

Insurance as Interstate Commerce

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Repository Citation

Joseph J. Ziino, *Insurance as Interstate Commerce*, 29 Marq. L. Rev. 55 (1945).
Available at: <http://scholarship.law.marquette.edu/mulr/vol29/iss1/7>

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INSURANCE AS INTERSTATE COMMERCE

For seventy-five years and since *Paul v. Virginia*,¹ the United States Supreme Court has consistently held insurance business in and among the states not to be interstate commerce.² This holding has been repeatedly challenged on many grounds, but always affirmed. It is to be noted that the question involved in all these cases was the power of a state to regulate insurance. In none of them was the Sherman Act or any other Congressional act directly involved. In reliance upon this holding insurance business acquired a doctrinal status under which most states have developed extensive and effective systems of insurance control without federal intervention.

By a majority of four to three the Supreme Court of the United States in *United States v. South-Eastern Underwriters Association*³ has now held insurance in and of itself to be interstate commerce under the Commerce Clause and the Sherman Anti-Trust Act. The decision answers affirmatively two questions: 1) Do fire insurance companies carrying on business across the state lines engage in interstate commerce under the commerce clause? 2) Did Congress include or intend to include insurance business in the Sherman Act of 1890?

The case came to the Supreme Court on the question of the validity of a federal grand jury indictment of two hundred private stock fire insurance companies and twenty-seven individuals for the alleged violation of the Sherman Anti-Trust Act. They were charged with the violation of interstate trade and commerce laws by fixing and maintaining arbitrary and non-competitive rates, and of monopolizing the trade and commerce in the fire insurance field and allied lines in and among six states.⁴ Many coercive methods were used to compel non-member companies to join the conspiracy. To those who refused, re-insurance and all other insurance facilities were denied. Ninety percent of the fire insurance in the six states was controlled by the conspiracy.

In the District Court a demurrer was interposed on the theory that insurance was not commerce, and, therefore, compliance with the Sherman Act could not be enforced. The demurrer was sustained, and

¹ *Paul v. Virginia*, 8 Wall. 168, 19 L.Ed. 357 (1869).

² *Hooper v. California*, 155 U.S. 648 (p.655), 15 S.Ct. 207, 39 L.Ed. 297 (1895).
Noble v. Mitchell, 164 U.S. 367 (p. 370), 17 S.Ct. 110, 41 L.Ed. 472 (1896).
New York Life Insurance Co. v. Cravens, 178 U.S. 389 (p.401), 20 S.Ct. 962, 44 L.Ed. 1116 (1900).
Bothwell et al v. Buckbee, Mears Co., 275 U.S. 274 (p.276), 48 S.Ct. 124, 72 L. Ed. 277 (1927).

Colgate v. Harvey, 296 U.S. 404 (p.432), 56 S. Ct. 252, 80 L.Ed. 299 (1935).

³ *United States v. South Eastern Underwriters Ass.* 322 U.S. 533, 64 S. Ct. 1162, 88 L.Ed. 1440 (1944).

⁴ Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia.

the court held that "the business of insurance is not commerce either intrastate or interstate." Appeal to the Supreme Court was taken under the Criminal Appeal Act,⁵ and the judgment of the District Court was there reversed.

The importance of the decision justifies a comparison and analysis of the Majority and the two Dissenting Opinions, an analysis of the recent act of Congress relative to insurance control, and an interpretation of the modern trends of federal legislation as interpreted by our Supreme Court.

Justice Black in the majority opinion held that insurance companies which do business across state lines come within the commerce clause, and any act or agreement on their part to restrain or monopolize the insurance business comes within the Sherman Anti-Trust Act. In answer to those who rely upon the long line of cases apparently holding to the contrary,⁶ the Court points out that these cases merely decided that the states had the power under the Commerce Clause to regulate insurance, and at no time did the Court directly decide that Congress did not have power under the commerce clause to regulate insurance carried on among the states. He distinguishes the present case in that it presents for determination for the first time the issue of whether or not Congress has the power under the commerce clause to regulate insurance, and also whether Congress intended to and did include insurance within the regulatory power of the Sherman Act.⁷ To hold that Congress has no power under the commerce clause to regulate a nation-wide insurance business, the court asserts, and to further hold that Congress did not include in the Sherman Act agreements and acts of insurance companies to arbitrarily fix rates, restrain competition, and monopolize the insurance business, would deprive Congress of the full constitutional right to carry out its express power under the Commerce Clause of the Constitution; and would clearly contravene the aims and purposes of the Sherman Act.⁸

