Volume 61
Issue 1 *Dickinson Law Review - Volume 61, 1956-1957*

1-1-1957

Taxation Without Limitation: Twentieth Century Tyranny

THE IMPLICATION OF GOVERNMENTAL INSURANCE OF CATASTROPHE RISKS*

By HERBERT A. KUVIN †

TO PROPERLY undertake a development of the subject, it will be necessary to establish the meaning of "insurance" and "catastrophe risks." After such establishment, this article will be confined to such matters within the framework of those definitions.

"Insurance" as defined herein shall be considered as including both primary insurance and reinsurance. Therefore, "Insurance" is that device that is more than "risk-shifting"; it is "risk-sharing." It is created or established by a contract or agreement which contains five necessary elements: (a) the person insured must possess an interest of some kind, susceptible of pecuniary estimation, known as an insurable interest; (b) the insured is subject to a risk of loss through the impairment or destruction of that interest by the happening of a *known* or *designated* peril; (c) the insurer (in this article, the government) assumes *that* risk; (d) such assumption is part of a *general scheme* to distribute the losses actually sustained among a large group of persons[1] bearing somewhat similar risks; (e) as consideration for the insurer's undertaking, the insured makes a ratable contribution, called a "premium", to a general insurance fund from which all such losses are paid.[2]

A clear understanding of the distinction between such "risk-distribution" and the "risk-shifting" devices must be had in order that one may not be confused with the other, which so often occurs even by those in the industry. The insurance device of "risk-sharing," by whatever name called or form used or assumed contains *all* five elements above set forth. If only the first three elements are present, then the transaction or device is "risk-shifting." It is a means of shifting the risk of loss from the one who normally should or would sustain that loss to another who assumes the loss. There are many devices and forms of transactions whereby "risk-shifting" have been resorted to.[2a] These

* On August 7, 1956, President Eisenhower signed the Federal Flood Insurance Act of 1956 authorizing the Housing and Home Finance Administrator to insure on a limited basis individuals, businesses, and municipalities against loss of property from flood or tidal wave damage. This article is dated April 14, 1956. Ed.

† Director of Insurance Law Training Programs and Conferences, Assoc. Prof. of Law, University of Miami, Fla.

1 "Persons" includes natural persons as well as all corporate or other legal entities.

2 B. M. Anderson: VANCE, INSURANCE (hornbook), West Publishing Co. (1951), p. 1 etc.; Kuvin, *Tontine Policies, etc.*, INS. L. J., May, 1955, pp. 345 and 347.

2a See article by Irving Fisher, *Elimination of Risks,* Yale Readings in Insurance, Life and Accident (1923), p. 1; also see Patterson, *Apportionment of Business Risks Through Legal Devices,* 24 COL. L. R. 335.

may be divided into five classifications or methods: (1) by increasing guaranties for the performance of contract;[3] (2) by increasing safeguards against incurring losses;[4] (3) by increasing foresight and thereby diminishing the risks;[5] (4) by throwing risks into the hands of a special class of speculators;[6] and (5) by insurance.

It is not always easy to determine when a transaction is insurance or "risk-distribution," warranty, guaranty or "risk-shifting."[7] Therefore, a contract, by whatever form or name, which contains only the first three elements, (a), (b) and (c), is a risk-shifting device and not a contract of insurance. Insurance, being risk-sharing or risk-distribution, must contain all five elements set forth under our definition or enumeration above.

Theoretically, one of the implied ingredients of insurance is that the sum total of the contributions by the insureds must equal the sum total of the losses sustained by such contributors. In practice there are such factors as expenses in collection of contributions (premiums) and payment of losses together with other overhead factors that must be added to the theoretical ingredients, so that the pro rata contributions, called "premiums," will be "adequate, reasonable and not excessive."[8] Even this question of premium rates or regulation of rates, involving so many factors for the determination of the criteria of reasonableness, adequacy and lack of discrimination or excessiveness, is not as simple as one would be led to believe.[9]

Obviously, any unexpected or unanticipated loss sustained is a "catastrophe" to the person sustaining the loss. It has been defined[10] as ". . . also, a final event or calamity; also, a sudden, violent disturbance, ..." Any accident, fire, loss by theft, collapse of structure, illness, discharge from employment, may be classified by the person sustaining a loss as a catastrophe. Insurance is now available against such losses or risks; one may insure against death.

