

RATIONALE OF ALTERNATE

NO-FAULT CONCEPTS

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Executive Director

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(Including a summary of the No - Fault laws of Massachussetts, Delaware and Florida from NO -FAULT INSURANCE: Willis Park Rokes, J.D., Ph.D.; C.L.U., C.P.C.U.; 1971 Insurors Press Inc.)

Pure versus Mixed System

"Pure No-Fault" would be a system that would completely abolish the tort remedy as a basis of compensating automobile accident victims and substituting, therefore, a plan of direct payment of first party benefits for specified forms of economic loss.

A "mixed" system would retain elements of the present tort system combined with some measure of substitution of first party benefits in lieu of the tort exemptions allowed.

The pure no-fault approach is almost universally rejected because of the revolutionary, dramatic and uncertain impact it would have on the consumer, the Insurance Industry and the legal profession.

Nearly all approaches considered to date favor a "mixed" system that mandates some level of first party benefits together with the preservation of residual tort liability over a basic specified coverage.

Proponents of the "no-fault" approach to the automobile accident reparations problem cite the cost of litigation as the major expense factor in the insurance premium composition that is most susceptible and responsive to substantial reduction by removing or limiting the remedy at tort.

In 1967, according to Table 1 (appendix) 18% of the premium dollar was expended for claimants lawyers fees and court costs, exclusive of other adjusting expenses and other company expenses. The net result was that after all expenses only \$.42 out of each dollar was returned to the policyholder (or paid on his behalf) for claims sustained.

In addition, according to Table 3 (appendix) 50% of the benefits paid were for general damages and approximately 17% were in the form of duplicate recovery from other sources such as Blue Cross, Blue Shield, social security, workmen's compensation,

unemployment compensation, sick leave, etc;.

The remaining (33%) net benefits to claimants provided for recovery of out-of-pocket expenses not otherwise compensated.

OBJECTIVE OF NO-FAULT PROPONENTS

The objective of proponents of No-Fault proposals appears to be to reduce the cost of the present system or to stabilize the cost of the system at or about present cost levels by attacking (1) cost of litigation, including court costs (18% of paid loss dollars), (2) reducing proportion of benefits (net) paid on account of general damages and (3) minimizing potential for duplicate recovery.

In this manner, it is hoped that sufficient reductions in cost can be effected on present rate levels to extend benefits to all injured parties at a cost that is not in excess of the present per capita rate level.

In other words, proponents of NO-Fault, by reducing the level of benefits paid to covered claimants under the present tort oriented system expect to generate sufficient dollar savings to extend the reduced level of benefits paid to all accident victims at the present cost level. It is therefore essential, in order to avoid a rise in rate levels, to employ some device to minimize the ability to recover compensation for injuries in excess of the out-of-pocket loss incurred.

It would not appear then, that any "no-fault" proposal could achieve the result claimed by its advocates, i.e., increase benefits and provide for significant cost reductions in the automobile insurance system for the delivery of reparations.

No-Fault can extend the payment of benefits to virtually all automobile accident victims, but at a level of benefit payments below levels currently paid to claimants under the present tort system at or near the present cost levels.

No significant cost reductions appear to be possible under any of the proposals thus far considered because no consideration has been given to controlling the major factors that determine pure loss costs. Pure loss costs account for the major portion of

the automobile insurance premium dollar. Pure loss costs are a direct function of the frequency of accidents and severity of injuries sustained. So long as no effective and major effort is expended to reduce the frequency and severity of losses, it is improbable that any significant reduction in cost can be obtained by attacking the problem from the level of benefits provided.

SOCIAL CONSIDERATIONS: PROBABLE RESULTS OF A NO FAULT SYSTEM

Is it a desirable social objective to provide a system that will indemnify most automobile accident victims for all or a major part of their provable out-of-pocket losses and deprive or restrict most of those same automobile accident victims of their present civil remedy to recover damages for intangible loss resulting from the shock, terror, pain, fear and anxieties of the accident? This is the real question to which the General Assembly must address itself.

Another, less immediate result of the proposed no-fault systems will be the re-distribution of loss costs among the various classes of insureds. Under the present system, loss costs are predicated on the probability of the insured being adjudged a tortfeasor and thereby being legally liable for bodily injuries and property damages resulting from a tortuous act. Present rate classifications and underwriting standards attempt to give some measure of objective evaluation to this probability and distribute loss costs accordingly.

Since under a no-fault system the probability of being a tortfeasor will be at best a secondary consideration, the major underwriting and rating considerations will be predicated on the probability of utilization of available benefits mandated under the law as well as the severity of loss. Classes of risk which are today classified as preferred under present underwriting and rating considerations will probably be less desirable and be the subject of increased rate levels. On the other hand, risks that are today considered less desirable will, in all probability, become desirable or even preferred risks.

This would result in a major shift in the allocation of loss costs that also carries with it an element of significant social reform. The economically deprived or low income

of economic loss benefits (exclusive of lost future earnings and pain and suffering) in excess of \$5,000.00 would be illusory benefits for more than 90% of covered persons.

In considering costs of benefit levels, consideration must be given to the relationship in the distribution of paid claimants, loss dollars and payment dollars by size of economic loss to date of settlement.

While 89.1% of all claimants suffered an economic loss of \$1,000.00 or less to date of settlement, they accounted for only 33.2% of loss dollars and 45.8% of payment dollars. Claimants suffering an economic loss in excess of \$5,000.00 accounted for only 1.6% of the number of claimants, but accounted for 30.4% of loss dollars and 17.4% of payment dollars (table 2A, appendix). Future loss earnings were not reflected in the loss data and, if available and included, would have increased the proportion of loss dollars in the larger loss categories and the percentage differentials.

