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Speech by Representative Gerald R. Ford, Jr.,

Fifth District - Michigan.

Annual Banquet - Detroit Association of Insurance Agents

January 13, 1955

Shooting
Pay-Combat, Flight, Sub.
Boyskin

"The Federal Government and Mail Order and Unauthorized Insurance"-

History records through the eyes of Marco Polo some of the first observations of the basic fundamentals of insurance. While in China he saw oriental merchants taking their goods to market cross dangerous rapids only after carefully dividing each merchant's goods among the cargoes of all the boats. In this way, risk by any individual was minimized and equally shared by all.

These shrewd oriental merchants knew most of the boats would cross the rapids unharmed; but those that didn't wouldn't carry one of their number to financial ruin and the loss of much labor. The alternative carried to destruction only a fraction of the property of any individual merchant.

More recently a group of adventurous Englishmen began a custom of meeting regularly in Edward Lloyd's coffee house. Here the merchants were shippers who sent their goods by large sailing vessels to the far corners of the globe. The array of worldwide destinations and the bulky cargoes outdated the ancient oriental practice of dividing equally the actual goods being transported.



These businessmen would post information at Lloyd's indicating the value of their respective vessels with details about the cargoes and proposed trip. Lloyd's would prepare a document indicating the monetary value relative to the risk and perils of the voyage. Then the men at Lloyd's could sign the document showing the amount of liability they individually assumed.

These men made a more complex adaptation of the theory of insurance witnessed by Marco Polo years before, but demanded by the greater involvements of the newer age.

Today the theory behind insurance remains unchanged since the days of Marco Polo and the early beginnings of Lloyd's. But the actual applications of this theory have undergone vast changes since Lloyd's. The complexities and technicalities of modern day underwriters rivals, if not betters those of any other modern day establishment. Indeed, I believe one of our American life insurance companies is still conceded to be the largest single private enterprise in the world. Coupled with this rapid and tremendous growth of the insurance business historically have come correspondingly vast, intricate and certainly controversial problems.



I have always been intensely interested in the historical origins of the insurance business. But even more, I continue to be impressed by the basic fundamentals of the business which have not and cannot change. Both the oriental merchants and the Underwriters at Lloyd's realized that indemnification of the unfortunate few was wholly dependent upon there being a fortunate many. The business of insurance cannot survive without adherence to that elementary truth.

If the fortunate many are to pay the losses of the unfortunate few, then our second basic principle of the business is obviously, How much? Recovery of the oriental merchant was limited to his goods contained on boats which unsuccessfully crossed the rapids. The underwriters at Lloyd's simply agreed to offer a monetary settlement to the extent of the property lost. That the business of insurance may still only reimburse its customers to the extent of their financial loss interest has been reaffirmed by our present day courts many times.

As a matter of fact, it is significant to note that an insurance transaction which offered a settlement in excess of a loss interest would in effect be affording a prize. It is only the absence of a prize which distinguishes the business of insurance from a lottery; an illegal endeavor in the United States. Your business contains the elements of chance and



consideration, but lacks the prize necessary to classification as a lottery.

I have not gone into this exceedingly brief sketch of your business in an attempt to be entertaining and otherwise noncommittal. Instead, I have done so because it is my unwavering belief as a public official, though a comparative layman in the insurance field, that a great deal of our present problem must be analyzed and any corrective action taken in terms of its relation to the basic fundamentals of the business.

If the fortunate many become too few, or the unfortunate few too many, we destroy a basic fundamental of the business. Or, to use terminology of the trade, we no longer have a favorable spread of risk necessary for survival. Therefore, it follows that certain safeguards to protect this spread of risk must be incorporated in policies of insurance.

All of which means to me that insurance policies contain exclusions which are necessary to the continued success of the company and protection of the policyholder's premiums given it in trust. I am not one who believes for a moment that any policy of insurance could endure devoid of all exclusions, regardless of the premium charged.

Following the Federal Trade Commission's action last October against seventeen insurance companies, I examined each

of the complaints issued by the Commission. I have been concerned during the ensuing months that many of those engaged in your business have not clearly understood that the allegations of the Commission were based solely on false and misleading advertising; nothing more and nothing less.

I have already expressed my conviction that certain insurance policy exclusions are necessary to protect the fundamentals of the business. I would challenge the Federal Trade Commission's authority, or propriety, in questioning the aspect of the coverage involved. But this the Commission didn't do. It simply objected to alleged misrepresentation in the advertising and explanation of the policies. None of us, in good conscience could justify this practice, if the same be true.

