusion clause in an insurance contract will become operative. An analysis of the conflicting cases is unlikely to yield the desired resolution since they do not satisfactorily set out the reasons for their choices. The more fruitful approach to this question, therefore, is a determination of why an insurance company would insert "insurrection" into an exclusion clause and why the legislature might allow the insurer to do so.

There seems little doubt that the major consideration leading an insurer to refuse to undertake the risk of damage resulting from direct violence against the government, *i.e.*, an insurrection, is the probability that extensive destruction will result.³¹ An analysis of the elements of antigovernmental activity which are likely to lead to this destruction is relevant to the issue of the direction which opposition to society or government must take in an insurrection. The participants are likely to have a sense of unity, at least in terms of singleness of purpose. Some may be moved by such fanatical desire that checking them will be nearly impossible. They will probably have done some planning to insure that their movement will come by surprise. The result will be systematic destruction and paralysis of the local police force, prolonging the period of destruction. Another element to be considered is the form which the government's counterattack is likely to take. In the interest of containing the outburst as a whole, government forces may find it necessary to allow property in some areas to be destroyed by the insurgents in order to cut off the progress of the movement into other areas. By concentrating the counterattack in areas not yet reached by the insurgents, government forces such as the National Guard may have to abandon any hope of protecting property in those districts which the insurgents have been able to dominate. In addition, these forces may find it necessary to engage in destruction of property themselves in order to prevent further violence. For example, apprehension of the insurgents may require the use of firearms, fire hoses, and tear gas in areas where private property is likely to be damaged in the process. All of the factors listed above must necessarily lead to wide-

²⁹ Case of Fries, 9 Fed. Cas. 924, 930 (No. 5127) (C.C.D. Pa. 1800); *In re Charge to Grand Jury*, *supra* note 26; *Ex parte Jones*, 71 W. Va. 567, 601, 77 S.E. 1029, 1043 (1913).

³⁰ *Home Ins. Co. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954); cf. *Spruill v. North Carolina Mut. Life Ins. Co.*, 46 N.C. 126, 127 (1853).

³¹ *Home Ins. Co. v. Davila*, *supra* note 30, at 735; *Vance*, *supra* note 11.

spread destruction of property and hence to potentially ruinous insurance claims.

It seems quite clear that these factors of destruction are very likely to appear when the movement seeks to overthrow the government. It may, however, be inaccurate to suggest that they are peculiar to such movements. If the objective of an outburst is to display opposition to a foreign policy, an unjust law, or an unjust social order made possible by governmental action or inaction, then it is likely that the participants will be as fanatical and unified, and hence as destructive, as when they seek to overthrow the government. There appears, therefore, to be no reason to say that when insurers excluded insurrection from coverage they meant to limit the exclusion merely to outbursts aimed at overthrowing the government.

The insurer's purpose in excluding insurrection is relevant to the question of whether an intention to overthrow the government is necessary only if the government which regulates the business of insurance shares that purpose. Legislatures are opposed to an underwriter's assumption of risks which may lead to insolvency and his consequent inability to pay claims.³² Clearly a narrowing of the concept of insurrection to an intention to overthrow the government increases the chances of liability for the ruinous payments which the exclusion clause is designed to avoid. It is submitted, therefore, that the reason for the existence of the clause, both from the point of view of insurance companies and legislatures, militates against the adoption of the narrow definition.

An additional reason for concluding that the term insurrection embraces both events is that violence opposing a law or governmental policy may be as unforeseeable as violence directed toward overthrowing the government. In order for insurers to set rates that bear some reasonable relationship to the risk assumed, as legislatures demand they must,³³ actuarial departments must be able to calculate the frequency and intensity with which the insured event will occur. One major reason for including an event in the exclusion clause is the difficulty of making this calculation due to the unpredictability of that event.³⁴ The manifestation of opposition to society or government through violence, *i.e.*, an insurrection, is such an event. This element of unpredictability exists not only when the movement seeks to overthrow the government, but also when its target is an allegedly unwise and unjust law or social order. For this reason, the term insurrection should include both movements.

Traditionally, insurers have not provided protection against the risks incident to direct opposition to government.³⁵ This may be the result of a feeling that it is the responsibility of government to assume those risks. If there is merit to the argument that the responsibility of government to

³² E.g., Cal. Ins. Code § 1852(a); Mass. Gen. Laws Ann. ch. 174A, § 5(a)(2) (1958).

³³ Del. Code Ann. tit. 18 § 2303(a)(3) (1953); Wash. Rev. Code Ann. § 48.19.030(3) (1961).

³⁴ 3 Richards, Insurance § 512, at 1663 (5th ed. 1952); Vance, *supra* note 11.