From these figures, it may reasonably be deduced that, as the level of benefits available as basic coverage is increased, the cost of coverage for the majority of insureds will be increased disproportionately to their relative share of the total loss dollars and payment dollars.

THRESHOLD CONSIDERATIONS:

The threshold is a device that is employed to limit or restrict the civil right to seek a remedy at law for recovery of damages in excess of out of pocket expenses. The higher the amount stated as the threshold and the less comprehensive it is in composition, the more difficult it is for one to reach it and hence the more limiting it is with respect to the ability to exercise ones civil right to seek a remedy at law.

The Insurance Commissioner and the Insurance Industry generally seek a medical threshold of \$2,500.00, but will reluctantly accept a \$1,000.00 threshold. The threshold would be based on aggregate medical expenses but excluding cost of diagnosis, X-rays and rehabilitation.

In relating medical expenses (including diagnosis, x-ray and rehabilitation) to the

risk would be less likely to utilize benefits whereas the affluent, the self employed and farm would tend to maximum utilization of available benefits.

In other words, the poor, men and women in the military, the aged and the youthful driver, currently the less desirable risk, will be less likely to use available benefits to the extent provided (especially if benefit levels are high), whereas professional men, farmers and middle and upper income insureds, currently the more desirable risk, will have a greater probability of being a total loss beneficiary of available policy benefits.

In effect, rate levels eventually would be predicated on income, occupation and family size considerations as an indicator of total policy loss potential to the underwriter. Costs would ultimately, in effect, be redistributed along the lines of one's ability to pay.

While this is a less immediate result of any no-fault plan, it none-the-less has significant social implications and is another ramification of the question to which the General Assembly must address itself.

LEVEL OF BENEFITS:

The insurance Commissioner of the Commonwealth of Pennsylvania favors a no-fault plan that would provide unlimited medical expenses and substantial wage loss benefits of at least \$36,000.00.

The Insurance Federation of Pennsylvania proposes a plan with medical expense benefits of \$50,000.00 and \$9,000.00 on wage loss benefits.

Benefits under programs already enacted in other jurisdictions range from \$2,000.00 to \$10,000.00 per person for economic loss consisting of medical expenses, wage loss, funeral expenses and miscellaneous expenses.

According to the U. S. Department of Transportation (U.S.D.O.T.) studies, 98.4% of all claimants studied had an economic loss(excluding future lost wages) to date of settlement of under \$5,000.00. (Table 2A, appendix). Eighty-nine and one tenth percent (89.1%) of all claimants suffered an economic loss of under \$1,000.00.

Using the U.S.D.O.T. studies for reference, it would then appear that a level

amount of economic loss to date of settlement, we find that as the amount of economic loss increases, the percentage proportion of medical expense declines. An individual having an economic loss (exclusive of future lost earnings) of under \$500.00 will have medical expenses amounting to 67.47% of the economic loss. Where the economic loss is between \$1,000.00 and \$1,500.00 the medical expenses will run 50.45%.

In order to reach a \$1,000.00 medical threshold (including diagnostic, x-ray and rehabilitation), the average claimant would have to incur an economic loss, exclusive of lost future earnings, of nearly \$2,500.00. At this level, even with a broadly defined threshold, about 96.3% of injured persons would be barred from seeking a remedy at law unless it could be established that the nature of the injury was permanent and resulted in the loss of an important body function or was permanently and irreparably disfiguring or resulted in death.

Also, because of variables in medical costs around the Commonwealth, a fixed dollar threshold would cause some degree of inequity. Claimants residing in Philadelphia County, for example, could meet or exceed a \$1,000.00 threshold with relative ease as compared to a claimant residing in Tioga County, all other considerations being equal. However, this disparity may be capable of measurement and possibly reflected in the rate structure.

The threshold would have the effect of reducing the ratio of aggregate reparations to aggregate loss in the non-serious injuries and make available those excess of loss claim dollars to apply to the more serious injuries.

Exhibit 4 (appendix) shows the relationship of average reparations and ratios of reparations to losses (excluding future lost earnings) by amount of economic loss for serious injury cases.

Exhibits 6 and 7 further illustrate the comparison of reparations received to economic loss by persons with and without tort recovery and by retention of counsel.

According to Exhibit 4, persons sustaining an economic loss of \$500.00 or

under had an average loss of \$330.00 and 70% recieved payment of reparations averaging \$829.00. Had they been subject to the no-fault concept with a threshold, the recovery would probably have not exceeded their economic loss and the average reparations paid would have been reduced by \$500.00. This clearly illustrates the reduction in the level of benefits available.

PRECLUSION OF PLEADING:

The State of Delaware, as an alternative to the threshold concept, altered the tort liability system by the use of a preclusion of pleading provision. The preclusion of pleading provision does not bar the right to sue for reparations, but modifies the suit procedure by prohibiting the claimant from introducing as evidence in the suit those economic losses sustained for which compensation is available under the benefits provision of the law.

The apparrent rationale for the preclusion of pleading provision is probably based on these concepts:

(1) The availability of coverage for basic economic loss benefits provides a sufficient sense of economic security, that the injured party's incentive to bring suit is substantially reduced.

(2) An attorney will be more likely to consider each case more on its individual merit if he is unable to use economic loss as a measure or indicator of the value of general damages. Only the more serious cases will recieve the consideration of the attorney. As a result, the number of litigious cases can be expected to decline substantially. Experience in Delaware to date appears to confirm this theory.

Some lawyers believe that the effect of the Preclusion of pleading provision is equivalent to a \$750.00 threshold but is not so harsh on the claimant.