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[3] Such as penalty or bonus clauses in contracts, security deposit requirements, etc.

[4] Hurricane shutters on buildings, sprinkler systems, safety devices on machinery and equipment, automatic fire alarms, fire salvage companies, etc.

[5] Surveys of causes of risks and establishment of preventive measures to avoid occurrences or severity of loss, etc.

[6] Such as bail sureties and other sureties for business (the surety business is not, strictly speaking, "insurance"; and since it has been undertaken by corporations for profit and consideration, the regulation of this business was placed under the jurisdiction of the state insurance departments).

[7] Compare Ollendorff Watch Company v. Pink, Supt. of Ins., 279 N.Y. 32, 17 N.E. 2d 676 (1938), with State *ex rel.* Herbert, Atty. Gen. v. Standard Oil Company, 138 Ohio St. 376, 35 N.E. 2d 437 (1941), and State *ex rel.* Duffy, Atty. Gen. v. Western Auto Supply Co., 134 Ohio St. 163, 16 N.E. 2d 256 (1938).

[8] See sec. 186, chap. 28 of Insurance Law of the State of New York, as amended L. 1948, c. 618, secs. 20-22, as an example of state regulatory enactments as to premium provisions; also see 44 C.J.S., *Insurance* § 60.

[9] See Moser, *Competition and Insurance: Yesterday—Today—Tomorrow*, INS. L. J. for May of 1955, p. 305.

[10] 1 NEW CENTURY DICT. 221.

Therefore, for the purpose of this discussion, some other concept of the meaning of "catastrophe" must be established.

The word "disaster" does not afford any greater assistance to our purposes. It is defined as "Mischance or misfortune; fatal or ruinous misfortune; also, a mishap; a sudden or great misfortune; a calamity . . . ."[11]

We are obviously not concerned with "catastrophies" or "disasters" to individuals or even groups of individuals from the aspect that the government, whether state or federal, should undertake to provide insurance against losses sustained by them.

The "catastrophe" or "disaster", to warrant the government to undertake institution of an insurance program to indemnify losses thereby caused, must be of such degree, magnitude, scope or character as to endanger the safety, health, welfare and morals of the public, within the jurisdiction of that government.

Therefore, "catastrophe" as herein used shall mean such happening as will endanger the health, safety, welfare and morals of the entire or the major portion of the public of that jurisdiction, either directly or indirectly.

It will not be the purpose of this writer to enumerate all of the kinds of insurance made available by the insurance industry to individuals, groups, or legal entities.

Governmental insurance has been made available in many fields. During the transition from the common law remedy of employer and employee liability to workmen's compensation laws, both private and state insurance funds were made available.[12] Some states have insurance funds which compete with private insurance companies; some states provide funds to such employers who cannot obtain insurance protection from private insurance companies, and some states have exclusive state employer insurance funds and do not permit private insurance companies to write workmen's compensation insurance within their state boundaries.

The United States government has participated in many catastrophe or disaster insurance programs. Since natural disasters or catastrophies respect no state or local boundaries, they often impede commerce among the several states and with foreign nations. They damage post offices and post roads. They interfere with the common defense and general welfare and defense of the nation.

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[11] 1 NEW CENTURY DICT. 427.

[12] See Kuvin, *Automobile Liability Insurance: What Is Its Future Course?*, INS. L. J. for June of 1956, and authorities therein cited.

Under the 1936 Flood Control Act[13] the following declaration of policy was set forth by Congress:

> "It is recognized that destructive floods upon the rivers of the United States, . . . constitute a menace to the national welfare; . . . that the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in excess of the estimated costs, and if the lives and social security of people are otherwise adversely affected."