³⁵ Home Ins. Co. v. Davila, *supra* note 30 (insurrection, rebellion, war); Spruill v. North Carolina Mut. Life Ins. Co., *supra* note 30 (invasion, insurrection, usurped authority).

prevent opposition to its existence is a factor which would lead an insurer to decline to offer coverage for such opposition, then no reason is seen for limiting the concept of opposition to an intention to overthrow the government.

Was the outburst in Watts a riot or an insurrection? Was it the activity of two or more pursuing a private objective resulting in a public disturbance, or was it a movement with a public objective directed against government, its laws, or an unjust social order? It has been suggested that the violence had no objective other than destruction for its own sake.³⁶ Apparently much of the agitation stemmed from a Negro's resistance to arrest for reckless driving³⁷ and from a claim that a pregnant Negro woman had been abused by the police.³⁸ The fact that a good deal of the damage was inflicted upon white-owned establishments³⁹ may indicate the Negro participants' grudges against the white owners for alleged unfair dealings. Insofar as the above would lead to the conclusion that the violence was a manifestation of private objectives, such as the desires to be destructive or to seek revenge against individuals, the outburst may be considered a riot.

However, other aspects of the outburst indicate that what may have begun as the settlement of private quarrels became something more than a riot. Although there is little evidence of a pre-established plan of destruction,

the sudden appearance of Molotov cocktails in quantity and the unexplained movement of men in cars through the areas of great destruction support the conclusion that there was organization and planning after the . . . [outburst] commenced.⁴⁰

To the extent that this planned violence, however unsophisticated it may have been, was directed toward what the participants considered an oppressive government or an unjust social order, an insurrection may have occurred.

A good deal of the destruction of private property can be interpreted as the manifestation of a feeling that the structure of society denies full citizenship to Negroes. Inadequate education,⁴¹ consumer exploitation⁴² and job discrimination⁴³ must certainly give rise to this feeling. When, in November of 1964, an overwhelming majority of the voters repealed by initiative the Rumford Fair Housing Act, this probably was further evidence to the Negro that society and the government it reflects was basically discriminatory.⁴⁴ The "resentment, even hatred, of the police, as the symbol of authority,"⁴⁵ is yet another indication of the conclusion that, however inarticulate the violence may have been as an expression of protest, it did have as an objective opposi-

³⁶ N.Y. Times, Aug. 14, 1965, p. 8, col. 5.

³⁷ Governor's Comm'n on the Los Angeles Riots, op. cit. supra note 1, at 10.

³⁸ Id. at 12.

³⁹ N.Y. Times, Aug. 14, 1965, p. 8, cols. 1 & 7.

⁴⁰ Governor's Comm'n on the Los Angeles Riots, op. cit. supra note 1, at 22. The authors have substituted the word "outburst" for "riot." Although the commission called the Watts outburst a "riot," they were not using this term in a legal sense.

⁴¹ Id. at 49.

⁴² Id. at 62.

⁴³ Id. at 46.

⁴⁴ Id. at 4.

⁴⁵ Id. at 2.

tion to society and government. As one commentator put it, the violence was a "protest against forces which reduce individuals to second-class citizens, political, cultural, and psychological nonentities . . ."⁴⁶

Whether this view of society was justified is irrelevant to the issue of whether or not there was a violent opposition to the laws of government or to the structure of society. The existence of an insurrection should not depend on the political acumen of the insurgents nor on the rightness of their cause. The only question should be whether there in fact existed direct violent opposition to government. It is submitted that this question as applied to Watts should be answered in the affirmative and that the exclusion clause, as presently written, should relieve insurers of liability.

At present, insurers do not appear ready to contest their liability for losses from such demonstrations as occurred in Watts.⁴⁷ Nevertheless, in view of the increasing number of insurance claims arising from civil demonstrations, insurers may decide to assert the defense of insurrection. Because of this possibility, solutions to the problem posed by the present form of the exclusion clause should be proposed and examined. Such solutions must presuppose the existence of a fire policy available at reasonable rates. Only when such availability is established should the question be raised whether the policyholder is able to procure protection which clearly covers civil demonstration losses. This approach (treating policy availability at reasonable rates before adequacy of coverage) will be employed below in an examination of the ability of the insurance industry, the states and, finally, the federal government to implement solutions.

The ability of insurers to effect solutions themselves is limited by state control over the business of insurance. In some areas, states have permitted insurers to act with a degree of independence; here insurers can effect solutions, subject, of course, to state acquiescence. In other areas, however, the state has exercised its control to the fullest;⁴⁸ here insurers are restricted to suggesting solutions. As an example of the former, California insurers have been considering the voluntary formation of an insurance pool or association which would provide protection for some of those experiencing difficulty in securing insurance.⁴⁹ This "pool" approach would, of course, be subject to the same problem which exists absent a pool: the insurers remain the evaluators of insurability.⁵⁰ Thus, while a voluntary pool makes it somewhat easier for certain property owners to procure protection, those who are deemed uninsurable risks by the insurers remain unprotected.⁵¹

An example of an area in which the states have exercised their control to

⁴⁶ *Id.* at 88.

