REPARATION REFORM for NEW JERSEY MOTORISTS.

State of New Jersey.

AUTOMOBILE INSURANCE STUDY COMMISSION.

REPORT to the Governor and the Legislature

(pursuant to Joint Resolution No. 4. 1970)

December , 1971

LETTER OF TRANSMITTAL

37-11

December, 1971

HIS EXCELLENCY, WILLIAM T. CAHILL, GOVERNOR

THE HONORABLE MEMBERS OF THE SENATE AND GENERAL ASSEMBLY

Your Excellency, Mesdames and Messrs.:

Transmitted herewith is a report of the findings, conclusions, and recommendations of the Automobile Insurance Study Commission.

The work of the Commission was performed in accordance with the requirements of Joint Resolution No. 4 of 1970, which authorized the appointment of the Commission.

Respectfully submitted,

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AUTOMOBILE INSURANCE STUDY COMMISSION

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1. Appointed by Governor
2. Appointed by Senate President
3. Appointed by Assembly Speaker

JOINT RESOLUTION NO. 4, LAWS OF 1970
Approved June 18, 1970

SENATE JOINT RESOLUTION No. 20

STATE OF NEW JERSEY

INTRODUCED APRIL 9, 1970

By Senator BATEMAN

Referred to Committee on Insurance

A JOINT RESOLUTION creating a commission to study certain automobile insurance matters, including the matter of a "no fault" automobile accident insurance plan.

WHEREAS, There is increasing interest and concern with the problems of compensating through some form of insurance those suffering injury or damage by reason of automobile accidents; and

WHEREAS, A full and complete examination of existing and proposed methods of effecting compensation, through insurance, of automobile accident victims is desirable, to the end that all possible improvements may be brought to light and exposed to the view of the motoring public of the State of New Jersey;

WHEREAS, The cost of automobile insurance has undergone a substantial increase; and

WHEREAS, Many persons are faced with the prospect of exposure to serious liability or economic hardship because of the fact that automobile insurance companies will not provide automobile insurance at a cost within their means and in some cases will not provide insurance at all; and

WHEREAS, Such restrictive underwriting practices on the part of certain insurance companies are detrimental to the interest of this State and its citizens; and

WHEREAS, It is the duty of the Exxecutive and Legislative Branches of government to inquire into and provide remedies for any inequity that may exist and to strive for improvement in existing systems or to make fundamental changes when necessary and practicable; now, therefore,

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. There is hereby created a commission to consist of nine members, two to be appointed by the Speaker of the General Assembly from among the members of the General Assembly providing that no more than one of such appointees shall be a member of the same political party; and two to be appointed by the President of the Senate from the membership of the Senate providing that no more than one of such appointees shall be a member of the same political party, and five shall be citizens of this State to be appointed by the Governor. The five citizen members shall include one member of the insurance industry and 2 members of the legal profession who are members of the Bar of this State.

2. The commission shall organize at the call of the Governor as soon after the appointment of its members as is practicable. The Governor shall select a chairman from among its members. The commission may appoint a secretary who need not be a member of the commission.

3. It shall be the duty of the commission to study, hold hearings, both public and private, and inquire into those cost factors which relate to automobile insurance premiums, such as marketing costs, legal fees and property damage costs; to review the concepts of "no fault" automobile insurance coverage for the purpose of evaluating its feasibility and adaptability in this State and its effect upon automobile insurance premiums and the citizens of this State; to compare present methods of compensating victims of automobile accidents through court proceedings with other judicial or quasi-judicial proceedings, including a review of possible improvements within the framework of the present system, such as comparative negligence and arbitration; to study and investigate the desirability of compulsory medical payments coverage by automobile owners, and costs related thereto; and to make such recommendations for legislation as it deems desirable and appropriate.

4. The commission shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for said purpose, and to employ counsel and such stenographic and clerical assistants and incur such traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for said purposes.

5. The commission may meet and hold hearings at such place or places, within or without the State, as it shall designate during the sessions or recesses of the Legislature, shall report its findings and recommendations to the Governor and Legislature as soon as possible, and accompany the same with any legislative bills which it may desire to recommend for adoption by the Legislature.

6. This joint resolution shall take effect immediately.

SUMMARY STATEMENT OF COMMISSION'S

R E C O M M E N D A T I O N S

Offered in compliance with JR 4, paragraph 3 of Resolution, wherein--

"It shall be the duty of the commission to make such recommendations for legislation as it deems desirable and appropriate."

SUMMARY STATEMENT OF COMMISSION'S RECOMMENDATIONS

After extensive research and careful study of the responsibilities delegated to it in JR 4, the Commission arrived at the statement of recommendations which appears below in summary form. The reasons underlying these recommendations together with full explanatory comment are set forth in the chapters which follow this section.

The Commission believes that its recommendations supply the New Jersey automobile insurance market with the substance and structure for a solid program of reparation reform. However, it has left to those who will draft such implementing legislation as may be accorded its program the task of providing the procedural detail, including statutory definitions and references, appropriate to the authorship of a definitive legislative bill.

Recommendation 1. Personal Injury Protection (No-Fault) Coverage

(1.0) All compulsory automobile liability insurance policies as defined in section 2.0 above, shall include, personal injury protection coverage (PIPC) providing for the prompt payment on a first-party basis, and without regard to fault or negligence liability, of automobile accident insurance benefits as follows:

(1.1) Covered Persons: To the named insured and members of his household who are injured in an automobile accident, and to authorized drivers and guest passengers in the insured car who are injured while occupying it, and also to pedestrians struck by the insured car;

(1.2) Personal Injury Protection Benefits:

(1.21) All reasonable expenses for ambulance, hospital, nursing, medical, surgical, dental and rehabilitative services, including prosthetic devices, made necessary by such injury;

(1.22) Funeral, burial or cremation expenses not to exceed $1,000 per person;

(1.23) Disability (and survivors) benefits for loss of income due to inability to work caused by such injury up to $100 a week and subject to an aggregate payment of $5,200 per person for any one disability. Similar benefits shall be available to dependent survivors where the injury is fatal;

(1.24) Reasonable extra expense reimbursement up to $12 a day for 365 days for household services interrupted by the injury of persons who otherwise would have performed such services without income. Similar benefits shall be available to dependent survivors where the injury is fatal;

(1.3) PIPC Insurers May Exclude Benefits: To any injured person whose conduct contributed to his injury while operating an automobile in this State with the specific intent of causing injury or damage to himself or others; while under the influence of alcohol or narcotic drugs, or while committing a high misdemeanor or felony.

(1.4) Primary Nature of Benefits: The benefits described in section 1.2 shall be payable without regard to collateral benefit sources available to the injured person except that benefits recoverable under any workmen's compensation or temporary disability benefit statute or under medicare shall be credited against such PIPC benefits.

(1.5) Subrogation by PIPC Insurers: To the extent of the PIPC benefits paid or payable, an insurer shall be subrogated to the injured person's right of action for damages against culpable third parties and their liability insurers. Determination as to whether any insurer is legally entitled to recover damages in tort from another insurer shall be by intercompany agreement or arbitration.

(1.6) Admissibility of Evidence: Injured persons shall not plead or introduce into evidence in an action for damages against a tortfeasor those damages for which PIPC benefits are available under section 1.2.

Purpose: Many accident victims in New Jersey and elsewhere do not recover damages in tort for injuries sustained because of their inability to prove liability against third parties and their insurers.

In still other cases, tort recoveries are obtainable only after frustrations, delays and expense. The PIPC (no-fault) benefits recommended by the Commission provide appreciable reparation for all New Jersey accident victims promptly, fairly and efficiently. To minimize costs and to avoid duplicate recovery under both tort and PIPC, insurers of no-fault benefits are subrogated to the victim's right of action at tort to the extent of the no-fault payments made. The burden of litigation on the courts is relieved by mandating such subrogation settlements to intercompany agreement or arbitration.

