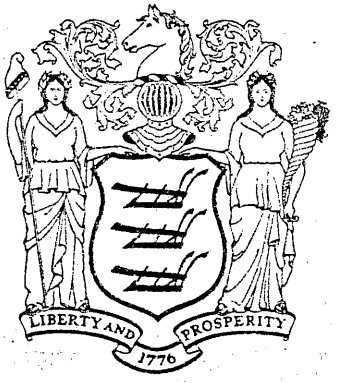
NO-FAULT AUTOMOBILE INSURANCE REFORM IN NEW JERSEY.



State of New Jersey. Legislature

(Legislative Study) Commission to Study the New Jersey Automobile Reparation Reform Act."

REPORT TO THE LEGISLATURE
(pursuant to SCR No. 68 of 1976)

December, 1977

LETTER OF TRANSMITTAL

37-50

December, 1977

THE HONORABLE MEMBERS OF THE SENATE and GENERAL ASSEMBLY

Ladies and Gentlemen:

The Commission to study the "New Jersey Automobile Reparation Reform Act," P.L. 1972, c. 70 (C. 39:6A-1 et seq.), among other things, created pursuant to Senate Concurrent Resolution No. 68 of 1976, herewith respectfully submits its report in compliance with the terms of the resolution regarding said act.

(s) _____
ALEXANDER J. MENZA
Chairman

(s) _____
SAMUEL HAGER
Vice-Chairman

(s) _____
BARRY T. PARKER

(s) _____
THOMAS J. DEVERIN

(s) _____
DONALD DiFRANCESCO

(s) _____
GEORGE W. CONNELL

(s) _____
WILLIAM K. DUNCAN

(s) _____
DAVID GREEN

TABLE OF CONTENTS

APPENDICES

LIST OF TABLES AND CHARTS

COMMISSION TO STUDY THE

"NEW JERSEY AUTOMOBILE REPARATION REFORM ACT,"

P.L. 1972, c. 70 (C. 39:6A-1 et seq.)

MEMBERS

Senator Alexander J. Menza, Chairman[1]
District 20 (Part of Union County)

Samuel Hager, Vice-Chairman[2]
Perth Amboy, New Jersey

Senator Barry T. Parker[1]
District 8 (Parts of Burlington, Ocean, Monmouth, and Mercer Counties)

Assemblyman Thomas J. Deverin[2]
District 21 (Parts of Union and Middlesex County)

Assemblyman Donald DiFrancesco[2]
District 22 (Parts of Union and Morris)

George W. Connell, Esquire[1]
Newark, New Jersey

William K. Duncan[1]
Northfield, New Jersey

David Green[2]
Newark, New Jersey

Peter P. Guzzo, Research Associate
Legislative Services Agency
Staff Aide

Laurine Purola, Research Associate
Legislative Services Agency
Staff Aide

---

[1]Appointed by Senate President

[2]Appointed by Assembly Speaker

SUMMARY OF RECOMMENDATIONS

Listed below are the recommendations of the Commission which are discussed in more detail in their appropriate chapters. A draft of legislation encompassing the proposed amendments and supplements to the "New Jersey Automobile Reparation Reform Act" will be prepared for introduction.

1. The Commission believes that the no-fault automobile insurance system -- in a generic sense -- is conceptually and practically sound and should be maintained in New Jersey. The risks of driving should be spread more widely through society since driving is more of a social risk today than it was years ago. Furthermore, the determination of fault has become more costly and technically difficult to prove, and should only be preserved for certain types of personal injury and property damage claims. While recommending retention of a no-fault system in New Jersey, the Commission realizes there are certain deficiencies in the present law. It is hoped the recommendations contained in this report will help to strike a balance between equity and justice, and what is socially and personally affordable. (Chapter II)

2. Because the Commission cannot determine what courts of this state or any other jurisdiction will do, it recommends that the legislature ask the Commissioner of Insurance to report to it as a whole all court decisions which have, or may have, a bearing on New Jersey's no-fault law. In this manner the legislature could act, or be prepared to act, to correct any inequities or deficiencies in the law. (Chapter III)

3. The Commission recommends maintaining automobile insurers as the primary providers of no-fault benefits, with exceptions as currently provided for in the no-fault law. (Chapter IV)

4. The Commission believes a major emphasis should still be placed on loss prevention rather than no-fault insurance as a means of reducing automobile property insurance costs, and does not recommend a system of no-fault property damage insurance. (Chapter V)

5. The Commission recommends the continued exclusion of commercial vehicles, school and public buses, and motorcycles from no-fault coverage, and that no-fault benefits should not be applicable to passengers in non-private passenger automobiles* involved in accidents with automobiles. (Chapter V)

6. PIP coverage should be extended to the owners and occupants of all automobiles involved in accidents with non-private passenger automobiles. While some carriers now extend PIP coverage to such injured parties, the Commission believes it should be done uniformly by all carriers. (Chapter V)

7. Pedestrians who are struck by non-private passenger automobiles should be covered under their own automobile insurance coverage. (Chapter V)

8. "Professional" pedestrians, i.e., pedestrians who are not covered under any automobile insurance coverage, should be covered under "add-on" PIP coverage applicable to all such non-private passenger automobiles. (Chapter V)

*As used in this report, they include commercial vehicles and school and public buses, but exclude motorcycles and mopeds.

9. If a "professional" pedestrian is struck by an uninsured non-private passenger automobile, he should look to the Unsatisfied Claim and Judgement Fund for PIP benefits. (Chapter V)

10. A pedestrian eligible for PIP benefits under his own coverage or an "add-on" PIP policy of non-private passenger automobiles should be subject to the tort exemption of the no-fault law. (Chapter V)

11. In all accidents between private passenger and non-private passenger automobiles or where a pedestrian with his own automobile insurance coverage is struck by a non-passenger automobile, it should be made statutorily clear that any insurer paying PIP benefits under automobile insurance coverage shall be subrogated to the rights of the party to whom it makes such PIP payments to the extent of such PIP payments. (Chapter V)

12. The Commission recommends that the unlimited medical benefits provided for in the no-fault act be retained. However, it believes that the liability of any one company should be limited to the first $75,000 with the amount over that pooled among all insurers and paid out of the state's Unsatisfied Claim and Judgement Fund. This is the approach taken by Senate Bill No. 1380, which the Commission recommends the Governor sign into law. (Chapter VI)

13. The Commission recommends the establishment of Regional Claims Review Boards for injuries covered under no-fault insurance. (Chapter VI)

14. The Commission recommends that Regional Claims Review Boards be given the authority to establish a reimbursement medical

fee schedule for injuries covered under no-fault insurance in the region in which they operate. (Chapter VI)

15. The Commission recommends that the time period for the payment of claims be extended from thirty days to sixty days. (Chapter VI)

16. The Commission recommends that an accident victim covered by no-fault cannot recover general damages from a driver covered by no-fault unless the victim's injury results in (1) his being unable to perform substantially all of the material acts that constitute his usual activities for at least thirty days during the180 days following the accident; (2) dismemberment; (3) significant disfigurement; (4) a fracture; (5) permanent loss of use of a body organ, member, function, or system; (6) permanent consequential limitation of use of a body organ or member; (7) significant limitation of use of a body function or system; or (8) death. (Chapter VIII)

17. The Commission recommends that the merits and problems of providing for a system of optional first party "speculative damage" insurance be studied further. (Chapter VIII)

18. Miscellanea. (Chapter IX)

Chapter I

Introduction

Background

In February of 1968 New Jersey's Commissioner of Banking and Insurance, in a landmark decision, denied application for a 20.6 percent rate increase filed by the National Bureau of Casualty Underwriters and the National Automobile Underwriters Association. On the basis of data submitted by a special counsel to represent the public interest, the Commissioner determined that the automobile insurance industry should be granted only a slight increase, not the requested 20.6 percent. The industry reaction to this denial took the form of policy cancellations and nonrenewals, agency terminations, assignment of risks, increased use of 214 (consent to rate) filings, and restrictive underwriting practices. Rate increases were allowed by the Commissioner of Insurance early in 1970, which, it was hoped, would restore the market to its normal level. Despite this rate increase, however, it was necessary for the Commissioner of Insurance to declare a ninety-day moratorium on nonrenewals. The Commissioner cited the imminent peril of an unprecedented constriction in the New Jersey market.

This situation emphasized the need for automobile insurance reform in New Jersey--an outcome of which was the creation by the New Jersey Legislature in 1970 of the Automobile Insurance Study Commission (AISC), which produced the bill which, with amendments, became the "New Jersey Automobile Reparation Reform

Act," the so-called no-fault act.

The AISC was created on June 18, 1970, pursuant to Joint Resolution Number 4, Laws of 1970. Basically, the duties and responsibilities of the AISC were readily identified in terms of recommendations leading to:

(1) The prompt and efficient provision of benefits for all accident injury victims.

(2) The reduction or stabilization of the prices charged for automobile insurance.

(3) The ready availability of insurance coverage necessary to the provision of accident benefits.

(4) The streamlining of the judicial procedures involved in third-party claims.

In its deliberations, the AISC addressed itself primarily to modifying the tort liability system in such a manner as to provide New Jersey residents with a system of reparations which provided maximum benefits to injured persons with optimum efficiency. Accordingly, as the AISC concentrated its efforts in this area it did not deal with the questions of ratemaking or insurance availability. In December of 1971 the AISC released its final report entitled "Reparation Reform for New Jersey Motorists," which recommended that New Jersey adopt a "no-fault" system of reparation for injuries sustained in automobile accidents. On June 20, 1972, legislation was approved (effective January 1, 1973) to accomplish this objective. Much of the legislation recommended by the AISC was eventually enacted, although often in amended version. (See Appendix A for the text

of the no-fault act and Appendix B for rules and regulations pertaining thereto.)

The no-fault act (P.L. 1972, c. 70) provides for unlimited medical benefits for persons injured as a result of accidents involving an automobile, and restricts the right of the injured party to sue for damages if his injury is confined to soft tissues and his medical expenses, excluding hospital, x-ray, and diagnostic costs, are under $200, or unless his injury results in death, permanent disability, permanent significant disfigurement, permanent loss of a bodily function, or loss of all or part of a body member. Wage loss, essential service benefits, survivor benefits, and funeral expense benefits are also included under the no-fault plan.

By the end of 1976, it was obvious to most observers that insurance problems similar to those of 1968 were developing once again within the automobile insurance market in New Jersey. Many of the same factors were again present, e.g., serious availability problems, agency terminations, and spiraling premium costs. The residual market, served by the New Jersey Automobile Insurance Plan, grew significantly as the voluntary market contracted. These problems were further complicated by the insolvency of the Gateway Insurance Company and the decision of one of the major automobile insurance writers, the Government Employees Insurance Corporation, to cease doing business in the state.

The market problems of 1976 were the result of a number of factors. Some critics suggested that the system of prior approval of rates was disruptive of efficient pricing because delays experienced in getting rates approved by the Insurance Commissioner

distorted pricing methods. The New Jersey no-fault law was criticized for providing benefits which were too generous and for being too lenient with respect to protecting the insured's right to sue for general damages, including pain and suffering. Several technical defects in the no-fault law had also become obvious as a result of judicial decisions.

In a larger sense, the market disruption in New Jersey was also the result of the adverse effect of inflation and other economic pressures in the general economic downturn of 1973-74 and, as such, was a nationwide phenomenon. Casualty insurers lost money on their investment portfolios during that period and were adversely affected by the spiraling inflation which pushed up medical costs as well as the costs of repairs and spare parts. In turn, these factors had an adverse effect upon their capacity to write new business.

Accordingly, a new legislative commission was established by Senate Concurrent Resolution No. 68, in May of 1977, to examine New Jersey's no-fault law, various ratemaking systems, and insurance availability problems. Generally speaking, the three broad areas of automobile insurance which the Commission was mandated to study are:

(1) The automobile accident compensation system as provided for in the no-fault act.

(2) Automobile insurance ratemaking systems.

(3) The automobile insurance residual market.

The Commission decided early in its deliberations to study the three areas separately, with no-fault insurance as its initial

effort. This was not to deny the close relationship of the three areas and their component issues. However, the Commission believed that for the sake of expediency and because of limited staff resources it was necessary to compartmentalize its study.

Its duties and responsibilities were to inquire into and provide remedies for any inequities and deficiencies that may exist, strive for improvement, and make fundamental changes when necessary and practicable in the "New Jersey Automobile Reparation Reform Act." Enough time has passed (more than four years) for New Jersey to have a no-fault loss experience and sufficient statistical data available which can be compared to the pre-no-fault data in this state as well as to the no-fault experience in other states. It is also possible in 1977 to determine the impact of the no-fault system in New Jersey in providing more and better benefits to accident victims, more promptly and efficiently. In addition, the Commission addressed itself to several issues raised by the courts.

The Commission outlined the component issues and questions of its study of the no-fault act to be:

The role of the tort system: Should it compensate everyone involved in an automobile accident or should it be based upon the principle that one who wrongfully causes injury to another should fairly and adequately compensate the injured person to the extent he was free from fault? This also involves a question of social risks versus personal risks in spreading the cost of automobile claims.

Medical expenses: Should there be a limit on medical benefits? What methods might be employed to hold down costs? Should there be fee schedules for medical services under no-fault coverage to serve as standards, with regional review boards which could set a reimbursement schedule for insurers and to which a medical provider could appeal from the schedule in unusual circumstances?

Property damages: Should no-fault coverage be extended to automobile property damage? How can rising property damage costs be contained?

Threshold: Should the threshold remain at its present dollar limit? Should there be a higher dollar threshold? A verbal threshold? No threshold (a straight cut compensation system where fault in an automobile accident is irrelevant and the purpose is to pay all injury claims)? What is the volume of automobile negligence suits for pain and suffering in New Jersey today as compared to prior to no-fault, and over the last three years? To what extent have the so-called "nuisance suits" been eliminated from the system?

Collateral sources: New Jersey's no-fault plan is predicated upon the containment of losses within the automobile insurance system, i.e., it does not transfer loss to other insurance or benefit systems. Should injury losses from automobile accidents continue to be considered part of the price paid for automobile usage, with motorists responsible for total reparations?

Classifications other than private passenger automobiles:

Court decisions have interpreted the no-fault law to make PIP benefits available to drivers and passengers of motorcycles and other non-private passenger automobiles involved in accidents with automobiles who are covered under their own automobile insurance and to passengers in commercial vehicles injured in accidents involving automobiles. Is this the intent of the no-fault law? Should PIP coverage be extended to other vehicles, i.e., trucks, buses, and taxis, and to other classes of injured person, e.g., pedestrians struck by non-private passenger automobiles.

PIP benefits: Are additional PIP benefits to be provided to all occupants of the insured's car or simply the named insured, spouse, and resident members of the family as carriers presently write policies?

Fraud, deceit, and overutilization: What has been the extent of fraud under no-fault insurance in inflating claims to reach the threshold for bringing suits? What has been the extent of deceit and overutilization under no-fault claims concerning billing practices by doctors and hospitals? What possible legislative remedies exist against these practices?

Premiums: What has been the rate of increase of automobile insurance premiums (PIP, bodily injury and property damage separated) since the enactment of no-fault after discounting the inflationary factor? How much of that increase is attributable to tort liability under the present system? How would various thresholds affect premiums? What is the profit margin in New

Jersey for automobile insurers?

Procedures Adopted by the Commission in its Study

The Commission was, from its inception, aware of the debate over no-fault insurance in general, and of its proclaimed merits and deficiencies in New Jersey, in particular. As a result, the viewpoints and arguments of the expert witnesses available to the Commission had already become well known and the zones of disagreement between proponents and critics of no-fault rather clearly delineated. Therefore, while not neglecting the testimony presented to it in formal public sessions, the Commission -- as did the AISC six years ago -- found wisdom in attempting to base its decisions on statistical data to a great degree.

The Commission received testimony on the no-fault law at two public hearings held on July 21 and July 28, 1977. Several Commission members traveled to Michigan for three days in July, 1977, to meet with industry representatives and with the Michigan Commissioner of Insurance, Thomas Jones, and his staff. Of prime concern was the operation and effect of the verbal threshold in Michigan. The Commission also sent some of its members to Washington, D.C., on September 8, 1977, to meet with U.S. Department of Transportation personnel and the staff of the U.S. Senate Committee on Commerce, Science, and Transportation involved with the preparation of the presently pending federal no-fault automobile insurance bill, U.S. Senate 1381. Finally, several Commission members attended a No-Fault Automobile Insurance Seminar sponsored by the National Conference of State Legislatures in Atlanta, Georgia, on November 3 and 4, 1977. Participants from at least

twenty five states were in attendance, which provided an excellent opportunity for comparing no-fault experiences.

A panel was also appointed by the Commission to serve as an Advisory Committee. Members of the group included representatives of the insurance industry, trade associations, several attorneys, including a representative of the trial bar, a representative of an insurance brokers' trade association, and an actuary from the Insurance Services Office, an organization which collects statistical data and formulates insurance rates for submission to the Commissioner of Insurance. Working with the group, and serving as special advisor to the Commission itself, was Philipp K. Stern, the Chief Property-Liability Actuary for the New Jersey Department of Insurance.*

Among other things, the Commission gathered data from industry statistics and insurance company claim files to determine the effect of the present $200 no-fault threshold and the probable effect of the adoption of a verbal threshold upon the number of lawsuits filed in New Jersey in connection with automobile accidents. In gathering this statistical data, the Committee aided the Commission in determining, as precisely as possible, how well the present threshold is working and whether it should be modified. The Committee also helped test the efficacy of other changes in the no-fault law which had been proposed to the Commission and discussed by it.

*The members of the Advisory Committee are listed below in "Acknowledgements."

Finally, the Commission itself held eight working meetings at which time recommendations concerning the various component issues and questions pertaining to its study of the no-fault act were discussed and finally voted upon.

Acknowledgements

The Commission members extend their thanks to Peter P. Guzzo and Laurine Purola, Research Associates in the Division of Legislative Information and Research, who served as staff aides, for their assistance in managing administrative details, analyzing various reforms considered by the Commission, and for preparing this report. The Commission also acknowledges Philipp K. Stern, Chief Actuary, Division of Property and Liability, of the New Jersey State Department of Insurance, for his material assistance.

Finally, the Commission members acknowledge the assistance and cooperation of the following members of the Advisory Committee to whom it extends their thanks: William Hollritt, Marketing Manager and Director of the North Jersey Automobile Club; David V. Teese, Claims Manager, Firemen's Fund Insurance Company; Fred Marcon, Vice President of Insurance Services Office; Jules Borrus, President of Insurance Broker's Association; Norman Gill, Vice President and General Counsel of New Jersey Manufacturers' Insurance Company; John N. Reid, Associate General Counsel, American Insurance Association; Morris Brown, Esquire; John J. Nangle, Washington Counsel, National Association of Independent Insurers; Henry G. Morgan, Esquire; and Stephen A. Gilbert, Vice President and Associate General Counsel, Motor Club of America Companies.

CHAPTER II

Fault, No-Fault, and Automobile Insurance

How No-Fault Developed

The fault, or tort liability, system of reparation for accidental injury evolved, ironically, at the same time as the Industrial Revolution was occurring, which eventually led to the production of the automobile. As it developed and came to the legal forefront in this country in the nineteenth century, an injured person could not collect reimbursement from the injurer unless he could prove intent or, in the case of unintended contact, negligence.

The conclusion reached by most scholars is that "until the nineteenth century a person whose actions caused harm to another was with exceptions held responsible for the harm simply because he had acted."[1] Even under the common law of England, however, there was an undercurrent of feeling that legal liability should coincide with moral blame. Nonetheless, liability was commonly imposed without regard to the moral innocence of the defendant.