The Court further points out that a realistic appraisal of the many activities which go into making up of insurance contracts and in carrying on of the general business leads one to the inescapable conclusion that a chain of commercial events binds all these activities into one closely knitted pattern of nation-wide commercial intercourse from which no

⁵ 18 U.S.C. Sec. 682, 18 U.S.C.A. Sec. 682.

⁶ Note 2, *Supra*.

⁷ 26 Stat. 209, as amended, 15 U.S.C. 1 and 2, 15 U.S.C.A. 1 and 2.

⁸ *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (pp. 495-501); 60 S. Ct. 982, 84 L. Ed. 1311 (1939).

Northern Securities Co. v. United States, 193 U.S. 197, 24 S. Ct. 436, 48 L. Ed. 579 (1904).

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 52 S. Ct. 607, 76 L. Ed. 1204 (1931).

Parker v. Braun, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1942).

one act can be completely separated. This inseparable bundle of activities, the Court points out, clearly fall within the definition of "Commerce" as stated by Chief Justice Marshall when he said, "Commerce, undoubtedly, is traffic, it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches⁹. . ."

This being the common understanding of the term "commerce," it can reasonably be inferred that Congress in the broad language of the Sherman Act intended to make no exception to any business enterprise carried on a national basis and effecting the interests of people throughout the nation. The Act¹⁰ speaks of "every person," "every contract," "every combination," "in restraint of trade or any part thereof." As indicative of the mood of the period, between 1885 and 1912, twenty-three states enacted laws forbidding insurance combination. Wisconsin passed its Act in 1897. This fact together with the comprehensive language of the Act itself convinced the Court that insurance was included in the Sherman Act.

In his dissenting opinion, Chief Justice Stone, concedes that certain phases of insurance business may be the subject of appropriate federal power, but takes the strong position that the business of insurance itself¹¹—the formation and performance of insurance contracts—is not under the protection of the Commerce Clause nor is the fixing of rates within the prohibitory power of the present Sherman Act. It is the universal view, he asserts, that the making of a contract¹² which does not stipulate for the carrying of goods or the rendition of service in or related to interstate commerce is not in itself an act of interstate commerce, but merely a local activity over which Congress has no control. A contract comes within the perview of the Act when its purpose is to restrain or monopolize the marketing of commodities or services in interstate commerce. Insurance contracts do not undertake to supply or market these goods or services, but merely create an obligation to pay a certain sum of money upon the happening of a contingency. As such they are in a different classification from ordinary contracts dealing with goods or services, and without more, do not come within the commerce clause or the Sherman Act. Congress knew at the time of passing the Sherman Act that this Court held that insurance is not

⁹ *Gibbons v. Ogden*, 9 Wheat. 1 (pp. 189-190), 2 L.Ed. 23 (1824).

¹⁰ 15 U.S.C. 1 and 2, 15 U.S.C.A. 1 and 2 (1890).

¹¹ *New York Life Ins. Co. v. Deer Lodge County*, 231 U.S. 495, 34 S. Ct. 167, 58 L.Ed. 332 (1913).

¹² *Ware and Leland vs. Mobile County*, 209 U.S. 405, 28 S. Ct. 526, 52 L.Ed. 855 (1907).

Western Live Stock Co. vs. Bureau of Internal Revenue, 303 U.S. 250, 58 S. Ct. 546, 82 L.Ed. 823 (1937).

commerce, and its debates and the subsequent history of this legislation show that insurance was not included in the Act.