It would appear that the preclusion of pleading provision is more equitable to the injured person than is the threshold. There is no bar or limit to the injured persons right to sue and the variation in medical costs around the Commonwealth does not result in the inequities described in the threshold.

SUMMARY:

The decision to change the present automobile reparations system to a no-fault system will have to be made on consideration of desired social objectives. Unless the impact and ramifications of the social implications are appreciated and agreed to, substantial harm could result in the passage of the wrong form of no-fault plan.

There does not appear to be any justifiable reason to expect that a no fault system will result in a significant reduction in the cost of automobile insurance except in the context that aggregate benefits paid can be increased and passed on to a greater number of claimants at about the same cost level as present. This, is, of course, based on the assumption that the tort remedy is controlled and the present level of benefits which includes compensation for pain and suffering is lowered.

A benefit level of \$5,000.00 for economic loss would appear to be more than adequate to meet the needs of an overwhelming majority of people. Political considerations may dictate a higher level of benefits.

A preclusion of pleading provision would seem to be more desirable from a consumer viewpoint than a threshold. If a threshold would be considered, the \$1,000.00 minimum limit would appear to be excessive using the Insurance Commissioners and the Insurance Industrys composition. Unless the threshold included diagnosis, x-ray and rehabilitation costs, it would not appear to be in the best interest of the consumer to have a limit in excess of \$500.00.

APPENDIX

TABLE 1. — Where \$5,700,000,000 of automobile bodily injury liability insurance premiums went, 1969

	Amount	Percent
Premiums ¹	\$ 5,768,000,000	100
Company expenses:		
Selling.....	1,043,286,000	
Overhead.....	295,374,000	
State taxes.....	167,817,000	
Total company expenses.....	1,506,477,000	26
Claim adjusting expenses.....	789,586,000	14
Claimants lawyers fees.....	947,839,000	16
Court costs.....	111,102,000	2
Total expenses, fees, and costs.....	3,355,004,000	58
Net benefits to claimants.....	2,412,996,000	42

¹ Earned by over 1,000 stock, mutual, and reciprocal insurers.

Note: "Premiums," "Company expenses," and "Claim adjusting expenses" derived from *Bests Aggregates and Averages* (1970, 31st ed.), and *The Spectator* (Chilton Co., Philadelphia, Pa.); "Claimants lawyers fees" and "Court costs" derived from U.S. Department of Transportation, "Automobile Personal Injury Claims," pp. 73, 80 (1970), and "Automobile Accident Litigation," p. 7 (1970).

Source: U.S. Senate Antitrust and Monopoly Subcommittee

TABLE 2. — Where each \$1 of automobile bodily injury liability insurance premium goes

Premium.....	\$1.00
Company expenses:	
Selling.....	.18
Overhead.....	.05
State taxes.....	.03
Total company expenses.....	.26
Claim adjusting expenses.....	.14
Claimants lawyers' fees.....	.16
Court costs.....	.02
Total expenses, fees, and costs.....	.58
Net benefits to claimants.....	.42

Note: "Premiums", "Company Expenses", and "Claim Adjusting expenses" derived from *Bests Aggregates and Averages* (1970, 31st Ed.), and *The Spectator* (Chilton Co., Phila., Pa.); "Claimants Lawyers' Fees" and "Court Costs" derived from U.S. Dept. of Transportation, *Automobile Personal Injury Claims*, pp. 73, 80 (1970), and *Automobile Accident Litigation*, p. 7 (1970).

Source: U.S. Senate Antitrust and Monopoly Subcommittee.

TABLE 3. — Breakdown of the 42 cents of net benefits to claimants out of each \$1 of automobile bodily injury liability insurance premium

	Cents
In excess of out-of-pocket loss (viz. general damages, such as pain and suffering).....	21
Duplicate recovery ¹	7
Out-of-pocket loss not otherwise compensated.....	14
Net benefits to claimants.....	42

¹ i.e., benefits received from other sources, such as Blue Cross, Blue Shield, Social Security and sick leave, etc.

Note: Derived from Statement of Professor Robert E. Keeton, Harvard Law School, before the U.S. Senate Antitrust and Monopoly Subcommittee Hearings on Automobile Insurance, December 9, 1969; U.S. Dept. of Transportation, *Economic Consequences of Automobile Accident Injuries* (1970).

Source: U.S. Senate Antitrust and Monopoly Subcommittee.

TABLE 4. — Comparison of private insurance systems—
Cost of delivering \$1 of benefits

	Auto bodily injury liability insurance	Work- men's compen- sation health insurance	Group accident and health insurance
Total dollar input.....	\$2.40	\$4.50	\$1.22
Administrative expenses.....	1.40*	.50*	.22**
Benefits.....	1.00	1.00	1.00

*Includes insurance company expenses, and all costs of litigation.
**Includes property and liability insurance company expenses;
excludes costs of any litigation.

Sources: U.S. Senate Antitrust and Monopoly Subcommittee as to
bodily injury liability insurance: "Crisis in Car Insurance," pp. 89-90.
(Keeton, O'Connell, and McCord, University of Illinois 1968) as to
workmen's compensation insurance, "The Spectator," p. 33, Septem-
ber 1970 (Chilton Co., Philadelphia, Pa.) as to group accident and
health insurance.