Recommendation 2. Compulsory Automobile Liability Insurance

(2.0) Every owner or registrant of a private passenger automobile (as defined in the manuals of rules and rates approved by the Insurance Department of this State) which is registered or principally garaged in New Jersey, shall continuously maintain automobile liability insurance in effect for limits of at least $15,000 per person and $30,000 per accident for bodily injury and $5,000 for property damage.

Purpose: In all states which have enacted automobile accident reparation reform legislation, tort liability insurance has been retained as a basic or supplemental source of recovery for injury and damage losses. The Commission recommends that it be so retained in New Jersey.

However, the level of reparation needs has risen greatly since the State's financial responsibility limits of $10,000/$20,000 for bodily injury were originally established. The recommended increase in limits is desirable to adjust the supply of reparation realistically to current needs.

The Commission's recommended Personal Injury Protection Coverage program will fall short of its objective of full reparation for all automobile accident victims unless every motorist purchases automobile insurance coverage. It is estimated that approximately 90% of New Jersey motorists today purchase this coverage.

An appreciable proportion of New Jersey motorists, perhaps 10 per cent, presently evades responsibility for the losses it causes both by declining to insure and by failure to pay the $50 uninsured motorist fee to the New Jersey Unsatisfied Claim and Judgment Fund (UCJF). In the interests of equity toward insured motorists as well as for the protection of injured persons this "uninsured gap" should be closed.

The Personal Injury Protection aspect of the recommended program will provide strong motivation for many of the present day uninsureds to obtain this coverage. In order to reduce further the number of uninsured motorists in this State, a compulsory insurance requirement is indicated.

Recommendation 3. Limited Tort Exemption for Certain Soft-Tissue Injuries.

(3.0) The right of an injured person to bring an action in tort for damages over and beyond the benefits provided by PIPC (section 1.2) shall be guaranteed, provided however, that injuries involving and limited to "soft tissue" as to which medical treatment by a licensed physician, osteopath, or chiropractor is valued at not more than $100, will not be subject to payment of benefits in excess of those provided by PIPC. (Neither diagnostic nor hospital charges shall be included in valuing the medical treatment for such injuries.) This limitation shall not apply to fatal injuries.

Purpose: In order to offset the cost of providing no-fault benefits, it is usually customary in reparation reform legislation to limit to some extent the claimant's right to recover general damages ("pain and suffering") in tort actions. Thus, in Massachusetts, except for serious injuries, a tort exemption is placed on general damages unless the claimant's medical expenses exceed a "threshold" of $500.

After considerable study in consultation with the New Jersey State Department of Insurance, the Commission recommends the foregoing limitation in the belief that it will accomplish cost savings without significantly impairing the overall reparation program for accident victims.

Recommendation 4. Comparative Negligence Statute

(4.0) The Commission recommends that New Jersey adopt a comparative negligence law patterned after the Wisconsin statute which provides that:

> "Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering."

Purpose: The PIPC (no-fault) benefits recommended in section 1.2 above provide all injury victims with reparation for economic loss from injuries sustained up to the limits stipulated. However, in actions at law for damages over and beyond those provided by PIPC, New Jersey law currently makes any degree of contributory negligence on the claimant's part a defense to the action. This is considered by the Commission to be harsh doctrine and especially so where the contribu-

tory negligence on the victim's part is slight as compared with that of the tortfeasor. A comparative negligence statute would enhance equity and justice in the provision of injury reparation through the tort remedy.

Recommendation 5. Mandatory Arbitration

(5.0) With respect to actions in tort for damages, the Commission recommends that a mandatory settlement conference and arbitration program be instituted for automobile accident cases following the recommendations contained in the Report of the Joint New Jersey Supreme Court and the New Jersey State Bar Association Committees on Expedition of the Civil Calendars (March, 1971). In brief--

> "All matters certified to have an approximate value of $5,000 or less shall be listed for arbitration with one of the arbitration panels sitting in the county of venue. The arbitrators shall conduct a hearing and make an award. The award may, in fact, be in excess of $5,000 or may state that there is no reasonable basis for a claim. A dissatisfied party may appeal in accordance with the provisions made herein and have this matter decided de novo by a jury trial."

Purpose: The PIPC (no-fault) benefits described in section 2.2 above are provided on a first-party basis. However, for recovery of loss over and beyond the benefits provided by PIPC, victims can still pursue a remedy in tort. The arbitration provision will reduce the delays and expenses frequently attendant on such third-party actions and also minimize the burden on the courts. The right of jury trial is preserved for appeals from the arbitration award.

Recommendations 6. & 7. Modification of the Unsatisfied Claim and Judgment Fund

(6.0) The Commission recommends that the benefit program currently administered by the Fund be expanded:

(6.10) To provide first-party benefits in accordance with section 2.0 above; and also,

(6.11) To reflect the increase in minimum liability limits of $15,000/$30,000 for bodily injury.

(7.0) The Commission further recommends that, in view of section 2.0 above (compulsory liability insurance), the Fund be financed primarily by assessment on insurers.

Purpose: The Commission believes that a compulsory insurance statute will go far toward closing the present New Jersey "uninsured gap." However, the history of compulsory insurance in other states indicates that this gap can never be completely closed. In addition, hit-and-run drivers, drivers of stolen cars, uninsured motorists from out of State, and other causes, will continue to expose New Jersey citizens to uninsured loss. The continued existence of the Fund seems warranted.

As under section 2.0 all private passenger car owners would be required to purchase insurance as a condition of registration, the present option to choose between insurance and contribution to the Fund would of course be rescinded. Therefore, the Fund would have to rely primarily on insurer assessments for financing.

Recommendation 8. Revised Uninsured Motorist Coverage

(8.0) Uninsured motorist coverage in increased limits of $15,000/$30,000 for bodily injury and $5,000 for property damage shall be made mandatory on all compulsory automobile liability insurance policies (section 2.0) in addition to the PIPC (no-fault) benefits provision (section 1.0). This coverage is to contain an insolvent insurer clause.

Purpose: A compulsory PIPC (no-fault) and liability insurance program together with an expanded Unsatisfied Claim and Judgment Fund should assure all New Jersey citizens of comprehensive injury reparation for accidents occurring in New Jersey. For accidents occurring outside the State, New Jersey motorists--so far as recoveries based on

tort law are concerned--will continue to need uninsured motorist coverage for protection against loss caused by financially irresponsible drivers and those whose insurers are insolvent.

Recommendation 9. Excess Loss Coverage

(9.0) Without being specific as to amounts, the Commission recommends that under section 2.0 (compulsory liability insurance), and as a supplement to section 1.0 (mandatory personal injury protection coverage), insurers shall make available to the named insured and members of his household, at the latters' option of rejection, suitable additonal (excess) first-party benefits for loss of income including, in the event of death, a dependent survivor's benefit.

Purpose: The recommended mandatory PIPC benefits (section 1.0) provide all injured persons, without regard to fault, a floor of security. For those motorists who desire a greater degree of first-party insurance protection and are willing to pay an additional premium charge, excess loss coverage should be made available.

Recommendation 10. Notice of Insurance Termination and Conditional Return Premiums

(10.0) Insurers shall give 60 days advance notice to the insured and also to the New Jersey Division of Motor Vehicles of intent to cancel or non-renew the compulsory liability insurance in section 2.0 above.

(10.1) Where insurance is terminated at the insured's request, or for non-payment of premium, the refund of any unearned premiums due the insured shall be made conditional upon the surrender to the Division of Motor Vehicles of the registration and plates for the vehicle on which the mandatory insurance was terminated. Any refunds invalidated by a breach of this condition shall be turned over to the New Jersey Unsatisfied Claim and Judgment Fund.

Purpose: To enforce the compulsory insurance provision of section 2.0, it is of course necessary to give adequate advance notice of insurance termination to the Division of Motor Vehicles. Making premium refunds conditional upon the surrender of license plates

should help deter insurance lapses following registration and the issuance of plates.