The tort system modified the stern theory of absolute liability based on the common law in early England in a fairly simple concept -- trespass. Under this ancient concept of trespass, it made no difference whether the defendant was negligent or otherwise at fault in causing an injury involving contact as the consequence of one's voluntary conduct against the interest of another, no matter under what circumstances it occurred. The law was more interested in finding the cause of an injury than in placing blame on the injurer, and in this

respect the system of absolute liability for harms helped preserve the peace.*

It has been stated that the "suitability of a strict liability rule has turned upon how well that rule has suited the needs of a community rather than upon any philosophical conclusion...."[3] For example, under the common law trespass rule, the implements used in labor or recreation were relatively uncomplicated devices whose functioning was controlled by elementary mechanical principles. Proof of "immediate causation" was then a satisfactory standard for allocating responsibility for harm. Contrarily, industrial expansion, involving the building and operating of factories and railroads, would have been more difficult under an absolute liability system. That is, entrepreneurs found absolute liability to be a roadblock to expansion when the costs of all accidents and injuries fell upon them. Consequently, the courts, beginning most notably in the landmark Brown v. Kendall decision in 1850 (60 Mass. [Cush.] 292), accommodated both the Industrial Revolution and a new "intellectual climate" by gradually shifting to a general theory of civil obligation under which persons owed a universal, but confined, duty to take care not to injure their neighbors. Ultimately, a generalized theory of legal carelessness developed and an objective fault standard, i.e., negligence, emerged as a limiting principle of tort liability for unintentional injuries.

*It should be noted that by the thirteenth and fourteenth centuries a new writ had developed in England known as the "action on the case," or "case," in contradistinction to trespass. Those who sued in case had to submit some item of illegality or fault to take the place of the "missing element of trespass" in order to establish liability. The suit in case introduced the notions of duty and neglect which were "destined to serve as the basis for the eventual appearance of the negligence requirement in the [2]

Eventually, the same requirement of fault finding was applied to automobile accident injury claims. A motorist, under the fault system, is required to compensate someone for an injury that the motorist did to him or his property only if he is guilty of wrongdoing or a negligent act.

Automobile liability insurance responded to the fault system by supplementing the law and providing protection for wrongdoers, frequently compensating victims, and spreading accident risks by limiting the costs that might fall on any one individual. However, liability insurance--as the words imply--is designed primarily to protect the wrongdoer-policyholder from financial loss because of his liability, and not to compensate accident victims for their losses.

This fact must be considered when charges are made that automobile insurance does not return enough of its premium dollars to accident victims. The true purpose of liability insurance is to provide a successful defense for a policyholder involved in an automobile accident and accused of being at fault and prevent his financial insolvency.

Architects of no-fault automobile insurance claim that for this reason the merging of the fault system and automobile liability insurance was a mismatch. Fault law, in theory, shifts accident costs to wrongdoers. Liability insurance, in theory, protects wrongdoers both by defense and indemnity.

Their purposes are, therefore, in fundamental conflict. The consequence of a merging has been to strip fault law of its purpose, but leave society to pay for and endure all the costs and complexities of fault law decision making, e.g., investigation and litigation, claims adjusting costs and legal fees, and crowded court dockets.

In addition, various socio-economic changes have affected the actual operation of the law relating to automobile accidents.[4] For example, the increase in both the dimensions of the accident problem and its effects; the recognition of the social risk and inevitability of accidents accompanying our mechanized and industrialized way of life; the development of cost distributing mechanisms for accidents over wide segments of society, such as insurance; and the divorce of the burden of liability from the fault on which liability is supposed to depend. It should be recognized, as one legal scholar stated, that while these newer notions have more in common with traditional notions of strict liability than with those of fault, "they take into account many factors and considerations that were not in existence, or were unknown, when earlier notions took root."[5]

Proponents of the "fault automobile insurance system" contend that in spite of the merging of the fault system and automobile liability insurance, the traditional role of the law is still preserved. That is, irresponsible driving behavior is deterred, victims of automobile accidents are compensated when the injurer has breached his duty (i.e., to drive safely), and accident risks are spread, thereby preventing the insolvency of a wrongful-policyholder.

It was not on theoretical grounds that the concept of no-fault was argued and ultimately implemented, however. Elimination of the fault standard in order to broaden the compensable event in workers' compensation and later in automobile insurance claims was presaged in various degrees by the recognition of workers and motorists who were not being compensated, or adequately compensated, for injuries received in a work related activity or a motor vehicle accident. In some cases they did not make a claim and in others compensation was denied because the injury was not proved to be the result of someone else's fault.

As alluded to above, no-fault made its initial inroads into the fault system with the concept of workers' compensation. When the obstacles to compensation for industrial accidents finally become intolerable in the factories of the late 1880's, workers' compensation laws were enacted by the various states, abrogating the tort law and enabling workers to collect compensation from an employer-financed insurance fund for an injury suffered on the job regardless of its cause. In essence, such laws are no-fault workers' compensation laws.

Generally, no-fault automobile insurance is meant to remedy those situations where motorists are not being compensated or adequately compensated for automobile related injuries. Thus, the hoped-for objectives of no-fault are to (1) provide prompt and efficient benefits for all accident injury victims; (2) reduce or stabilize the prices charged for automobile insurance; (3) make available insurance coverage necessary for the provision of accident benefits; and (4) streamline the judicial procedures involved in third-party claims.

Various no-fault automobile insurance plans were proposed prior to 1971. The Columbia University Committee Plan, developed in 1932; the Saskatchewan (Canada) plan, adopted in 1946; the "Basic Protection Plan," presented in 1965 by Robert Keeton and Jeffrey O'Connell; and the Puerto Rican modified no-fault law, which took effect in 1970, are most notable. The first true no-fault law in the fifty states went into effect in Massachusetts on January 1, 1971. Since then, twenty-one additional states, including New Jersey, have adopted laws which contain some no-fault provisions. In addition, several federal no-fault bills (with different provisions) have been introduced in the U.S. Congress to establish, or require the states to establish, a no-fault automobile insurance system.

New Jersey's no-fault automobile insurance law provides prompt and equitable first-party payments to victims of private passenger and certain light truck (not used customarily for business purposes, except farming) accidents. In this manner, it seeks to spread the risks of driving throughout society. The law provides first-party medical and hospital benefits with no limit as to time or amount; wage loss of up to $100 a week (one year maximum); substitute services of up to $12 a day (limited to $4,380 per person); funeral expense of $1,000; and survivor's benefits equal to benefits that would have been paid to the accident victim except for his death. Additional first-party coverage is also available.

The no-fault benefits of the law are meant to be a trade-off for the restrictions it places on tort recoveries. A victim cannot sue for general damages if his injury is confined to soft tissues and medical expenses, excluding hospital, x-ray, and other diagnostic costs, or the equivalent value thereof for the reasonable and necessary treatment of the injury, are under $200, or unless his injury results in death, permanent disability, permanent significant disfigurement, permanent loss of a bodily function or loss of all or part of a body member.

Issues

There are at least three issues involved in considering a no-fault automobile insurance plan: a conceptual issue; a practical, cost issue; and a constitutional issue (which is addressed in the following chapter). Conceptually, one must grapple with the question of whether the risks of driving should be borne by the individual or be spread more widely through society. Tangential to this issue is whether driving is more of a social risk today than it was when the fault system was merged with automobile insurance.

Just as important (although at least subject to impirical proof) is the cost issue, i.e., whether insurers should compensate every injured victim of an automobile accident or require that an injured victim cannot recover without proving the defendant's fault (or his greater fault) and his own innocence (or lesser fault). Tangential to this issue is whether it is practical, both in effect and cost, to attempt to determine fault in all automobile accident cases. Nearly every law which provides

no-fault insurance benefits to victims of automobile accidents seeks for reasons of cost control to reduce or modify in one or more diverse ways -- tort exemptions, setoffs, a limitation on general damages -- the full traditional tort remedy. And to the extent of that reduction or modification, motorists are immunized against fault.

The emphasis of no-fault (whether in workers' compensation or automobile insurance) is on insurance and loss distribution. This development reflects a trend towards security-consciousness in certain "social" activities.

Recommendation

The Commission believes that a no-fault automobile insurance system--in a generic sense--is conceptually and practically sound and should be maintained in New Jersey. The risks of driving should be spread more widely through society since driving is more of a social risk today than it was years ago. Furthermore, the determination of fault has become more costly and technically difficult to prove, and should only be preserved for certain types of personal injuries and property damage claims. While recommending retention of a no-fault system in New Jersey, the Commission realizes there are certain deficiencies in the present law. It is hoped the recommendations contained in this report will help to strike a balance between equity and justice, and what is socially and personally affordable.

FOOTNOTES

1. C.J. Peck, "Negligence And Liability Without Fault In Tort Law," The Origins And Development Of The Negligence Action (U.S. Department of Transportation Automobile Insurance and Compensation Study, 1970), p. 51.

2. C.O. Gregory, "Trespass To Negligence To Absolute Liability," 37 Virginia Law Review 359, at 363 (1951).

3. Peck, p. 58.

4. F. James, "Analysis Of The Origin And Development Of The Negligence Actions," The Origins And Development Of The Negligence Action (U.S. Department of Transportation Automobile Insurance and Compensation Study, 1970), pp. 37-38.

5. Ibid., p. 38.

CHAPTER III

Constitutional Issues of No-Fault Automobile Insurance

While the Commission favors the maintenance of no-fault automobile insurance in New Jersey, as recommended in the preceding chapter, it realizes there could be constitutional challenges to the no-fault law. As this state's judiciary does not issue advisory opinions, the Commission looked to past challenges to the law in New Jersey and to constitutional challenges in other jurisdictions in an attempt to determine if no-fault denies or infringes on constitutional rights. Of course, comparisons with other jurisdictions can be valid only where there are similar no-fault and constitutional provisions, unless the challenge was based on the federal constitution.

A recent case seeking to declare the New Jersey no-fault law unconstitutional as a whole and in several specific parts was Rybeck v. Rybeck (141 N.J. Super. 481 [1976]). The Superior Court, Law Division, held that the act as a whole and on the record before the court did not offend the State Constitution.*

Specifically, the court stated that: the issue of whether no-fault insurance had failed was not one for judicial review; legislative classification under the act was to be tested for constitutional validity by the rational basis test; the act was

*The Law Division decision was appealed and the Appellate Division dismissed the appeal; the plaintiff had been paid in the meantime and the Appellate Division held that "no truly justifiable controversy" was before it as the issues raised were now "strictly hypothetical in nature...."

not violative of equal protection by its mode of distinguishing significant from insignificant injuries, by treating accident injuries different than other kinds, or as discriminating against the poor, who assertedly received medical care at a lower cost and thus would be less likely to reach the $200 threshold, and who assertedly would be less able to pay costs of medical testimony for any hearing preliminarily required to prove satisfaction of threshold requirements; the act was not shown to be discriminatory against nonwage earners by reasons of provision for income continuation benefits for loss of income to injured "income producers"; the act was not unconstitutional by reason of potential conflicts of interest on the part of insurers; the act was not invalid as depriving a married woman of the option either to obtain her own insurance or to remain outside of the no-fault system altogether or as otherwise discriminating against a married woman; the act was not unconsitituional as creating irrational classifications by making an injured person's remedy depend on the nature and use of vehicles that injure him; there is no vested right in current general law; the right to jury trials does not survive valid prospective legislation providing that a claim should not be heard at all; the act was not invalid as barring access to courts or to jury trial; and finally, the provision of the act concerning inadmissible evidence of amounts collectible or paid was not an unconstitutional legislative invasion of the Supreme Ccurt's rulemaking power. Rybeck has been cited with approval in subsequent cases.

A number of state courts, as previously mentioned, have already considered no-fault insurance at the highest level. No case has yet reached the U.S. Supreme Court. Massachusetts made the first judicial ruling on no-fault in 1971 (Pinnick v. Cleary, 271 N.E. 2d. 592 [1971]) when its high court upheld the state's no-fault law, the first enacted by any state. In this case the court rejected the argument that a tort cause of action was a vested property right. The second ruling by a state's court of last resort came in Illinois (Race v. Howlett, 51 Ill. 2d. 478 [1972]). In this case, the so-called "dual-protection" formula--which was a unique type of tort shield--was struck down as violative of the state's constitutional prohibition on special legislation. New Jersey's no-fault law does not contain a "dual protection" formula.

In Michigan, the Supreme Court is reviewing a Court of Appeals case (Catherine Shavers, et al. v. Frank J. Kelly, et al. Civil No. 73-248-068-CZ) in which the bodily injury portion of the Michigan no-fault law was upheld as constitutional, but the property damage section was declared unconstitutional. Similarly, the Florida Supreme Court ruled (Kluger v. White, 281 So. 2d. 1 [1973]) that the provisions of the state's no-fault law limiting the right to sue for damage to property were unconstitutional. In another Florida case (Lasky v. State Farm Co. et al., 296 So. 2d. 9 [1974]) the Supreme Court upheld the bodily injury provision of the law, but found the existing threshold language prohibiting suits for pain and suffering unless there was a fracture of a weight-bearing bone, or a compound, comminuted, displaced, or compressed fracture to be

arbitrary and unreasonable and violative of equal protection of the law. The result of this decision was that the no-fault act was made somewhat more restrictive and stronger by a process of judicial editing.*

Conclusion

The constitutionality of the personal injury provisions and tort liability exemptions of no-fault automobile insurance has withstood substantial challenges. The fate of no-fault property damage insurance appears to be doubtful, however, and there is reason to believe that further challenges to no-fault will continue. Therefore, the Commission has been especially sensitive to the basic constitutional issues involved in reviewing New Jersey's no-fault law, especially in terms of the doctrines of due process and equal protection of the law, and has attempted to note any deficiencies or inequities that could cause the law or any parts thereof to be held unconstitutional.

*Five other states upheld their respective no-fault automobile insurance laws: Kansas (S.G. Manzaneres et al. V. W. Fletcher Bell 14 Kan. 589, 522 P. 2d. 1291 [1974]; Pennsylvania (Singer v. heppard (No. 646 Misc. Dkt. [1975]); Kentucky (Fann v. McGuffey, o. 75-458 [1975]; Connecticut (Gentile v. Altermatt, 37 Conn. L. . 1 [1975]); and New York (Montgomery v. Daniels, et al.).

Recommendation

Because the Commission cannot determine what courts of this state or any other jurisdiction will do, it recommends that the legislature direct the Commissioner of Insurance to report to it all court decisions which have, or may have, a bearing on New Jersey's no-fault law. In this manner the legislature could act, or will be prepared to act, to correct any inequities or deficiencies in the law.

CHAPTER IV

Delivery of Benefits Under No-Fault: Primary and Collateral Sources

One of the objectives of New Jersey's no-fault law is to provide for the prompt and efficient provision of benefits for all injury victims of private passenger automobile (and certain light truck) accidents regardless of fault. The reparation purpose of the law, however, would fall short of its objective unless all private passenger automobiles were included in the insurance program. Consequently, the no-fault law provides that personal injury protection and liability insurance are mandatory for such automobiles.

An important question which flows from mandatory no-fault insurance is whether no-fault coverage should be coordinated with other medical, health, and disability insurance. Depending on which insurance is made exclusively primary for paying no-fault benefits, other insurers will be responsible only for excess costs or coverage not paid or provided by the primary insurer. The collateral insurer should -- theoretically -- be able to reduce the insured's premium, as double coverage would be eliminated.

A more important, and perhaps more difficult, question pertains to who should be the primary provider of (no-fault) personal injury protection benefits. The framers of New Jersey's no-fault law, pursuant to the recommendations of the Automobile Insurance Study Commission (AISC) in 1971, made automobile insurance primary for no-fault benefits. The AISC did not generally favor reliance on collateral sources of benefits to fill the indemnity gaps in the tort liability system.

The Commission agrees that automobile insurance should be primary for personal injury protection benefits. Retaining automobile insurers as primary insurers for the payment of medical expense benefits associated with automobile accidents internalizes the cost of the automobile reparations system; the cost of injury loss resulting from automobile accidents should be part of the price paid for automobile usage. Several considerations are germane here. Those who drive automobiles should be the only individuals required to pay for the system; health insurance, of course, is frequently paid by employers, by the state, or by others. To require that health insurance be made primary would be to extend part of the cost of the automobile reparations system to that part of the population which does not drive cars; it should be noted that the 18 percent of the population which does not drive is also the poorest portion of the population in terms of economic resources.

Second, not all victims with income loss or medical expenses are necessarily covered by health or disability insurance, or covered by them to the same extent as provided by no-fault automobile insurance; the reparation objective of the no-fault law is to provide an equitable and uniform schedule of benefits for all victims. Third, some forms of non-automobile insurance provide only a low "floor of protection" whereas it is the purpose of the no-fault law, within reasonable limits, to provide income replacement benefits. And, finally, it is likely that inequities and rate-making difficulties would result if collateral sources were made primary.

To minimize costs and duplication of benefits, however, the no-fault law requires the subtraction of workers' compensation, temporary disability insurance, and also medicare benefits, from those benefits otherwise payable under the automobile insurance reparation system. A very large part of the New Jersey labor force is eligible for workers' compensation and temporary disability benefits, which are financed by employer contributions. Medicare, of course, provides government benefits for certain eligible recipients.

Nonetheless, there are those who continue to advocate coordinating health insurance and automobile no-fault personal injury protection benefits as a useful method of avoiding wasteful duplication of benefits and as a means by which individual insureds might save money on premiums. Some authorities have pointed out that health insurers are able to deliver a greater portion of the premium dollar to the insured as benefits; administrative expenses, for example, tend to be lower for non-profit hospital service corporations (such as Blue Cross) than they are for casualty insurers. It has also been pointed out that individuals who hold Blue Cross and Blue Shield health insurance contracts also benefit from the fact that such corporations are direct writers (i.e., no agent or broker fees are included in the cost of the insurance), and that they also enjoy a favored tax position. Such corporations have been cited as the premier experts in health care delivery systems, and therefore well equipped to take on the payment of medical claims associated with automobile accidents.

The Commission examined three plans which could be used to coordinate health insurance and automobile insurance. They would

operate in the following manners:

(1) Health insurance would be made primary. In the event of an automobile accident, the health insurer would pay the medical expenses incurred in the same fashion as it would pay for any other illness under the regular health insurance contract. A so-called "wrap-around" feature might be added, which would provide for the casualty insurer's payment of any medical expenses which are not reimburseable under the regular contract.

(2) Blue Cross and Blue Shield, as nonprofit corporations, might be made the universal PIP (personal injury protection) carriers in the state. A separate Blue Cross PIP policy would be issued, providing unlimited medical benefits to every driver in the state, along with a policy issued by a regular casualty insurer to provide for liability and property damage coverage. This approach was mentioned by Commissioner James Sheeran at a public hearing of the Commission on July 28, 1977.

(3) An optional $1500-2000 deductible could be offered by the casualty insurer in the PIP portion of the policy. For an appropriately reduced premium, the insured could elect to utilize his own health insurance coverage in the amount of the deductible, absorbing any gaps in coverage himself.

The first plan, which would establish health insurers as primary medical expense carriers in the no-fault automobile system, is implicitly predicated upon the supposition that all drivers have some form of health insurance. In New Jersey, health insurance coverage is held by the state's residents as follows:

40% - BLUE CROSS AND BLUE SHIELD

25% - MEDICARE

15% - MEDICAID

10% - COMMERCIAL CARRIERS OR PAY OWN WAY

10% - NO INSURANCE

It should be noted that of the 10 percent of the population covered by commercial carriers a substantial number are under-insured; i.e., there are large gaps in their coverage in the form of low ceilings, substantial co-payment provisions, and large deductibles. It is estimated that about 500,000 people in the state have insurance coverage which is not adequate.

Therefore, in order to make health insurance primary for automobile injuries, a means would have to be found to provide the entire driving population with adequate coverage. At present, the health insurance of 45-50 percent of the population is funded through governmental agencies. This includes Medicare (25 percent), Medicaid (15 percent), and that portion of the population which has no insurance coverage; in the event that these uninsureds are admitted to hospitals and cannot pay their bills, the county government frequently pays for them. If regular health insurance were made primary for all drivers, some provision would have to be made to relieve the public sector of the burden of that portion of the cost of medical expenses associated with automobile accidents.