The Chief Justice indicates the impracticability of the majority position when it indicates that the effects of the decision will loosen a flood of litigation between the two governments, during which time both insurance business and the two governments might experience the most confusing state of affairs in the history of insurance business and insurance legislation. It is the duty of the Court, he says, to make certain that before a precedent is overruled greater harm is not done in rejecting it than in retaining it.¹³ It is frequently the case that it is more important to have a rule settled than to have it settled right. To this, Justice Jackson added in his dissenting opinion that "abstract logic may support them (the Majority) but the common sense and wisdom of the situation seems opposed." By this decision, Justice Stone maintains most of the control is taken away from the states and is placed in the federal government which does not possess the necessary facilities to administer the insurance business.

Justice Jackson points out that the time is ripe for appropriate federal legislation over insurance, but the change must come not from this Court but from Congress.

The congressional reaction to this decision was immediate. The need for a federal law to retard the perplexing consequences of the decision became imperative. The Senate and the House considered the decision, the most revolutionary in our history. Both Houses, the President, and the Attorney General favored some congressional law in the form of a moratorium. Bill S 340 was enacted on January 25, 1945.¹⁴

¹³ *Smith v. Allwright*, 321 U.S. 649 (pp.666-670), 64 S. Ct. 757, 88 L.Ed. 987 (1943).

¹⁴ Public Law 15—79th Congress, Chapter 20—1st Session (S.340).

AN ACT

To express the intent of the Congress with reference to the regulation of the business of insurance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

SEC. 3. (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended,

The new law provides that in the interest of the public the regulation and taxation of the insurance business shall remain under the control of the States. It sets no time limit during which time the states are to have this control, but expressly provides that mere silence on the part of Congress should not be construed to impose any barrier to any existing or future state law affecting the regulation on taxation of insurance. This will give state legislators an added assurance that their extensive legislation will not be interfered with by mere judicial construction. Moreover, it will prevent litigation which might arise under the belief that certain laws might apply to the business of insurance. This is made even more certain by Section Two of the Act which provides that no previous or future act of Congress shall invalidate or supersede any state law regulating insurance unless such act expressly refers to the business of insurance. This provision does not set any time limit during which time Congress might pass a law specifically regulating insurance. It also puts at rest widespread refusal, already existing in many states, on part of insurance companies to pay their taxes due to the states. There is, however, the express provision limiting the time during which the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Anti-discrimination Act, shall not apply to the insurance business. The period extends to January 1, 1948. These acts are not repealed during the period, but are merely made ineffective as to the insurance business. On January 1, 1948, they will automatically apply to the insurance business in the same manner as they apply to any other business. This period of time will give states ample opportunity to change many of their existing laws which may be inconsistent with the various acts above mentioned. The new law further provides that the Sherman Act shall apply to acts and agreements which result in boycott, coercion, or intimidation. This phase of the law applies *at any time before or after 1948*. It is to be noted that

known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Anti-discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

SEC. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act. of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

SEC. 5. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

SEC. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

Approved March 9, 1945.

the provision makes no mention of restraint of commerce or monopoly of business. This means that the insurance companies may enter into agreements and perform acts resulting in a monopoly of the business of insurance during this period of grace without violating this law of Congress.

Section Four of the Act further provides that the National Labor Relation Act, the Fair Labor Standard Act, and the Merchant Marine Act, shall be applicable to the business of insurance or any part thereof.

The Congressional Record,¹⁵ clearly indicates that this law is a mere moratorium attempting to prevent devastating effects of the decision in the *Underwriters* case. It indicates that it is not the purpose of Congress to disturb the ruling of this Court that insurance business is interstate commerce. There is no indication as to when or to what extent Congress might bring into its orbit the regulation of insurance. It seems to be apparent, however, that both Houses of Congress are reluctant in depriving states of their power to regulate insurance and in voting this power in the federal government.

Assuming that Congress will legislate on this subject, how will the Supreme Court construe this legislation? Recent legislative decisions of the Supreme Court clearly indicate the present trend of the Court and furnish the best answer to this question.