Recommendation 11. Penalties for False and Fraudulent Representation Regarding Insurance or Claims

(11.0) The Commission recommends stringent penalties in the form of license revocations, fines and/or imprisonment for false and fraudulent representation concerning either compliance with the mandatory insurance requirement (proof of security under section 1.0) or the collection of benefits under any coverage provided by the reparation program.

Purpose: To minimize the administrative costs of enforcing a compulsory insurance statute, it is necessary to curb abuses in connection with the submission of proof of security. Similarly, to minimize the cost of insurance for motorists, fraud in connection with the filing of spurious and exaggerated claims for injury benefits must be contained. Stringent penalties are recommended as a deterrent to false and fraudulent representation in both cases.

Recommendation 12. Advance Payment of Property Damage Claims

(12.0) In cases where the liability of one motorist toward another is clear but the amount of injury damages is in dispute, the insurer of the person claimed against in tort shall be privileged to adjust the claimant's property damage loss separately from the bodily injury loss. This adjustment is to be made without prejudice to the insurer.

Purpose: To expedite the settlement of automobile damage claims without the necessity of awaiting an adjudication of the amount of injury damages. This provision would mitigate an important cause of dissatisfaction with the tort liability system by providing for the early repair or replacement of the claimant's automobile. It is similar to the advance payment plan currently in use in New Jersey in connection with the adjustment of injury losses.

Recommendation 13. Anti-Damageability Standards for Automobiles Sold in New Jersey

(13.0) The Commission endorses Senate No. 2090 (Senators Italiano, et al.) which provides in part that:

> "Every private passenger automobile manufactured on and after January 1, 1973, sold and licensed in the State of New Jersey, shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system and that, without compromising existing standards of passenger safety, it can be driven, both front and rear, directly into a standard Society of Automotive Engineers (SAE J-850) test barrier at a speed of 5 miles per hour without sustaining any damage to the automobile."

Purpose: Property damage is the fastest rising component in automobile insurance costs and makes the largest contribution to the average motorist's insurance bill. Any attempt to stabilize the overall cost of insurance must include measures to reduce the susceptability of automobiles to substantial damage at low-speed impacts.

Recommendation 14. Rehabilitative Efforts Toward Drunken Drivers

(14.0) The Commission recommends to the attention and study of municipal magistrates, police officials, educators, and also to the State Division of Motor Vehicles, the rehabilitative program sponsored by the American Automobile Association based on the successful DWI (driving while intoxicated) Phoenix Program. In addition to punitive measures, this program provides for compulsory court-controlled attendance of DWI drivers at a certified university seminar especially designed to present the rehabilitative curriculum successfully utilized for over six years in Phoenix, Arizona, and known as DWI Phoenix.

Purpose: The fact is now well documented by DOT and other authoritative agencies that the drunken driver is the principal cause of highway deaths and serious injuries. In the interests of public safety and also to achieve real and substantial cost savings in New Jersey's reparation system, it is essential that the DWI problem be brought under better control.

To this end, experience shows that punitive measures must be supplemented by a greater effort at educational rehabilitation. The DWI Phoenix program as described in Stewart and Malfetti, Rehabilitation of the Drunken Driver (New York: Teachers College Press, 1970), presents the New Jersey traffic safety establishment with a viable, ready-made and tested program available for early adoption. The Commission urges the utilization of this rehabilitative effort wherever feasible as an essential part of its cost-reduction recommendations under JR 4.

Recommendation 15. Loss Prevention in General

(15.0) The Commission recommends to the consideration of the appropriate legislative committees the highway safety programs drafted by the New Jersey Citizens Highway Committee (Highway Safety in New Jersey 1971) and the Pennsylvania Action Committee for Highway Safety (Proposals for Saving Life and Property and Reducing the Costs of Automobile Insurance: Reports Nos. 1, 2 and 3, 1970-1971), which programs are designed to supplement as well as implement at the state level the prevention effort of the National Highway Safety Department under Federal legislation.

Purpose: Accident prevention measures reduce the need for and the cost of reparation. Where such measures can be supplied for an expenditure which is less than the resulting savings to the reparation system, economic as well as humanitarian objectives are served by their optimum utilization. In Highway Safety in New Jersey, preventive measures are described with specific reference to this State's highway safety weaknesses. Other remedial measures which might profitably be employed in New Jersey are catalogued in the Proposals of the Pennsylvania Action Committee for Highway Safety.

Recommendation 16. State Funding

(16.0) The Commission recommends the introduction of legislation to create a special commission to study the feasibility of state funding for New Jersey's automobile accident reparation system.

Purpose: Due to the cost and unavailability of automobile insurance coverage in our State from the private insurers in recent years, a serious problem had gradually arisen for untold thousands of New Jersey motorists. Recognizing this problem the Commission, after careful deliberation, believes that the problem has been alleviated and states its desire that economic protection at reasonable cost be afforded to every motorist should he be involved in an accident.

Therefore, the Commission recommends that a special study commission be created and funded by the New Jersey Legislature for the purpose of studying the feasibility of the establishment and implementation of a state operated automobile insurance plan. This study could determine whether such a plan could effectively and at reasonable cost be the vehicle to provide compensation through insurance for the accident victim and protection for the New Jersey motorists.

Conclusion

The foregoing recommendations speak to the major issues mandated to the Commission's attention and in JR 4. They provide the basis for a legislative reform program designed in the in-

terests of all New Jersey citizens with respect to the financial consequences of automobile accidents and the means of providing prompt, equitible, and efficient relief for them.

The research and analyses which led the Commission to its recommendations will be described in the following chapters.

I

INTRODUCTION

The investigations undertaken by this and other state Commissions appointed to study automobile insurance reform stand in lineal descent from the Hearings On The Insurance Industry initiated in 1958 by the U. S. Senate Subcommittee on Antitrust and Monopoly.

Beginning with aviation insurance, these Hearings progressed through marine insurance, fire insurance, foreign insurers, surplus lines insurance, and other divisions of the industry, arriving finally in 1965 at a study of High-Risk Automobile Insurance with emphasis on the insurer insolvencies associated with that market.

The publicity attending the automobile insurance study was greatly augmented by the publication at about the same time of Ralph Nader's book Unsafe at Any Speed, and Keeton-O'Connell's Basic Protection for the Traffic Victim, precursor of the modern no-fault automobile insurance movement.

The three issues raised by these studies, namely, (1) the availability and cost of adequate insurance protection for hard-to-place and other drivers, (2) the "unsafe" features and damageability of automobiles, and (3) the reform potential of no-fault insurance, became then and have remained since the three major foci of recommendations for legislative programs aimed at overcoming performance weaknesses in the automobile insurance market. They led in 1968, to the well-known DOT Study and also to continued Congressional Hearings on Automobile Liability Insurance.

By initiating the present study of this New Jersey Commission, Governor William T. Cahill manifested the continuing interest in reform which prompted him in 1967, as Congressman from the Sixth Congressional District of New Jersey, to urge Emanuel Celler, Chairman of the House Committee on the Judiciary, to have its Anti-trust Subcommittee examine the automobile insurance market in depth. And in the continuing Senate Hearings on that subject, Governor Cahill (then Congressman) appeared as an important witness in July of 1968 to describe his deep concern over "the grave situation now confronting my own State of New Jersey."[1]

Because this "situation" served as a point of departure for the Commission's study and remained throughout a well-spring of its inquiries, it is relevant to quote in part from Congressman Cahill's testimony.

> "In February of this year (1968), the Commissioner of Banking and Insurance, Charles Howell, in a landmark determination denied applications for a 20.6 percent rate increase filed by the National Bureau of Casualty Underwriters and National Automobile Underwriters Association. This denial came after an unexpected and unprecedented full public hearing where the public's interest was represented by counsel. The national significance of the decision, however, is based on the factors taken into account by the Commissioner in determining that insurance companies

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[1] Automobile Liability Insurance Hearings, Senate Subcommittee on Anti-trust and Monopoly, 90th Congress, July 22, 1968, pp. 8350-8370. The Subcommittee Chairman, Senator Philip A. Hart, introduced Congressman Cahill as follows: "We will have the opportunity this morning to hear from the Member of Congress who is one of no more than two or three who have voiced continuing and responsible concern about this whole problem over a long period of time and as much as any man in the Congress is responsible for the now acknowledged necessity that we try to build some greater understanding and sense into the whole subject."

were making a 'reasonable profit' at present rates; first, investment income on unearned premium and loss reserves was required to be included in determining profits and secondly, the profits on 'excess limits' coverage beyond New Jersey's basic coverage limits of $10,000--$20,000 were required to be included.