At present, because of the voluntary nature of health insurance coverage in this country, there are a wide variety of

benefit packages available and a complete absence of the uniformity which characterizes the automobile reparations system. Presently, automobile PIP benefits provide unlimited medical payments for all reasonable costs associated with an automobile accident without deductibles or coinsurance. No regular health insurance contract even approaches being this comprehensive. Health insurance coverage frequently contains a dollar benefit ceiling, often provides for partial reimbursement of medical costs, and increasingly provides for coinsurance and deductibles as a means of reducing the total cost of the coverage to the purchaser. This in not necessarily suited to the circumstances of an automobile accident. Blue Cross, for example, usually provides for fairly complete reimbursement for hospital expenses, but Blue Shield provides for limited reimbursement for medical and surgical care. Automobile accidents, however, are characterized more frequently by medical costs, such as visits to a doctor's office (not reimburseable at all under the standard Blue Shield contract, and under major medical only after the payment of a $100 deductible) than by hospitalization.

Health insurance contracts are also characterized by a number of exclusions which might deprive the automobile accident victim of needed care. One of the most significant areas of care traditionally excluded by Blue Cross and Blue Shield contracts is rehabilitation. Casualty insurers, however, have traditionally seen the importance of early rehabilitation, both medical and vocational, of the accident victim in terms of the victim's wellbeing and the cost-effectiveness of such treatments in reducing the long-term medical and wage loss benefits paid by the insurer.

Another area which has been found to be cost-effective by the casualty insurer but has been neglected by Blue Cross and Blue Shield is outpatient care.

In terms of cost, there do not seem to be strong indications that any savings could be effected by making health insurance primary. The lower administrative cost of Blue Cross insurance is not, in fact, shared by Blue Shield. One of the reasons that Blue Cross expenses are low is that it merely serves as a conduit for the payment of hospital bills and frequently makes such payments to hospitals in regular, large lump sums. Blue Shield, on the other hand, makes payment to a large number of providers, which raises its administrative costs to two or three times that of Blue Cross. It has been pointed out that the Blue Cross method of payment precludes any serious, individualized attempts to discover overutilization and overpayment of hospital benefits. Furthermore, it must be noted that if health insurance were made primary in automobile cases, its general utilization (and premiums) would rise commensurately. In fact, a four state survey conducted by the United States Department of Transportation showed a cost savings in the states where automobile insurance was primary; in 1972 Blue Cross rates were reduced $15 in New Jersey in recognition of the cost savings associated with making automobile insurance primary.

The payment of benefits by both health insurers and casualty insurers in a "wraparound" arrangement would result in a net increase in administrative costs. A double set of files

for each accident would need to be kept, and additional expenses would be incurred by each insurer in verifying payments made by the other. The administrative expenses for casualty insurers would not be reduced at all by the fact that they no longer paid medical expense benefits or paid them only partially. Their administrative expenses, which include taxes and loss adjustment expenses, are relatively static. In addition, the payment of claims by two insurers would probably increase the opportunity for fraud and duplication of payments.

Similarly, in term of cost to the consumer, there is no indication of saving. Those individuals who did not have regular health insurance coverage would have to secure it. Those who were underinsured would have the option of securing a better policy (which would cost around $500 for a family of four), or self-insuring in the amount of the deductibles and copayments which their existing policy contained. To fill in these gaps would result in a larger payment to the casualty insurer for augmented "wraparound' benefits. Significantly, however, the securing of a fairly good health insurance policy for $500 would not provide the comprehensive unlimited coverage available for the $38.00 PIP coverage from the casualty insurer.

The second plan would provide for the offering of a regular PIP policy, including wage loss and other benefits, by Blue Cross. Ostensibly, this would include unlimited benefits as does the present PIP coverage now offered by casualty insurers. This could presumably be offered at a lower cost because of the lower expense ratio of medical service corporations.

This approach would require Blue Cross and Blue Shield to get into many areas in which they are not now involved and in which they have no particular expertise. This would include the payment of claims for wage loss, rehabilitation, nursing care, and other benefits.

In Maryland, the Maryland Automobile Insurance Fund, a state-owned residual market mechanism, contracted with Blue Cross and Blue Shield in 1972 to handle the Personal Injury Protection portion of the insurance policy issued by the Fund. After two years the contract was cancelled. Officials of the fund suggested that Blue Cross simply did not have the expertise required to service the policies properly.

An immediate problem would be the mechanics of marketing an automobile insurance policy which contained elements issued by two completely separate insurers. Aside from the double file-keeping problem noted earlier, both kinds of insurers might market their product in a completely different manner. Blue Cross and Blue Shield are direct writers; thus, five million New Jersey drivers would have to try to contact them directly for the issuance and servicing of their policies in the absence of agents or brokers. Probably any savings in administrative expenses enjoyed initially would soon be wiped away in the face of the monumental task of issuing and servicing several million PIP policies.

Furthermore, it is difficult to estimate the effect of imposing the burden of unlimited medical payments on the present financial structure of Blue Cross and Blue Shield. Their reserving practices

are presently different from casualty insurers and would probably have to be changed to adapt to the new set of circumstances and obligations posed by the advent of unlimited medical payments. Furthermore, since they would enjoy a monopoly, there would be no possibility of any pooling arrangement for excess losses, which would be permitted to automobile insurers under the provisions of Senate Bill No. 1380, now awaiting the Governor's signature to become law.

The third plan has been tried in Michigan and Florida. Both states have no-fault laws which provide that the insured, at his option, can elect to take a deductible up to $2,000 on his PIP policy, and use his existing health insurance to cover that deductible. PIP, therefore, becomes excess for catastrophic losses. In Michigan this was accompanied by a mandated 40 percent rollback in the medical portion of the PIP premium, a savings of $7 for the average policyholder. For this $7 reduction, however, the policyholder faced the spectre of paying deductibles in his regular health insurance and in his major medical coverage, which might amount to significantly more than the small savings he gained. In addition, he ran the risk that certain kinds of treatment might not be covered at all.

An inherent danger in this approach is that the insured might not seek early rehabilitation, which might result in longer term cost savings. If his automobile insurer is not brought into the case until a later time, opportunity for needed early treatment may have been lost.

Conclusion and Recommendation

The Commission believes automobile insurers are better suited to be, and should be, the primary providers of no-fault benefits, with exceptions as currently required in the no-fault law. The Commission was influenced by data which shows that in New Jersey and New York, where automobile insurance is primary, consumers have received an average premium cut on their health insurance of about $18 a year as a result of the primacy of no-fault. Blue Cross and Blue Shield were required to cut their premium by 2 1/2 percent in New York and 3 percent in New Jersey after the introduction of mandatory personal injury protection benefits.

In addition, automobile insurers have the expertise in special kinds of serious injuries which are uniquely associated with automobile accidents, and often their experience permits them to act effectively early on in the treatment to bring about optimum results. Also, automobile insurers, dealing in these problems exclusively, unlike health insurers, have a vested interest in working in collateral areas to effect highway and automobile safety; and they are in a unique position to offer inducements to bring needed changes about, e.g., as discounts for safety features in cars such as air bags.

CHAPTER V

Exclusions and Inclusions Under No-Fault Automobile Insurance

While the Commission endorses a no-fault reparation system, it also realizes there are limitations to the advantages of such a system. For example, a no-fault system may or may not lead to a reduction in the cost of automobile insurance. Although a direct reparation program increases the number of accident victims who are reimbursed for their losses, there are cost reducing features in the program which, depending on the type of features, may or may not offset the added loss costs.*

Another advantage, which seems unquestionable, lies in the provision of first party insurance benefits based on need rather than fault. This may occur at no increase in costs if litigation is substantially diminished, leading to a decrease in legal fees and recovery for general damages. Or, first party insurance benefits can be provided without a substantial reduction in litigation, but at a higher premium cost.

The Commission believes that the provision of no-fault benefits should be premised on a stabilization of premiums because of a redistribution of benefits based on need with, hopefully, a reduction in litigation. At the same time, it should be recognized that no-fault in certain areas of automobile insurance, or as applied to certain classes of motorists, or motor vehicles, may not stabilize premiums, but could increase them. On the other hand, a denial of no-fault benefits to certain victims of motor

*Although a reduction in bodily injury premiums was a "distinct" possibility with the introduction of no-fault insurance in New Jersey, the Automobile Insurance Study Commission made no recommendation for a premium reduction in 1971. The 15 percent reduction was adopted by the legislature as a supplement to the no-fault act at the time of its enactment.

vehicle accidents may be unjust.

For these reasons, the Commission has, after careful analysis, endorsed the fact that New Jersey's no-fault law does not apply to automobile property damage and commercial vehicles, and reaffirms the fact that it was not intended to apply, nor should it, to motorcycles. However, there are deficiencies in the law relating to the exclusion of certain injured victims of motor vehicle accidents which should be remedied. An explanation of the deciding factors in each case is provided below.

1. Property Damage

Whereas a no-fault plan might reduce the costs of bodily injury liability insurance through diminished litigation leading to a decrease in legal fees and general damages, the Commission believes the containment of property damage costs continues to depend almost entirely on loss prevention, e.g., mandatory damageability standards, control of repair costs, the use of deductibles, improvement of highways, more safety features on the roads and in automobiles, etc. This is necessary as the defects in the tort liability system that make no-fault praiseworthy in the bodily injury area do not apply to automobile property damage.

The tort system is criticized in bodily injury cases because it encourages abuses of general damages; allows double recoveries from various insurance sources; presents the risk of expensive litigation; produces an inequitable distribution of benefits; and clogs the courts. In the area of automobile property damage, these problems are not germane.

A motorist cannot collect damages for pain and suffering or grief because his automobile has been destroyed. He can collect only repair costs which cannot exceed the current market value of the vehicle. The owner of a damaged vehicle cannot recover from two sources; if he collects from the insurer of the driver at fault in the accident, he cannot also collect from his own insurer. And if he carries collision coverage and collects under it, his own insurer will then recover from the insurance company of the driver at fault (which also holds down the premium for collision insurance). Finally, there are fewer lawsuits and attorney fees in motor vehicle damage cases than in bodily injury cases.

Eliminating the liability system for automobile damages would not offer much in the way of premium savings. On the contrary, under a no-fault system, the cost for first-party collision may actually increase.

Conclusion

The Commission deems it "fanciful," as did the Automobile Insurance Study Commission in 1971, to place property loss and bodily injury loss in the same category so far as the potential impact of no-fault on costs is concerned. And to force the innocent victim of a negligent motorist to assume all or an appreciable part of his own property loss either through first party collision insurance or self-insurance would impose a financial hardship on the poor and create an injustice for those motorists who must take a deductible because premiums would be prohibitively expensive if collision insurance paid from the

Also, as pointed out in Chapter three, the fate of no-fault property damage insurance appears to be doubtful, having been successfully challenged already in Michigan and Florida. In fact, the Commission agrees with the reasoning of the court in the Florida case (Kluger v. White, 281 So. 2d. 1 [1973]) that there is no demonstrated need for no-fault physical damage insurance.

Recommendation

The Commission believes a major emphasis should still be placed on loss prevention rather than no-fault insurance as a means of reducing automobile property insurance costs.

2. Commercial Vehicles and Motorcycles

Section 2 of the no-fault act pertains to definitions and includes that of "automobile" as used in the act (P.L. 1972, c. 70, amended by P.L. 1972, c. 203; C. 39:6A-2). "Automobile" means:

(1) A private passenger automobile of a private passenger or station wagon type that is owned or hired [rented], and is neither used as a public or livery conveyance for passengers [such as school buses and taxies] nor rented to others with a driver;

(2) A motor vehicle with a pick-up body;

(3) A delivery sedan, panel truck, or a camper type vehicle used for recreational purposes, owned by an individual or by a husband and wife who are residents of the same household, and not

customarily used in the occupation, profession or business of the insured other than farming or ranching. Coverage shall not apply when such vehicles are located for use as residences or premises. Also, a commercial vehicle customarily used in business, when used occassionally to hold a camper body for personal recreational purposes, is not covered;

(4) An automobile owned by a farm family coparternership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in the "no-fault" act.

It was the intent of the Automobile Insurance Study Commission to exclude trucks, school buses, taxies, and other commercial vehicles, and motorcycles, from the definition of "automobile." Thus, policies on these vehicles do not include "no-fault" benefits. This policy decision was made after considering the effect the extension of personal injury protection benefits to all motor vehicles would have on automobile insurance rates in New Jersey.

There is presently no clamor to extend PIP coverage to commerci vehicles, especially since such vehicles have some form of workers' compensation coverage. And it would be exorbitant to extend PIP coverage to school and public buses.

However, in the recent case of Hoglin v. Nationwide Mutual Insurance Company (144 N.J. Super. 475 [1976]), the Appellate Division of the New Jersey Superior Court held that where a plaintiff was injured when the motorcycle he was operating struck an automobile owned and operated by another, and at the time of the accident the plaintiff was the named insured in an automobile policy covering his automobile, the plaintiff was an eligible

insured person within the coverage of his personal injury protection coverage endorsement. The court held that the plaintiff was eligible for PIP benefits since the accident involved an automobile. Because of this decision and the fact that present PIP rates do not contemplate motorcycle exposure, which is very substantial, motorcycle PIP coverage is subsidized by automobile rates, which are not adequate for motorcycle PIP coverage.

As a consequence of the Hoglin case, there appear to be at least three options which can be considered: (1) increase the PIP rate for a vehicle if a motorcycle is owned by any member of the insured's household; (2) issue separate PIP policies for motorcycles; or (3) amend the no-fault law to explicitly provide that PIP benefits shall not be extended to motorcycles involved in automobile accidents.

The effect of increasing PIP rates for a vehicle if a motorcycle is owned by any member of the insured's household would be prohibitive and probably aggravate the affordability and availability problem in this state. Because New Jersey's Department of Insurance has no separate claims file for PIP benefits paid to motorcyclists, there was no data available relative to the risk factor of motorcycles covered by PIP benefits. However, as an indication of the high risk and exposure of motorcycles when covered under PIP insurance, the Commission looked to the Michigan experience, where motorcyclists are covered for PIP benefits as pedestrians. It examined a catastrophic loss report of incurred losses for injuries resulting from motor vehicle accidents in excess of $50,000 (since

October 1, 1973, when Michigan's no-fault law took effect, to August 31, 1977), provided by the Automobile Club of Michigan, which is the largest writer of automobile insurance in Michigan. Out of a total of 231 catastrophic cases, twenty nine involved motorcycles, with incurred losses ranging from $51,640 to $270,000, and PIP benefits paid to motorcyclists averaged $45,000 per claim. The Commission believes claim data for motorcycles would probably be similar in New Jersey.

Since New Jersey's no-fault law applies to private passenger automobiles, separate no-fault insurance policies have never been written for motorcycles. In Delaware, however, where a type of no-fault coverage is provided, with no limitation upon the tort liability system, motorcyles are covered. To prevent motorcycle premiums from being exorbitant, the law was amended to permit a deductible of up to $10,000 -- which is the maximum for personal injury protection benefits. Furthmore, the owner of a motorcycle may elect to exclude from such coverage expenses incurred as a result of injury to any person riding his motorcycle while not on a highway and in any case of injury when no other vehicle is involved by actual collision or contact.

The Commission questions the wisdom of requiring PIP coverage for a motorcycle if so many exclusions are written into the policy. On the other hand, without exclusions, the Commission has been informed that there would probably be a virtual drying up of the motorcycle insurance market as occurred in Delaware when the law went into effect on January 1, 1972, and which prompted the subsequent amendments to that law.

The Commission also believes that extending no-fault coverage to motorcycles, through separate motorcycle policies, could have a very adverse affect on the cost of motorcycle insurance. The effect, according to some estimates presented to the Commission, could result in a loss of the insurance market for motorcycles and even price motorcycle ownership out of the reach of most persons, or, in fact, encourage the operation of motorcycles without insurance.

Aside from the cost factor, most motorcyclists use their motorcycles for pleasure or sporting purposes, off the public ways. The use of motorcycles may also be sharply curtailed during winter months. Moreover, motorcyclists recognize the extraordinary hazard involved in motorcycle riding and assume the risk themselves. Finally, motorcycles represent a far greater risk of harm to their own operators or riders than to any other persons.

Subsequent to the Hoglin decision was the decision of Mac Iver v. Motor Club of America Companies (decided by the Superior Court of New Jersey, Chancery Division, Middlesex County, on June 10, 1977, and affirmed by the Appellate Division, A-937-76). MacIver involved the same statutory construction issue analyzed and discussed in the Hoglin case. However, the circumstances were different.

The MacIver decision dealt with the right of a passenger in a commercial vehicle (tow truck) injured when that vehicle was involved in a collision with an automobile to recover PIP benefits. At the time the passenger owned an automobile covered by a policy of insurance containing PIP benefits. Motor Club contended that the passenger was not "an eligible injured person" because he sustained bodily injury while he was a passenger in a commercial vehicle

and not while "occupying, using, entering into or alighting from a private passenger automobile," although his injuries were the result of an accident with an automobile.

The court relied on the disposition of the issue in Hoglin, which required the payment of PIP benefits to the named insured and members of his family "who sustained bodily injury as a result of an accident involving an automobile." Once again, a court decision has extended PIP benefits to certain injured persons without present PIP rates contemplating their exposure, in this case, the risk of being injured while a passenger in a commercial vehicle as a result of a collision with an automobile.

As a consequence of the MacIver case, which has increased the risk exposure of no-fault carriers, there are at least two options which can be considered: (1) increase PIP rates; or (2) amend the no-fault law to explicitly provide that PIP benefits shall not be extended to passengers in commercial vehicles under their own automobile insurance coverage. The Commission believes a passenger in a commercial vehicle will most often be employed by the owner of the vehicle and therefore covered under workers' compensation. Or, the commercial vehicle may have medical coverage for passengers other than those employed by the vehicle's owner.

Conclusion

The Commission believes the intent of the no-fault law in excluding commercial vehicles and school and public buses remains sound today. Regarding motorcycles, the intent of the law was to exclude them from the definition of "automobile" and to exclude motorcyclists from the right to receive PIP benefits under a policy of automobile insurance, and for valid actuarial and social reasons.

With regard to passengers in commercial vehicles sustaining bodily injuries as a result of automobile accidents, the intent was to extend PIP benefits only to passengers occupying an automobile. Again, this was for valid actuarial reasons.

The Commission also realizes that in both the Hoglin and Mc Iver cases, the courts were interpreting the language of the no-fault law regarding PIP coverage as it is written, and as they are bound to do. Therefore, to accomplish the intent of the no-fault law as its drafters so intended, and with which the Commission concurs, appropriate legislative action should be taken to amend the law and clarify the language regarding PIP benefits.

The Commission is aware that in a number of cases New Jersey courts have ruled that the legislature should be able to restrict coverage to certain classifications of motor vehicles unless this distinction is shown to be unreasonable or invidious. (See Magierowski v. Buckley, 39 N.J. Super. 534, 557-59, 121 A. 2d 749, 761-63 [App. Div. 1956]; Fried v. Kervick, 34 N.J. 68, 74, 167 A. 2d 380, 383 (1961); Two Guys From Harrison v. Furman, 32 N.J. 199, 226-29, 160 A. 2d 265, 279-81 (1960); David v. Vesta Co., 45 N.J. 301, 314-15, 212 A. 2d 345, 352 [1965]). Unless the distinction in New Jersey's no-fault law -- between private passenger automobiles, motorcycles, and non-private passenger automobiles -- is shown to be invidious or unreasonable, said distinction would appear to follow the guidelines of prior New Jersey cases and be constitutional.