In *Houston, East & West Texas Rr. Co. v. United States*,¹⁶ the I. C. C. compelled the freight carriers within Texas to raise their intrastate rates. The order of the Commission was affirmed by the United States Supreme Court. It was affirmed on the ground that under the Commerce Clause, Congress may, where discrimination exists against interstate rates, compel the states to raise the intrastate rates so as to conform to the interstate rates and thus end the discrimination. Here Texas was charging lower rates per mile between, let's say, Point A and B within Texas than it was charging for a shorter distance between, let's say, Point C in Texas and D in Louisiana. The same situation existed in Wisconsin,¹⁷ where the rates for passengers between Chicago and any point in Wisconsin were higher per mile than the rates charged between points within the State of Wisconsin. Here the passengers traveling through Wisconsin paid a higher rate per mile on the same train than passengers who had purchased their fare in Wisconsin and traveled wholly within Wisconsin. The defense here was that the Wisconsin Legislature and the people of the state were satisfied with the intrastate rates. This was over-ruled and the order of the Commission was af-

¹⁵ Congressional Record, 1113-21-Vol. 91 (28).

¹⁶ *Houston East & West Texas Rr. Co. v. United States*, 234 U.S. 342, 34 S. Ct. 833, 58 L.Ed. 1341 (1914).

¹⁷ *Railroad Commission vs. Chicago, B & Q Rr. Co.*, 257 U.S. 563, 42 S. Ct. 232, 66 L.Ed. 371 (1922).

firmed by our Supreme Court. The Court states that Congress has the power under the commerce clause to enable railroads to earn a fair profit in intrastate trips so that the interstate traffic in the United States will not be burdened with bankrupt and non-profit making roads.

Five large meat packers were charged with the violation of the Stockyard Act.¹⁸ They were charged with monopolizing the stockyard facilities, discrimination and abuse in the prices paid to farmers at the stockyards, and with failure to pay proper commission to brokers, etc. The animals came to Chicago from many different States. In Chicago they were slaughtered and a large quantity of the meat was consumed there while the balance of the meat was shipped to other states. The defense here was that the acts in question were purely local because the animals had come to rest and no interstate commerce actually existed at the time. It was held that the Chicago stockyards were a mere throat in which a temporary stop took place in the flow of interstate commerce. Most of the meat from Chicago was sent to eastern states, and unless the federal government could control local activities, the effect upon the markets of the East would be disastrous.

Under the N.L.R.A., an employee is protected against discrimination for joining or supporting a labor union. In the case of *National Labor Relation Board v. Jones & Laughlin Steel Corporation*,¹⁹ it was found that various union officers, employees of the said corporation, were discharged. Discrimination was alleged. The board so found and ordered the corporation desist from such conduct in the future, and rehire them. The company contended that the Board had no jurisdiction of the case due to the fact that the products upon which these men were working were not actually in interstate commerce. It was held that the N.L.R.B. had jurisdiction since the local business of the corporation substantially affected interstate commerce. The local acts could not be separated from this continuous flow of commerce and the federal government could not be denied the power to regulate. There was said

“the term ‘affecting commerce’ means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.”

In *Santa Cruz Fruit Packing Co. v. National Labor Relation Board*,²⁰ a strike took place in a canning factory in California; canning of fruits was stopped. Thirty-seven per cent of the fruits here packed were shipped in commerce. The Labor Board intervened. It was con-

¹⁸ *Stafford v. Wallace*, 258 U.S. 495, 42 S. Ct. 397, 66 L.Ed. 735 (1922).

¹⁹ *National Labor Relation Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 57 S. Ct. 615, 81 L.Ed. 893 (1937).

²⁰ *Santa Cruz Fruit Packing Co. vs. National Labor Relation Board*, 303 U.S. 453, 58 S. Ct. 656, 82 L.Ed. 954 (1937).

tended that the products had not yet begun the interstate trip. It was held that the power of Congress under the Commerce Clause extends not only to products already in commerce, but also to those which have not yet begun their interstate commerce but were intended for interstate commerce.