On the basis of data submitted by the Public Defender with respect to these factors, Commissioner Howell found that the companies were entitled to only a slight increase, not the requested 20.6 percent."

Congressman Cahill then described the industry reaction to this denial in terms of (1) cancellations, (2) nonrenewals, (3) agency terminations, (4) assignment of risks (5) increased use of 214 (consent to rate) filings, and (6) restrictive underwriting practices.

To quote again from Congressman Cahill's testimony:

"It is estimated that since Howell's denial of the auto rate increase, over 50,000 cancellation notices have been sent to motorists, business people, and homeowners. This figure is based on almost 2,500 complaints which have come into the Department of Insurance since the rate decision, and Department officials estimate that they receive only 5 percent of the total complaints."

In brief, the leading problems in the New Jersey market in 1968 centered on the cost and availability of insurance.

Early in 1970, the availability problem was mitigated somewhat by a rate increase following an availability crisis in which a leading insurer announced its intention to non-renew New Jersey automobile insurance policies effective February 1970. However, despite this rate increase, which it had been hoped would restore the market to its normal levels, it was necessary in June of 1970, for Insurance Commissioner Robert L. Clifford to declare a 90-day moratorium on terminations. The Commissioner cited the imminent peril of an unpreced-

ented restriction in the New Jersey market.

It was in the context of this long and disturbing record of constricted availability that the Commission began its studies and, despite subsequent market developments, it did not lose sight of the importance to New Jersey motorists of an adequate supply of insurance coverage.

However, as the results of automobile insurance underwriting matured in the winter of 1971, it became apparent to the Commission that for reasons which could only be surmised, the bleak picture of soaring costs and unprofitable underwriting was undergoing improvement. Bodily injury liability claim frequency throughout the United States and also in Canada was falling off perceptibly with consequent greater adequacy in the existing rate level for that coverage. Some observers attributed this improvement to the safer cars mandated by the National Highway Safety program, to a self-insurance of smaller claims which motorists, fearing loss of availability, were apparently imposing upon themselves, and also to adverse economic conditions.

Whatever the reasons, in April of 1971, the New Jersey Insurance Department was able to authorize for the first time in many years a decrease in the average rates for bodily injury coverage, a modest reduction to be sure but nevertheless a reduction. Furthermore, a reversal in injury cost trends augured well for a greater willingness on the part of insurers to make coverage more readily available.

In consequence, it began to appear as though dynamic change within the automobile insurance market itself might achieve without legisla-

tion part of the improvement which had been the object of the Commission's deliberations.

On the other hand, experience with the New Jersey property damage coverages, the cost of which makes up two thirds of the average motorist's insurance bill, continued to worsen. But whereas a no-fault plan might reduce the costs of injury liability insurance through diminished litigation leading to a decrease in legal fees and recovery for general damages, the containment of property damage costs appeared to depend almost entirely on mandatory damageability standards, control of repair costs, and the use of deductibles. Therefore, reform through no-fault insurance began to assume more significance for the Commission as a means of expanding injury reparation and less significance as an overall cost-reducing device.

The Commission believes that this brief background history is important to an understanding of its conclusions and recommendations. As to its methodology, the Commission would point out that by 1971, the debate over no-fault insurance was entering its sixth year. 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 defined. Therefore, while not neglecting the taking of testimony, the Commission found wisdom in orienting its decisions toward objective analysis based on quantitative considerations to a greater degree than is apparent in the reports of study commissions in other states.

II

METHODS AND OBJECTIVES

The Commission drew its objectives from JR 4, a law resulting from concern on the part of the "Executive and Legislative Branches of Government" with three broad issues. In the order of presentation in JR 4, these issues are:

(1) The methods of compensating "those suffering injury or damage by reason of automobile accidents."[1]

(2) The cost of automobile insurance which "has undergone a substantial increase."

(3) The "respective underwriting practices on the part of certain companies" and the fact that for "many persons" insurers "will not provide automobile insurance at a cost within their means and in some cases will not provide insurance at all."

For brevity and convenience, the Commission identified each of these issues with a single descriptive term. In the same order as given in JR 4, these are: (1) Reparation; (2) Cost; and (3) Availability.

To minimize the problems associated with each of these issues became the principal objectives of the Commission.

In addition, JR 4 specifically charged the Commission with "a review of possible improvements within the present system, such as comparative negligence and arbitration."

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[1]The quoted material on this page is abstracted from JR 4.

This became the Commission's Judicial objective.

Thus, the duties and responsibilities of the Commission were readily identified in terms of recommendations leading to:

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

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

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

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

The Commission realized, of course, that the attainment of one objective might require a sacrifice in the attainment of one or more other objectives. For example, a liberal benefits program for all injury victims might increase cost. On the contrary, a reduction in cost might necessarily entail a reduction in benefits.

The ultimate purpose of the Commission, therefore, became the search for some overall solution which would tend toward the simultaneous attainment of all four objectives while at the same time maintaining a reasonable balance among them where compromise and adjustment had to be made.

It was in the hope of discovering this overall solution that the Commission held hearings,[2] attended conferences, solicited expert testimony, sought advice from government agencies, collected data, studied legislative programs in other states, and researched the voluminous literature of reparation reform including the massive DOT study.

However, this method of seeking a solution revealed such a diversity of expert opinion that the Commission was uncertain as to where the preponderance of the evidence lay. For example, the Commission was assured by some that the AIA total no-fault plan would optimize the attainment of all four of the Commission's objectives; and then equally assured by others that it would not do so but that some other plan would do so.

This conflict of testimony led the Commission to design a simple framework of analysis by means of which it could test the credibility of the evidence and decide for itself how best to attain its objectives.

Analytical Framework for Testing the Evidence

By means of a flow chart, the Commission visualized a chain or sequence of connected events which began with automobiles and the accidents they cause at one end of the sequence,

2. The Commission's Hearings were published separately in four volumes in March and April, 1971.

and terminated with the billing of premium costs to insured motorists at the other end. The sequence of events in this chain of causation would constitute an axiomatic statement with which everyone could agree. That is, each event could be recognized as the inevitable result of those which preceded it and the inevitable cause of those which followed it.

The Sequence of Events.

Automobiles produce accidents; accidents cause injuries; injuries involve losses; losses result in claims; claims translate into premiums; premiums become costs to motorists.

The linkage between any two of the foregoing events may be referred to as a "conversion point"--the place where the preceding event "converts" to the succeeding event as for example where losses "convert" to claims.