On the basis of this policy, Congress authorized a program of physical protection works as a measure of flood control in order to prevent or control destructive floods that menace national welfare. This was making use of one of the risk-shifting devices.[14] It would seem that a federal insurance or indemnity program would be another means of minimizing the losses caused by destructive floods which occur in spite of the protective devices used, since experience has indicated that such floods have occurred in areas where flood control protective measures were not undertaken or planned, because such areas were not considered subject to floods by all knowledge available.

Congress has already enacted into law many programs incorporating the insurance method, or a related indemnity method, requiring the payment of fees or charges. These include such programs as:

1. Crop insurance[15]
2. Bank deposit insurance[16]
3. Savings & Loan Account insurance[17]
4. Housing mortgage insurance (FHA and VA)[18]
5. Maritime vessel mortgage insurance[19]
6. Maritime cargo wartime insurance[20]
7. Aviation wartime insurance[21]
8. Veterans' life insurance[22]
9. Unemployment insurance[23]
10. Old-age and survivors insurance[24]

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13 49 STAT. 1570 (1936), 33 U.S.C. § 701 (1950).
14 See *supra*, ". . . by increasing safeguards against incurring losses . . ."; also see note 5 *supra.*
15 52 STAT. 72 (1938), 7 U.S.C. §§ 1501-1518 (1952).
16 48 STAT. 168 (1913), 12 U.S.C. §§ 264 et seq. (1945).
17 48 STAT. 1255 (1934), 12 U.S.C. §§ 1274 et seq. (1945).
18 48 STAT. 1246 (1934), 12 U.S.C. §§ 1702 et seq. (1945).
19 46 STAT. 969 (1936), 46 U.S.C. §§ 1271 et seq. (1944).
20 50 App. 1293 etc.
21 65 STAT. 65 (1938), 49 U.S.C. §§ 713 et seq. (1955).
22 54 STAT. 1008 (1940), 38 U.S.C. §§ 801 et seq. (1954).
23 49 STAT. 626 (1935), 42 U.S.C. §§ 501 et seq. (1952).
24 49 STAT. 620 (1935), 42 U.S.C. §§ 301 et seq. (1952).

11. Government employees' insurance[25]
12. Export-Import Bank tangible property insurance[26]
13. Mutual Security Act investment guaranty program[27]
14. Veterans loans guaranteed by federal government agencies[28]
15. War damage insurance[29]

Therefore, it is evident that the insurance device has already been widely used in federal programs. Several of these programs were inaugurated by federal legislation at times when persons active in private insurance business cast strong doubts on their workability, but as operating experience progressed, the confidence of private businessmen in the programs grew so that now many of them have become part and parcel of everyday transactions stoutly defended by some of the same groups that were first hesitant about their practicality.

Many of the above federal ventures into the insurance field are still with us to this date.

The private insurance industry has taken care of its requirements for catastrophe or disaster coverage by reinsurance. *Reinsurance* has been defined[30] as a contract between two insurers by which the one assumes the risk of the other and becomes indemnitor on the risks or parts of risks pursuant to agreed upon covenants and conditions. Thus fire, liability, marine, life and surety insurance companies, by treaties or specific undertakings, arrange to transfer that portion of their assumed risks to another insurer, group of insurers or syndicates so that any loss resulting from a disaster or catatrophe will be paid out by such reinsurers.[31]

Some types of commercial (supplied by private insurance entities as distinguished from governmental agencies) insurance generally cover property damage from natural disasters except flood, tidal wave, certain damage from hurricanes, air pollution and wave wash. Accident, health, and life insurance is generally available from private or public sources against personal injury or death due to natural disasters. During eight years (1947-54), of 750,000 accidental deaths in the United States only 1,411 resulted from natural disaster, or less than one-fifth of 1 percent, on Metropolitan Life Insurance Company cal-