Recommendation

The Commission recommends the continued exclusion of commercial vehicles, school and public buses, and motorcycles from

no-fault coverage, and that no-fault benefits should not be applicable to passengers in non-private passenger automobiles sustaining bodily injuries as a result of accidents with automobiles. It thus recommends that section 4 of the no-fault act (P.L. 1972, c. 70, as amended by P.L. 1972, c. 203, section 3; C. 39:6A-4), be amended to read in the following manner:

39:6A-4. PERSONAL INJURY PROTECTION COVERAGE, REGARDLESS OF FAULT

> Every automobile liability insurance policy insuring an automobile as defined in this act against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, maintenance or use of an automobile shall provide additional coverage, as defined herein below, under provisions approved by the Commissioner of Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustained bodily injury as a result of an accident [involving] <u>while occupying or using</u> an automobile, <u>or through being struck by an automobile while a pedestrian</u>, to other persons sustaining bodily injury while occupying <u>or using</u> the automobile of the named insured [or while using such automobile] with the permission of the named insured and to pedestrians, sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile.

3. <u>Inclusions</u>

Under the statutory provisions of the no-fault law, certain injured victims of motor vehicle accidents are, in the Commission's opinion, unfairly excluded from PIP coverage simply because of the type of vehicle involved in an accident or because of their status. For example, PIP coverage is presently not uniformly extended to the owners and occupants of all automobiles involved in accidents with non-private passenger automobiles, under the automobile insurance

coverage of the automobile. The Commission found no valid reasons, actuarial or social, for excluding such owners or occupants from PIP coverage. Their risk exposure for accidents involving non-private passenger automobiles has been anticipated and rates were set accordingly. Another example is that pedestrians struck by non-private passenger automobiles are not eligible to receive PIP benefits under their own automobile insurance coverage. Presently, they are covered only when struck by automobiles. And "professional" pedestrians, who are not covered under any automobile insurance policy, are not eligible for PIP benefits when struck by non-private passenger automobiles. To rectify these injustices, or oversights, and at the same time control costs, the Commission endorses the following recommendations.

Recommendations

1. PIP coverage should be extended to the owners and occupants of all automobiles involved in accidents with non-private passenger automobiles.* While carriers now extend PIP coverage to such injured parties, the Commission believes it should be done uniformly by all carriers. The proposed amendment of section 4 of the no-fault act discussed above would eliminate any doubts as to the eligibility of owners and occupants of automobiles for PIP coverage under the automobile insurance coverage of an automobile involved in an accident with a non-private passenger automobile.

2. Pedestrians who are struck by non-private passenger automobiles should be covered under their own automobile insurance coverage.

*Non-private passenger automobiles as used in this report includes commercial vehicles and school and public buses, and excludes motorcycles and mopeds.

3. "Professional" pedestrians should be covered, when struck by a non-private automobile, by a mandatory "add-on" PIP coverage applicable to all non-private passenger automobiles.

4. If a "professional" pedestrian is struck by an uninsured non-private passenger automobile, he should look to the UCJF for PIP benefits.

5. A pedestrian eligible for PIP benefits under his own policy or the "add-on" PIP policy of non-private passenger automobiles will be subject to the tort exemption of the no-fault law.

6. In all accidents between private passenger and non-private passenger automobiles or where a pedestrian with his own automobile insurance coverage is struck by a non-private passenger automobile, it should be made statutorily clear that any insurer paying PIP benefits under automobile insurance coverage shall be subrogated to the rights of the party to whom it makes such payments, to the extent of such payments.

CHAPTER VI

Medical Costs Under No-Fault

Unlimited Medical Benefits

Prior to the inception of no-fault automobile insurance the ompensation of victims of automobile accidents was haphazard. In 971, a U.S. Department of Transportation study showed that only 2 percent of accident victims with economic losses of $25,000 or ore recovered any tort compensation whatever, and the average ort recovery was only 30 percent of economic loss. Compensation o the victims was slow in coming, and the system placed a burden n health insurers, who were forced to pay part of the losses. Under o-fault, benefits are payable to all who are injured in an ccident, and the injured receives payment promptly, usually within hirty days.

When the concept of no-fault insurance was first introduced, s previously indicated, it was generally viewed as being predicated n the idea of a "trade-off" -- i.e., the insured would voluntarily ive up certain of his rights in tort in return for receiving eparation for his injuries and wage loss as expeditiously as ossible. Inherent in such an idea is the concept that the so-alled "trade-off" should be balanced; the insured should receive enefits equal to or exceeding the rights which he is giving up. onsequently, when no-fault was enacted in New Jersey, the legis-ature made the decision to offer the insured unlimited medical enefits; two other states, Pennsylvania and Michigan, did likewise.

As a result, no-fault medical benefits in New Jersey are payable to all, including infants, and extend through a person's lifetime in the event of catastrophic injury.

In practice, these unlimited benefits have resulted in insurers paying for an extraordinary range of services in certain catastrophic cases. Some examples may be cited to illustrate the benefits which some New Jersey residents have received as a result of this unlimited coverage. In one case a young man became a quadraplegic as a result of an automobile accident. As he had no one to care for him, he would normally have been placed in a nursing home, where the kind of care he needed would have been available. The insurer, however, contacted his parents, who lived in England, and they agreed to come to the United States to care for him. The insurer brought them from England, placed a $10,000 down payment on a mobile home for them, and found the father a job. The insurer continued to pay the medical bills for the young man, who has received better and less costly care than if he had been placed in a nursing home or extended care facility.

In another case, a young New Jersey woman attending college in New Mexico was struck by a hit and run automobile. She sustained severe brain damage and partial paralysis, and was sent to a hospital, but the insurer did not feel she was receiving adequate rehabilitative care. The insurer flew her to New Jersey in a specially equipped hospital plane at a cost of $5,000. Her parents wanted her to be cared for at home, but their home, a small Cape Cod-style house, had no bedrooms on the first floor.

Consequently, the insurance company built a $15,000 addition, consisting of a bedroom and a bathroom. At the time of the initial injury, the doctors' prognosis was that she would never walk. As a result of both the care she is receiving at home and proper rehabilitative therapy, she is now able to walk to a limited degree.

Aside from the humanitarian aspects involved in providing appropriate rehabilitative care for severely injured patients, there are practical reasons as well for encouraging the use of rehabilitation therapy. It is estimated that $60,000 in future medical and nursing home costs are saved for every rehabilitated spinal cord injury case. Such spinal cord injuries, of course, are common to automobile accident victims. Therefore, the extraordinary expenses paid for by the insurers in the examples cited above can be ultimately cost-effective.

Considerable controversy has arisen over unlimited medical benefits regarding the efficacy of offering this kind of carte blanche benefit. Many insurers believe it is too comprehensive and too difficult to rate because of the uncertainty involved in the long-term cases. Many have suggested that the New Jersey package of benefits is unwarranted in view of what they consider to be a threshold that is too low to represent a genuine trade-off. Obviously, the risk exposure for any insurer is significant.

The insurance industry has suggested placing a cap on medical benefits, variously set at $100,000 to $250,000, with optional increments available to insureds up to a limit of $1,000,000. In

light of these proposals, the Commission believes it is well to look at the statistical experience to determine what experience shows the effect of unlimited benefits in New Jersey to be, and whether such a cap would be useful or necessary.

In accident year 1975, there were 107,000 PIP claims reported in New Jersey. Of that number, there were forty-seven cases with an incurred loss of $75,000 or more reported by companies selling automobile insurance in the state, and which may be classified as being catastrophic. These forty-seven cases had total incurred losses of $10.3 million, with $6.8 million representing the aggregate amount over $75,000 on each claim. These figures are significant, of course, but one should attempt to see the catastrophic losses in perspective as part of the whole insurance picture. They represent an extremely small -- 1/12 of 1 percent -- percentage of the PIP claims filed for that accident year. Industry statistics show that the average claim cost was $695.

Seen in another perspective, the catastrophic PIP claims for accident year 1975 were a very small percentage of the total liability losses throughout the system. Total New Jersey liability losses for that year, including bodily injury, property damage, and PIP amounted to $288 million dollars. Hence, the catastrophic losses for that year - $6.8 million - represent about 2 percent of the total losses. In otherwords, to eliminate the benefits for catastrophic loss would represent a saving of only 2 percent in the system as a whole; this 2 percent, it would seem, is a small price to pay for the coverage which it affords.

Consequently, while the catastrophic losses are significant in themselves, they do not seem to be overly burdensome to the automobile insurance system. The entire concept of insurance is, after all, the spreading of risk for loss among a number of insureds, and the incidence of catastrophic injury is patently not so frequent as to endanger the financial integrity of the system or to make such coverage unaffordable. In fact, the PIP coverage under an automobile policy is surprisingly inexpensive, given the nature of the benefits. Inflation has, of course, been responsible for escalating PIP premium costs since the inception of no-fault, but the coverage is still easily affordable.

The Commission does not believe that placing a cap on the medical benefits recoverable is necessary or wise. A ceiling on benefits creates no overall savings in the economy, but rather shifts the burden to health insurance or public assistance. Providing protection against catastrophic loss is the essence of the insurance mechanism. To attempt to place the burden of such catastrophic loss on the individual when the cost of such coverage is only a few dollars seems absurd. The potential savings in premiums realized from a $100,000 cap are extremely small; the average saving has been variously estimated at $3.00 to $7.00 per policy.

Under the no-fault laws of many states, the personal injury protection benefits available are limited; most provide modest first-party no-fault benefits in the $2,000 to $10,000 range. Aside from the obvious insufficiency of this benefit level in the case of catastrophic claims, it should also be noted

that low benefit levels such as these increase the likelihood of third party tort suits which adds more to the total expense of the system than the first party benefits themselves; furthermore, under tort recovery, the injured party is not likely to collect the full amount of his economic loss. As a result, then, low ceilings on medical benefits can have the same effect upon the efficiency of the no-fault reparations mechanism as a low threshold. The U.S. Department of Transportation has concluded that "underwriting policy and driver rating class plans are unlikely to reflect the no-fault loss minimization ethic until high-benefits, no-subrogation no-fault plans become the dominant form of automobile accident injury insurance."

Some problems have emerged in New Jersey with regard to unlimited medical benefits. While reserving practices vary, in general insurers attempt to reserve a sum from which the investment income is sufficient to pay the yearly cost of the claim. How much actually needs to be reserved for any one claim is a subjective judgement, of course, and if there is significant over-reserving such loss reserves can have an adverse impact upon the rates.

Smaller companies with limited resources have been severely taxed with regard to committing reserves for catastrophic claims. Most small companies reinsure excess losses, and have had to pay increasingly larger reinsurance premiums. The cost of this reinsurance, of course, also ultimately impacts upon the rates which companies must charge to their insureds for this coverage.

Accordingly, the New Jersey Department of Insurance has proposed a solution to the problem of maintaining large loss reserves for catastrophic losses or purchasing costly reinsurance. Senate Bill No. 1380 has passed both houses of the legislature and is now on the Governor's desk awaiting his signature. This bill limits any one company's direct loss to $75,000; any excess losses would be paid from the state's Unsatisfied Claim and Judgement Fund. The excess losses from the fund would be pooled among insurers in proportion to their market share. Any amount paid into the pool by insurers, in turn, could be passed along to the policyholders. The proposal would thus free companies from the burden of maintaining loss reserves and would reduce the need for reinsurance. It is estimated that if this law had been in effect for accident year 1975, the over-all rate level for the PIP coverage could have been reduced by approximately 7 percent.

This solution is, the Commission believes, preferable to putting a dollar cap on medical benefits, as has been suggested by the industry. The approach taken by S. 1380 would still retain the original elements of the "trade-off" -- i.e., unlimited benefits for insureds in return for a limitation on tort recovery -- and yet provide greater stability to the system by eliminating the uncertainties posed by offering such comprehensive benefits.

The Commission believes that the concept of providing unlimited medical benefits is a fundamentally sound one, and with some of the modifications discussed above, should be continued in New Jersey. Prompt and complete reparation for injury is, the Commission believes, a key component of the

no-fault concept, and every effort should be made to retain it as part of our insurance system.

2. Fraud and the Overutilization of Benefits

Since the inception of no-fault insurance in New Jersey, there have been allegations of fraud and overutilization of benefits. It has been suggested that the nature of the unlimited medical benefits package and the relatively low tort threshold have exacerbated the problem. The Commission has seen some evidence which would indicate that sometimes, at least, people are receiving excessive treatment for minor injuries. The problems which exist in the system seem to lie more with charges for professional services than with hospital costs. Hospital costs are monitored by both state and federal agencies on a regular basis.

At present, insurers have little recourse if they believe that an individual is receiving either more treatment than may be necessary or the wrong kind of treatment. Furthermore, the present requirement that insurers pay claims within thirty days gives them little time to investigate possible cases of fraud or overutilization of benefits.

The Commission considered a number of ways that this problem might be dealt with, such as the establishment of a division within the Department of Insurance to investigate fraudulent claims, verification of medical bills by the doctor and patient, and the prohibition of the practice of "two-tier billing," which is the billing by doctors of different sets of fees

to their regular patients and to third-party payers.

Eventually, the Commission adopted three recommendations which it believes will eliminate some of the abuses which presently exist. These recommendations are:

1. The establishment of Regional Claims Review Boards for injuries covered under no-fault insurance.

2. The establishment of a medical fee reimbursement schedule for injuries covered under no-fault insurance.

3. Modification of the thirty-day claims payment period.

Regional Claims Review Boards

The Commission recommends the establishment of Regional Claims Review Boards for injuries covered under no-fault insurance. These boards, appointed by the Commissioner of Insurance, would consist of physicians and public members. They would not be peer review boards in that their membership would be broad-based. Cases involving overutilization of benefits, fraud, or differences of opinion regarding appropriate treatment for automobile related injuries could be brought before the boards by either party to the dispute. The boards would hear evidence, call witnesses, and make their decision based on the facts brought before them. Decisions of the boards would be appealable to the Superior Court. Cases in which fraud is suspected would be referred to the Attorney General.

This approach would provide a workable mechanism to deal with the problems of fraud and overutilization of benefits provided under no-fault insurance. It is hoped that the mere existence of the

boards would be a sanction against the abuse of the insurance system by professionals and patients alike.

Reimbursement Schedule

The Commission recommends that the Regional Claims Review Boards be given the authority to establish a reimbursement medical fee schedule for injuries covered under no-fault insurance in the region in which they operate. The Commission believes that regional reimbursement schedules are preferable to state-wide schedules because they will reflect regional differences in medical costs.

The Commission believes that such schedules are needed as a means of containing costs. There have been a number of allegations that professional fees are higher when a third party payer is involved than when the fees are charged to private patients. At present, an insurer has no recourse but to pay whatever bill is presented by the physician, chiropractor, or physical therapist.

The Commission recommends that reimbursement medical fee schedules be extablished similar to the ones used by Blue Shield. A schedule of the most common procedures could be drawn up and a reimbursement rate fixed. An insurer would not be obligated to pay a higher fee for such services than that established by the regional board. This procedure would put an effective "cap" on medical fees, and would enable the insurer to assess costs more accurately.

If a reimbursement schedule were to be adopted, some provision should be made for procedures and treatment which do

not appear on the schedule. This could be done in a number of ways, including referring the question to the board for review. Alternatively, procedures not on the schedule and billed to an insurer could be subject to appeal to the review boards if the insurer did not consider the charges to be fair.

Modification of the Thirty-Day Claims Payment Period

In its investigation of the problems of fraud and the overutilization of benefits under no-fault, the Commission has determined that the requirement imposed by present law for companies to pay claims within thirty days tends to preclude any systematic attempt by insurers to investigate claims in order to detect these abuses. Accordingly, the Commission recommends that the time period for the payment of claims be extended to sixty days.

Conclusion and Recommendation

The Commission recommends that the unlimited medical benefits provided by present law be retained, and that the liability of any one company be limited to the first $75,000, with the amount over that being pooled among all insurers and paid out of the state's Unsatisfied Claim and Judgement Fund.

In order to contain medical costs and prevent the over-utilization of medical benefits provided under no-fault insurance, the Commission recommends the establishment of Regional Claims Review Boards, which would have the authority to establish re-

imbursement medical fee schedules for injuries covered under no-fault insurance.

In addition, the Commission recommends the extension of the claims payment period from thirty to sixty days, in order to give companies a better opportunity to investigate claims which may be fraudulent.

CHAPTER VII

THE TORT TRESHOLD: PURPOSE and TYPES

Current no-fault laws, as discussed earlier, have both cost-increasing and cost-reducing provisions built into them. The extension of first-party coverage to all drivers who do not have it will, obviously, result in greater benefits, but will also create greater costs resulting from the broader access to recovery for economic losses by all accident victims regardless of fault. For this reason, no-fault plans -- in the area of bodily injury -- offer several ways to balance the factors leading to cost increases. The most important factors are those which stipulate that a dollar limit must be exceeded, or a type of injury or death must be incurred, before a lawsuit for general damages may be filed. General damages involve payments for psychic loss or the human misery resulting from grief, disability, disfigurement, and pain and suffering.

The liberal no-fault benefits of New Jersey's law are to be balanced, for the most part (disregarding premium increases), out of the cost reducing restriction, or tort exemption, it places on tort recoveries. That is, a victim cannot sue for general damages if his injury is confined to soft tissues and medical expenses (excluding hospital, x-ray, and other diagnostic costs) are under $200 or the equivalent value thereof for the reasonable and necessary treatment of the injury, or unless his injury results in death, permanent disability, permanent significant

disfigurement, permanent loss of a bodily function or loss of all or part of a body member*

The two main techniques that have been adopted or proposed up to this point in the area of tort exemptions as means of limiting general damages are the "dollar" threshold technique and the "descriptive criteria" technique. A "dollar" threshold can be viewed as a barrier solely in terms of the dollars expended. This is the case in New Jersey's no-fault law with a $200.00 threshold and in eleven other states with specific dollar thresholds varying from $400.00 to $2,000.00.** However, it is really not accurate to describe the thresholds of these states, including New Jersey's, as simply "dollar" thresholds. All of them also describe verbal exceptions to the tort exemptions. It would be more precise to describe their thresholds as mixed dollar and verbal thresholds.

A "descriptive criteria" employs a "verbal" threshold, i.e., a victim can sue for general damages only in the case of death, serious permanent disfigurements, or total disability for a fixed period of time. Florida, Michigan, and New York have "verbal" thresholds, and there is at least one federal proposal (S 1381)

---

*Bodily injury confined solely to soft tissue, for purposes of the act, means injury in the form the sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches, and tears confined to the muscles, tendons, ligaments, cartilages, nerves, fibers, veins, arteries and skin of the human body.

**Connecticut: $400; Colorado, Georgia, Kansas, Massachusetts, Utah: $500; Nevada, Pennsylvania: $750; Kentucky: $1,000; Hawaii: $1,500; and Minnesota: $2,000.

which contains a "verbal" threshold.* The development of the "verbal" threshold has been explained, at least in part, as an effort to overcome the problems of fixed "dollar" thresholds, e.g., inflation eroding their effectiveness as cost savers; having been originally set too low; and becoming targets for injured persons to "shoot" at, thereby encouraging unneeded or marginal treatment in order to raise medical costs beyond the threshold.

A problem with the "descriptive criteria" or "verbal" threshold is that of identifying different criteria that are equal in terms of the severity of injury. If a statute fails to do that, it will be "inaccurate" because it would treat injuries that are really equivalent differently or give the same treatment to different injuries that are not really equivalent.

The Issue

The Commission recommended in Chapter II that a no-fault automobile insurance system -- in a generic sense -- is conceptually and practically sound and should be maintained in New Jersey. Furthermore, since the determination of fault has become more costly and technically difficult to prove, the tort system should only be preserved for certain types of personal injuries (and property damage claims) and have as its objective to strike a

*Seven states -- Arkansas, Delaware, Maryland, North Dakotas, Oregon, South Carolina, and Texas -- have statutes that add a no-fault provision to the existing system of reparations but still preserve all tort claims.

balance between equity and justice, and what is socially and personally affordable.