TABLE 5. — Comparison of selected insurance company costs* of deliv-
ering \$1 of auto bodily injury liability, workmen's compensation, and
group accident and health benefits in 1969

	[In cents]		
	Auto bodily injury liabil- ity— Fault and nongroup	Work- men's compen- sation— nonfault and nongroup	Group accident and health— nonfault and group
Stock companies:			
Aetna Life & Casualty.....	38	28	12
Allstate.....	39	27	7
U.S.F. & G.....	38	30	22
Mutual companies:			
American Mutual Liability.....	35	27	16
Employers Insurance of Wausau....	35	21	13
Liberty Mutual.....	33	19	11

*"Costs" mean all underwriting and claim adjustment expenses, in-
cluding any defense lawyer fees, but excluding claimants lawyers fees
and court costs.

Source: Best's Aggregates and Averages—Property and Liability,
pp. 120, 122-123, 126-129, 199, 200, 202-204 (1970, 31st ed.)

TABLE 6. — Automobile Insurance Premiums Written and Losses Paid
1960-64, 1965-69
[Dollar amounts in billions]

	Auto bodily injury		Losses to premiums (percent)
	Premiums	Losses	
1960-64.....	\$16.4	\$ 8.5	51.9
1965-69.....	25.0	12.9	52.7
Combined 1960-69.....	41.4	21.5	51.8
Auto property damage			
	Auto physical damage		Losses to premiums (percent)
	Premiums	Losses	
1960-64.....	\$ 6.6	\$ 3.8	56.9
1965-69.....	10.5	6.4	61.2
Combined 1960-69.....	17.1	10.2	59.5
Auto physical damage			
	Auto physical damage		Losses to premiums (percent)
	Premiums	Losses	
1960-64.....	\$11.7	\$ 6.4	54.5
1965-69.....	18.8	10.9	57.8
Combined 1960-69.....	30.5	17.3	56.6

Source: U.S. Senate Antitrust and Monopoly Subcommittee: derived
from "The Spectator" (Chilton & Co., Philadelphia).

Percentage Distribution of Paid Claimants and Payment Dollars
by Size of Payment

<i>Size of Payment</i>	<i>Percent of Claimants</i>	<i>Percent of Payment Dollars</i>
\$1-500	56.0%	7.8%
501-1,000	16.7	9.6
1,001-1,500	8.2	8.1
1,501-2,500	8.0	12.1
2,501-5,000	6.2	17.2
5,001-10,000	3.5	19.9
10,001-25,000	1.2	14.5
Over \$25,000	.3	10.8
Total*	100.0%	100.0%

* Detail may not add to totals due to rounding.

Source: APIC, p. 49.

TABLE 2 A

Percentage Distribution of Paid Claimants, Loss Dollars and
Payment Dollars by Size of Economic Loss to Date of Settlement

<i>Economic Loss to Date of Settlement</i>	<i>Percent of Claimants</i>	<i>Percent of Loss Dollars</i>	<i>Percent of Payment Dollars</i>
None	6.9%	—	2.1%
\$1-500	72.0	19.2%	28.0
501-1,000	10.2	14.0	15.7
1,001-1,500	4.0	9.6	11.1
1,501-2,500	3.2	11.9	12.3
2,501-5,000	2.2	14.8	13.4
5,001-10,000	1.1	14.4	10.3
10,001-25,000	.4	10.0	6.1
Over \$25,000	.1	6.0	1.0
Total*	100.0%	100.0%	100.0%

* Detail may not add to totals due to rounding.

Source: APIC, p. 50.

TABLE 3 A

Ratio of Aggregate Payments to Aggregate Losses to Date
of Settlement by Amount of Loss

<i>Economic Loss to Date of Settlement</i>	<i>Ratio of Aggregate Payments to Aggregate Losses</i>
\$1-500	3.7
501-1,000	2.8
1,001-1,500	2.9
1,501-2,500	2.6
2,501-5,000	2.3
5,001-10,000	1.8
10,001-25,000	1.6
Over \$25,000	.4

Source: APIC, p. 58.

TABLE 4 A

Distributions by Size of Loss, of Number of Paid Claimants Receiving 75 Percent or Less of Their Economic Loss to Date of Settlement, of Their Loss, and of Their Payments

<i>Economic Loss to Date of Settlement</i>	<i>Number of Claimants</i>	<i>Economic Loss in Dollars</i>	<i>Payments in Dollars</i>
\$1-500	274	\$50,000	\$24,500
501-1,000	*100	75,300	35,500
1,001-1,500	50	62,900	30,200
1,501-2,500	49	95,600	43,600
2,501-5,000	46	159,600	67,800
5,001-10,000	36	261,700	104,000
10,001-25,000	19	280,700	93,600
Over \$25,000	11	669,600	177,500
Total	585	\$1,656,400	\$576,700

Source: Extracted from *APIC*, vol. II, p. 18.

TABLE 5 A

Percentage Distribution of Paid Claimants, Losses, and Payments by Attorney Representation and by Ratio of Payments Received to Losses Incurred to Date of Settlement

<i>Ratio of Payments Received to Losses Incurred to Date of Settlement</i>	<i>Claimants Without Attorney</i>			<i>Claimants With Attorney</i>		
	<i>Claimants</i>	<i>Loss</i>	<i>Payments</i>	<i>Claimants</i>	<i>Loss</i>	<i>Payments</i>
	.00-.75	2.3%	7.1%	1.3%	2.1%	13.8%
.76-1.25	24.1	29.3	13.5	5.8	14.0	5.2
1.26-2.25	21.5	34.2	26.4	15.4	26.0	17.3
2.26-4.25	23.2	21.7	29.6	36.3	32.1	36.2
4.26-7.25	11.1	6.0	14.6	23.2	10.4	20.6
7.26-10.00	3.5	.9	3.5	7.8	2.1	6.7
Over 10.00	14.3	.8	11.1	9.4	1.5	12.1
Total*	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

* Detail may not add to totals due to rounding.