Under the theory that the people in the United States would have to pay higher prices for coal and thus affect or burden commerce, the federal government regulated the price for coal at the mines. The court sustained the price fixing in the *Sunshine Anthracite Coal v. Adking*.²¹

In *Mulford v. Smith*²² a tax imposed on local warehousemen was sustained. The federal government placed a restriction on the production of tobacco. Each farmer was given a quota to produce. Whenever any one of these farmers exceeded the quota, the tobacco warehousemen were required by the government to pay a tax equal to 50% of the market price of the excess production. The warehousemen in turn deducted the sum from the price paid to the farmer. It was contended that this imposition regulated agriculture which was considered to be a local activity. It was held that the warehouse was a mere throat in the flow of commerce and what happened there directly or substantially affected the tobacco markets of the country. Congress may tax any activity to promote and foster commerce.

A suit in equity was brought to enjoin the enforcement of the Agriculture Act against the petitioner because he violated the production quota. He claimed that he consumed the excess production on the farm and that it could not in any way affect the supply on the markets. Held: under the Commerce Clause Congress may regulate or fix prices of interstate products and every act, though local, affecting prices may also be regulated. The excess production of wheat though consumed by the family on the farm comes within this power.—*Wickard v. Filburn*.²³

Under the N.L.R.A., the Associated Press²⁴ was held to be interstate commerce. The association collects news items and dispatches them to member newspapers. Freedom of the press guaranteed by the Constitution was the defense. Held that the use made of interstate facilities brings it within the federal power.

In *United States v. Darby*,²⁵ Congress attempted to regulate wages, hours and working conditions of workers working in a local lumber mill. The defense was that the products were either not yet manufactured or not shipped in commerce. Held: the power of Congress under

²¹ *Sunshine Anthracite Coal v. Adking*, 310 U.S. 381 (1941).

²² *Mulford v. Smith*, 307 U.S. 38, 59 S. Ct. 648, 83 L.Ed. 1092 (1939).

²³ *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942).

²⁴ *Associated Press v. National Labor Relation Board*, 301 U.S. 103, 57 S.Ct. 650, 81 L.Ed. 953 (1937).

²⁵ *United States v. Darby*, 312 U.S. 100, 61 S. Ct. 451, 85 L.Ed. 309 (1941).

the Commerce Clause extends not only to the products actually in commerce, or those ready to be shipped to other states, but also to those which are merely *intended* to be shipped in commerce. This fact gives power to the federal government to regulate the very initial step of production.

In the *Polish National Alliance v. National Labor Relation Board*,²⁶ the Court held that a strike in Chicago, at the central office of the insurance company doing insurance business in thirty-six states interfered with the movement of bills, notices, premiums, etc., and directly affected commerce.

While these cases make clear the principle that commerce under the Constitution does not stop at the border of a state, but that it continues into the state as far as it can affect the commerce between the states, Congress has followed in the past as far as possible the principle laid down in many cases that whenever the federal power is extended within what would otherwise be the dominion of the state power, the justification for the exercise of the federal power must clearly appear.²⁷

It is a settled rule that in the absence of federal legislation a state may regulate a local activity even though this regulation will also affect interstate commerce provided it does not discriminate against or burden such commerce. However, once the federal government regulates, if the local law interferes with the federal regulation, the latter must yield. It is also possible that both the federal and state governments may tax or regulate the same activity.²⁸ The two governments would each have its own orbit and one would not interfere with the rights of the other.

Moreover, states may regulate many phases of interstate enterprises under the police power. Here the interests of the local citizens may become paramount to national interests and Congress has felt and the Court has sustained it, that the local interest is best served by allowing the local government to regulate.²⁹ On this theory a Massachusetts statute was sustained even though it prevented the sale of oleo-

²⁶ *Polish National Alliance v. National Labor Relation Board*, 322 U.S. 643, 64 S. Ct. 1196, 88 L.Ed. 1117 (1944).

²⁷ *Phelps Dodge Corp. vs. National Labor Relation Board*, 313 U.S. 177, 61 S. Ct. 845, 85 L. Ed. 1271 (1940).
Securities & Exchange Commission v. Chenery Corp., 318 U.S. 80 (pp. 92-95), 63 S. Ct. 454, 87 L.Ed. 626 (1942).