In generating benefits for victims, the automobile insurance system encompasses at all points this seven-stage sequence of causally-related events. And, as indicated in the accompanying flow chart (Figure 1), the direction of flow is always from left to right.[3]

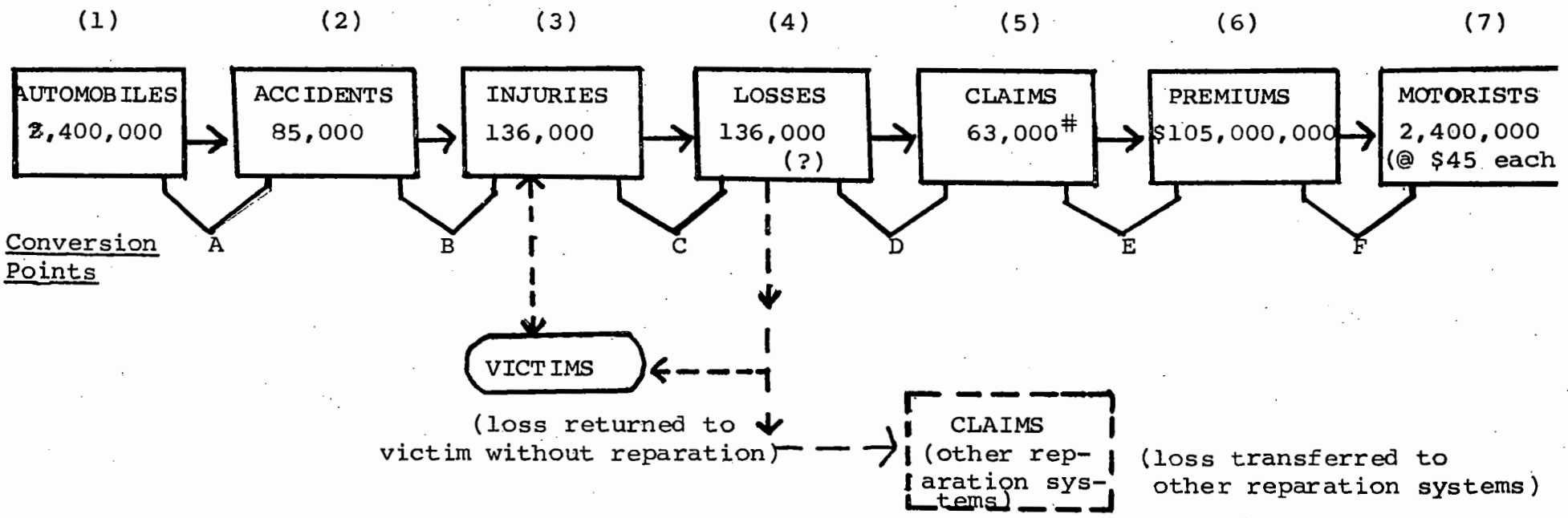
Where Problems Arise.

Serious systemic problems arise whenever the left-to-right flow is for any reason impeded in the sequence of events lying to the right of event #4, Losses; that is, at conversion points D, E, or F, in the flow chart shown in Figure 1.

3. There is of course a return flow, from right to left--of premiums to victim benefits--but for purposes of analysis a depiction of the full circuit flow is not necessary.

Figure 1. FLOW DIAGRAM

Illustrating the Seven-Stage Sequence of Events in a Reparation System*



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* The data included with each event represent the approximate dimensions of the New Jersey "flow" for bodily injury liability losses in the 1968-1969 period as estimated from statistics supplied by the New Jersey Division of Motor Vehicles and the New Jersey State Insurance Department.

\# The Commission has no way of determining how many of the 136,000 injuries reported by the DMV are serious enough to constitute claimable losses. It might be far less than 136,000. Further, the 63,000 claims refer to B.I. Liability only. In addition, there were 38,000 claims for Medical Payments.

Blockage at any of these three points disrupts the system's functioning. Several examples will serve to illustrate this fact.

First, blockage at F--the conversion between Premiums and Motorists--resulting from a resistance of motorists to the acceptance of premium charges--leads to system malfunctioning manifested by an increase in uninsured motorists, repressive rate regulation, a constricted supply of insurance, niggardly claim settlements, and an increase in unindemnified losses.

Second, a blockage at E--the conversion between Claims and Premiums--resulting from rate level inadequacy, which is to say a failure of premiums to keep pace with claims, prevents claims from flowing freely into premiums and leads to constricted supply, curtailed benefits, and unindemnified loss.

Third, a blockage at D--that is, at the conversion between Losses and Claims--causes an increase in uninsured loss and a decrease in benefits for victims.

Losses Are the Center of The System.

Obviously, Losses are at the center of the system and are central to its functioning. Where Losses are kept within reasonable limits either by inhibiting the use of automobiles, or the accidents caused by automobiles, or the injuries resulting from accidents, or the losses resulting from injuries--in other

words, by better controls over the conversions at points A, B, and C in Figure 1--the demands placed upon Claims, Premiums, and Motorists will be manageable and the system will function with reasonable satisfaction.

Where Losses become unmanageable--that is, where the flow of Accidents to Injuries to Losses significantly exceeds the capacity of Claims, Premiums, and Motorists to accommodate them--the system breaks down and is characterized by poor performance both in injury reparation on the one hand and in cost and availability on the other.

Loss Data Estimates for New Jersey.

The Commission found that it helped its analysis to supply the flow chart shown in Figure 1 with the approximate magnitudes of each of the seven events in the New Jersey bodily injury liability reparation system.

(1) Automobiles. According to Highway Statistics, a publication of the Bureau of Public Roads, there are about 3,000,000 registered private passenger automobiles in New Jersey. However, this includes publicly-owned cars, taxis, garage and dealership cars, and fleets of cars operated by businesses, as well as the family automobiles in which the Commission was primarily interested. From statistics supplied by the New Jersey State Department of

Insurance, it was estimated that of the total of 3,000,000 cars, about 2,400,000 were insured family automobiles. And this is the number supplied in Figure 1 under event #1, Automobiles.

(2) Accidents. The New Jersey Division of Motor Vehicles supplied statistics from which it was estimated that about 85,000 injury accidents resulted from the operation of the automobiles shown in event #1. If we assumed that, on the average, it took two cars to make an injury accident, we could conclude that about 170,000 cars were accident involved. However, about 30 per cent of all injury accidents involve only one car. Therefore, the total number of accident cars was about 140,000, or about one injury accident for every 17 cars.

(3) Injuries. The Division of Motor Vehicles also provided data for the estimate that the 85,000 accidents (event #2) caused about 136,000 injuries (victims) including fatal injuries. This is a ratio of about 1.6 injuries per accident.

(4) Losses. It was not possible to obtain any data on the losses resulting from the 136,000 injuries shown in event #3. However, the Division of Motor Vehicles classifies injuries according to their degrees of apparent seriousness and this gives some indication of the extent of the losses involved.

NEW JERSEY HIGHWAY TRAFFIC INJURIES--1970

(New Jersey Division of Motor Vehicles)

Classification: Type	Injuries: % of Total	Injuries: Number
(a) Fatal & Serious Injuries ("Visible signs of injury, as bleeding wound or distorted member; or had to be carried from scene.")	30%	40,800
(b) Moderate Injuries ("Other visible injury as bruises, abrasions, swelling, limping, etc.")	24%	32,600
(c) Slight Injury ("No visible injury but complaint of pain or momentary unconsciousness.")	46%	62,600
	100%	136,000

This classification is based on visual inspection made and statements taken at the accident scene and is therefore subject to considerable error so far as the actual resulting losses for medical expense and disability are concerned. For example, a "momentary unconsciousness" might eventually result in a larger loss than a "bleeding wound."

While the flow from (3) Injuries to (4) Losses cannot really be estimated with any degree of accuracy, the conceptual connection between the two (at conversion point C in Figure 1) had very important implications for the Commission's study.

"Soft-tissue" injuries which are not immediately apparent at the time of accident may in the long run have a very serious loss impact on the victim. A reparation system which places a major emphasis on the prompt indeminity of out-of-pocket expenses--those connected with the "bleeding wound" and "distorted member" type of injury--may not be adequate to deal with the latent but frequently more serious losses caused by the "hidden" injury.

In other words, one of the most important considerations facing those charged with the responsibility for reparation system reform involves the definition of Losses. A system like no-fault which trades off the long-run compensation of total loss for the short-run payment of out-of-pocket expenses may not be in the best interests of the victim population, however appealing it may be to motorists seeking immediate reduction in costs.

If each of the injuries in event #3 is considered to have caused a loss of some kind, either an out-of-pocket expense or a latent or intangible loss, then the total losses would also be 136,000 in number. It was not possible for the Commission to place an aggregate dollar amount on the value of these losses.

(5) Claims. Statistics supplied by the New Jersey State Insurance Department record a total of about 63,000 claims for injury losses. These are payable claims, those on which the insurers have already paid or are expected to pay benefits. There are, in addition, 38,000 losses payable under the Medical Payments Coverage, a first party coverage for automobile accidents purchased by approximately 85% of those who have bodily injury liability coverage.