The Commission has attempted to measure the effectiveness and soundness of the present New Jersey no-fault threshold against this objective. Before analyzing the effectiveness and soundness of the $200 "soft tissue injury" and "verbal" threshold, however, it is important to understand the proposed alternatives the commission considered:

1. Retain the present $200 "soft-tissue" injury and "verbal" threshold.

2. Increase the present $200 "soft tissue" injury threshold and/or change the "verbal" threshold.

3. Establish a straight "dollar" threshold.

4. Establish a "floating dollar" threshold tied to the annual Consumer Price Index and to be annually adjusted by the Commissioner of Insurance.

5. Establish a "straight verbal" threshold.

6. Establish a "verbal" threshold with a disability time period.

All of the proposed alternatives involve what a new dollar amount should be for the "dollar" threshold, or agreeing upon a "verbal" description of exemptions from the prohibition in bringing a tort action, or in the case of a disability time period, a specific time period beyond which an action in tort would be possible.

In Search of the "Right" Threshold

At a public hearing of the United States Senate Commerce Committee in June of 1977, U.S. Transportation Secretary Brock Adams cited New Jersey's no-fault system as "not one we would choose for a national model". Adams stated that the $200 threshold (in medical bills for soft-tissue injuries) employed in New Jersey's law "simply does not work".

In response to a letter addressed to him by the Chairman of the Commission as to how or in what manner the "dollar" threshold "does not work," Secretary Adams replied:

> While it is true that even the $200 threshold in New Jersey succeeded in lowering the proportion of automobile cases entering the tort system, this reduction does not seem to have been sufficient to offset the cost of increased benefits. It is my belief that a strong verbal threshold will contribute substantially to the efficiency of automobile insurance as a compensation system.

In search of conclusive evidence as to the pros and cons of various thresholds, various Commission members met in Washington, D.C., on September 7, 1977, with, first, U.S. Department of Transportation people and, later, aides to the U.S. Senate Commerce Committee. While not favoring a "dollar" threshold, especially New Jersey's threshold, and supporting a "verbal" threshold (as contained in S 1381), both the DOT and Committee staff people pointed out that they did not really know what the effect of a "verbal" threshold would be on automobile insurance rates. At both meetings, ultimately, the Commission members were told that the threshold is a "value judgement question," i.e., a search for a just, better, and more equitable system, which can-

not always (if at all) be demonstrated a priori by data.

In pursuit of its objective to arrive at cost saving estimates of various thresholds, several members of the Commission also met in Michigan with Insurance Commissioner Thomas Jones and members of his staff, as well as representatives of agents and insurers writing automobile business in that state, to discuss Michigan's no-fault experience. Michigan's no-fault law, which went into effect on October 1, 1973, allows suits only if the injured person "has suffered death, serious impairment of body function or permanent serious disfigurement."

Commissioner Jones and his staff completely supported the concept of a "verbal" threshold, although they suggested that experience indicate the Michigan language needs to be modified. Jones indicated that he did not consider the tort liability system to be the best method of allocating the premium dollar in order to direct maximum benefits to the insured. He noted that the use of litigation to gain compensation for economic and non-economic loss for minor injuries was an inefficient use of the automobile reparations system, and that, as a matter of philosophy, the no-fault approach gave the insured better compensation and provided the optimum use of the premium dollar.

Similarly, he and his staff expressed the view that under a no-fault system the right to recovery in tort for non-economic loss should be greatly restricted, particularly if the insured is entitled, as he is in Michigan and New Jersey, to unlimited medical benefits. Under this approach, a larger portion of the premium dollar is used for direct first-party

benefits. The Michigan officials supported the idea of a "verbal" threshold, which limits pain and suffering suits to only the most serious cases, as the means by which the goal of limiting tort recovery, and therefore maximizing the efficiency of the premium dollar, can best be realized.

The Commission was not satisfied to answer the question of the effectiveness and soundness of New Jersey's present threshold, expecially as it compared to other thresholds, with value judgements alone. Therefore, the Commission took another approach in attempting to explore the effects of various thresholds on automobile insurance rates in New Jersey. It solicited the comments of the leading twenty companies writing private passenger automobile insurance in New Jersey. A letter was sent to the companies asking them to comment on the Michigan, New York, and U.S. Senate Bill 1381 "verbal" thresholds, as well as the effects of a $500, $1000, and $5000 threshold on rates in New Jersey.

The fourteen responses reflected a consensus that it is impossible to predict with any degree of certainty the quantitative effect of subjective "verbal" thresholds versus monetary thresholds. One reply stated that the "true impact of a verbal threshold can only be measured by its interpretation and application as a standard on actual cases." There was also a feeling that while a "verbal" threshold (or even a stricter monetary threshold), to the extent it limits application of residual bodily injury coverage to only the most serious cases, would have a salutary effect on residual bodily injury premiums, there are too many variables to make it possible to predict, with any

accuracy, the specific impact on over-all automobile insurance premiums arising from the selection of a particular threshold. Among these variables are the severe impact of inflation, particularly on crash parts, labor costs, and medical costs; income replacement costs (as wage levels rise); the enforcement of speed limits; the availability and cost of gasoline; and the size and safety features of motor vehicles and highways.

Two responses did indicate that, in spite of these variables, if the New Jersey no-fault law were amended to contain a verbal-type threshold as contained in the federal no-fault standards bill (S 1381), there would be, "hypothetically," a savings of approximately 5 percent of the present average rates for full coverage (residual bodily injury liability, uninsured motorists, personal injury protection, comprehensive, and collision). These same responses indicated that, theoretically, the answer would be the same if the threshold used in Michigan were applied in New Jersey, although it recognized that the language used in the Michigan threshold may present some serious problems. Finally, both commentators indicated that a medical expense threshold of $5,000 could, hypothetically, yield results quite close to the verbal threshold suggested in S 1381. Anything less than a $5,000 threshold would remain a "target" to shoot at in attempting to surpass the limit and bring an action in tort.

In spite of a lack of supportive actuarial data regarding the cost saving impact of various thresholds, the consensus of the responding fourteen companies was in support of a strong "verbal" threshold. The feeling was best expressed by the statement that "no-fault will not work properly and deliver the benefits

required at a reasonable cost until access to tort is limited to those relatively few who sustain truly significant injuries and economic loss."

Comments on the effectiveness and soundness of New Jersey's $200 threshold were also expressed at two public hearings held by the Commission July 21 and July 28, 1977. One opinion criticized the lack of meaningful restrictions on lawsuits in New Jersey's no-fault law. Liability actions have not been adequately curtailed for enough injuries and the cost of litigation and other functional costs associated with the liability system have not diminished to the point necessary to adequately offset the cost of the laws "generous" no-fault benefits and to have a major impact on residual bodily injury liability rates. This opinion doubts that there can be both a "traditional tort system and a generous no-fault system operating at the same time." A contrary opinion argued that there should be no change in the present threshold until (and unless) the insurance industry submits proof that denying automobile accident victims their just compensation for pain and suffering will result in a substantial premium reduction and will increase the availability of insurance.

The New Jersey Experience

The Commission soon realized that it could judge the success of this state's threshold only by looking at the experience in New Jersey. Therefore, it focused its attention upon five sets of data it considered to be relevant to the threshold in New Jersey: (1) a comparison of the average insurance cost per car of companies using rates of the Insurance Services Office, for 1972 and 1977 (as of October 25);

(2) a comparison of the private passenger liability insurance experience of all companies for accident years 1972-1975; (3) trends in the filing of automobile negligences cases before and after the enactment of no-fault legislation; (4) automobile negligence money judgments before and after the enactment of the no-fault law; and (5) data compiled from paid claims files on automobile bodily injury liability claims during a recent period to determine the nature of injuries and the cost of the various claims.

1. Comparison of the Average Insurance Cost Per Car: Companies Using Rates of ISO (Prepared by the N.J. Department of Insurance, 10/25/77).

	1972	10/25/77	Change
Bodily Injury 15/30 Limits	$74.29	$70.18	-5.5%
Personal Injury Protection/ $5,000 Medical Payments	$12.52	$40.92	
TOTAL	$86.81	$111.10	+28.0%
Property Damage $5,000	$38.34	$ 57.33	+49.5%
TOTAL LIABILITY	$125.15	$168.43	+34.6%
Collison $100 Deductible	$63.30	$133.13	+110.3%
Comprehensive ACV	$19.57	$31.94	+63.2%
TOTAL PHYSICAL DAMAGE	$82.87	$165.07	+99.2%
TOTAL ALL COVERAGES	$208.02	$333.50	+60.3%

Note: Bodily Injury rates were reduced and Medical Payments charges were eliminated January 1, 1973

A review of the average insurance costs per car indicates that the latest cost of automobile insurance breaks down to $70.18 for bodily injury premiums and $263.32 for other premiums. Or, 21 percent of the total premium of $333.50 is attributable to bodily injury lawsuits. This raises the question whether bodily injury lawsuits are really that responsible for the increase in total premium from $208.02 in 1972 to $333.50 in October, 1977, in light of the fact that only 21 percent of the premium dollar is for bodily injury.

The Commission considered the following:

At a public hearing in Trenton on July 21, 1977, a repre-

sentative of an insurance association stated that a large percentage -- maybe 90 percent as a rough guess -- of the losses that insurance companies have experienced in the last few years is from inflation.

Between 1972 and 1977, the premiums for total physical automobile damage went from $82.87 to $165.07, an increase of 99.2 percent, reflecting the increasing and inflationary cost of automobile property repairs and parts.

Statistics furnished by the automobile insurance industry itself indicate that since 1970, the cost of medical care has increased approximately 60 percent, and the cost of a semi-private hospital room has increased 97 percent.

As previously stated, the average cost for bodily injury coverage was $74.29 in 1972 and is $70.18 today, or a decrease of 5.5 percent. This represents the only area of automobile insurance costs in New Jersey that has decreased over the past five years.

2. Comparison of the Private Passenger Liability Insurance Experience of All Companies For Accident Years 1972-1975 (Prepared by the New Jersey Department of Insurance)

Probably the most useful point of comparison for pre-no-fault (prior to January 1, 1973) and no-fault experiences is claim frequency. The claim frequency from 1972 to 1975 for residual bodily injury coverage has decreased by approximately 60 percent, i.e., from 2.37 claims per 100 cases in 1972 to less than 1 claim (.84) per 100 cars in 1975, the latest year for which industry data are available. [The term "accident year" includes losses paid between January 1 of one year and March 31 of the following year on all accidents that occurred between January 1 and December 31,

plus loss reserves on such accidents valued as of March 31.]

These data support the observation that no-fault has succeeded in reducing the number of cases where injured persons have to resort to the tort system to obtain recovery for their losses. On the other hand, close to 90,000 claims are made annually under the personal injury protection coverage of no-fault compared with only 32,000 claims under the much more limited medical payments coverage that existed prior to no-fault. It thus appears that the change in the reparations system has also accomplished the objective of bringing recovery for economic loss to more people than was available under the old tort system.

Based on data supplied by the National Association of Insurance Commissioners, the decrease in New Jersey's claim frequency under no-fault insurance (for residual bodily injury) compares with other no-fault states in the following manner:

State	After (number of no-fault years)	Decrease
Michigan	2 years	89%
Hawaii	1 year	79%
Colorado	1 year	73%
Minnesota	1 year	71%
Connecticut	3 years	67%
Florida	4 years	66%
New Jersey	3 years	62%
Kansas	2 years	54%
Nevada	2 years	53%
New York	2 years	49%
Utah	2 years	46%
Oregon	4 years	22%
Georgia	1 year	21%
Maryland	3 years	13%

3. Trends in the Filing of Automobile Negligence Cases Before and After the Enactment of No-Fault Legislation

(Data provided by the N.J. Administrative Office of the Courts)

Law Division-- Superior and County Courts

Examining the latest data available for the Law Division of the Superior and County Courts, auto negligence cases added for court years 1970-1972 amounted to 53,289 out of a total of 96,758 of all civil cases added. For court years 1974-1976, auto negligence cases added amounted to 47,533 out of a total of 105,355 of all civil cases added. Thus, for the three full years prior to the enactment of this law, auto negligence cases represented 55.1 percent of the total civil caseload added, while, for the three full years after the enactment of this legislation, auto negligence cases represented only 45.1 percent of the total civil caseload. It should also be noted that the number of auto negligence cases added averaged 17,763 for 1970-1972 (pre-enactment) and 15, 851 for 1974-1976 (post-enactment).

LAW DIVISION OF THE SUPERIOR AND COUNTY COURTS
Cases Added

Court Year Ending August 31	Total Auto Neg. Cases Added	Total of All Cases Added	Total Auto Neg. Cases Added As Percentage Of All Cases Added
1970	18,772	33,646	55.8%
1971	17,981	32,190	55.9%
1972	16,536	30,922	53.5%
1973	16,343	31,595	51.7%
1974	15,591	32,168	48.5%
1975	15,956	36,201	44.1%
1976	16,006	36,966	43.3%

County District Courts

Examing the latest data available for the County District Courts, total auto negligence complaints added (including reinstatements) for court years 1970-1972 amounted to 89,076 out of a total of 692,252 of all complaints added. For court years 1974-1976, total auto negligence complaints amounted to 52,192 out of a total of 835,522 complaints added. Thus, for the three years prior to the enactment of this legislation, auto negligence complaints represented 12.9 percent of the total complaints added, while, for the three full years after the enactment of this legislation, auto negligence complaints comprised only 6.2 percent of the complaints added in the District Courts. It should also be noted that the number of total auto negligence complaints added averaged 29,692 for 1970-1972 (pre-enactment) and 17,397 for 1974-1976 (post-enactment).

Examining new auto complaints filed (including transfers and excluding reinstatements) a similar pattern emerges of a decreasing proportion of auto negligence cases to total District Court complaints added. New auto negligence complaints filed for court years 1970-1972 amounted to 69,265 out of the total of 692,252 complaints added. From court years 1974-1976, new auto negligence complaints filed amounted to 40,817 out of the total of 835,522 complaints added. Accordingly, for the three years prior to the enactment of this law, new auto negligence complaints represented 10.0 percent of the total filings in the District Court, while, for the three full years after the enactment of "no-fault" new auto negligence complaints represented 4.9 percent of the total filings. The number of new auto negligence complaints averaged 23,088 for 1970-1972 (pre-enactment) and 13,606 for 1974-1976 (post-enactment).

COUNTY DISTRICT COURTS
Complaints Filed

Court Year Ending August 31	New Auto Neg. Filed (Including Transfers)	Inactive Auto Neg. Complaints Added	Total Auto Neg. Complaints Added	Total Of All Complaints Added	New Auto Neg. Complaints As Percentage Of Total Of All Complaints Added	Total Auto Neg. Complaints As Percentage Of Total Of All Complaints Added
1970	23,120	5,503	28,623	215,491	10.7%	13.3%
1971	23,714	7,412	31,126	237,548	10.0%	13.1%
1972	22,431	6,896	29,327	239,213	9.4%	12.3%
1973	20,292	6,333	26,625	251,743	8.1%	10.6%
1974	15,948	5,048	20,996	260,664	6.1%	8.1%
1975	13,154	3,480	16,634	280,941	4.7%	5.9%
1976	11,715	2,847	14,562	293,917	4.0%	5.0%

The caseload data for the courts support the conclusion that the proportion of automobile negligence cases relative to the total caseload has diminished since the "no-fault" law went into effect. This is true both in the Law Division of the Superior County Courts as well as in the County District Courts. The number of auto negligence cases filed has decreased also: and there has been a slight decrease in Superior Court auto negligence cases added and a substantial decrease in complaints filed in the County District Courts. County-by-county data also follow a consistent pattern: the proportion of auto negligence cases added relative to the total cases added has decreased in both civil courts for every county.

Although these decreases have occurred since the "no-fault" law went into effect, it would be inaccurate to attribute these decreases solely to the effect of the "no-fault" law. In order to state precisely the effect of this law on the courts, it would be necessary to review individual cases as well as define, quantify, and statistically eliminate all interacting factors which could affect the filings of automobile negligence cases. These factors include increases in automobile registrations,

changes in the amount deductable for each collision, the gasoline shortage and the subsequent reduction of maximum speed limits, increased safety equipment in cars, changes in the law, amount of other litigation being filed in these courts, and changes in policy by insurance companies processing claims.

However, the marked acceleration of this decline of automobile negligence cases "does suggest that the no-fault law is a significant contributor to the reduction in motor vehicle torts in New Jersey," as concluded in the June, 1977 U.S. Department of Transportation report on "State No-Fault Automobile Insurance Experience, 1971-1977."

4. Auto Negligence Money Judgments Before and After the Enactment of the No-Fault Law in New Jersey (Data provided by the N.J. Administrative Office of the Courts)

AUTO NEGLIGENCE MONEY JUDGMENTS IN THE SUPERIOR AND COUNTY COURTS

Court Years Ending 1970 to 1976
(Latest Year for which Data are Available)

	Auto Negligence Judgments Up to $500	Auto Negligence Judgments Greater Than $500	Total Auto Negligence Judgments
1976	45	1,692	1,737
1975	66	2,024	2,090
1974	79	2,707	2,786
1973	136	3,381	3,517
1972	171	4,139	4,310
1971	228	4,143	4,371
1970	266	3,955	4,221

AUTO NEGLIGENCE MONEY JUDGMENTS
IN THE COUNTY DISTRICT COURTS

Court Years Ending 1970 to 1976

	Auto Negligence Judgments Up to $200	Auto Negligence Judgments Greater Than $200	Total Auto Negligence Judgments
1976	409	2,205	2,614
1975	452	2,406	2,858
1974	586	3,066	3,652
1973	796	3,641	4,437
1972	647	3,066	3,713
1971	620	3,001	3,621
1970	568	3,238	3,806

NOTE: No breakdown is available as to whether or not these judgments involved personal injury.

The decrease in the number of judgements and the amount of judgements is not conclusive. There may be other factors involved. For example, it can be interpreted to mean that automobile insurance companies and claimants are settling out of court. But it is known that claim frequency has gone down dramatically since the enactment of no-fault. Therefore, a more likely explanation is that injured victims of automobile accidents are taking their economic losses and medical benefits and not seeking general damages, or they are not eligible to seek general damages because their medical expenses are under $200 and their injuries do not entitle them to bring an action in tort.

The decline in automobile negligence money judgements is greater in the Superior and County Courts, which handle more bodily injury suits than property damage claims. The opposite is true in the County District Courts. But even in the County District Courts the number of automobile negligence judgements has declined, which indicates there must have been a substantial reduction in bodily injury suits in the County District Courts.

5. Data Compiled from Paid Claims Files on Automobile Bodily Injury Liability Claims.

At the Commission's request, the staff of the New Jersey Department of Insurance conducted a paid claims file study during a recent period to determine the nature of injuries and the cost of various claims. As of November 22, 1977, the staff had reviewed 602 paid claims of which eighty-six had to be excluded from the study because the accident was not subject to the no-fault law. The review was limited to the tort recovery portion of the accident. Four companies' files were reviewed, three for the months of April and May, 1977, and one for the month of April, 1977. On each paid claim, the cause of action was first identified and placed into one of the two categories under the present statute; soft tissue injury and other types of injuries.

The sample of 516 cases shows there were 392 cases of tort recovery based on soft tissue injury, representing seventy-six percent of all cases; and 124 cases involving other injuries, representing twenty-four percent of all cases. The amount of tort recoveries for the soft tissue cases totalled $1.24 million, or forty-nine percent of the total of $2.54 million dollars in the total sample. The amount of tort recovery based on other injuries

totalled $1.30 million or fifty-one percent of the total dollars in the total sample.

It should be noted that the above cases involved eleven fatalities with total tort recoveries of $320,943. At least two of those fatalities involved low settlements because of special circumstances.

The same cases were also reviewed as to eligibility for tort action under the standards set forth in U. S. Senate 1381. A copy of the pertinent section of the bill is contained in Appendix C. All cases were grouped into the following categories:

-- Serious injury or disfigurement: "weak"

-- Serious injury or disfigurement: "strong"

-- Fatality

-- Economic loss not compensated by PIP

-- No course of action

Duration of disability was not measured in this study.