⁴⁷ *J. Am. Ins.*, Nov.-Dec., 1965, p. 5.

⁴⁸ As will be discussed below, rates and policy forms are strictly regulated by the states. See statutes cited note 62 *infra*; cases cited note 54 *infra*.

⁴⁹ State of California, Department of Insurance Press Release, Nov. 22, 1965.

⁵⁰ This is a "problem" only insofar as it is assumed to be desirable that all property owners in civil demonstration areas be protected by insurance. Undeniably, insurers' obligations to their stockholders and policyholders require selection of risks.

⁵¹ The factor motivating consideration of a pool might be the same as motivated the California automobile insurers to form a voluntary pool: if the insurers do not act themselves, the state will impose its plan upon them.

the fullest is fire and casualty rate regulation.⁵² Insurance industry action in lowering rates so as to make policy availability more than illusory must satisfy the various requirements considered in formulating and approving rating structures.⁵³

Any change in the form of the exclusion clause (for example, deletion of insurrection as an excluded peril) would also be subject to strict state control.⁵⁴ While the insurance industry could propose clarification or modification of the exclusion clause, actual changes would depend upon the states.

Turning now to state solutions, the scope of state regulation of insurance is sufficiently comprehensive to enable a state to require insurers operating within its boundaries to issue policies to applicants who would be denied protection by insurers free to choose their own risks.⁵⁵ Automobile assigned risk plans enable certain states to assure protection to residents classified as poor risks.⁵⁶ In 1951, the due process objection to California's plan was rejected by the United States Supreme Court.⁵⁷ The arguments which were offered by the automobile insurers may be raised by fire insurers faced with legislative establishment of assigned risk fire insurance. The defendant insurers argued in vain—but perhaps not without merit—that the act, in commanding them to incur liabilities against their will, forced them to undertake risks so abnormal that financial loss might be expected.⁵⁸ The Court found no violation of the fourteenth amendment, stating that, in its broadest reach, the case "is one in which the state requires in the public interest each member of a business to assume a *pro rata* share of a burden which modern conditions have made incident to the business."⁵⁹ Legislation which would establish assigned risk fire insurance has already been proposed in California⁶⁰ and Pennsylvania.⁶¹ Although these bills might effectively alleviate the availability problem, the conspicuous absence of a provision for rates reasonably within the reach of the property owner could render this protection illusory.

Normally, state insurance commissioners are required by statute to observe three primary considerations in establishing and approving rate structures: The solvency of the insurers, nonexcessiveness of the rates, and nondiscrimination among applicants posing like risks.⁶² The nonexcessiveness provision arguably leaves room for reasonable profit margin. Rates must meet the test of all of these provisions, and if the property owner is unable to afford the established rates, he cannot be protected. Perhaps in an assigned risk fire insurance plan the commissioner should be empowered to set rates which

⁵² E.g., N.Y. Ins. Law § 186(2).

⁵³ See statutes cited note 62 *infra*.

⁵⁴ Union Mut. Life Co. v. Bailey, 99 Colo. 570, 575, 64 P.2d 1267, 1269 (1937); New York Life Ins. Co. v. Hardison, 199 Mass. 190, 199, 85 N.E. 410, 413 (1908).

⁵⁵ California State Auto. Ass'n v. Maloney, 341 U.S. 105, 110 (1951).

⁵⁶ Cal. Ins. Code §§ 11620-27; Mass. Gen. Laws Ann. ch. 175, §§ 113H, I (1958); N.Y. Ins. Law § 63; Wisc. Stat. Ann. § 204.51 (1957).

⁵⁷ California State Auto. Ass'n v. Maloney, *supra* note 55.

⁵⁸ *Id.* at 108.

⁵⁹ *Id.* at 109.

⁶⁰ Cal. S.B. 1276 (Regular Sess. 1965).

⁶¹ Pa. H.B. 78 (1965 Sess.).

⁶² Cal. Ins. Code § 1852(a); Mass. Gen. Laws Ann. ch. 174A, § 5(a)(2) (1958); N.Y. Ins. Law §§ 183(1)(b), (c).

satisfy solvency considerations but cut into the insurers' profits, bringing rates within the reach of the low income property owner.

The problem posed by the present exclusion clause could be handled by legislative modification, or substitution of a new clause which clearly does not exclude civil demonstration losses.⁶³ Although it would seem that an alteration of the exclusion clause might affect the solvency of insurers, the fact that they are presently paying for civil demonstration losses without crying insurrection⁶⁴ suggests that present profit margins enable them to absorb these losses. If these profit margins continue, change should not cause a solvency problem.