There is no doubt that the action of the Federal Trade Commission reflected adversely on insurance as a whole in the minds of many not familiar with the technicalities of the business. This is most regrettable, but it is not unlike numerous other trades or businesses where the sins of the few must be shared by the many who are honest, scrupulous and rendering a public service. I seriously question that the recognized accomplishments of your profession, and the insurance business generally, can be diminished by any such unfavorable but brief adverse publicity.



*I am opposed to a Hobbes
atopia where nobody has
anything & you share it with
everyone.
A govt big enough
to give us etc.*

I am a firm believer in free enterprise, and wholly oppose the unwarranted encroachment of the federal government, in fields when the states can best do the job, but it is recognized in our present day society that there shall be government regulation of private business when public interests are at stake. Such regulation however should be aimed at the small minority of a private industry, such as in yours, who may be conducting abusive practices which conceivably reflect on the whole industry.

I believe the regulations imposed by present state insurance departments are for the most part adequate in containing competition of the business within reasonable bounds. The so-called standard provisions of the accident and health field are ample evidence of the cooperation of state departments and the vast majority of companies.

It is my most sincere hope that the National Association of Insurance Commissioners, and the insurance industry itself, can strengthen the laws and the administrative regulations with regard to advertising. I know that our own Michigan Department of Insurance has always exercised considerable jurisdiction over advertising practices of licensed companies, and with apparent success under current statutes.



Mail order insurance is similar although it offers a somewhat different problem in currently stretching our state regulations. I have been advised that of the seventeen companies named in the Federal Trade Commission's charges, only three are licensed in Michigan, yet most have conducted mail campaigns in our State.

Especially during the past months Michigan has been flooded by offerings of mail order insurance. There is no definite way of telling how many mail solicitations have been made in Michigan, but it appears that based on automobile registrations they could amount to several hundred thousands of dollars.

Figures from the Insurance Commissioner of the State of Missouri show some indication of the extent of this mail order business as it originates from four companies in Missouri who have been selling policies by mail in Michigan.

These companies aren't licensed in this State, and our Department of Insurance does not have jurisdiction over them as it does over licensed companies with regard to capital, surplus, reserves, terms of the policy, examinations or any other matter.

During 1953, one of these companies alone, by name, the Automobile Owners Safety Insurance Company, collected more than \$81,000 in premiums from Michigan residents on \$5.00 policies which



represents a grand total of more than 16,000 policies sold in Michigan in one year by one unlicensed outstate company.

In addition three other companies have reported to the Insurance Commissioner in Missouri business in Michigan reaching substantial amounts. It has been estimated that a minimum of \$250,000 in premiums have been taken out of Michigan by these three companies in 1953. And it might interest you to know that one of these companies, Old American Insurance Company of Kansas City, on a nationwide basis, collected \$2,285,000 in premiums in 1953.

The Michigan State Legislature is helpless to prevent this mail order business flowing over its borders. Mail order sales of insurance are being made in violation of Michigan law under which the sale of mail order insurance by Michigan licensed companies is not allowed. The trouble is: these companies, such as those in Missouri, need not and are not licensed by Michigan in order to sell insurance by mail in our state.

With these facts in mind it appears that Federal legislation may be needed to strengthen state regulation of the insurance business. Let me re-emphasize that point - Federal legislation to strengthen state regulation. Frankly I started out with the positive assumption that I would prepare a bill to accomplish this objective, and here is what I had in mind.



"That chapter 83 of title 18 of the United States Code (relating to crimes in connection with the postal service) is amended by adding at the end thereof the following new section:

'1733. Solicitation of Insurance through the Mails. - Every letter, circular, postal card, or pamphlet which is addressed to a place in a State where sales of insurance by mail by insurers licensed by the State are prohibited, and which contains an offer, solicitation, or advertisement concerning the sale of insurance by an insurer not licensed by the State, is non-mailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

"Whoever uses or attempts to use the mails or Postal Service of the United States for the transmission of any matter declared by this section to be non-mailable shall be fined not more than \$5000, or imprisoned not more than ten years or both".

This Bill would simply deny use of the Federal mails for solicitation of insurance within any state which forbids such activity except by licensed companies. I realize that use of the mails is not indicative of a company's general practices. But such is the method, unfortunately, too often employed by those who would misrepresent, avoid regulations and escape taxation.