It was necessary to exercise a degree of judgment in identifying cases of serious injury or disfigurement as provided for in U. S. Senate 1381. Obviously, if the federal standards become applicable they would be tested in court and the eventual effect would depend upon the interpretation given to them by the courts. It is believed that a liberal interpretation would make tort recovery possible in cases which are characterized in this survey as "weak" while under a very strict interpretation such cases may not qualify. In identifying cases as "weak" or "strong" the staff was guided by the physician's description of the injury, the part of the body affected, agreement in findings by the injured's physician and the company's physician, and the size of the tort

settlement.

The attached exhibits summarize the number of cases and the amount of tort recovery by the above described criteria. The data are presented in Exhibit A and again in Exhibit B where the bodily injury paid claim was less than $5000, and in Exhibit C where the claim was $5000 or more. As was previously noted, the number of bodily injury incurred claims has decreased by approximately sixty percent for the latest year (1975) for which industry data are available, compared with the last pre-no-fault year (1972). The attached exhibits would indicate that approximately fifty-six percent of the remaining cases would be eliminated or better than twenty percent of the pre-no-fault number of cases, if tort actions can be brought only for the listed categories including those injuries identified as "weak". If the "weak" category of injuries is also precluded from tort action close to ninety percent of the remaining cases would be denied access to tort recovery.

The data used for the preliminary report have also been used to produce the following distribution by size of bodily injury liability claim paid:

Size of Claim	Number of Claims	Amount Paid
up to $ 1,000	40	$ 20,617
$ 1,000 - less than $ 2,000	153	$ 215,063
$ 2,000 - less than $ 3,000	126	$ 298,754
$ 3,000 - less than $ 4,000	54	$ 184,295
$ 4,000 - less than $ 5,000	39	$ 166,068
$ 5,000 - less than $ 7,500	40	$ 225,909
$ 7,500 - less than $10,000	15	$ 124,040
$10,000 - less than $15,000	16	$ 191,984
$15,000 and over	34	$ 1,212,469
TOTAL	517	$ 2,639,204
SUB-TOTAL up to $5,000	412	$ 884,802

NEW JERSEY DEPARTMENT OF INSURANCE
1977 PRIVATE PASSENGER AUTOMOBILE BODILY INJURY LIABILITY
PAID CLAIM STUDY

Exhibit A

PROPOSED FEDERAL STANDARDS	NEW JERSEY CAUSE OF TORT ACTION											
	SOFT TISSUE OVER $200				OTHER				TOTAL			
	NUMBER OF CLAIMS	PERCENT	AMT. PAID	PERCENT	NUMBER OF CLAIMS	PERCENT	AMT. PAID	PERCENT	NUMBER OF CLAIMS	PERCENT	AMT. PAID	PERCENT
No Cause of Tort Action	253	64.5	618,220	49.8	34	27.4	83,945	6.5	287	55.6	702,165	27.7
Serious Injury or Disfigurement "weak"	120	30.6	507,115	40.8	48	38.7	308,687	23.8	168	32.6	815,802	32.2
Serious Injury or Disfigurement "strong"	18	4.6	115,400	9.3	30	24.2	580,900	44.9	48	9.3	696,300	27.4
Fatality	None	0.0	None	0.0	11	8.9	320,943	24.8	11	2.1	320,943	12.6
Economic Loss Not Compensated by PIP	1	0.3	1100	0.1	1	0.8	244	0.0	2	0.4	1,344	0.1
TOTAL	392	100.0	1,241,835	100.0	124	100.0	1,294,719	100.0	516	100.0	2,536,554	100.0

Exhibit B

NEW JERSEY DEPARTMENT OF INSURANCE
1977 PRIVATE PASSENGER AUTOMOBILE BODILY INJURY LIABILITY
PAID CLAIM STUDY - PARTIAL
Preliminary Summary by Cause of Tort Action
BI Amount Paid Less Than $5,000

PROPOSED FEDERAL STANDARDS	NEW JERSEY CAUSE OF TORT ACTION											
	SOFT TISSUE OVER $200				OTHER				TOTAL			
	NUMBER OF CLAIMS	PERCENT*	AMT. PAID	PERCENT*	NUMBER OF CLAIMS	PERCENT*	AMT. PAID	PERCENT*	NUMBER OF CLAIMS	PERCENT*	AMT. PAID	PERCENT
No Cause of Tort Action	234	59.7	413,996	33.3	30	24.2	58,545	4.5	264	51.2	472,541	18.6
Serious Injury or Disfigurement "weak"	100	25.5	232,615	18.7	30	24.2	69,350	5.4	130	25.2	301,965	11.9
Serious Injury or Disfigurement "strong"	8	2.0	19,419	1.6	6	4.8	17,959	1.4	14	2.7	37,378	1.5
Fatality	NONE	0.0	NONE	0.0	2	1.6	7,193	.6	2	.4	7,193	.3
Economic Loss Not Compensated by PIP	1	.3	1100	.1	1	.8	244	0.0	2	.4	1,344	.1
SUB TOTAL	343	87.5	667,130	53.7	69	55.6	153,291	11.9	412	79.9	820,421	32.4

*PERCENT OF CORRESPONDING TOTAL IN EXHIBIT A

Exhibit C

NEW JERSEY DEPARTMENT OF INSURANCE
1977 PRIVATE PASSENGER AUTOMOBILE BODILY INJURY LIABILITY
PAID CLAIM STUDY - PARTIAL
Preliminary Summary by Cause of Tort Action
BI Amount Paid $5,000 or over

PROPOSED FEDERAL STANDARDS	NEW JERSEY CAUSE OF TORT ACTION											
	SOFT TISSUE OVER $200				OTHER				TOTAL			
	NUMBER OF CLAIMS	PERCENT*	AMT. PAID	PERCENT*	NUMBER OF CLAIMS	PERCENT*	AMT. PAID	PERCENT*	NUMBER OF CLAIMS	PERCENT*	AMT. PAID	PERCENT*
No Cause of Tort Action	19	4.8	204,224	16.4	4	3.2	25,400	2.0	23	4.5	229,624	9.1
Serious Injury or Disfigurement "weak"	20	5.1	274,500	22.1	18	14.5	239,337	18.5	38	7.4	513,837	20.3
Serious Injury or Disfigurement "strong"	10	2.6	95,981	7.7	24	19.4	562,941	43.5	34	6.6	658,922	26.0
Fatality	NONE	0.0	NONE	0.0	9	7.3	313,750	24.2	9	1.7	313,750	12.4
Economic Loss Not Compensated by PIP	NONE	0.0	NONE	0.0	NONE	0.0	NONE	0.0	NONE	0.0	NONE	0.0
SUB TOTAL	49	12.5	574,705	46.2	55	44.4	1,141,428	88.2	104	20.2	1,716,133	67.8

*PERCENT OF CORRESPONDING TOTAL IN EXHIBIT A

Conclusion

Whenever there are alternatives, there are likely to be differences of opinion. This Commission was no exception. One opinion was expressed by those members of the Commission who held to the belief that the present threshold has worked and no change, either by way of an increase in the dollar amount or by a change to a verbal threshold, should be made until it is shown that further denying automobile accident victims compensation for general damages will result in substantial premium reductions.

A contrary opinion was expressed by those members of the Commission who proposed a stringent Michigan type verbal threshold, and opposed any dollar threshold. Why, they asked, should reform of the threshold leave intact the right to bring claims in tort which led to the need for reform in the first instance, and rely on human nature to forego taking advantage of the right to press those claims? The only logical reform, they argued, was to adopt a verbal threshold, like Michigan's, which greatly restricts the right to recovery in tort for non-economic losses. That is, pain and suffering suits are limited to only those cases where the injured person "has suffered death, serious impairment of body function or permanent serious disfigurement."

Based on the above data relative to the New Jersey experience with no-fault, the $200 medical bill soft-tissue injury threshold has (1), in so far as it has succeeded in lowering the proportion of automobile negligence cases entering the tort system, contributed to keeping the 1977 residual bodily injury rate below what it was in 1970; (2) along with other factors, reduced claim frequency,

i.e., the number of cases where injured persons have to resort to the tort system to obtain recovery for their losses has declined approximately 60 percent from 1972 to 1975; (3) accomplished the objective of bringing recovery for economic loss to more people than was available under the tort system; (4) diminished -- although probably for other reasons as well -- the proportion of automobile negligence cases relative to the total caseload since no-fault went into effect in the Law Division of the Superior and County Courts as well as in the County District Courts; and (5) been one factor in bringing about a reduction in automobile negligence money judgments in the Superior and County Courts.

While these accomplishments were being achieved under no-fault, other off-setting events were occurring. As previously indicated, between 1972 and 1977 the cost premiums for total physical automobile damage increased 99.2 percent, reflecting the increasing and inflationary cost of automobile property repairs and replacement parts. Additionally, the cost of medical care increased approximately 60 percent since 1970, and the cost of a semi-private hospital room increased 97 percent during the same period of time.

The question the Commission was eventually faced with was: Does this mean the threshold is working in New Jersey's no-fault law? In spite of the Commission's effort to attempt to determine the effectiveness of the threshold based on data, it eventually became clear that each member's position was, to a degree, both influenced by data and a matter of value judgements and personal beliefs. Thus, members of the Commission concluded that the effectiveness of the New Jersey threshold in terms of fairness and equity cannot be demonstrated by data alone and for good reasons.

For example, should an injured victim of an automobile accident be entitled to a prompt and full recovery for medical expenses and economic losses and in return be denied the right to recover general damages for all but serious injuries? And what is, and how do you define, a serious injury? Is a reduction in the bodily injury premium of, say, $10, $20, or even $35 dollars worth trading off for the loss of a right to seek and recover general damages for pain and suffering and disabilities? Or, is the use of litigation to gain compensation for general damages an inefficient use of the automobile reparations system and a waste of the premium dollar?

The proponents of change only where justified by a substantial premium reduction asked how reducing bodily injury lawsuits can substantially reduce premiums, in light of the fact that only 21 percent of the premium dollar is for residual bodily injury coverage, and 12 percent is for PIP coverage. A secondary question was whether a reduction in the premium is worth the deprivation of the right to sue for general damages. For example, even a 50 percent reduction in the bodily injury premium would result in an average savings of only approximately $34 of the total average insurance cost per car. That is:

> 50% of the 20% (approximate percent of the total premium attributable to the R.B.I.) = 10% of $333.50 = approximately $34.

Another point raised by proponents of the dollar threshold is that many verbal thresholds seem to raise questions of interpretation. This may actually result in more litigation and higher automobile insurance costs.

Rather than expect unreasonable results by tampering with the threshold, the proponents of the dollar threshold emphasized the importance of two other recommendations made by the Commission. First, because of charges that clients are "running" up their medical expenses in order to surpass the $200 threshold for soft-tissue injuries, the Commission has recommended the establishment. of Regional Claims Review Boards, with the authority to establish reimbursement schedules for medical fees relative to injuries covered under no-fault insurance in the regions in which they operate. The Commission has also recommended that the time period for the payment of medical insurance claims should be extended from thirty days to sixty days. This would allow insurers more time to investigate fraudulent or unnecessary claims which may be aimed at surpassing the $200 threshold for bringing suits for general damages.

Basically, the proponents of a dollar threshold believed that the "Cadillac" package of no-fault benefits can be paid without drastically eliminating further anyone's serious fault-based claims for pain and suffering, and that New Jersey's no-fault experience and reasonable success supports this position. One reason for this in New Jersey, which all the Commission members agreed upon, is that because victims of automobile accidents promptly and adequately recover out-of-pocket losses and receive unlimited medical benefits, many of them probably do not bother to press a claim against negligent motorists.

Proponents of the present dollar threshold did not deny, however, that it is in need of some reform. That is, the consumer price index (CPI), because of the inflationary cycle of the last four years, has weakened the value of the $200 soft-tissue injury threshold. To correct this effect, the proponents of the dollar threshold suggested a floating dollar threshold, adjusting the present $200 threshold to account for the average increases in the national CPI since 1972, and providing for a continuous adjustment hereafter by the Commissioner of Insurance based on the average increase in the national CPI. Thus, the present dollar threshold, adjusted from January of 1973 to January of 1977 to reflect the average increases in the national CPI for these years, would be $\underline{276}$. That is:

9.4% (the average increase in the national CPI for 1973) x $200 = $19 + $200 = $219 x 11.7% (the average increase in the national CPI for 1974) = $26 + $219 = $245 x 6.8% (the average increase in the national CPI for 1975) = $17 + $245 = $262 x 5.2% (the average increase in the national CPI for 1976) = $14 + $262 = $\underline{276}$.

Proponents of a stringent verbal threshold stated that a verbal threshold makes it difficult to abuse the law, since it, unlike a dollar threshold, cannot be reached by an artificial buildup of medical expenses. Any dollar threshold encourages the overutilization of medical benefits, if not outright fraud in padding bills, inflates claims, and eventually leads to unnecessary lawsuits. Furthermore, the notion that a soft-tissue injury

with medical bills of $199 is not serious, but one with medical bills of $201 is serious, would be discarded. The opponents of a dollar threshold also pointed to the fact that while New Jersey's claim frequency decreased 60 percent after three years, Michigan's claim frequency decreased 80 percent after only two years.*

Another indication of the cost benefits of a Michigan type verbal threshold, which its proponents on the Commission pointed to, is the pure premium for bodily injury coverage (which is determined by total losses, exclusive of all loss adjustment expenses, divided by the number of insured premiums). While the pure premium in New Jersey has increased from $49.69 for the first quarter of 1975 to $51.01 for the first quarter of 1977, Michigan's pure premium for the same time period has decreased from $21.83 to $18.05 (based on data compiled by the National Association of Insurance Commissioner's Fast Track Monitoring System).

While the proponents of New Jersey's dollar threshold claimed that even a 50 percent reduction in the average bodily injury premiums will yield only an approximate savings of $34, the proponents of a verbal threshold replied that (1) $34 is a substantial savings to many motorists, and

*Although the proportion of automobile negligence cases relative to the total caseload and the absolute number of automobile negligence cases have diminished in Michigan and New Jersey, both the proponents of New Jersey's dollar threshold and the proponents of a stringent Michigan type verbal threshold agreed that such figures can be deceiving because of suits which can commence shortly before the statutes of limitation in both states begin to run.

(2) many motorists in New Jersey are paying much more than the average bodily injury rate. Thus, a 50 percent savings could be quite substantial in terms of actual premium dollars saved.

Summarily, proponents of a stringent verbal threshold argued that for cost saving and conceptual reasons New Jersey's dollar threshold, or any dollar threshold, is a perversion of the no-fault concept. It invites injured victims of automobile accidents to sue with total impunity, whether they seek awards for disability, pain and suffering, or just "going for broke." And since a victim's medical bills and lost income are paid automatically under no-fault, what have they got to lose by suing.

Opponents of a dollar threshold also pointed to Florida's original $1,000 threshold which, while $800 more than New Jersey's threshold, still encouraged fraudulent medical claims and overutilization. While not disavowing the need for Regional Claims Review Boards to control medical fees relative to automobile related injuries, and for granting insurers more time to investigate claims, the proponents of a stringent verbal threshold believed these problems can only be eliminated -- as far as they are encouraged for the purpose of surpassing a dollar threshold -- when a dollar threshold is eliminated.

Finally, the proponents of a stringent verbal threshold agreed that any savings achieved in threshold reform will most likely be a one shot event and not a permanent guarantee against future rate increases caused by inflation. The introduction of a more cost effective verbal threshold in New Jersey will not curtail rising medical costs, although it should prove able to prevent

abuses related to the utilization of medical benefits. However, it can serve to more equitably allocate the consumer's insurance dollar.

The Commission had arrived at a position whereby it was polarized between two positions, i.e., (1) adopt a floating dollar threshold, adjusting the present $200 threshold to account for the average increases in the national CPI since 1972, and providing for a continuous adjustment hereafter based on the average increase in the national CPI, or (2) adopt a stringent Michigan type verbal threshold, which greatly restricts the right to recovery in tort for non-economic losses. The Commission came to realize, therefore, that compromise was necessary. Persuasive efforts went for naught as the deep philosophical differences among Commission members were made apparent. After nearly fifteen hours of working sessions on the threshold question over a period of approximately two months, unanimity was not possible.

Generally, all of the Commission members agreed that their objectives were basically similar. They were to (1) eliminate the practice of "running" up medical expenses in order to surpass the $200 threshold for soft-tissue injuries; (2) overcome the effect of inflation on eroding the value of the threshold; (3) eliminate nuisance claims in tort for general damages, e.g., pain and suffering. Obviously, there was disagreement over how to achieve these objectives, and agreeing on what are nuisance claims.

The Commission looked for a compromise solution, one which would blend the beliefs of the members as well as what they perceived to be the beliefs of the motoring public of New Jersey. It even agreed to look beyond conventional solutions and, for what

it may later prove to be worth, discussed a proposal which, it later discovered, was being considered in various forms in other jurisdictions. The proposal consists of optional first party "speculative damage insurance" and is discussed in Chapter VIII. However, time being of the urgency, the Commission put aside this unique proposal, which may or may not have merits, for future consideration, and agreed upon a compromise threshold reform proposal which eliminates a monetary threshold, but is not stringent in restricting the right to recovery in tort for non-economic losses.

The compromise agreed upon by a majority of Commission members provides that an accident victim covered by no-fault cannot recover general damages from a driver covered by no-fault unless the victim's injury results in (1) his being unable to perform substantially all of the material acts that constitute his usual activities for at least thirty days during the 180 days following the accident; (2) dismemberment; (3) significant disfigurement; (4) a fracture; (5) permanent loss of use of a body organ, member, function, or system; (6) permanent consequential limitation of use of a body organ or member; (7) significant limitation of use of a body function or system; or (8) death.

Recommendation

The majority of Commission members recommend that section 8 of P.L. 1972, c. 70 (C. 39:6A-8) should be amended as follows:

8. Tort exemption; limitation on the right to damages. Every owner, registrant, operator or occupant of an automobile to which section 4, personal injury protection coverage, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages to any person who is required to maintain the coverage mandated by this act, or to any person who has a right to receive benefits under section 4 of this act as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State, [if the bodily injury, is confined solely to the soft tissue of the body and the medical expenses incurred or to be incurred by such injured person or the equivalent value thereof for the reasonable and necessary treatment of such bodily injury, is less than $200.00, exclusive of hospital expenses, X-rays and other diagnostic medical expenses. There shall be no exemption from tort liability if the injured party has sustained death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member in whole or in part, regardless of the right of any person to receive benefits under section 4 of this act. Bodily injury confined solely to the soft tissue, for the purpose of this section means, injury in the form of sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches, and tears confined to the muscles, tendons, ligaments, cartilages, nerves, fibers, veins, arteries and skin of the human body] unless the person sustains a serious injury. Serious injury, for the purpose of this section, means a personal injury which results in death; dismemberment; significant disfigurement; a fracture; permanent loss of use of a body organ, member, function or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than thirty days during the one hundred eighty days immediately following the occurrence of the injury or impairment.

CHAPTER VIII

Optional First Party "Speculative" Damage Insurance

Bodily injury claims are, basically, divided into two categories, those called "tangible" damages, such as medical bills and lost wages, and those called "speculative" damages, such as pain and suffering, mental anguish, inconvenience, disability, incapacity, future wage loss, disfigurement, loss of consortium, and all other such damages which cannot be measured in monetary terms except upon an arbitrary basis. Under the traditional tort liability system, the amount of dollars awarded for "speculative" damages for bodily injuries resulting from automobile accidents is quite substantial. Furthermore, the cost of determining fault and damages through litigation, for many minor cases, often exceeds the amount in controversy which tends to encourage companies to settle frivolous cases for excessive amounts. The combined effect of these factors is to increase the cost of insurance claims and, consequently, insurance premiums.