As indicated in Figure 1, Liability Claims are considerably fewer than Losses in number--63,000 as against 136,000. In a tort reparation system

this excess of losses over claims is to be expected and is one of the most important actuarial considerations in the costing of a no-fault plan.

According to statistics published by the Division of Motor Vehicles, injuries may be divided into three classes based on causation or type of accident.

	Type of Accident	Injuries % of Total	Injuries Number
(a)	Pedestrian	7%	9,500
(b)	Single Car	15%	20,500
(c)	Collision with Other Car(s)	78%	106,000
		100%	136,000

With respect to single-car accidents, injured drivers, by far the largest category of injury victims overall, would obviously not be eligible for benefits under tort. That is, their losses, as indicated diagrammatically in Figure 1, would not flow into payable claims, event #5, but would be rejected at conversion point D--that between Losses and Claims--and diverted either back to the victim himself (loss assumption) or forward to some other reparation system to which the victim had access (loss transfer).

A similar rejection would occur in connection with the obviously negligent driver victims in the accident type classified as "Collision with Other Cars." (This would include the drivers of stolen cars whether they were negligent or not.)

Finally, it is most unlikely that pedestrian and passenger victims would in every case be eligible for tort benefits.

Therefore, we should expect the number of payable third-party injury claims under tort law to be considerably lower than the number of losses, and, as indicated in Figure 1--63,000 against 136,000--this proves to be the case.

This inequality between Claims and Losses can be expressed by saying that the number of payable claims per 100 insured cars is considerably lower than the number of actual losses per 100 cars. That is, the claim frequency is considerably lower than the loss frequency.

The importance of this inequality can scarcely be overemphasized for those contemplating reform in the tort liability reparation system. A fundamental principle of no-fault systems is that claim frequency should be equated with loss frequency, a proposition which is diametrically opposed to the fundamental tort principle of no liability without fault.

Therefore, looking solely at the bodily injury liability system as depicted in Figure 1, a conversion to no-fault would necessarily imply an increase in claim frequency. It is not suggested by the Commission that the number of injuries and losses shown in Figure 1 as 136,000 is other than a crude estimate based on perhaps superficial observation at the time of accident. It may be overstated in the light of subsequent more factual information. On the other hand, it may be understated.

But if we took the data in Figure 1 at face value, the number of Losses flowing into Claims at conversion point D would obviously have to be doubled if a no-fault reparation principle were applied. And other things being equal, a doubling of claims would cause a doubling of premiums and hence of costs to motorists.

As to the monetary value of the 63,000 paid and payable claims shown in event #5, the Commission does have fairly accurate data. According to Insurance Department statistics, each claim on average costs insurers about $1,670. Thus the total cost of claims would be about $105,000,000.

(6) Premiums. Continuing our analysis of the New Jersey system's flow, we note from Figure 1 that the $105,000,000 cost of claims is passed along in the form of premium billings to insured motorists. Technically, these are billings for what are called pure premiums or that part of the gross premiums which is utilized to pay benefits and adjust claims as distinct from the "loading" for the insurers' selling and administrative expenses.

Thus, bodily injuries convert to monetary losses which become claims on insurers who serve as fiscal agents for the system first, by passing claim costs forward to motorists in the form of premium billings, and second, by passing premium payments from motorists back to injury victims in the form of cash benefits.

(7) Motorists. The seven-stage sequence of events in a reparation system's flow chart begins as in Figure 1 with Automobiles on the left and ends with Motorists on the right. "Motorist" refers to the insured owner of a private passenger family automobile. The fact that a single family may own three cars all of which are insured on the same policy does not invalidate this definition. If there are three cars in one family, it is probably because there are three drivers in that family all of whom may be on the road at the same time. And they are all insured motorists under the family's policy. Thus, there are as many insured "motorists" as there are insured cars and, as already noted, their number is estimated to be 2,400,000. (There may, of course, be many fewer than 2,400,000 premium-paying policyholders.)

In practice, different motorists pay different prices depending on personal and territorial risk differentials. But New Jersey's "rate level" is based on an average pure premium which is derived by dividing the total claim cost by the number of motorists--or $105,000,000 by 2,400,000--and therefore the average pure premium billing to individual motorists is about $45.[4]

The New Jersey bodily injury liability insurance system depicted in Figure 1 looks only to the payment by insured motorists of the claims

[4]In the motorist's actual gross billing, the insurer's average loading of $26 is added to the average pure premium of $45. That is, the motorist is billed for $71.

resulting from the use of insured cars. It is estimated conservatively that about 10 per cent of the total number of family cars registered in New Jersey are uninsured. The losses attributable to the use of these uninsured cars do not flow forward into claims--event #5 in Figure 1--but are diverted at conversion point D (as indicated in the flow chart) down and (a) back to the victims themselves or (b) forward to other insurance coverages.

It would of course be desirable to have all cars insured so that all motorists would contribute to the losses they cause and all injury victims would be entitled to claims consideration in the automobile reparation system. However, statutory compulsion to insure is a separate and distinct issue and does not necessarily identify directly with a particular type of reparation system whether it be no-fault or tort liability.

Testing the Evidence.

Having supplied the approximate magnitudes of the seven events in New Jersey's reparation flow chart, the Commission utilized the chart throughout its analysis to search out the probable results of diverse reform recommendations. Several illustrations of this methodology are shown below.

A. Can No-Fault Expand Reparation? No-fault insurance plans are offered as a means of expanding and improving reparation. Is it reasonable to expect that they can do so?

Figure 1 shows that of 136,000 Losses (event #4), only 63,000

became payable claims in New Jersey's tort liability reparation system (event #5). This is primarily because at conversion point D many losses are rejected for failure on the victim's part to prove third-party liability as required by tort law. Therefore, if all losses are to flow into payable claims, tort would obviously have to be replaced or supplemented by a first party coverage which is broader than the Medical Payments Coverage now purchased, as an additional insurance protection by 85% of the insureds.

B. Can No-Fault Reduce Costs? No-fault plans are also offered as a means of reducing costs (premiums) to motorists. Is this a reasonable expectation?

Figure 1 clearly reveals that if costs to motorists are to be reduced, there must be a reduction in the $105,000,000 of premium billings to insured motorists. But this in turn can only be achieved by reducing the aggregate claims cost of a similar amount which flows into premium billings. And this item is the cost of accepting 63,000 losses into claims.

Is it reasonable to assume then that: (a) claims can be expanded to accommodate 136,000 losses, and (b) the total cost of claims can at the same time be reduced? This would appear to be totally unreasonable. The only way to increase the number of losses flowing into claims--while at the same time decreasing the total cost of claims--is to divert a substantial part of each loss (on average) down and out of the flow and either (a) back to the victim as a loss assumption, or (b) forward to some other system as a loss transfer. Figure 1 charts these two alternatives.

(1) Loss Assumption. To the extent that losses are returned for assumption by the victims themselves, a question necessarily arises as to the success of the system in achieving the reparation objective.

(2) Loss Transfer. To the extent that losses are transfered to other reparation systems, either the costs of the transfer systems are increased--which is an instance of "robbing Peter to pay Paul"--or the insured victims who have paid premiums to both no-fault and to such other systems are denied the benefits actuarially equivalent to the premiums paid.

If losses are to be transferred entirely outside the automobile reparation system, either in whole or in part, the principle of social accounting for losses will be subverted; that is, motorists will not be charged with the full costs automobile usage entails.

C. Can No-Fault Plans Increase Market Availability? In Figure 1, a claim cost of $105,000,000 flows into premium billings of the same amount. So far as claim costs are concerned, the insurers are therefore assumed to be breaking even on the transaction as given and there should be reasonably good market availability under the circumstances.

A restricted availability would inevitably result if the total claim cost were to rise to say $110,000,000 (by about five per cent) and no adjustment were allowed by the regulatory authorities in the premium billings of $105,000,000. That is, rates would then be inadequate.