I am convinced that any such legislation of this nature must be drafted in its final form in the closest consultation



not only with the regulatory insurance bodies of the states, but with advice from the legitimate insurance industry as well. I would sincerely hope such a legislative proposal supplemented by the efforts of the National Association of Insurance Commissioners and the industry as a whole could put an end to malicious advertising *state prohibited* and mail order solicitations once and for all.

Let me assure you my efforts are wholeheartedly in your behalf. If you have any criticisms or suggestions, I should have them in order to work out a satisfactory solution.

Before proceeding further you should know that this problem has been of considerable interest to the National Convention of Insurance Commissioners since 1903, when at a convention in Baltimore, Md., this group petitioned Congress in part as follows -

"The National Convention of Insurance Commissioners now in session at Baltimore, Md. (1903), has the honor to address you for the purpose of respectfully and earnestly directing your attention to a serious condition of affairs which the members of this convention in their various jurisdictions, are powerless to remedy, and from which substantial relief can only be obtained through enactment of amendments to the present Postal Laws.

"We respectfully represent that to the best of our knowledge, information and belief, the United States

mails are being used for fraudulent and nefarious purposes by certain concerns styling themselves 'insurance companies' and seeking by correspondence and advertising matter sent through the mails to obtain money for so-called fire insurance policies, these policies being in most instances entirely worthless.

"None of the concerns in question is authorized to transact business by the authority of any state in the Union. They evade the laws of the states of their domicile by writing no business therein, and evade liability to arrest and prosecution in other states by operating entirely through the medium of the mails.

"We respectfully urge that Congress take cognizance of this matter to the end that proper laws may be passed to meet the serious situation."

A bill was subsequently introduced in the Congress and public hearings were held before the Senate Committee. The records show the Commissioners were greatly surprised by the determined opposition of "surplus line interests, and those representing Lloyd's and inter-insurance." Apparently the Commissioners were somewhat taken back by the intensity of the opposition, and placated themselves by indicating that good causes are seldom adopted quickly.

At the 1904 meeting the Special Committee of the Commissioners was recommended for continuance and after considerable debate, which by no means discloses a unanimity of opinion, a resolution continuing the committee and renewing the Commissioners' recommendation to Congress for the enactment of National legislation was adopted. There were those among the Insurance Commissioners even in those ~~halcyon~~ days before the Supreme Court declared insurance to be commerce, who resisted the thought of going to the federal government for aid in these matters. These Commissioners believed that the matter of the control of unauthorized insurance, inasmuch as the company conducting the unauthorized business was chartered in some state, was up to the Commissioner in the domiciliary state to do whatever was necessary to prevent the company from acting in what then was called a "wildcat" fashion. However, a reading of the debate will also disclose that there was by no means the apprehension present in 1904 that there would be today in requesting the federal government for help. It must be remembered that in 1904 it was recognized that as long as the business was safe from the federal anti-trust laws, it wouldn't hurt too much to have the government assist in the stamping out of these unauthorized practices which were made possible only by the use of the mails, over which the government had exclusive jurisdiction.



For a period of 30 years, from 1905 to 1935, there was an apparent lull in this struggle against so-called "wildcat" companies. However, in 1935, a former colleague, the late Rep. Sam Hobbs, of Alabama, introduced a bill in the House of Representatives which revived the issue.

1938 Proceedings of the NAIA, 69th session, at New York City contained a report of the Executive Committee, and the opening sentence is as follows, "This subject (unauthorized insurance) has perhaps been discussed as/much as any in this Association and little has been done about it." The committee reviewed and acknowledged that there were two ways in which these evils can be attacked: one is close cooperation with the postal authorities of the federal government; the second "is for the states which now permit such companies to organize and embark upon a piratical course in other states to pass proper legislation which will make the continuance of such a course impossible."

In the next few years this problem received considerable attention from the State Commissioners, the American Bar Association and the industry as a whole. The Commissioners by 1939 apparently felt the solution rested on the State level, and the final sentences of a report by the Chairman of the Commissioners Committee on Unauthorized Insurance is interesting. "It is my opinion that this troublesome matter (unauthorized insurance) can best be cured only through the cooperation of each and every



member of this body. I am sure that if all the Commissioners resolve to take a firm stand against this racket, much good will be accomplished."