A different approach would be for the states to adopt programs which are not, strictly speaking, insurance. An illustration of such a program is the proposed California catastrophe insurance fund which would be composed of tax revenues and premiums paid by residents who desire protection.⁶⁵ As mentioned previously, rates satisfying the present state requirements might preclude protection because of the inability of the property owner to pay. By pouring general tax revenues into the fund, the state would in effect subsidize the cost of this protection.⁶⁶

In *United States v. South-Eastern Underwriters Ass'n*,⁶⁷ the United States Supreme Court held that the federal government has the power under the commerce clause of the Constitution to assume the dominant role in insurance regulation. Congress chose not to exercise this power in Section 1 of the McCarran-Ferguson Act,⁶⁸ which declares that it is in the public interest that regulation of the business of insurance should remain in the hands of the states. In theory, then, if Congress should so decide, the federal government could assure availability of insurance and make those rate and exclusion clause modifications discussed above.

Even under existing laws, some federal action is possible. One federal solution might take the form of the Federal Flood Insurance Act of 1956.⁶⁹ Although the Congress appropriated no money for the program, it is illustrative of a joint federal-state subsidy of insurance: the act provided for the establishment of a disaster insurance fund, composed of the assureds' premium payments and state and federal contributions, from which payments for losses were to be made.⁷⁰ The same reasons underlying passage of the Federal Flood

⁶³ See *Union Mut. Life Co. v. Bailey* and *New York Life Ins. Co. v. Hardison*, supra note 54.

⁶⁴ *J. Am. Ins.*, supra note 47.

⁶⁵ Cal. A.B. 1737-40 (Regular Sess. 1965).

⁶⁶ Another non-insurance solution might be legislative imposition of direct municipal liability for civil demonstration damage. See Note, *Municipal Liability for Riot Damage*, 16 *Hastings L.J.* 459 (1965).

⁶⁷ 322 U.S. 533, 552-53 (1944).

⁶⁸ 59 Stat. 33 (1945), 15 U.S.C. § 1011 (1964).

⁶⁹ 70 Stat. 1078 (1956), 42 U.S.C. §§ 2401-21 (1958).

⁷⁰ Actual premium rates could be less than the rates estimated to be adequate to fund the program, but in no case could a policy premium be less than 60% of the estimated rate. Each participating state would have been required to pay one half of the difference between the actual rate and the estimated rate; the federal government would have paid the other half. The latest proposal for federal aid to victims of flood damage is the Disaster Relief Act of 1965, S. 1861, 89th Cong., 1st Sess. (1965). This program would

Insurance Act are applicable to civil demonstrations. In both cases there are potential ruinous losses, the losses affect only a limited area, and these limited areas can be determined in advance with some degree of accuracy.

The federal antitrust laws, made applicable to the business of insurance by the McCarran-Ferguson Act,⁷¹ might be used to prevent agreements among insurers not to insure property in civil demonstration areas. However, a recent case involving agreements not to insure illustrates the limitations of this approach.⁷² The case involved alleged agreements not to insure the plaintiff property owner against loss from fire. It was held that the antitrust laws were not violated, since the effect upon competition in this instance was minimal.⁷³ By way of dicta, the court stated that in light of the plaintiff's previous susceptibility to fire loss and the insurers' obligations to their policy holders, refusal to insure the plaintiff was not unreasonable.⁷⁴ Because of the very high risk involved in insuring property susceptible to civil demonstration damage, insurers may very well be acting reasonably in refusing, even concerted, to insure in such high risk areas.

In conclusion, the authors submit that a legal analysis of a "Watts-type" outburst by a court may well lead it to the conclusion that such an outburst constitutes an insurrection. The upshot is that insurance policies now available do not provide protection against civil demonstrations such as occurred in Watts. To afford such protection to property owners, we must look to the states, since federal activity in insurance regulation is curtailed by McCarran-Ferguson, and because insurers are limited largely to suggestion. The authors feel that the optimum solution which can be afforded by the states would be the establishment of state-administered fire insurance assigned risk plans, with policies clearly covering loss due to civil demonstrations.

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provide an indemnity against loss resulting from major disasters. The federal government would pay 50% of the loss, the state would pay 25% of the loss, and the property owner or business concern would assume the remaining 25%.

⁷¹ 59 Stat. 33 (1945), 15 U.S.C. § 1012 (1964).

⁷² *Ruddy Brooks Clothes, Inc. v. British & Foreign Marine Ins. Co.*, 195 F.2d 86 (7th Cir. 1952).

⁷³ *Id.* at 90.

⁷⁴ *Ibid.*