In New Jersey, as elsewhere, no-fault was adopted as a means of reforming the automobile insurance liability system. Pure no-fault would allow recovery only for tangible monetary damage, such as lost wages and medical expenses; there would be no permissible recovery for "speculative" losses, such as pain and suffering, or mental anguish. However, a compromise form of no-fault -- between pure no-fault and the traditional tort system -- was adopted in New Jersey. Basically, a compromise form of no-fault attempts to distinguish between major and minor injuries, prohibiting persons injured in certain motor vehicle accidents from bringing

suit for injuries determined to be minor.

Elimination of the right to sue for minor injuries is meant to be a trade-off, or balance, for certain first-party benefits which are paid promptly and efficiently. The great virtue of no-fault insurance is its more efficient use of insurance dollars, not its lower cost, although no-fault has stabilized automobile insurance rates for residual bodily injury coverage. However, premium reductions are contingent upon some reduction in benefits, either for economic losses or "speculative" damages.

The Commission soon realized after its study began that the motoring public favors, and would not support a reduction in, unlimited medical benefits and reimbursement for wage loss. As an alternative to reducing benefits for economic losses, the Commission carefully considered and thoroughly analyzed various reforms of the existing no-fault threshold. In spite of the various data reviewed by the Commission, it came to the conclusion that the question of whether or not to prohibit suits for "speculative" damages is a value judgement. That is, after an injured victim of a motor vehicle accident is made whole for his economic losses, it is a personal value judgement as to whether he should be entitled to a recovery for pain and suffering, mental anguish, or loss of lifestyle. There are most certainly many claimants who are willing to pay the price to be able to collect for "speculative" damages which may result.

As a compromise solution, the Commission briefly considered prohibiting the collection of "speculative" damages against tort-feasors but allowing the insured to electively purchase coverage

for "speculative" damages on a first party basis. That is, recovery would be from one's own carrier. Today, every motorist pays for his insurance on a third party basis whether he wants it or not. Making this coverage optional, and putting it on a first party basis, will ensure that only those who want it will have to pay for it. This would also allow an individual to accomplish a goal possible with many other areas of insurance -- relatively individualized payments for losses not necessarily met by other generalized forms of payment, such as social security or health insurance. And the premiums for such coverage would be a reflexion of one's risk exposure and the extent of coverage he insures himself for.

There is also a social policy question that deserves consideration, i.e., whether a motorist can always look after his own welfare. If not, perhaps there should be a mandatory requirement of minimum coverage of, say, 15 thousand/30 thousand, to protect to a certain degree his future earning losses, permanent disabilities, and other "speculative" damages, as there is to protect other people's interests through liability coverage.

Very simply, this could be achieved by means of a coverage comparable to that of uninsured and under-insured motorists coverage. That is, a first party "speculative" damage insurance would be a universal coverage in lieu of the present mixture of third party coverage and uninsured motorists first party liability coverage. The following steps would be required:

1. First party no-fault PIP coverage for economic losses, e.g., medical costs and wage losses, would remain mandatory.

2. Third party recovery for bodily injury resulting from

automobile accidents against New Jersey residents would be prohibited.

3. Automobile bodily liability coverage as it exists today would be abolished as a kind of insurance.

4. In lieu thereof, an uninsured motorists type of insurance, modified as set forth below, would be established which would have to be available to every resident of New Jersey on a first party basis.

5. Until the system is adopted by all other states some type of "extra territorial" automobile bodily injury coverage would have to be continued to provide coverage to New Jersey residents in case they cause damage to an out of state driver in New Jersey or are involved in an accident outside of New Jersey.

This first party coverage would be made available to owners of New Jersey registered cars and their resident relatives and also to New Jersey residents who do not own cars, as in the present Uninsured Motorist Coverage. The statute could require that the coverage be offered to car owners who purchase other automobile insurance, with the right of rejection. Some form of fund would probably have to function for non-owners who do not buy the coverage, in order to provide the "quid-pro-quo" needed for the denial of third party recovery.

The new type of coverage need not be limited; it could provide very specific schedules of benefits. For example, compensation for loss of future earnings, which represents a major element in large claim settlements under the present

system, could be tailored according to the individual insured's economic status. Thus, a physician would purchase much higher amounts of coverage for loss of future earnings than a factory worker.

Compensation for permanent disabilities could be provided on a schedule basis comparable to, but more generous than, that provided under workers' compensation. Here too, the insured should have an option of coverages he may want to purchase. Such a system would establish a direct relationship between the benefit the insured received and the premium he pays. The coverage could be priced more accurately than under the present system. With present classification criteria companies are trying to guess the amount of loss they may have to pay for any individual insured. Under the contemplated system this uncertainty would be reduced, if not eliminated.

Whatever misuse is made under the present tort system, particularly with respect to relatively minor injuries, could be corrected by the introduction of substantial deductibles. Not only would such deductibles eliminate payment for minor injuries but they would also substantially reduce the cost of the bodily injury coverage without unduly limiting the right of injured persons to seek compensation for wrongful serious injury.

Although the insurance for "speculative" damage would be first party coverage, the right to recover "speculative" damages -- if recovery were to remain contingent upon who was at fault -- could be pursued through appropriate legal representation under the arbitration process now used in connection with uninsured motorist

coverage. This would reduce court congestion substantially.

Conclusion

While the Commission gave some consideration to this concept, it obviously believes the implications of this proposal for tort reparations are considerable and deserve careful analysis before, and if, it is to be seriously proposed. Some of the questions facing consideration of this proposal are:

1. Should first party "speculative" damage insurance be paid regardless of fault, or only where another motorist is determined to be at fault?

2. If fault is to remain, should it be determined in a court proceeding or under an arbitration process?

3. If fault remains a factor, should an insurer paying "speculative" damage benefits be subrogated to the rights of the party to whom it makes such payments?

4. Should first party "speculative" damage insurance be mandatory for a minimum coverage, and what should be the minimum coverage?

5. What would be the cost of providing benefits to accident victims and the costs of conducting an insurance operation under this proposal.

Recommendation

The Commission recommends that the merits and problems of providing for a system of optional first party "speculative" damage insurance be explored further.

CHAPTER IX

Miscellanea

Throughout the course of its study on the operation of the New Jersey no-fault act, the Commission attempted to determine precisely how the law was working, and whether or not any changes in, or modifications of, the statute were necessary. In doing so, it selected those areas which it felt were most urgently in need of study.

The Commission briefly considered the question of extending no-fault coverage to non-resident motorists driving in New Jersey. It determined that such coverage should be extended automatically to non-residents, and suggests that the following section be added to the no-fault law:

> Every insurer authorized to transact the business of insurance in this state, or controlling or controlled by or under common control by or with an insurer authorized to transact the business of insurance in this state, which sells a policy providing motor vehicle liability insurance coverage, or any similar coverage, in any state or Canadian province shall include in each such policy coverage to satisfy the financial security requirements of Chapters 6 and 6B of Title 39 of the Revised Statutes and to provide for the payment of first party benefits pursuant to the provisions of P.L. 1972, c.70, when a motor vehicle covered by such policy is operated in this state, and every such policy shall be construed as if such coverage were embodied therein.

There are other matters, however, perhaps more of a technical or clarifying nature only, which should be addressed by the Legislature. For example:

1. What is the relationship between the filing of claims for temporary disability benefits and PIP benefits?

2. Does the phrase "principally garaged" need clarification? Perhaps all cars used in New Jersey should be covered for PIP benefits by their own automobile insurance carriers, and not simply automobiles "principally garaged" in New Jersey.

3. What should be the practice where a father and son living in the same household have their own automobiles and different insurance carriers, and the son, while driving his father's automobile with permission, is injured? Is this a case of concurrent coverage and, if so, should it remain that way?

4. Is the definition of "income" in the no-fault law in need of clarification?

The Commission hopes that its recommendations will improve the effectiveness and efficiency of the present law by eliminating some of the deficiencies and ambiguities which presently exist. It feels it is also important to stress, however, that there is no reason to believe such modifications will have any significant impact on automobile insurance rates. At best, proposals such as the elimination of motorcycles from PIP coverage eligibility, the establishment of Regional Claims Review Boards, and the repeal of a dollar threshold may serve to contain costs and may slow the rate of increase in bodily injury and PIP premiums. While they may not reduce premium costs, they should make the automobile insurance system more efficient in the delivery of benefits; this may have a tangential impact on costs.

The present automobile insurance market has been characterized by rising costs and availability problems. A large number of motorists, unable to secure coverage in the voluntary market, have been placed in the assigned risk pool during the last two years. Carriers have been increasingly reluctant to write new business, including even "clean risks," because they claim that New Jersey rates are inadequate.

The cost of all components of the automobile insurance package has risen since 1972, but collision and property damage premium costs have escalated most significantly. In part, this is due to high labor costs and the extremely high costof crash parts.

The Commission is aware that these aspects of the insurance problems -- namely, ratemaking and the residual market -- are as important as no-fault reform, if not more so, in reestablishing an orderly, efficient automobile insurance market in New Jersey. It is the Commission's intention to study these areas as well, and to make recommendations which will contrubute to the amelioration of the automobile insurance problems in the state.

APPENDIX A

THE "NEW JERSEY AUTOMOBILE REPARATION REFORM ACT"

THE "NEW JERSEY AUTOMOBILE REPARATION REFORM ACT"

Sec.

39:6A-1. SHORT TITLE

This act may be cited and known as the "New Jersey Automobile Reparation Reform Act." L. 1972, c. 70, § 1.

39:6A-2. DEFINITIONS

As used in this act:

a. "Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pick-up body, a delivery sedan or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation

which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

b. "Essential services" means those services performed not for income which are ordinarily performed by an individual for the care and maintenance of such individual's family or family household.

c. "Income" means salary, wages, tips, commissions, fees and other earnings derived from work or employment.

d. "Income producer" means a person, who at the time of the accident causing personal injury or death, was in an occupational status, earning or producing income.

e. "Medical expenses" means expenses for medical treatment, surgical treatment, dental treatment, professional nursing services, hospital services, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery pursuant to R.S. 45:9-1 et seq., dentistry pursuant to R.S. 45:6-1 et seq., psychology pursuant to P.L. 1966, c. 282 (C. 45:14B-1 et seq.) or chiropractic pursuant to P.L. 1953, c. 233 (C. 45:9-41.1 et seq.) or by persons similarly licensed in other states and nations or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

f. "Hospital expenses" means:

(1) the cost of a semiprivate room, based on rates customarily charged by the institution in which the recipient of benefits is confined;

(2) the cost of board, meals and dietary services;

(3) the cost of other hospital services, such as operating room, medicines, drugs, anesthetics, treatments with X-ray, radium and other radioactive substances; laboratory tests, surgical dressings and supplies; and other medical care and treatment rendered by the hospital;

(4) the cost of treatment by a physiotherapist;

(5) the cost of medical supplies such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, casts, splints, trusses, braces, crutches, rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration.

g. "Named insured" means the person or persons identified as the insured in the policy and, if an individual, his or her spouse.

h. "Pedestrian" means any person who is not occupying a vehicle propelled by other than muscular power and designed primarily for use on highways, rails and tracks and includes any person who is entering into or alighting from such a vehicle. L. 1972, c. 70, § 2. Amended by L. 1972, c. 203, § 1, eff. Dec. 26, 1972.

39:6A-3. COMPULSORY AUTOMOBILE INSURANCE COVERAGE; LIMITS

Every owner or registered owner of an automobile registered or principally garaged in this State shall maintain automobile liability insurance coverage, under provisions approved by the Commissioner of Insurance, insuring against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of the ownership, maintenance, operation or use of an automobile wherein such coverage shall be at least in:

a. an amount or limit of $15,000.00, exclusive of interest and costs, on account of injury to, or death of, one person, in any one accident; and

b. an amount or limit, subject to such limit for any one person so injured or killed, of $30,000.00, exclusive of interest and costs, on account of injury to or death of, more than one person, in any one accident; and

c. an amount or limit of $5,000.00, exclusive of interest and costs, for damage to property in any one accident.

No licensed insurance carrier shall refuse to renew the required coverage stipulated by this act without the consent of the Commissioner of Insurance. L. 1972, c. 70, § 3. Amended by L. 1972, c. 203, § 2, eff. Dec. 26, 1972.

39:6A-4. PERSONAL INJURY PROTECTION COVERAGE, REGARDLESS OF FAULT

Every automobile liability insurance policy insuring an automobile as defined in this act against loss resulting from liability imposed by law for bodily injury, death and property damage sustained by any person arising out of ownership, operation, maintenance or use of an automobile shall provide additional coverage, as defined herein below, under provisions approved by the Commissioner of Insurance, for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of his family residing in his household who sustained bodily injury as a result of an accident involving an automobile, to other persons sustaining bodily injury while

occupying the automobile of the named insured or while using such automobile with the permission of the named insured and to pedestrians, sustaining bodily injury caused by the named insured's automobile or struck by an object propelled by or from such automobile. "Additional coverage" means and includes:

a. Medical expense benefits. Payment of all reasonable medical expenses incurred as a result of personal injury sustained in an automobile accident. In the event of death, payment shall be made to the estate of the decedent.

b. Income continuation benefits. The payment of the loss of income of an income producer as a result of bodily injury disability, subject to a maximum weekly payment of $100.00, per week. Such sums shall be payable during the life of the injured person and shall be subject to an amount or limit of $5,200.00, on account of injury to any one person, in any one accident.

c. Essential services benefits. Payment of essential services benefits to an injured person shall be made in reimbursement of necessary and reasonable expenses incurred for such substitute essential services ordinarily performed by the injured person for himself, his family and members of the family residing in the household, subject to an amount or limit of $12.00 per day. Such benefits shall be payable during the life of the injured person and shall be subject to an amount or limit of $4,380.00, on account of injury to any one person in any one accident.

d. Survivor benefits. In the event of the death of an income producer as a result of injuries sustained in an accident entitling such person to benefits under section 4 of this act, the maximum amount of benefits which could have been paid to the income producer, but for his death, under section 4b. shall be paid to the surviving spouse , or in the event there is no surviving spouse, then to the surviving children, and in the event there are no surviving spouse or surviving children, then to the estate of the income producer.

In the event of the death of one performing essential services as a result of injuries sustained in an accident entitling such person to benefits under section 4 c. of thic act, the maximum amount of benefits which could have been paid such person, under section 4 c., shall be paid to the person incurring the expense of providing such essential services.

e. Funeral expenses benefits. All reasonable funeral, burial and cremation expenses, subject to a maximum benefit of $1,000.00, on account of the death to any one person in any one accident shall be payable to decedent's estate. L. 1972, c. 70, § 4. Amended by L. 1972, c. 203, § 3, eff. Dec. 26, 1972.

39:6A-5. PAYMENT OF PERSONAL INJURY PROTECTION COVERAGE BENEFITS

a. An insurer may require written notice to be given as soon as practicable after an accident involving an automobile with respect to which the policy affords personal injury protection coverage benefits required by this act.

b. Personal injury protection coverage benefits shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same. If such written notice is not furnished to the insurer as to the entire claim, any partial amount supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer. Any part or all of the remainder of the claim that is subsequently supported by written notice is overdue if not paid within 30 days after such written notice is furnished to the insurer; provided, however, that any payment shall not be deemed overdue where the insurer has reasonable proof to establish that the insurer is not responsible for the payment, notwithstanding that written notice has been furnished to the insurer. For the purpose of calculating the extent to which any benefits are overdue, payment shall be treated as being made on the date of a draft or other valid instrument which is equivalent to payment was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

c. All overdue payments shall bear simple interest at the rate of 10% per annum. L. 1972, c. 70, § 5.

39:6A-6. COLLATERAL SOURCE

The benefits provided in section 4 a., b., c., d., and e. and section 10, shall be payable as loss accrues, upon written notice of such loss and without regard to collateral sources, except that benefits collectible under workmen's compensation insurance, employees temporary disability benefit statutes and medicare provided under Federal law, shall be deducted from the benefits collectible under section 4 a., b., c., d., and e. and section 10. L. 1972, c. 70, § 6. Amended by L. 1972, c. 203, § 4, eff. Dec. 26, 1972.

39:6A-7. EXCLUSIONS

Insurers may exclude a person from benefits under section 4 a., b., c., d., and e. and section 10 where such person's conduct contributed to his personal injuries or death occurred in any of the following ways:

a. while committing a high misdemeanor or felony or seeking to avoid lawful apprehension or arrest by a police officer; or

b. while acting with specific intent of causing injury or damage to himself or others. L. 1972, c. 70, § 7. Amended by L. 1972, c. 203, § 5, eff. Dec. 26, 1972.

39:6A-8. TORT EXEMPTION; LIMITATION ON THE RIGHT TO DAMAGES

Every owner, registrant, operator or occupant of an automobile to which section 4, personal injury protection coverage, regardless of fault, applies, and every person or organization legally responsible for his acts or omissions, is hereby exempted from tort liability for damages to any person who is required to maintain the coverage mandated by this act, or to any person who has a right to receive benefits under section 4 of this act as a result of bodily injury, arising out of the ownership, operation, maintenance or use of such automobile in this State, if the bodily injury, is confined solely to the soft tissue of the body and the medical expenses incurred or to be incurred by such injured person or the equivalent value thereof for the reasonable and necessary treatment of such bodily injury, is less than $200.00, exclusive of hospital expenses, X-rays and other diagnostic medical expenses. There shall be no exemption from tort liability if the injured party has sustained death, permanent disability, permanent significant disfigurement, permanent loss of any bodily function or loss of a body member in whole or in part, regardless of the right of any person to receive benefits under section 4 of this act. Bodily injury confined solely to the soft tissue, for the purpose of this section means, injury in the form of sprains, strains, contusions, lacerations, bruises, hematomas, cuts, abrasions, scrapes, scratches, and tears confined to the muscles, tendons, ligaments, cartilages, nerves, fibers, veins, arteries and skin of the human body. L. 1972, c. 70, § 8. Amended by L. 1972, c. 203, § 6, eff. Dec. 26, 1972.

39:6A-9. SUBROGATION

Any insurer paying benefits in accordance with the provisions of section 4 and section 10, personal injury protection coverage, regardless of fault, shall be subrogated to the rights of any party to whom it makes such payments, to the extent of such payments. Such subrogated insurer may only by intercompany arbitration or by intercompany agreement exercise its subrogation rights against only the insurer of any person liable for such damages in tort provided, however, that such insurer may exercise its subrogation rights directly against any person required to have in effect the coverage required by this act and who failed to have such coverage in effect at the time of the accident. The exemption from tort liability provided in section 8 does not apply to the insurers' subrogation rights. On and after 2 years from the effective date of this act the provisions of this section shall be inoperative. L. 1972, c. 7 § 9. Amended by L. 1972, c. 203, § 7, eff. Dec. 26, 1972.

39:6A-10. ADDITIONAL PERSONAL INJURY PROTECTION COVERAGE

Insurers shall make available to the named insured covered under section 4, suitable additional first-party coverage for income continuation benefits, essential services benefits, survivor benefits and funeral expense benefits. Income continuation in excess of that provided for in section 4 must be provided as an option by insurers to persons for disabilities, as long as the disability persists, up to an income level of $35,000.00 per year, with the excess between $5,200.00 and the amount of coverage contracted for to be written on the basis of 75% of said difference. The Commissioner of Insurance is hereby authorized and empowered to establish, by rule or regulations, the amounts and terms of income continuation insurance to be provided pursuant to this section. L. 1972, c. 70, § 10. Amended by L. 1972, c. 203, § 8, eff. Dec. 26, 1972.

39:6A-11. CONTRIBUTION AMONG INSURERS

If two or more insurers are liable to pay benefits under sections 4 and 10 of this act for the same bodily injury, or death, of any one person, the maximum amount payable shall be as specified in sections 4 and 10 if additional first party coverage applies and any insurer paying the benefits shall be entitled to recover from each of the other insurers, only by inter-company arbitration or inter-company agreement, an equitable pro-rata share of the benefits paid. L. 1972, c. 70, § 11.