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[25] 68 STAT. 736 (1954), 5 U.S.C. §§ 2091 etc. (1955).
[26] 59 STAT. 526 (1945), 12 U.S.C. §§ 635 etc. (1955).
[27] 22 U.S.C. § 1671, repealed; see 68 STAT. 862 (1954), 22 U.S.C. §§ 1751 et seq. (1953).
[28] 58 STAT. 291 (1944), 38 U.S.C. § 694 (1954).
[29] 48 STAT. 318 (1934), 15 U.S.C. §§ 601 et seq. (1948).
[30] 46 C.J.S., *Insurance* § 1220.
[31] For comprehensive treatment of reinsurance, see THOMPSON, REINSURANCE (3rd ed. 1951).

culations. At the end of 1954, life insurance in the United States totaled $334 billion in 237 million policies covering 93 million holders. Of this, $118 billion worth provided for double indemnity for accidental death. At that time 100 million persons had some form of health insurance, which paid $2.7 billion in benefits in all. None of these life or health policies contained any exclusion pertaining to natural disaster risk; and most do not exclude war risk. Accident and health policies paying benefits resulting from accidental injury do tend to exclude war risk.

Insurance on flood risk to property is very limited in availability. The only real property generally so covered are bridges and tunnels under all-risk policies, and these are chosen selectively. Comprehensive coverage is available for motor vehicles. Inland marine policies cover merchandise in transit or on consignment. Cargo and equipment may be covered under other policies. Floater policies handle contractors' equipment, jewelry, furs, and certain other personal property. An examination of a standard form of fire insurance policy will indicate that when a flood causes a fire, fire-insurance policies cover the loss.[32] Flood insurance is not generally commercially available on real property. Even hurricane damage is not covered or insured if caused primarily by water under most extended coverage policies or riders.

Therefore, disaster or catastrophe risks may be divided into two classes: man made and natural.

Among the man made disaster or catastrophe risks would be included damages resulting from war, riot, insurrection, explosions (atomic or otherwise caused), radioactive fallout and smog or air pollution of any kind.

Among the natural catastrophies or disasters may be considered damages resulting from flood, tidal wave, hurricane, tornado, blizzard, duststorm, hailstorm, other severe natural disturbances, earthquakes, explosion (from atomic energy reactors or such occurrences as the Black Tom Explosion during World War I or the Texas City disaster, considered general in effect as distinguished from local or confined in scope), landslides, snowslide, severe freeze, drought, smog, radioactive contamination or other air pollution, and volcanic eruption.

It would be beyond the space limitations of this article to attempt to treat with each and every one of the types of risk or damage resulting from the herein set forth classification of either man made or natural disaster or catastrophe.

What are the implications of governmental insurance pertaining to these risks?

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[32] Insurance Policy Annotations and Supplements, Section of Insurance, A.B.A.

Four bills are now pending in the Congress. They are known as the Lehman Bill,[33] the Kennedy-Saltonstall Bill,[34] the Carlson Bill,[35] and the Staff Bill.[36]

The Lehman Bill authorizes insurance and reinsurance for several types of natural and man made disaster and would strengthen the statutory authority of the Federal Civil Defense Administration to handle disaster relief insurance and reinsurance. This bill is the most comprehensive in scope and detail of the four proposed bills. It would change the name or title from Federal Civil Defense Administration to Federal Disaster Administration. It provides for coverage for war risk in addition to disaster from natural or man made causes.

The Kennedy-Saltonstall Bill places the administration of the insurance in the Administrator of the Small Business Administration and covers only "flood" as defined by the administration.

The Carlson Bill places jurisdiction in the National Disaster Insurance Corporation, a newly created government corporation, and is made subject to the Government Corporation Control Act.[37] It authorizes coverage for flood, tidal wave, earthquake, or hurricane.

The Staff Bill places the administration in the hands of the Administrator of the Small Business Administration and covers the risks as comprehensively as authorized in the Lehman Bill.