Source: *APIC*, p. 62.

TABLE 6 A

Cumulative Percentages of Paid Claimants, Loss Dollars and Payment Dollars by Elapsed Time from Accident to Settlement

<i>Elapsed Time from Accident to Settlement</i>	<i>Cumulative Percent of:</i>		
	<i>Paid Claims Settled</i>	<i>Loss Dollars Settled</i>	<i>Benefits Paid</i>
30 days	21.2%	3.7%	3.5%
60	32.6	7.1	6.7
90	40.5	10.8	10.5
180	57.6	23.8	23.0
365	75.9	46.1	45.4
550	84.1	62.6	60.9
998	92.9	82.9	81.8

Source: *APIC*, p. 84.

EXHIBIT 1

Percentage Distribution of Economic Losses

<i>Amount of Economic Losses</i>	<i>Medical Expenses Percentage to Total Loss</i>	<i>Wage Loss Percentage to Total Loss</i>
\$1-\$499	67.47%	
\$500-\$999	54.21	16.19%
\$1,000-\$1,499	50.45	23.99
\$1,500-\$2,499	42.92	20.77
\$2,500-\$4,999	45.41	24.93
\$5,000-\$9,999	43.07	29.83
\$10,000-\$24,999	36.75	42.41
\$25,000+above	20.88	55.50
Total	38.16	76.40
		46.44

Source: *Economic Consequences of Automobile Accident Injuries*, p. 67.

EXHIBIT 2

Components of Economic Losses per Seriously Injured Person and Fatality Cases

<i>Kind of Loss</i>	<i>Average Loss for Those Sustaining Loss (Seriously Injured)</i>	<i>Average Loss for Those Sustaining Loss* (Fatalities)</i>
<i>Losses to date of interview or death</i>		
Medical	\$2,011	
Hospital	1,213	\$848
Other medical	798	
Property damage	873	
Wage Loss	2,838	\$1,065
Other losses	306	
Total	6,028	\$1,913
<i>Expected future losses</i>		
Future Earnings	\$40,006	
Medical and other	1,098	
Total future losses	41,104	\$109,621
Total Losses	\$47,132	\$111,534

*Certain components not computed.

Source: Adapted from Tables 3.1 and 3.2 pages 26 and 27.

EXHIBIT 3

Potential Sources of Loss Recoveries

Recovery of Current Losses

- Insurance policies on family members
 - Medical insurance (including hospital)
 - Life insurance (for fatality cases only)
 - Automobile medical payments
 - Collision insurance
 - Other insurance programs

Other Sources:

- Tort recovery
- Sick leave
- Workmen's Compensation
- Disability under Social Security*
- Miscellaneous Sources (Included here are payments made through Medicare, union and employer medical programs, the Veterans Administration, Medicaid, and public and private welfare agencies.)

Recovery of Future Losses

- Social Security*
- Other Sources (Included here are benefits from workmen's compensation, Veterans Administration, union funds, and other public and private survivor and disability programs.)

* The term Social Security is used throughout the study, yet the term Social Security is much broader than its use only for disability income payments in this report. Social Security includes unemployment compensation, old age and survivors benefits, health insurance, public assistance, etc. However, to avoid confusion the authors will use the term Social Security in this article to mean disability income payments under the Old-Age, Survivors and Disability Insurance (O.A.S.D.I.) system.

EXHIBIT 4

Average Reparations and Ratios of Reparations to Losses By Amount of Total Economic Loss for Serious Injury Cases

Amount of Economic Loss	Average Total Loss per Person	Reparations per Person Receiving Reparations		Ratio of Aggregate Reparations to Aggregate Losses
		Average	% Receiving	
\$1-\$499	\$ 330	\$ 829	70	1.8
\$500-\$999	764	1,270	77	1.3
\$1,000-\$1,499	1,254	1,747	86	1.2
\$1,500-\$2,499	1,947	2,234	88	1.0
\$2,500-\$4,999	3,496	3,502	90	0.9
\$5,000-\$9,999	6,632	5,521	95	0.8
\$10,000-\$24,999	16,482	9,681	91	0.5
\$25,000-and over	71,371	12,718	94	0.2
All Losses Classes	8,290	4,055	88	0.4

Source: *Economic Consequences of Automobile Accidents*, p. 38.

¹¹ *Economic Consequences*, op. cit., p. 38.

Percent of Reparations Received from Principal Sources
as Compensation for Serious Injury or Fatality,
by Amount of Economic Loss

Total Economic Loss	Total	Medical Insurance	Life Insurance	Auto Medical Payments	Collision Insurance	Net Tort	Wage Replacement*
\$1-499	100	4.1	11.8	3.6	—	74.4	4.3
\$500-999	100	9.7	7.0	5.6	3.6	59.6	13.2
\$1,000-1,499	100	10.9	6.1	10.3	5.6	56.6	5.9
\$1,500-2,499	100	10.4	23.3	6.1	9.5	38.4	13.0
\$2,500-4,999	100	15.2	5.9	6.2	11.4	40.0	11.7
\$5,000-9,999	100	17.7	.8	9.5	10.6	39.1	16.6
\$10,000-24,999	100	19.9	6.2	3.4	3.8	42.5	19.9
\$25,000 and over	100	5.5	23.7	0.9	1.2	17.3	49.2
Total	100	11.1	14.1	4.3	5.5	32.1	27.4

*Sick leave, workmen's compensation, social security, and similar sources.
Source: *Economic Consequences* (Table 3.15), p. 45.