39:6A-12. INADMISSIBILITY OF EVIDENCE OF LOSSES COLLECTIBLE UNDER PERSONAL INJURY PROTECTION COVERAGE

Evidence of the amounts collectible or paid pursuant to sections 4 and 10 of this act to an injured person is inadmissible in a civil action for recovery of damages for bodily injury by such injured person. L. 1972, c. 70, § 12.

39:6A-13. DISCOVERY OF FACTS AS TO PERSONAL INJURY PROTECTION COVERAGE

The following apply to personal injury protection coverage benefits:

a. Every employer shall, if a request is made by an insurer or the Unsatisfied Claim and Judgment Fund providing personal injury protection benefits under this act against whom a claim has been made, furnish forthwith, in a form approved by the Commissioner of Insurance, a signed statement of the lost earnings since the date of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

b. Every physician, hospital, clinic or other medical institution providing, before and after the bodily injury upon which a claim for personal injury protection benefits is based, any products,

services or accommodations in relation to such bodily injury or any other injury, or in relation to a condition claimed to be connected with such bodily injury or any other injury, shall, if requested to do so by the insurer or the Unsatisfied Claim and Judgment Fund against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

c. The injured person shall be furnished upon demand a copy of all information obtained by the insurer or the Unsatisfied Claim and Judgment Fund under the provisions of this section, and shall pay a reasonable charge, if required by the insurer and the Unsatisfied Claim and Judgment Fund.

d. Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection benefits, such person shall, upon request of an insurer or the Unsatisfied Claim and Judgment Fund submit to mental or physical examination by a physician or physicians. The costs of any examinations requested by an insurer or the Unsatisfied Claim and Judgment Fund shall be borne entirely by whomever makes such request. Such examination shall be conducted within the municipality of residence of the injured person. If there is no qualified physician to conduct the examination within the municipality of residence of the injured person, then such examination shall be conducted in an area of the closest proximity to the injured person's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection coverage policies for mental and physical examinations of those claiming personal injury protection coverage benefits.

e. If requested by the person examined, a party causing an examination to be made, shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him, or his representative, concerning any examination, previously or thereafter made of the same mental or physical condition.

f. The injured person, upon reasonable request by the insurer or the Unsatisfied Claim and Judgment Fund shall sign all forms, authorizations, releases for information, approved by the Commissioner of Insurance, which may be necessary to the discovery of the above facts, in order to reasonably prove the injured person's losses.

g. In the event of any dispute regarding an insurer's or the Unsatisfied Claim and Judgment Fund's or an injured person's right as to the discovery of facts about the injured person's earnings or about his history, condition, treatment, dates and costs of such treatment, or the submission of such injured person to a mental or physical examination, the insurer, Unsatisfied Claim and Judgment Fund or the injured person may petition a court of competent jurisdiction for an order resolving the dispute and protecting the rights of all parties. The order may be entered on motion for good cause shown giving notice to all persons having an interest therein. Such court may protect against annoyance, embarrassment or oppression and may as justice requires, enter an order compelling or refusing discovery, or specifying conditions of such discovery; the court may further order the payment of costs and expenses of the proceeding, as justice requires. L. 1972, c. 70, § 13.

39:6A-13.1. LIMITATION OF ACTIONS

a. Every action for the payment of benefits set forth in sections 4 and 10 of this act, except an action by a decedent's estate, shall be commenced not later than 2 years after the injured person or survivor suffers a loss or incurs an expense and either knows or in the exercise of reasonable diligence should know that the loss or expense was caused by the accident, or not later than 4 years after the accident whichever is earlier, provided, however, that if benefits have been paid before then an action for further benefits may be commenced not later than 2 years after the last payment of benefits.

b. Every action by a decedent's estate for the payment of benefits set forth in sections 4 and 10 of this act shall be commenced not later than 2 years after death or 4 years after the accident from which death results, whichever is earlier, provided, however, that if benefits had been paid to the decedent prior to his death then an action may be commenced not later than 2 years after his death or 4 years after the last payment of benefits, whichever is earlier, provided, further, that if the decedent's estate has received benefits before then an action for further benefits shall be commenced not later than 2 years from the last payment of benefits. L. 1972, c. 203, § 11, eff. Dec. 26, 1972.

39:6A-14. COMPULSORY UNINSURED MOTORIST PROTECTION

Every owner or registrant of an automobile registered or principally garaged in this State shall maintain uninsured motorist coverage as provided in P.L. 1968, c. 385 (C. 17:28-1.1). L. 1972, c. 70, § 14.

39:6A-15. PENALTIES FOR FALSE AND FRAUDULENT REPRESENTATION AND FOR FAILURE TO MAINTAIN INSURANCE COVERAGE

*[a.] In any claim or action arising under section 4 of this act wherein any person, obtains or attempts to obtain from any other person, insurance company or Unsatisfied Claim and Judgment Fund any money or other thing of value by (1) falsely or fraudulently representing that such person is entitled to benefits under section 4 or, (2) falsely and fraudulently making statements or presenting documentation in order to obtain or attempt to obtain benefits under section 4 or, (3) cooperates, conspires or otherwise acts in concert with any person seeking to falsely or fraudulently obtain, or attempt to obtain, benefits under section 4 may upon conviction be fined not more than $5,000.00, or imprisoned for not more than 3 years or both, or in the event the sum so obtain or attempted to be obtained is not more than $500.00, may upon conviction, be fined not more than $500.00, or imprisoned for not more than 6 months or both, as a disorderly person.

[b. Any owner, operator or registrant of an automobile registered or principally garaged in this State who operates or causes to be operated an automobile upon any public road or highway in this State knowingly without automobile insurance coverage, extendir coverage to such automobile as provided in sections 3 and 4 of this act, may upon conviction be fined not more than $500.00, or imprisor for not more than 6 months or both, as a disorderly person, and sha forthwith forfeit his right to operate a motor vehicle over the roads and highways of this State for a period of 1 year from the date of such conviction, and after the expiration of said period he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle which application may be granted at the discretion of the director. For a subsequent violation the automobile in question may be subject to confiscation and may be seized by the Director of the Division of Motor Vehicles or his agents or employees or by any peace officer of the State whe directed by the director, his agents or employees to do so, without a warrant. The director shall immediately thereafter institute a proceeding for the confiscation thereof in the County Court, county district court or the municipal court within the jurisdiction in which the seizure is made. The court may proceed in summary manner and may direct confiscation to the director; provided, however, tha any person claiming to be the holder of a mortgage, conditional sales contract, or other security interest in any such automobile, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the automobile in question was being operated in violation of sections 3 and 4 of this act without the knowledge of the claimant and if such claimant acquired his security interest in good faith, the court shall either waive forfeiture in favor of such claimant and order the automobile returned or delivered to such, or if it is found that the value thereof exceeds the amount of the claim, the court shall order payment of the amount of the claim out of the proceeds of the sale.

*[ ] indicates the enclosed material was deleted by amendment.

c. The Director of the Division of Motor Vehicles shall have the authority to suspend a license and registration at any time the registrant cannot furnish proof the vehicle is insured.] L. 1972, c. 70, § 15. Amended by L. 1973, c. 298, § 1, eff. Dec. 7, 1973.

39:6A-16. CONSTRUCTION AND SEVERABILITY

This act shall be liberally construed so as to effect the purpose thereof. The provisions of this act shall be severable and if any phrase, clause, sentence or provision of this act is declared to be contrary to the Constitution of this State or of the United States or the applicability thereof to any person, government, agency or circumstance is held invalid, the validity of the remainder of this act and the applicability thereof to any person, government, agency or circumstance shall not be affected thereby. L. 1972, c. 70, § 16.

39:6A-17. GENERAL REPEAL OF INCONSISTENT STATUTORY PROVISIONS

All laws or parts of laws which are inconsistent with the provisions of this act are repealed and superseded to the extent of such inconsistency. L. 1972, c. 70, § 17.

39:6A-18. MANDATORY REDUCTION OF BODILY INJURY INSURANCE RATES

Bodily injury insurance rates in effect on July 1, 1972 shall be reduced by at least 15% and shall become effective upon the effective date of this act. L. 1972, c. 70, § 18.

39:6A-19. RULES AND REGULATIONS

The Commissioner of Insurance is hereby authorized and empowered to prescribe, adopt, promulgate, rescind and enforce such reasonable rules and regulations as may be required to effectuate the purposes of this act. L. 1972, c. 203, § 9, eff. Dec. 26, 1972.

39:6A-20. POWERS OF COMMISSIONER OF INSURANCE

For the purpose of implementing and enforcing this act, the Commissioner of Insurance shall possess all of those general powers as enumerated in Title 17 of the Revised Statutes. L. 1972, c. 203, § 10, eff. Dec. 26, 1972.

APPENDIX B

NEW JERSEY ADMINISTRATIVE CODE

(Rules and Regulations promulgated by the Department of Insurance)

SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

NEW JERSEY ADMINISTRATIVE CODE

(Rules and Regulations promulgated by the Department of Insurance)

SUBCHAPTER 7. AUTOMOBILE REPARATION REFORM ACT

NOTE: All references to "Sections" in the following pertain to Sections in the Second Official Copy Reprint of Assembly Bill No. 667 (P.L. 1972, c. 70; C. 39:6A-1 et seq.).

.1:3-7.1 DEFINITIONS

In Section 2, line 4C, the term "long-term contract" shall mean a written agreement or lease for not less than 12 months.

In Section 2, line 4A, the term "automobile" does not include motorcycles; the term does include vehicles used for family recreational purposes, such as campers and motor homes, except if such vehicles are customarily used:

1. In the occupation, profession or business of the insured; or
2. For the transportation of passengers other than members of the insured's family and guests.

Coverage shall not apply when such vehicles are located for use as residence or premises.

NOTE: A commercial vehicle customarily used in business, when used occasionally to hold a camper body for personal recreational purposes, is not included in the definition of "automobile".

In Section 2G, "named insured" means the person(s) or the organization named in the declaration of the policy and, if an individual, shall include the spouse if a resident of the same household.

NOTE: A person not owning an automobiel but providing an automobile for his own use by an organization may be afforded no-fault coverage by appropriate endorsement as though he owned an automobile.

In Section 4d, "survivors benefits" shall mean any unpaid medical expenses plus either the unpaid remaining portion of the maximum $5,200 in the case of death of an income producer or the unpaid remaining portion of the maximum $4,380 in the case of the death of a person performing essential services.

11:3-7.2 PAYMENTS

(a) Under Section 5b and c, payments shall not be overdue where there is a charge pending which would make operative an exclusion in accordance with Section 7.

(b) If the injured party is found not guilty of such charge, benefits shall be overdue if not paid 30 days after the insurer is furnished written notice of the disposition of such charge.

11:3-7.3 MINIMUM SCHEDULE OF ADDITIONAL PERSONAL INJURY PROTECTION

(a) Appendix A outlines the minimum schedule of "additional personal injury protection" coverage benefits that insurers must make available in accordance with Section 10 of this Act.

(b) In the Appendix A table, only five weekly indemnity schedules are shown, with a two-year benefit duration. It is believed that these ranges of benefits will meet the demand for this additional coverage in most cases.

(c) Consequently, at least for the initial period, it will be sufficient if your manuals exhibit these minimum benefit schedules with corresponding rates.

(d) However, benefits in excess of thos set forth in Appendix A must be made available at the option of the named insured at reasonable intervals subject to the specific approval by the Commissioner, up to a maximum additional weekly loss of income benefit of $35,000 per year, as well as reasonable essential service benefits, survivor benefits and funeral expenses benefits, as required by Section 10 of the Act.

11:3-7.4 POLICY FORM OR ENDORSEMENT

The policy form or endorsement providing the personal injury protection benefits shall provide that Section 4 benefits shall be afforded by the insurer of the injured person.

11:3-7.5 REIMBURSEABLE EXPENSES

Expenses incurred under "essential services benefits" in Section 4 shall be reimbursable only if the injured person other than an income producer is unable to perform essential services as a result of bodily injury caused by an automobile accident and the substitute services are actually performed for a charge.

11:3-7.6 RESIDUAL MEDICAL PAYMENTS COVERAGE

(a) Appropriate language shall be included in the policy form or the personal injury protection endorsement to add residual medical payments coverage, corresponding to Coverage C in the Family Automobile Policy to provide such coverage at a limit of $1,000 per person on an excess basis over other collectible insurance and with a subrogation provision.

(b) With respect to insureds carrying medical payments coverage in excess of $1,000 per person on policies remaining in force beyond January 1, 1973, a company may provide $9,000 of additional medical payments coverage per person in addition to the $1,000 limit included in the bodily injury coverage in accordance with the preceding paragraph.

(c) Appropriate rate filings for the Commissioner's approval will have to be made, and it is the Commissioner's present intention to approve a rate of no more than $1.00 per car for the period of coverage of additional $9,000.

11:3-7.7 FILINGS

(a) Filings to comply with the "New Jersey Automobile Insurance Reparation Reform Act" shall be submitted on or before November 15, 1972, as follows:

1. Bodily Injury Increased Limits Table: The present table in use by the rate filer shall be adjusted to a starting point of 15/30 by the usual actuarial method. If any table values are adjusted to obtain proper gradation, an appropriate explanation shall be included in the filing.

2. Bodily injury rates:

i. The present 10/20 bodily injury rates shall be reduced by 15 per cent to produce the rate reduction mandated by the Act, and the result shall be adjusted to a 15/30 basis to comply with the newly-required financial responsibility limits by application of the present 15/30 increased limits factor.

ii. It is required in Section 6 above that a residual medical payment coverage be included with the bodily injury coverage. This residual coverage will be applicable in the rare situations where an insured under the policy providing the P.I.P. coverage would not be able to obtain reimbursement for medical expenses, such as in the situation where he is injured while riding in a truck. It is noted that this coverage will be on an excess basis over other collectible insurance and the insurer will have the right of subrogation.

iii. It is estimated that this exposure will be approximately five per cent of the exposure presented under the present medical payments coverage. The present average medical payment rate in the State of New Jersey amounts to approximately $8.00. Five per cent of that amount would be $0.40, which would be the appropriate charge for this reduced coverage.

iv. A charge for this medical payments coverage may be included in the bodily injury rate as follows: For companies that round their manual rate to the nearest dollar, the rate under subparagraph i. above may be rounded to the next highest dollar. Companies that round rates to other than whole dollar amounts shall modify this procedure appropriately and so explain in their rate filing.

v. Each rate filer shall review all other rates in the manual related by formula to the private passenger bodily injury rate, and shall revise these rates for classifications affected by the P.I.P. provisions of the Act, and use for such adjustment the private passenger bodily injury rates developed in accordance with the above procedure.

vi. It is also required that rates in the garage section of the manual for Hazard 1 be modified to reflect the 15 per cent reduction in the private passenger exposure. It is estimated that 70 per cent of the Hazard 1 garage bodily injury rate reflects the private passenger exposure, the remainder is attributed to the premises exposure which is not affected by the Act. In order to reflect the 15 per cent reduction in the bodily injury premium charge, the garage Hazard 1 bodily injury rate shall be reduced by 10.5 per cent. The minimum premium shall be adjusted by the same method that was used in the last rate filing approved for the rate filer in New Jersey.

vii. Bodily injury rates for classifications other than those referred to above shall be adjusted to a 15/30 basis by applying to the present rate the present factor for 15/30 coverage.

3. Additional personal injury protection: Every rate filer shall submit a proposed schedule of rates to provide at least the benefit schedules set forth on Exhibit A.

4. Rules and policy forms: Rating organizations and independent filers shall file the appropriate policy forms or endorsements as well as the necessary manual rules for the implementation of this program.

APPENDIX A

ADDITIONAL PERSONAL INJURY PROTECTION

	Maximum Additional Weekly Loss of Income Benefit			Maximum Additional Essential Services			
	During Period of Basic Benefits Payments (a)	After Period of Basic Benefits Payments (b)	Total Maximum Income Benefits	During Basic Payments	After Basic Payments	Total Max. E. Serv.	Death Benefits (c)
1.	$0	$100	$5,200	$0	$12	$4,380	$10,000
2.	25	125	7,800	8	20	10,220	10,000
3.	75	175	13,000	8	20	10,220	10,000
4.	150	250	20,800	8	20	10,220	10,000
5.	300	400	36,400	8	20	10,220	10,000

NOTES TO TABLE

(a) Subject to 75 per cent of the amount of weekly income in excess of $100.00 per week.

(b) Subject to 75 per cent of the total weekly income.

(c) Death benefit shall be payable provided death occurs within 90 days from date of bodily accident.

GENERAL: Above schedules applicable to names insured as defined; limits apply per person, per accident.

Broader forms of additional personal bodily injury protection benefits are available on a "refer to company" basis.

Nothing herein is intended to prohibit the marketing of additional coverage on a per-car basis.

APPENDIX C

U.S. Senate 1381:

Restrictions On Lawsuits

SEC. 103. RESTRICTIONS ON LAWSUITS.

(a) IN GENERAL.—An approved State plan shall provide that no claimant shall be entitled to maintain a civil action based on liability in tort against any person, with respect to an injury as to which basic no-fault benefits are payable, unless the person is or may be liable in tort in accordance with one of the exceptions set forth in subsection (b) and in that plan.

(b) EXCEPTIONS TO RESTRICTIONS.—(1) Except as provided in paragraph (2) of this subsection, an approved State plan shall provide, in accordance with applicable law, that a person may be liable in tort—

(A) for any loss which is in excess of any applicable limitation in accordance with section 102(a), 102(b)(2), or 102(c), and which is not compensated by added no-fault benefits;

(B) for—

(i) any loss which is in excess of the applicable limitation in accordance with section 102(d) and which is not compensated by added no-fault benefits; and

(ii) damages for noneconomic detriment which is sustained by a victim who suffers injury resulting in death or by any survivor of the victim as a result of that death;

(C) for noneconomic detriment which is not compensated by other benefits and which is sustained by a victim who suffers an injury resulting in—

(i) significant permanent scarring or disfigurement;

(ii) the permanent loss of an important bodily function;

(iii) other serious and permanent injury. As used in this subparagraph, "other serious and permanent injury" means an injury which results directly in a substantial and medically demonstrable permanent impairment that significantly affects the ability of the victim to resume his usual and customary daily activities; or

(iv) more than 180 continuous days of total disability. As used in this subparagraph, "total disability" means an injury which results directly in a medically demonstrable impairment that prevents the victim from performing all or substantially all of the material acts and duties which constitute his usual and customary daily activities;

(D) for any injury arising out of the maintenance or use of a motor vehicle with intent to injure himself or another person;

(E) for any injury arising out of a defect in a motor vehicle that was designed, manufactured, repaired,

serviced, or otherwise maintained by that person in the course of his business (other than a defect that occurs while the vehicle is being operated in the course of the business) if the defect was caused or not corrected by an act or omission in the course of the business; or

(F) for any injury that is caused in whole or in part by any act or omission not connected with the maintenance or use of a motor vehicle by that person.

(2) An approved State plan may provide for a longer

time period than that specified in subparagraph (C) (iv), and may exclude any or all of the exceptions to restrictions on lawsuits specified in paragraph (3).

(c) TORT PENALTIES.—An approved State plan may provide for a mechanism to assess the individual responsibility of motor vehicle operators and a process or procedure for the imposition of tort penalties, to deter negligent and unsafe maintenance and use of motor vehicles in that State. Those tort penalties may include—

(1) the imposition of fines;

(2) the suspension or revocation of motor vehicle operators' licenses;

(3) compulsory driver education;

(4) orders to participate in programs designed to prevent driving while intoxicated;

(5) the impoundment of motor vehicles owned by those operators for specified periods; and

(6) any other penalty that is considered appropriate by the State.

No penalty imposed pursuant to the authority set forth in this subsection shall be paid or reimbursed, directly or indirectly, by an insurer.

(d) ATTORNEY'S FEES.—A defendant shall be awarded a reasonable attorney's fee by the court for defending a claim for liability in tort if the court determines that—

(1) the claim is fraudulent; or

(2) there is no reasonable foundation for believing that the claim falls within an exception to the restrictions on liability in tort set forth in subsection (b) and in the applicable approved State plan.