Apparently Congressman Hobbs persisted in his desire for corrective federal legislation. By 1941 the NAIC approved a resolution condemning the Hobbs' proposals, but at the same time recommended that each Commissioner prepare and sponsor in their respective states a statute which would prohibit any company domiciled within the state to transact any business in states in which they were not licensed.

Congressman Hobbs who had spearheaded this legislative action for many years voluntarily retired from Congress in 1950, and subsequently passed away in 1951. Nevertheless the problem still persists.

In 1954 meetings of the NAIC, Commissioner Dickey of Oklahoma sponsored an important resolution on this subject, and as a result the overall problem was and is on the agenda of the Commissioners. As an implementation of the Dickey resolution the various Commissioners were circularized with a letter asking them to supply certain data. ^{Unfortunately} Only a limited number of Commissioners have responded indicating little real enthusiasm for the Dickey resolution, nevertheless in my opinion it is worthy of careful study.

It seems to me the introduction of my suggested bill would rouse many who objected to the Hobbs bills, but from my analysis to date my initial draft doesn't appear to raise some of the problems feared by some in your industry. No doubt there will be many conscientious opponents to any further federal legislation



of any nature, but perhaps the raising of the issue at this time will have a desirable effect in stimulating better answers than we have at present. The problem is with all of us; admittedly progress has been made but the public will not be satisfied until there is a more satisfactory solution.

Another subject of concern to your industry is the activity of non-licensed carriers which, however, are permitted to write the extraordinary risk or to conduct an excess or surplus line business within our state. I find this matter extremely technical and would not presume to offer a quick and easy solution. It does seem that so long as a kind or amount of coverage is not available in the admitted market, we must provide agents with an outlet to other sources.

I believe non-admitted outlets should be regulated for protection to policyholders and, as you know, such regulations already exist. Whether present regulations should be revised is a question that I am not attempting now to answer. I am convinced however from my analysis of the problem that the entire subject should be left to individual state jurisdiction.

Abnormally
I have not resolved the current problems of your profession, but I hope you will think my suggestions worthy of consideration. To be honest I have moved into this controversial field with some fear and trepidation, and the more I saw, the greater



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my apprehension. I would be most remiss if I failed to pay generous tribute to Hildy and your State Association for invaluable assistance in providing me with necessary background and factual information. I happen to be a staunch supporter of trade associations, particularly when under the capable management displayed by your Detroit and State Organization.

Over the years I have never known your associations to support any principle that was not ultimately in the public interest. So long as this attitude continues and I am positive that it will, public officials will work closely with you ladies and gentlemen of a great profession which means so much to the economy and well being of our State and Nation.

I thank you - Goodnight.

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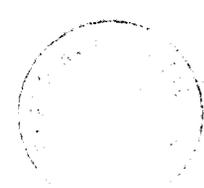


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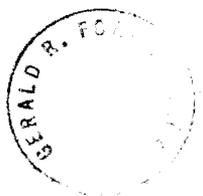


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Over the years I have seen from your associations to support any principle that was not ultimately in the public interest. So long as this attitude continues and I am positive that it will, public officials will work closely with you ladies and gentlemen of a great profession which means so much to the economy and well being of our State.



Speech by Representative Gerald R. Ford, Jr.,

Fifth District - Michigan.

Annual Banquet - Detroit Association of Insurance Agents

January 13, 1955

"The Federal Government and Mail Order and Unauthorized Insurance"

History records through the eyes of Marco Polo some of the first observations of the basic fundamentals of insurance. While in China he saw oriental merchants taking their goods to market cross dangerous rapids only after carefully dividing each merchant's goods among the cargoes of all the boats. In this way, risk by any individual was minimized and equally shared by all.

These shrewd oriental merchants knew most of the boats would cross the rapids unharmed; but those that didn't wouldn't carry one of their number to financial ruin and the loss of much labor. The alternative carried to destruction only a fraction of the property of any individual merchant.

More recently a group of adventurous Englishmen began a custom of meeting regularly in Edward Lloyd's coffee house. Here the merchants were shippers who sent their goods by large sailing vessels to the far corners of the globe. The array of worldwide destinations and the bulky cargoes outdated the ancient oriental practice of dividing equally the actual goods being transported.

These businessmen would post information at Lloyd's indicating the value of their respective vessels with details about the cargoes and proposed trip. Lloyd's would prepare a document indicating the monetary value relative to the risk and perils of the voyage. Then the men at Lloyd's could sign the document showing the amount of liability they individually assumed.