EXHIBIT 6

Comparison of Reparations Received for Serious Injury or Fatality by
Persons With and Without Tort Recovery

Total Economic Loss (1)	Estimated persons with some recovery (2)	Percent with tort recovery (3)	Ratio of net recovery to loss with tort (4) without tort (5)		Percent tort of total recovery for those with tort (6)
\$1-499	19,500	54.3	4.5	0.8	92
\$500-999	42,700	62.6	2.6	0.5	72
\$1,000-1,499	54,000	49.3	2.4	0.7	79
\$1,500-2,499	93,600	46.9	2.0	1.0	63
\$2,500-4,999	109,300	43.6	1.6	0.6	64
\$5,000-9,999	57,000	44.2	1.1	0.6	63
\$10,000-24,999	28,200	52.3	0.7	0.4	72
\$25,000-over	42,600	41.8	0.3	0.3	42
Total	448,900	47.7	0.6	0.4	60

Source: *Economic Consequences* (Table 3.17), p. 47.

EXHIBIT 7

Net Tort Recovery for Serious Injury and Fatality by Retention of Counsel
by Filing of Suit, and by Total Economic Loss

Total Economic Loss	Ratio of recovery to economic loss			
	For Those Retaining Counsel	For Those Without Counsel	For Those Filing Suit	For Those Not Filing Suit
\$1-499	3.05	2.79	2.94	1.88
\$500-999	1.77	1.65	1.28	1.52
\$1,000-1,499	1.48	2.27	1.19	1.34
\$1,500-2,499	1.18	1.26	0.92	0.87
\$2,500-4,999	1.06	0.68	0.82	0.82
\$5,000-9,999	0.73	0.43	0.59	0.42
\$10,000-24,999	0.45	0.37	0.43	0.21
\$25,000 and over	0.11	0.01	0.09	0.04
Total	0.32	0.36	0.25	0.21

Source: *Economic Consequences* (Table 3.21), p. 51.

MASSACHUSETTS

"Compulsory Personal Injury Protection"

On August 13, 1970, Massachusetts Governor Francis W. Sargent signed Senate Bill 1580 into law. The bill became effective on January 1, 1971, making Massachusetts the first United States jurisdiction, other than Puerto Rico, to enact a no-fault plan. The law provided for the amendment of the Massachusetts compulsory automobile insurance law to provide certain first-party coverages on a compulsory basis. It also modified existing tort remedies for automobile accidents within the state.

Features of the Law

The law provides for limited first-party no-fault coverage. Provisions are as follows:

1. Compulsory first-party coverage, with per person limits of \$2000, are provided for the named insured, members of his household, any person responsible for the operation of a motor vehicle, any operator or authorized passenger of a vehicle of a corporation, partnership or business association, guest passengers and pedestrians struck by the insured's vehicle. Excluded from this first-party coverage would be the employees of the owner or registrant of the insured vehicle or other persons entitled to workmen's compensation benefits. All reasonable expenses incurred within two years from the date of the accident would be covered for necessary medical, surgical, X-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services.

2. Coverage for wages actually lost by reason of an automobile accident and payments in fact made to non-members of the injured person's household for services which the injured person would have performed, if not injured, are covered. In addition to the \$2000 per person limit on the first-party coverage, wage loss payments would not exceed 75 percent of the injured person's average weekly wages for the year preceding the accident. Coverage for reasonable medical and wage losses are provided up to a maximum of \$2000 for both kinds of loss.

3. There is no collateral source setoff except that the combination of wage loss payments made under the plan and any other collateral wage continuation program cannot exceed the 75 percent limit.

4. Insurers could exclude from coverage under the first-party payments provision those whose conduct contributed to cause their injury through operating of a vehicle while under the influence of liquor or narcotics; operating while in the commission of a felony or trying to avoid arrest; or operating a vehicle with the specific intent to cause injury to themselves or others.

5. The injured person may not make a tort claim for those out-of-pocket expenses covered by the first-party provision of the plan, but, as to other damages, the injured person would be free to pursue his normal tort action.

6. The law provides that a person may not seek or recover compensation for pain and suffering in a tort action unless his reasonable and necessary expenses incurred in treating his injury for necessary medical, surgical, X-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral expenses are determined to be in excess of \$500 or, unless such injury causes death, consists in whole or in part of loss of a body member, permanent and serious disfigurement, loss of sight or hearing, or consists of a fracture.

7. All motorists driving autos covered by the compulsory insurance are granted tort immunity to the extent of first-party benefits payable by the plan and the pain and suffering limitation. Such tort exemption applies only for accidents occurring in Massachusetts where the motorist and the victims are covered by the plan.

8. The law also provides that an insured may elect to have a first-party coverage deductible of \$250, \$500, \$1000, or \$2000 applied to the benefits payable to him and members of his household. The fact that there is a deductible would not affect the tort immunity previously discussed and would not be taken into consideration in determining whether the claimant's medical expenses exceed \$500. (See Bibliography entry No. 518).

9. Benefits under the plan are payable as loss accrues on receipt of reasonable proof thereof, but the insurer may agree to a lump sum settlement.

10. Subrogation. An insurer paying benefits under the plan is subrogated to the extent of such payments to any rights the payee may have at tort against an offending motorist, if the latter is not exempt from tort liability.

11. A Massachusetts resident who does not own a car and is not a member of a family household or a named insured under the plan would be covered for benefits under the policy of any motorist in whose car he was riding or by whose car he was struck as a pedestrian. If injured in or by an out-of-state car, such person would have no benefits under the plan. To provide for such cases, insurers are required to organize and maintain an Assigned Claims Plan through which the injured persons may obtain the benefits otherwise available under the "Personal Injury Protection" program.