²⁸ *Kirschbaum v. Walling*, 316 U.S. 517, 62 S. Ct. 1116, 86 L.Ed. 1638 (1941).
Union Brokerage Co. v. Jonsen, 322 U.S. 202, 64 S. Ct. 967, 88 L.Ed. 1227 (1943).

²⁹ *Schlollemberger v. Pennsylvania*, 171 U.S. 1, 188 S. Ct. 757, 43 L.Ed. 49 (1898).
Smith v. St. Louis S.W.R. Co., 181 U.S. 248, 21 S. Ct. 603, 45 L.Ed. 847 (1900).
South Carolina State Highway Dep't. v. Bornwell Bros., 303 U.S. 177, 58 S. Ct. 510, 82 L.Ed. 734 (1938).
California v. Thompson, 313 U.S. 109, 61 S. Ct. 930, 85 L.Ed. 1219 (1940).

margarine shipped interstate on the ground that it was made to look like butter. The quarantine laws have also been sustained. Recently, and after the *Underwriters* case was decided, a Wisconsin statute was sustained under the police power of the state. It compelled a foreign insurance company to deposit as a part of the premium 50% of a membership fee charged to the Wisconsin policyholders, and a refusal to make such deposit was the cause for revoking the license to do business in Wisconsin.³⁰ Minnesota was allowed to impose upon a custom house broker engaged in interstate commerce a fee of \$50.00 before it could come into the state courts. The Supreme Court held that Minnesota had the power to supervise the activities of this broker and a supervisory fee was not unconstitutional.³¹

Under Article one Section eight, Clause three of the Constitution, Congress has the power to regulate commerce among the states. This power is enlarged by Clause eighteen of the same Article which gives power to make all laws necessary and proper for the carrying on of the express powers. This means that there need not be an absolute necessity, but merely the necessity to carry out a constitutional end. However, a limitation seems to have been imposed, at least to the extent that the power cannot be used to destroy the federal system of government guaranteed by the 10th Amendment. Nevertheless the power is very broad and may be used by Congress to the fullest degree and at the complete exclusion of state regulation under its delegated powers. It was said in *United States v. Wrightwood Dairy Co.*³²

“. . . the commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the execution of the powers of Congress over it as to make regulation of the appropriate means of attainment of a legitimate end, the effective execution of the granted powers to regulate commerce. The power over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than those prescribed in the constitution.”

Notwithstanding these trends it is difficult to foresee precisely where Congress will draw the line in accommodating the conflicting interests of the state and federal governments in the field of insurance. The mechanical separation of the business of insurance from its incidentals, and the suggestion of Chief Justice Stone that Congress regulates only

³⁰ *State Farm Mutual Auto. Insurance Co. v. Duel*, 65 S. Ct. 856 (1945).
696 (1944).

³¹ *State Farm Mutual Auto. Insurance Co. v. Duel*, 244 Wis. 429, 12 N.W. (2d) 322 U.S. 202 (*supra*).

³² *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 62 S. Ct. 523, 86 L.Ed. 726 (1941).

these incidentals by means of other express powers under the Constitution leaving the business itself in the control of the states, seems difficult to follow.

The extent of federal regulation for the present remains uncertain, but the reaction of Congress to the perils into which the insurance business and the several states had at once fallen as a result of the decision in the *Underwriters* case was swift. Undoubtedly, much credit for calling those perils to the attention of the nation is due to the excellent dissenting opinion of Chief Justice Stone. The Congressional reaction is indicative of the desire on its part to prevent unnecessary confusion, hardships and complications. It is hoped that this desire will prevail when Congress will begin to legislate over the field of insurance. However, no one should assume that Congress will not exercise all the power necessary to regulate insurance in an effective manner and on a national scale, as said by Chief Justice Hughes in *National Labor Relation Board v. Jones & Laughlin Steel Corporation*;³³

“Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control.”

JOSEPH J. ZIINO.

³³ 301 U.S. 1 (*supra*).