All, except the Carlson Bill, permit direct writing and sale of federal insurance to persons and reinsurance agreements with primary insurers. The Carlson Bill permits only reinsurance of private company undertakings.

Since none of these bills have been enacted, but in fact are still under consideration by the Committee on Banking and Currency in the United States

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[33] Senate Committee print, Oct. 25, 1955, intended to be proposed by Senator Herbert H. Lehman, New York, Appendix B, p. 389, Staff Study for the Committee on Banking and Currency, United States Senate, Nov. 30, 1955.

[34] On Sept. 12, 1955, Senator Kennedy and Senator Saltonstall sent their colleagues in the Senate a letter with a draft of a proposed bill to be introduced in the Senate. See Appendix C, p. 400, Staff Study for the Committee on Banking and Currency, U.S. Senate, Nov. 30, 1955.

[35] S. 2148 was introduced on Sept. 20, 1951, by Senator Carlson of Kansas, for himself, Senator Schoeppel of Kansas, and Senator Kem of Missouri; it was to be known as the National Disaster Insurance Corporation Act of 1951. This bill was sent to Congress with the President's message and printed as House Document 458, 82nd Congress, 2nd Session. On May 9, 1952, Senator Maybank introduced the bill in the Senate and it became S. 3146 and was referred to Committee. On May 5, 1952, a companion bill was introduced in the House by Congressman Bolling as H.R. 7726. No action was taken and no bill was introduced in the 83rd or, to Nov. 30, 1955, the 84th Congress in the Senate. On Jan. 3, 1953, H.R. 7726 was reintroduced as H.R. 377, and no legislative action has been taken thereon. See Appendix D, p. 404, *op. cit. supra.*

[36] Senator Bush asked the Staff of the Committee on Banking and Currency to prepare a form of bill to be proposed and the Staff draft of the proposed bill is set forth in Appendix E, p. 408, *op. cit. supra.*

[37] 59 STAT. 597 (1945), 31 U.S.C. §§ 841 et seq. (1954).

Senate, no purpose can be gained by discussing the implications of the probable passage of any or all of them, or any section of any of them.

Considerable agitation is afoot for some type of disaster insurance to cover the losses sustained by reason of floods, hurricanes, wave wash, and all kinds of risks incident to the use of atomic energy as a power producer.[38]

All sorts of plans are being proposed to Senator Lehman who is conducting hearings throughout the country on his proposed bill.[39] Some insurance groups suggest that the War Risk plan be adopted. Others suggest that the federal government establish a reinsurance pool or government corporation authorized to reinsure catastrophe risks.

What will occur is problematical.

Regardless of the type or form of action taken relative to this problem there are certain patterns that can be expected to come into being.

At the outbreak of World War I, in 1914, American shippers found their business seriously disrupted by the difficulty of procuring reasonable insurance rates. To meet this emergency, Congress enacted the War Risks Insurance Act of 1914.[40] This created a Bureau of War Risk Insurance which proved highly successful. Under this statute it was held that when the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement on the loss it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business.[41] In October, 1917, the War Risk Insurance Act was extended to provide life insurance for all persons in the armed forces.[42] Then when the Armistice of November, 1918, was signed and peace finally established, Congress passed the Economy Act of 1933 attempting to repeal the benefits issued under the insurance provided. Although the courts considered that the insurance, by reason of the low premiums charged and the liberal terms of provided coverage, as compared with private insurance company policies, was in part a gratuity,[43] they consistently held that the policy coverage was not repealed since the government cannot, consistent with the Fifth Amendment of the constitution, destroy a contractual right.[44]

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[38] See: NATIONAL UNDERWRITER, Nov. 10, 1955; JOURNAL OF COMMERCE, Nov. 14, 1955; JOURNAL OF COMMERCE, Nov. 10, 1955; NATIONAL UNDERWRITER, Dec. 1, 1955, and each issue of WASHINGTON INSURANCE NEWSLETTER after Dec. 10, 1955.