12. Renewability. All Massachusetts policies, whether covering liability (including the Personal Injury Protection coverage) or Physi-

cal damage, shall be automatically renewed for insureds 65 and over and for all other insureds with clean records.

13. No insurers shall refuse to issue a policy of liability or physical damage insurance because of age, sex, race, or occupation of the applicant or the place of garaging of his car.

14. Cancellation of a liability insurance policy requires that the insurer provide the cancelled insured with an assigned risk coverage.

15. Commercial vehicles are treated the same as private passenger vehicles. How to treat commercial motor vehicles has been a prime point of contention in many of the "no-fault" proposals which have been made. (See Gilkenson, No. 173).

More Moderate than 1967 Bill

The new law is a pale image of its progenitor, the Keeton-O'Connell "Basic Protection Insurance" Bill, which was defeated in the Massachusetts Senate in 1967. The "Basic Protection" plan immunized against tort suits up to \$10,000 or economic loss and deducted all collateral source recovery. The "Personal Injury Protection" plan (the new law) sets a \$2000 cutoff on tort suits and deducts only for wage continuation. The older plan eliminated pain and suffering suits under \$5000; the present plan permits such suits where a medical loss exceeds \$500.

The Massachusetts plan is a modest move toward the no-fault concept. It is politically palatable because of the exclusion of benefits for certain individuals, such as drivers under the influence of liquor or narcotics—a vestige of the feeling that people at fault should not be permitted to recover. The low barriers to pain and suffering suits permit attorneys considerable scope for tort liability actions.

Mandatory Reduction in Rates

A controversial part of the Massachusetts Plan was the mandatory reduction in automobile insurance rates of 15 percent, which caused a number of companies to threaten to stop writing automobile insurance in the state. (See Bibliography entry No. 301).

The Massachusetts Supreme Judicial Court on November 9 and November 18, 1970, nullified that portion of the Massachusetts "no-fault" law which provided for an across-the-board automobile insurance rate cut of 15 percent. The November 9 decision covered property damage rates for 1971 and the November 18 decision covered fire, theft and collision. The court called both legislatively mandated rate cuts "confiscatory."

The Supreme Court for the third time rejected legislative efforts to impose automobile insurance rate limitations by holding that the

"freeze" of compulsory automobile insurance rates for 1970 imposed by the legislature and promulgated by the insurance commissioner was "confiscatory" and "unconstitutional." The Court's opinion sustained the appeal brought by The Travelers and 45 other insurance companies. (See Bibliography entry No. 304).

Experience under the Law

The immediate impact of the Massachusetts Plan as of the first quarter of 1971 indicated that the program was eliminating so-called nuisance claims. First quarter's results indicated that there was a 60 percent drop in total claims under compulsory bodily injury coverage during the first three months of 1971, with a 36 percent reduction in the average paid claim, according to Governor Francis W. Sargent. "The average paid claim cost in the first quarter of 1970 was \$205. The average paid claim cost in the first quarter of 1971 was \$131," stated Governor Sargent. He predicted a "future premium cost cut of 25 percent for bodily injury insurance." (See Bibliography entry No. 364).

Insurance industry spokesmen expressed the belief that the plan must be in operation for at least six months before meaningful statistics could be compiled and evaluated. They confirmed that the volume of claims had been lower than anticipated, but indicated this could be due to the transition to the new system and also to "normal time lags between the occurrence of an accident and the filing of claims." Some 70 to 80 percent of the bodily injury claims filed in January and February arose from accidents that occurred in the previous December, November, and October before the new law became effective.

Although the law requires payment of benefits within 30 days after receipt of claim, provided it is accompanied by necessary supporting data, companies discovered that there had been no reduction in the average time lag of 21 days before the form was returned. In many cases the form was not accompanied by hospital and medical bills, because the claimant had not yet received them. Thus, an additional delay ensued before payment could be made. (See Bibliography entry No. 67).

Litigation Challenging the New Law

Some critics question the constitutionality of the Massachusetts plan. The lack of an option permitting the insured the right to waive first-party benefits as he may (but rarely does) under workmen's compensation led some to believe that the courts would strike down the law as unconstitutional. An early case resolved the issue.

A postal worker and his wife, Mr. and Mrs. Milton Pinnick, were involved in an accident in Boston January 2, 1971. The couple's claim amounted to less than \$2000 and medical expenses were less than \$500. Since Massachusetts law provides that, unless losses exceed these amounts, or unless the accident results in death, loss in whole or in part of a body member, permanent and serious disfigurement, loss of sight or hearing, or a fracture, a tort liability suit could not be instituted. The Pinnicks' demand that the adverse party's insurer pay for lost wages and for "pain and suffering" was denied by the adverse party's insurance company. Under the Massachusetts law, the Pinnicks could collect only actual medical expenses and 75 percent of their lost wages.

The Pinnicks then instituted a legal suit challenging Massachusetts "no-fault" statute. The petition brought by the Pinnicks contended that the law barring compensation for pain and suffering was unconstitutional and abridged the rights of the petitioners contained in the first eight amendments to the Constitution, and, also, that the new law created privileges and immunities from tort liability for some citizens and exempted them from the operation of standing laws. The lawsuit presented an interesting challenge to the heart of the constitutional issue of "no-fault" automobile compensation statutes. (See Bibliography entries Nos. 441 and 535).

On June 29, 1971, the Massachusetts Supreme Court ruled that the state's no-fault automobile insurance law is constitutional.

Massachusetts Law in Appendix

For the information of the reader and as a guide for the drafting of legislation, the Massachusetts law has been reproduced in the appendix at the end of this book.