These men made a more complex adaptation of the theory of insurance witnessed by Marco Polo years before, but demanded by the greater involvements of the newer age.

Today the theory behind insurance remains unchanged since the days of Marco Polo and the early beginnings of Lloyd's. But the actual applications of this theory have undergone vast changes since Lloyd's. The complexities and technicalities of modern day underwriters rivals, if not betters those of any other modern day establishment. Indeed, I believe one of our American life insurance companies is still conceded to be the largest single private enterprise in the world. Coupled with this rapid and tremendous growth of the insurance business historically have come correspondingly vast, intricate and certainly controversial problems.



I have always been intensely interested in the historical origins of the insurance business. But even more, I continue to be impressed by the basic fundamentals of the business which have not and cannot change. Both the oriental merchants and the Underwriters at Lloyd's realized that indemnification of the unfortunate few was wholly dependent upon there being a fortunate many. The business of insurance cannot survive without adherence to that elementary truth.

If the fortunate many are to pay the losses of the unfortunate few, then our second basic principle of the business is obviously, How much? Recovery of the oriental merchant was limited to his goods contained on boats which unsuccessfully crossed the rapids. The underwriters at Lloyd's simply agreed to offer a monetary settlement to the extent of their financial loss interest has been reaffirmed by our present day courts many times.

As a matter of fact, it is significant to note that an insurance transaction which offered a settlement in excess of a loss interest would in effect be affording a prize. It is only the absence of a prize which distinguishes the business of insurance from a lottery; an illegal endeavor in the United States. Your business contains the elements of chance and consideration, but lacks the prize necessary to classification as a lottery.

I have not gone into this exceedingly brief sketch of your business in an attempt to be entertaining and otherwise noncommittal. Instead, I have done so because it is my unwavering belief as a public official, though a comparative layman in the insurance field, that a great deal of our present problem must be analyzed and any corrective action taken in terms of its relation to the basic fundamentals of the business.

If the fortunate many become too few, or the unfortunate few too many, we destroy a basic fundamental of the business. Or, to use terminology of the trade, we no longer have a favorable spread of risk necessary for survival. Therefore, it follows that certain safeguards to protect this spread of risk must be incorporated in policies of insurance.

All of which means to me that insurance policies contain exclusions which are necessary to the continued success of the company and protection of the policyholder's premiums given it in trust. I am not one who believes for a moment that any policy of insurance could endure devoid of all exclusions, regardless of the premium charged.

Following the Federal Trade Commission's action last October against seventeen insurance companies, I examined each of the complaints issued by the Commission. I have been concerned during the ensuing months that many of those engaged in your business have not clearly understood that the allegations of the Commission were based solely on false and misleading advertising; nothing more and nothing less.



I have already expressed my conviction that certain insurance policy exclusions are necessary to protect the fundamentals of the business. I would challenge the Federal Trade Commission's authority, or propriety, in questioning the aspect of the coverage involved. But this the Commission didn't do. It simply objected to alleged misrepresentation in the advertising and explanation of the policies. None of us, in good conscience could justify this practice, if the same be true.

There is no doubt that the action of the Federal Trade Commission reflected adversely on insurance as a whole in the minds of many not familiar with the technicalities of the business. This is most regrettable, but it is not unlike numerous other trades or businesses where the sins of the few must be shared by the many who are honest, scrupulous and rendering a public service. I seriously question that the recognized accomplishments of your profession, and the insurance business generally, can be diminished by any such unfavorable but brief adverse publicity.

I am a firm believer in free enterprise, and wholly oppose the unwarranted encroachment of the federal government in fields when the states can best do the job, but it is recognized in our present day society that there shall be government regulation of private business when public interests are at stake. Such regulation however should be aimed at the small minority of a private industry, such as in yours, who may be conducting abusive practices which conceivably reflect on the whole industry.

I believe the regulations imposed by present state insurance departments are for the most part adequate in containing competition of the business within reasonable bounds. The so-called standard provisions of the accident and health field are ample evidence of the cooperation of state departments and the vast majority of companies.

It is my most sincere hope that the National Association of Insurance Commissioners, and the insurance industry itself, can strengthen the laws and the administrative regulations with regard to advertising. I know that our own Michigan Department of Insurance has always exercised considerable jurisdiction over advertising practices of licensed companies, and with apparent success under current statutes.