On the other hand, if the total claim cost were to fall to say $100,000,000 (also by about five per cent), no immediate change in premium billings being made, insurers naturally would try to maximize profits by opening the market.

The answer to this question would therefore depend in the short run on whether no-fault increased or decreased total claim costs at the existing rate level. This question in turn revolves on whether the number of claims can be increased from 63,000 to 136,000 while at the same time the average cost of claim can be reduced sufficiently to offset the increase in claims.

That is, can the $105,000,000 which is currently required to process and indemnify 63,000 claims be utilized under no-fault to process and indemnify 136,000 claims and at the same time produce a significant overall savings in the aggregate amount of claims paid? If such can be accomplished, then, a market should be more readily available than is presently the case.[5]

D. Can No-Fault Decrease the Burden on the Courts? Figure 1 does not show it, but at conversion point D, the movement of losses into payable claims depends upon the existence of third-party liability.

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[5]The Commission cannot be sure that the total number of losses which injury victims would consider serious enough to justify the filing of an insurance claim is in fact 136,000. This number is derived from data published by the Division of Motor Vehicles and may not represent even approximately the number of claimable losses. Further, it is not known whether victims who file claims in a tort system would file claims in a no-fault system.

This discussion is presented here merely to demonstrate that the Commission has considered the most extreme loss potential that may result from the adoption of a comprehensive reparation system, without, at this point, taking into consideration the loss reducing potential of other reforms of the system proposed in this Report.

And in many cases, the determination of liability as to fact and law requires recourse to judicial procedures. Under no-fault, all losses--up to the limiting thresholds provided for--would flow automatically into claims past conversion point D. Therefore, a no-fault system would have a definite potential for reducing the burden on the courts.

Restatement of Commission's Objectives.

The framework of analysis provided by the flow chart contained in Figure 1, in addition to supplying the Commission with a touchstone for testing the evidence and the reasonableness of various reform recommendations, also enabled it to restate its objectives.

(1) The Reparation Objective. To maximize the flow of individual losses into payable claims at conversion point D.

(2) The Cost Objective. To minimize the total dollar value of claim costs at event #5, Claims, without resorting unduly to loss assumption and loss transfers.

(3) The Availability Objective. To maintain a reasonable break-even relationship between Claims and Premiums so that insurers will not suffer net operating deficits from the processing of claims.

(4) The Judicial Objective. To minimize the workload placed upon the courts by enabling losses to pass into claims at conversion point D with a minimum of judicial intermediation.

Each of these objectives will be considered in turn in the chapters which follow.

III

THE NEW JERSEY REPARATION ENVIRONMENT

Much of the testimony presented to the Commission by expert witnesses, together with a major part of the documentary material examined by the Commission, pertained to the national automobile insurance market and to reparation systems outside the State of New Jersey. The Commission was concerned, therefore, to interpret and test the evidence it accumulated within the context of conditions actually obtained in New Jersey. To this end, an analysis was made of the New Jersey environment relative to automobile accidents, insurance and reparation.

Analysis of the New Jersey Reparation Environment

Table 1 gives the basic dimensions of the New Jersey automobile insurance market.[1] To give meaning and relevancy to the data presented in that table, the Commission examined them from the standpoint of its reform objectives.

The Reparation Objective. If all injury victims are to be compensated for loss sustained, it is essential that the automobiles which cause those injuries should be insured in one way or another to provide the requisite compensation.

Table 1 indicates that of the approximately 3,000,000 private passenger cars registered in New Jersey in 1969, nearly 10 per cent were uninsured. (And there is no evidence that since 1969, this uninsured proportion has appreciably changed.[2])

1. For private passenger automobiles and bodily injury liability insurance.
2. The data presented in Table 1 are as precisely determined as the Commission could make them. However, in view of the complexities involved in collecting data, it does not pretend that they are other than close approximations.

TABLE I

BASIC DIMENSIONS OF THE NEW JERSEY AUTOMOBILE INSURANCE MARKET

-- 1969 --

(1)	Number of Private Passenger Automobiles		3,000,000
(2)	Number of Insured Automobiles:*		
	Voluntary: Dual Limits Policies**.....	2,321,000	
	Special Policies.....	200,000	
	Assigned Risks.....	169,000 #	
	Consent to Rate (214 Forms).....	17,000	
	Total		2,707,000
(3)	Uninsured Automobiles.....		293,000
(4)	Proportion of Uninsured to Total Automobiles.....		9.8%
(5)	Automobiles "Insured" in U.C.J.F. ##		85,700
(6)	Average Price per Insured Automobile Ø		
	Average Claim Frequency (F).....	2.70 per 100 cars	
	Average Claim Cost (C).....	$1,670 per claim	
	Average Pure Premium (F x C)	$ 45 per car	
	Average "Loading".....	$ 26 per car	
	Average Price (Rate).....		$71
(7)	Number of Claims.....		63,000
(8)	Incurred Losses		$120 Million
(9)	Earned premiums		$167 Million
(10)	Loss Ratio (Incurred Losses/Earned Premiums).....		72%

Source: New Jersey Insurance Department and Unsatisfied Claim & Judgment Fund.
*B.I. Liability Insurance. **Fleet and Non-Fleet. #6.2% of total insured cars.
##According to New Jersey Statutes, motorists who do not insure must pay an uninsured motorists fee of $50 to the UCJF. ØAll data in items (6) through (10) pertain to Voluntary and Assigned Dual Limits Policies.

According to New Jersey law, all uninsured motorists are required to reveal their uninsured status at the time of vehicle registration and pay a mandatory fee of $50 to the New Jersey Unsatisfied Claim and Judgment Fund. Actually, as shown in Table 1, less than 30 per cent of the uninsured motorists (85,700/293,000) made contributions to the Fund. Therefore, approximately 208,000 motorists (car owners), or 7 per cent of all motorists, do not provide reparation for themselves or for others either through insurance or contributions to the Fund.[3]

The impact of this "uninsured gap" on the reparation objective can be estimated from other data furnished in Table 1.

The New Jersey average claim frequency (F) and average claim cost (C) are respectively 2.7 claims per 100 cars and $1,670 per claim. This means that for every 100 insured cars there are approximately 2.7 injury claims payable each year under tort law at an average payment of $1,670 a claim.

There is a possibility that uninsured motorists produce a higher than average claim frequency and claim cost and that the data supplied in Table 1, item (6), generally understate the experience actually developed by them. However, on the basis of 2.7 claims per 100 cars, 208,000 cars would produce 5,616 claims. And at $1,670 per claim, 5,616 claims would represent a victim loss of $9,400,000 which is uninsured so far as

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3. Uninsured motorists are not only financially irresponsible toward their victims but also, by failing to insure, they lose the opportunity to obtain first-party protection for themselves. Further, uninsured motorists as victims of other uninsured motorists are not eligible for recovery from the Fund.

motorist membership in and contribution to the New Jersey overall reparation system is concerned.

This uninsured gap takes on added significance when considered from the viewpoint of no-fault legislation.[4] The reparation purpose of a no-fault program is to assure all victims ready claims eligibility through first-party coverage written on the accident car itself. In New Jersey, with nearly 300,000 uninsured cars -- not counting those in the Fund (which is in effect a satellite third-party reparation system) -- such a program would fail to achieve its purpose by a considerable margin.

The Commission asked itself, therefore, whether a substantial number of New Jersey motorists could rightfully expect to receive no-fault medical and wage-loss benefits for themselves while at the same time refusing to purchase for their own benefit the coverage especially legislated into being for the purpose of providing no-fault protection.

It appeared to the Commission that under a voluntary insurance system, the only source of first-party benefits for those who refused to purchase no-fault insurance for themselves would be New Jersey's Unsatisfied Claim and Judgment Fund appropriately modified for that purpose. In that event, however, the State would face as big a problem getting the 300,000 un-

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4. As indicated earlier in the Summary of Recommendations, the Commission has advocated the adoption of a no-fault benefits program for injury victims in New Jersey.

insured motorists to contribute to the Fund as it would in compelling them to buy insurance in the first place.