[39] See UNITED STATES INVESTOR (3163), p. 31, Sept. 10, 1955.

[40] See note 20 *supra*.

[41] Standard Oil Co. of New Jersey v. United States, 267 U.S. 76, 79 (1925), *reversing* 291 Fed. 1 (1st Cir. 1923).

[42] See note 22 *supra*.

[43] White v. United States, 270 U.S. 175 (1925).

[44] Lynch v. United States, 292 U.S. 571 (1934); United States v. Jackson, 302 U.S. 628 (1938).

Certain provisions for the designation of or change of beneficiaries were also provided for. However, the courts, following the theory that the United States, being in the insurance business and to the same effect as private corporations, should be bound by the same principles of law as private insurance companies, held that these provisions could be waived by the United States,[45] since they were for the convenience or benefit of the United States.

The administration of the act was placed in the Veterans' Bureau, when it was organized in 1921. A claim presented to this Bureau was determined and upon an appeal from this determination, the courts held that it was not reviewable in a federal court unless a showing was made that the administrator acted arbitrarily, capriciously or wholly unfounded on evidence.[46] Congress passed the War Veterans Act[47] which changed this and allowed an insured to bring suit in a federal court after disagreement with the Veterans' Bureau respecting a claim. However, a condition precedent to such right to bring an action or to maintain such action was to allege and prove the existence of such disagreement.[48]

On the question of limitations, the courts followed the statutory provisions and construed them much as they would other limitation statutes.[49]

Within a year after World War II had commenced and more than a year after the United States entered into this war, Congress again passed an act to provide marine insurance and reinsurance as to war risks.[50]

The National Service Life Insurance Act was also passed about this time.[51] However, this insurance has been costly to the United States for many reasons.[52]

Federal crop insurance has suffered from the damaging effects of natural disasters such as drought and hurricane. Administered by the Federal Crop Insurance Corporation in the United States Department of Agriculture, it has experienced growing pains and may well serve as guide to problems of a similar nature that may arise in the operation of a federal disaster or catastrophe in-

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45 Farley v. United States, 291 Fed. 238 (N.D. Ore. 1923); Peart v. Chaze, 13 F.2d 908 (S.D. La. 1926).

46 Silberschein v. United States, 266 U.S. 221 (1924); Armstrong v. United States, 16 F.2d 387 (7th Cir. 1926).

47 43 STAT. 1302 (1925), 38 U.S.C. § 445 (1954).

48 Maddox v. United States, 16 F.2d 390 (6th Cir. 1926); Reece v. United States, 17 F.2d 856 (S.D. Mo. 1927); Howard v. United States, 2 F.2d 170 (M.D. Ky. 1924); Kontovitch v. United States, 99 F.2d 661 (5th Cir. 1938), *cert. denied*, 306 U.S. 661 (1928).

49 United States v. Towery, 306 U.S. 324 (1939).

50 54 STAT. 689 (1940), 5 U.S.C. § 30 (1950).

51 See note 29 *supra*.

52 See House Report No. 2761, 81st Congress, 2d Session, July 31, 1950. Dan M. McGill, *The Source of National Service Life Insurance Dividends*, J. AM. SOC'Y C. L. U. for Dec. of 1949, pp. 7-17.

surance or indemnity program. The loss ratio, which is the total premiums collected from all business, divided by the total losses paid out for the period considered, for 1948 to 1954 both inclusive was 1.06, whereas the loss ratio for 1954 only was 1.26.[53] If any private insurance company has such a record, the state insurance commissioner would immediately start an investigation to ascertain if its capital and surplus structure was sufficient to take such losses, or was critically impaired.