Mail order insurance is similar although it offers a somewhat different problem in currently stretching our state regulations. I have been advised that of the seventeen companies named in the Federal Trade Commission's charges, only three are licensed in Michigan, yet most have conducted mail campaigns in our State.

Especially during the past months Michigan has been flooded by offerings of mail order insurance. There is no definite way of telling how many mail solicitations have been made in Michigan, but it appears that based on automobile registrations they could amount to several hundred thousands of dollars.

Figures from the Insurance Commissioner of the State of Missouri show some



indication of the extent of this mail order business as it originates from four companies in Missouri who have been selling policies by mail in Michigan.

These companies aren't licensed in this State, and our Department of Insurance does not have jurisdiction over them as it does over licensed companies with regard to capital, surplus, reserves, terms of the policy, examinations or any other matter.

During 1953, one of these companies alone, by name the Automobile Owners Safety Insurance Company, collected more than \$81,000 in premiums from Michigan residents on \$5.00 policies which represents a grand total of more than 16,000 policies sold in Michigan in one year by one unlicensed outstate company.

In addition three other companies have reported to the Insurance Commissioner in Missouri business in Michigan reaching substantial amounts. It has been estimated that a minimum of \$250,000 in premiums have been taken out of Michigan by these three companies in 1953. And it might interest you to know that one of these companies, Old American Insurance Company of Kansas City, on a nationwide basis, collected \$2,285,000 in premiums in 1953.

The Michigan State Legislature is helpless to prevent this mail order business flowing over its borders. Mail order sales of insurance are being made in violation of Michigan law under which the sale of mail order insurance by Michigan licensed companies is not allowed. The trouble is; these companies, such as those in Missouri, need not and are not licensed by Michigan in order to sell insurance by mail in our state.

With these facts in mind it appears that Federal legislation may be needed to strengthen state regulation of the insurance business. Let me re-emphasize that point - Federal legislation to strengthen state regulation. Frankly I started out with the positive assumption that I would prepare a bill to accomplish this objective, and here is what I had in mind.

"That chapter 83 of title 18 of the United States Code (relating to crimes in connection with the postal service) is amended by adding at the end thereof the following new section: '1733. Solicitation of Insurance through the Mails. - Every letter circular, postal card, or pamphlet which is addressed to a place in a State where sales of insurance by mail by insurers licensed by the State are prohibited, and which contains an offer, solicitation, or advertisement concerning the sale of insurance by an insurer not licensed by the State, is non-mailable and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

"Whoever uses or attempts to use the mails or Postal Service of the United States for the transmission of any matter declared by this section to be nonmailable shall be fined not more than \$5000, or imprisoned not more than ten years or both!"



This Bill would simply deny use of the Federal mails for solicitation of insurance within any state which forbids such activity except by licensed companies. I realize that use of the mails is not indicative of a company's general practices. But such is the method, unfortunately, too often employed by those who would misrepresent, avoid regulations and escape taxation.

I am convinced that any such legislation of this nature must be drafted in its final form in the closest consultation not only with the regulatory insurance bodies of the states, but with advice from the legitimate insurance industry as well. I would sincerely hope such a legislative proposal supplemented by the efforts of the National Association of Insurance Commissioners and the industry as a whole could put an end to malicious advertising and mail order solicitations once and for all.

Let me assure you my efforts are wholeheartedly in your behalf. If you have any criticisms or suggestions, I should have them in order to work out a satisfactory solution.

Before proceeding further you should know that this problem has been of considerable interest to the National Convention of Insurance Commissioners since 1903, when at a convention in Baltimore, Md., this group petitioned Congress in part as follows -

"The National Convention of Insurance Commissioners now in session at Baltimore, Md. (1903), has the honor to address you for the purpose of respectfully and earnestly directing your attention to a serious condition of affairs which the members of this convention in their various jurisdictions, are powerless to remedy, and from which substantial relief can only be obtained through enactment of amendments to the present Postal Laws.

"We respectfully represent that to the best of our knowledge, information and belief, the United States mails are being used for fraudulent and nefarious purposes by certain concerns styling themselves 'insurance companies' and seeking by correspondence and advertising matter sent through the mails to obtain money for so-called fire insurance policies, these policies being in most instances entirely worthless.

"None of the concerns in question is authorized to transact business by the authority of any state in the Union. They evade the laws of the states of their domicile by writing no business therein, and evade liability to arrest and prosecution in other states by operating entirely through the medium of the mails.