This should serve as a helpful guide, particularly since the Massachusetts Plan contains many of the more popular features of the reform plans which are appearing about the nation.

THE DELAWARE LAW

Effective on January 1, 1972, the state of Delaware inaugurates the implementation of its "no-fault" automobile insurance law.

The bill creating the law was signed by Governor Russell W. Peterson on May 27, 1971, making Delaware the second state to enact a "no-fault" automobile insurance law.

Under the law, Delaware drivers are required to have automobile insurance and their companies will pay claims regardless of fault. The

victim of an accident will still retain his right to sue for "pain and suffering."

Features of the Law

Under the legislation, no owner of a motor vehicle registered in the state, other than a self-insurer, shall operate or authorize any other person to operate his automobile unless he obtains minimum insurance coverage, including the following:

1. Liability insurance for bodily injury, death, or property damage of at least \$25,000 or to the limit of the Delaware Financial Responsibility Law, whichever is greater.
2. Compensation coverage of at least \$10,000 for one person and \$20,000 for each accident for reasonable and necessary expenses for medical, hospital, dental, surgical, medicine, X-ray, ambulance or prosthetic services, professional nursing and funeral services, and for loss of earnings and reasonable and necessary extra expense for personal services which would have been performed by the injured person had he not been injured. Funeral expenses shall not exceed the sum of \$2000 per person.
3. Compensation coverage for property damage, other than to a motor vehicle, with a minimum limit of \$5000 for any one accident.
4. Compensation for damage to the insured motor vehicle, including loss of use coverage up to \$10 per day, with a maximum payment of \$300.

The coverage applies to each person occupying the insured vehicle and to any other person injured in an accident involving the insured vehicle, but excludes occupants of another motor vehicle. There is an option to provide certain deductibles, waiting periods, sublimits, percentage reductions, excess provisions and similar reductions applicable to expenses incurred as a result of injury to the owner of the vehicle or members of his household. Insureds are permitted to obtain coverage more extensive than the minimum coverages required by the law.

Alteration of Tort Liability System

Any person eligible for the compensation coverage for medical, disability, and funeral expenses and for property damage, other than that involving a motor vehicle, is precluded from suing for these damages, for which compensation is available, under the tort liability system.

Subrogation Rights

Insurers providing the compensation benefits under the law shall

be subrogated to the rights, including claims under any Workmens' Compensation law, of the person for whom benefits are provided, to the extent of the benefits provided.

Arbitration

All insurance policies are required to provide that insurers must submit to arbitration claims for damages to a motor vehicle, other than the insured motor vehicle, including the loss of use of such vehicle upon the request of the owner of the damaged vehicle. The state insurance commissioner is designated to administer the arbitration system.

Delaware Law in Appendix

For the information of the reader and as a guide for the drafting of legislation, the Delaware law has been reproduced in the appendix at the end of this book.

Inclusion of the statute should be most helpful, particularly since the Delaware Plan incorporates some of the more unusual features of no-fault proposals.

THE FLORIDA PLAN

"Florida Automobile Reparations Reform Act"

In June of 1971 the state of Florida passed its "Florida Automobile Reparations Reform Act" providing that effective January 1, 1972, Florida citizens would come under a "no-fault" automobile insurance law.

Under the law an injured person would collect his economic loss from his own insurer without regard to fault in an accident. Tort liability actions against others, arising from automobile accident injuries and damages, would be eliminated to the extent of the basic coverage.

Features of the Law

The law provides for the following features:

1. Maximum limit of coverage is \$5000, covering all reasonable expenses incurred for necessary medical, surgical, X-ray, dental and rehabilitative services, including prosthetic devices, hospital and nursing services.
2. Reimbursement of 100 percent of loss of gross income and earning capacity (or 85 percent, if such benefit is found to be not subject to federal income tax).
3. Funeral benefits to \$1000.

4. Lawsuits (from the first dollar of loss including claims for pain and suffering and other general damages) are still permitted for serious fractures, permanent disfigurement, loss of a body member, "permanent injury within reasonable medical probability," permanent loss of a bodily function, or death.

5. Insurers must issue, as a package, the no-fault statutory benefits and liability coverage to provide for those situations wherein an insured is still subject to suit.

6. Deductibles of \$250, \$500, and \$1000 applicable to the no-fault benefits must be offered by insurers.

7. The law mandates a 15 percent reduction in premiums.

"Thresholds" Which Govern Right to Sue

A "medical threshold" is established where medical and related expenses exceed \$1000. When the threshold is exceeded, the injured party may still sue (and meanwhile be collecting his no-fault benefits).

Although the coverage applies only to bodily injury, the law modifies the right to sue for property damage to private passenger automobiles. Here a "property damage threshold" is established—a person incurring less than \$550 property damage cannot sue. If the loss is above this threshold, he may sue.

Handling Property Damage

Persons may take one of three courses with regard to property damage to their own private passenger automobiles: (1) Carry the same collision coverage as exists today, providing for indemnity without regard to fault; or (2) carry a new form of collision coverage, which will be offered, providing payment for only those situations wherein the damages were incurred through the fault of another who is subject to the law; or (3) elect not to carry collision coverage (but such a decision has new meaning with statutory removal of the right to sue one who negligently causes damage not exceeding \$550).

Mandatory

Florida motorists are required by the law to carry insurance providing the statutory no-fault bodily injury benefits (or post equivalent security).

Failure to comply with the law provides for revocation of driver's license and car registration, although proof of compliance is not required to secure a license tag. Failure to obtain the coverage, nevertheless, carries the full penalties for noncompliance. It is not necessary for the motor vehicle operator to be involved in an accident before the penalties apply, such as is the case in most financial responsibility laws.