Under this type of insurance it was held[54] that regulations promulgated by the Corporation pursuant to the act have the effect of law; that the insured was bound to know the limitations upon the authority of an agent of the Corporation in dealing with him; that while an equitable estoppel ordinarily may not be invoked against a government or public agency functioning in its governmental capacity, but that where elements of an estoppel are present it may be asserted against the government when the government is acting in its proprietary capacity, and insurance is such proprietary capacity; and that where an insured has a contract of insurance he is bound by the terms thereof, whether he has read the contract or not, so long as he has had the opportunity to read same, since it was in his possession.[55]

In reinsurance most treaties or specific contracts contain provisions for the determination of controversies between the reinsured and the reinsurer by arbitration.[56] There is nothing in any of the proposed federal bills authorizing a like provision. On the contrary, provisions are included which permit suits in the federal courts upon disagreement with the Administrator's determination of claims. This situation may be satisfactory for primary insurance. But it must be remembered that insurance companies, which reinsure their excess or surplus coverage, do not want litigation relative to any issue concerning the interpretation or enforcement of their treaty or specific or facultative contracts. Arbitration avoids litigation, yet does not have the element of compromise in it. It does not do away with the regard to the merits of the case. The insurance industry has found much to warrant its use of this device. It usually saves cost of litigation which can be long and protracted. Decisions are reached rapidly. The decision has been found to be based largely upon business experience and custom rather than upon strict rules of law and evidence. After the determination, the parties generally continue to deal with each other unless distrust has arisen or the element of fraud or concealment has developed as an element in the case;

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53 See Federal Crop Insurance Corporation's report to Congress, 1954.

54 See United States v. Shaw, 137 F. Supp. 24 (S.D.N.D. 1956).

55 Compare the law generally relative to duty of insured to reply on insurance company's agent's representations as to contents of policy without reading policies delivered to assured. See VANCE, INSURANCE (hornbook), § 44 (3rd ed. 1951).

56 THOMPSON, REINSURANCE, pp. 109-111.

then and in that event the cessation of business dealing is not due to the issue being determined or the manner or result of the determination but is due to the moral turpitude of the party.

It is doubtful if insurance companies would treat in reinsurance matters so freely with a federal agency in view of the custom, usage and tradition which have grown and developed in this class of insurance transaction and in view of the body of statutory and case law that has developed heretofore under prior types of federal insurance and the administration thereof.

The conclusion therefore arises that federal disaster or catastrophe insurance may properly work as primary insurance but as reinsurance it may be made to operate if the legislation and regulations promulgated pursuant thereto allow the administrators of the program to operate with that degree of discretion that private negotiators for reinsurance are now able to treat. This seems very unlikely, since it is not the principle of governmental agencies to be permitted to operate with unlimited discretion. The philosophy of administrative law has been to permit the operation of agencies within the confines of legislative pronouncements of authority. Reinsurance is comparatively new to American corporations. It was and still is carried on by English and European organizations.[57] It may very well be that, after the federal disaster insurance program has been carried on for years, the private insurance industry may have observed that experience will permit it to carry on this class of risk, even though private industry now indicates that it does not believe that it can undertake this class of risks at this time.

As to direct or primary insurance, the implications are (a) that insureds will be able to obtain coverage of the risks described but that they will pay not only the premiums set by the federal governmental administrator without any supervisory superior determinant organization to make certain that the premiums or rates are not excessive, discriminatory or inequitable; (b) but that upon a claim filed, if the determination is contrary to the insured's conception of the amount, suit will be filed in the federal courts (whereas insurance policies issued by private insurance corporations now almost all, without exception, contain arbitration provisions), thus increasing the court load of litigated cases and the backlog of undetermined cases; (c) that also the current law of insurance will not be applicable to the policies to be issued to the insureds, and (d) that an insured will have to know his insurance policy provisions and also the regulations promulgated by the insuring agency, even though such regulations are not contained in the policy issued to him.

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[57] Kuvin, *Lloyds of London*, INS. L. J. for June of 1954, p. 406 et seq.

Unless the courts follow the application of the laws relative to contracts of adhesion, as are now being applied to insurance contracts, instead of the principles of law that have been applied to federal insurance contracts, strict construction will defeat the purpose of the proposed program for disaster or catastrophe relief.