"We respectfully urge that Congress take cognizance of this matter to the end that proper laws may be passed to meet the serious situation."



A bill was subsequently introduced in the Congress and public hearings were held before the Senate Committee. The records show the Commissioners were greatly surprised by the determined opposition of "surplus line interests, and those representing Lloyd's and inter-insurance." Apparently the Commissioners were somewhat taken back by the intensity of the opposition, and placated themselves by indicating that good causes are seldom adopted quickly.

At the 1904 meeting the Special Committee of the Commissioners was recommended for continuance and after considerable debate, which by no means disclosed a unanimity of opinion, a resolution continuing the committee and renewing the Commissioners' recommendation to Congress for the enactment of National legislation was adopted. There were those among the Insurance Commissioners even in those halcyon days before the Supreme Court declared insurance to be commerce, who resisted the thought of going to the federal government for aid in these matters. These Commissioners believed that the matter of the control of unauthorized insurance, inasmuch as the company conducting the unauthorized business was chartered in some state, was up to the Commissioner in the domiciliary state to do whatever was necessary to prevent the company from acting in what then was called a "wildcat" fashion. However, a reading of the debate will also disclose that there was by no means the apprehension present in 1904 that there would be today in requesting the federal government for help. It must be remembered that in 1904 it was recognized that as long as the business was safe from the federal anti-trust laws, it wouldn't hurt too much to have the government assist in the stamping out of these unauthorized practices which were made possible only by the use of the mails, over which the government had exclusive jurisdiction.

For a period of 30 years, from 1905 to 1935, there was an apparent lull in this struggle against so-called "wildcat" companies. However, in 1935, a former colleague, the late Rep. Sam Hobbs, of Alabama, introduced a bill in the House of Representatives which revived the issue.

1938 Proceedings of the NAIA, 69th session, at New York City, contained a report of the Executive Committee, and the opening sentence is as follows, "This subject (unauthorized insurance) has perhaps been discussed as much as any in this Association and little has been done about it." The committee reviewed and acknowledged that there were two ways in which these evils can be attacked: one is close cooperation with the postal authorities of the federal government; the second "is for the states which now permit such companies to organize and embark upon a piratical course in other states to pass proper legislation which will make the continuance of such a course impossible."



In the next few years this problem received considerable attention from the State Commissioners, the American Bar Association and the industry as a whole. The Commissioners by 1939 apparently felt the solution rested on the State level, and the final sentences of a report by the Chairman of the Commissioners Committee on Unauthorized Insurance is interesting. "It is my opinion that this troublesome matter (unauthorized insurance) can best be cured only through the cooperation of each and every member of this body. I am sure that if all the Commissioners resolve to take a firm stand against this racket, much good will be accomplished."

Apparently Congressman Hobbs persisted in his desire for corrective federal legislation. By 1941 the NAIC approved a resolution condemning the Hobbs' proposals, but at the same time recommended that each Commissioner prepare and sponsor in their respective states a statute which would prohibit any company domiciled within the state to transact any business in states in which they were not licensed.

Congressman Hobbs who had spearheaded this legislative action for many years voluntarily retired from Congress in 1950, and subsequently passed away in 1951. Nevertheless the problem still persists!

In 1954 meetings of the NAIC, Commissioner Dickey of Oklahoma sponsored an important resolution on this subject, and as a result the overall problem was and is on the agenda of the Commissioners. As an implementation of the Dickey resolution the various Commissioners were circularized with a letter asking them to supply certain data. Only a limited number of Commissioners have responded indicating little real enthusiasm for the Dickey resolution, nevertheless in my opinion it is worthy of careful study.

It seems to me the introduction of my suggested bill would rouse many who objected to the Hobbs bills, but from my analysis to date my initial draft doesn't appear to raise some of the problems feared by some in your industry. No doubt there will be many conscientious opponents to any further federal legislation of any nature, but perhaps the raising of the issue at this time will have a desirable effect in stimulating better answers than we have at present. The problem is with all of us; admittedly progress has been made but the public will not be satisfied until there is a more satisfactory solution.

Another subject of concern to your industry is the activity of non-licensed carriers which, however, are permitted to write the extraordinary risk or to conduct an excess or surplus line business within our state. I find this matter extremely technical and would not presume to offer a quick and easy solution. It does seem that so long as a kind or amount of coverage is not available in the admitted market, we



must provide agents with an outlet to other sources.

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