If the State failed to enforce contributions to the Fund, then such no-fault benefits as the Fund paid uninsured accident victims would have to be financed by a levy on the premiums paid by insured motorists. But, while there is some logic in forcing insured motorists to help finance a fund from which they themselves may receive damages under tort law, there is neither logic nor justice in levying on the premiums paid by insured motorists in order to provide first-party, no-fault benefits for uninsured motorists. A subsidy of this kind might easily induce motorists to abandon insurance so as to obtain gratuitous first-party benefits from the Fund.

In conclusion, the Commission felt that a law compelling all motorists to insure as a condition of registering their cars should be very seriously considered as a part of its recommendations concerning the reparation objective. No-fault laws in Massachusetts, Florida, Delaware and Puerto Rico, and the proposed laws for Pennsylvania and New York are all compulsory laws.

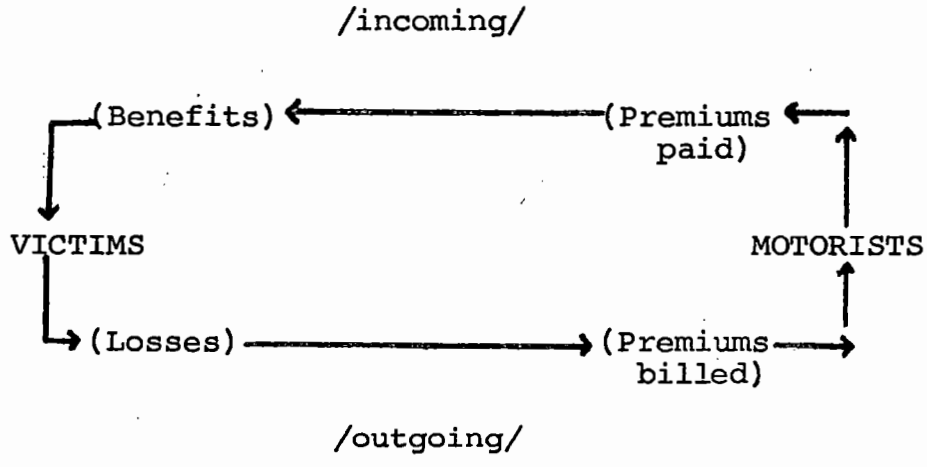
The Cost Objective. National surveys determined that a major criticism of automobile insurance concerns its cost. As the Commission has not been able to assess the degree of dissatisfaction with cost in the New Jersey market, it cannot be certain that cost is in fact a major point of dissatisfaction in all New Jersey price classes and territories.

Nevertheless, an important objective of the Commission has been to minimize cost wherever possible so long as reparation and availability objectives are not thereby impaired.

Looking at Table 1, item (6), the Commission noted that the average cost (price) for bodily injury liability insurance in New Jersey is about $71. It also observed that this cost arises necessarily from the fact that: (a) insured motorists in New Jersey produce on average 2.7 injury claims per 100 cars and (b) the average cost of settling each claim is $1,670.

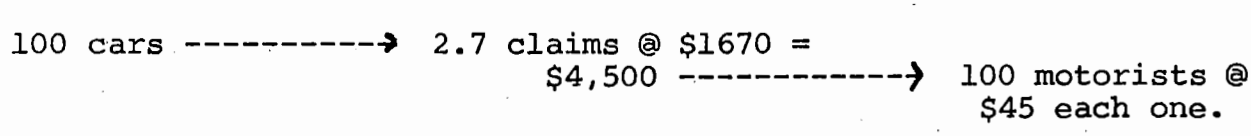
Where liability exists, the losses caused injured parties by insured motorists flow back to those motorists in the form of claim costs which are known to the trade as "pure premiums." (Pure premiums may be likened to the manufacturer's cost of manufacturing prior to the addition of selling and administrative expenses.) The average pure premium per car is the sum the insurers must collect on average from each insured if they are to raise enough premium revenues to pay incurred claims.

Thus one may visualize the reparation system in New Jersey, and elsewhere, as a circuit flow of losses from victims to motorists and a return flow of pure premiums (benefit payments) from motorists to victims.



As the return (incoming) flow from motorists to victims must be in long-run equilibrium with the (outgoing) flow of losses from victims to motorists, we need only consider one of the two equivalents for purposes of cost analysis. The following diagram shows the outgoing flow of losses to premiums.

Diagram of the Underlying New Jersey Cost Determinant



The data in this diagram supply the basic dimensions for the New Jersey circuit flow of losses to premiums to benefits. On average, for every 100 cars, there are 2.7 victims and an outgoing loss of $4,500.[5] This loss is billed in the form of premiums to 100 motorists each of whom pays $45. The payment of $45 by each of 100 motorists provides $4,500 of premium revenues which are incoming to 2.7 victims in the form of benefits.

The prorating of $4,500 of claim costs among 100 motorists obviously produces a billing (pure premium) of $45 each. But once an understanding of the process is gained, it is simpler

5. To avoid fractioning victims, merely increase cars from 100 to 1000 and the frequency becomes 27 victims.

to calculate the pure premium billing per motorist by means of the following formula:

The Basic New Jersey Cost Formula

F	x	C	=	P/P
2.7/100	x	$1,670	=	$45
(Claim Frequency)	times	(Average Claim Cost)	=	(Pure Premium)

This pure premium is basic to the costing of automobile insurance in New Jersey because the insurer's margin or mark-up for selling and administrative expenses--called the "loading"--is computed as a fixed per cent of the pure premium. Thus, as the pure premium rises or falls, so too does the loading and hence the overall price. In New Jersey, the average loading is $26 which together with the pure premium of $45 produces a price of $71. Obviously, the only way by which the New Jersey price can be reduced is by decreasing the claim frequency (F) or the average claim cost (C).[6]

As will be noted in more detail in a later section which examines average automobile insurance prices in all states, the Commission found that New Jersey had to be included among the nation's highest-priced states. It also noted, however, that when average price is compared with average (per capita)

6. Unless, of course, the insurers' percentage mark up for selling and administrative expenses can be reduced. However, this is a problem in marketing efficiency rather than in reparation system design.

income, New Jersey citizens on the average have purchasing power commensurate with price. Specifically, New Jersey average income and New Jersey average price are both about 17 per cent above the national averages for price and income.

Table 2 Ranking of 8 Highest-Priced States--1971

Rank	State	Average Price	Avg. Income	Rank
1	New York	$84	$4,421	3
2	Hawaii	81	3,882	12
3	District Columbia	80	4,849	-
4	Massachusetts	73	4,138	8
5	Minnesota	71	3,608	20
6	Illinois	69	4,310	5
7	Missouri	69	3,459	26
8	New Jersey	67*	4,278	6
	Countrywide	$57	$3,680	-

Source: Insurance Services Office--Bodily Injury Liability (10/20)

*This average differs from the $71 shown in Table 1 because of differences in defining the market. The relative ranking of New Jersey among all the states is not affected by this difference in market definition.

The range of 1971 prices for the 52 legislative jurisdictions (including Puerto Rico and the District of Columbia) runs from $84 (New York) to $24 (Wyoming), New Jersey ranking in eighth place and about 17 per cent higher than the countrywide average of $57.[7]

As most prices include approximately the same average percentage margin for expenses -- the loading -- these inter-

7. See Table 6 in Chapter V.

state differences are caused essentially by differences in pure premiums. That is, the high-priced states have higher claim frequencies and/or claim costs than do the low-priced states.

For example, to reduce the New Jersey price by 20 per cent -- that is, from $67 to $53, which is the average price charged in Pennsylvania (and Pennsylvania is 7 per cent below the national average) -- it would be necessary to reduce the New Jersey average pure premium by 20 per cent.

As New Jersey's average claim cost is only slightly higher than Pennsylvania's, this reduction would have to be achieved by reducing this State's claim frequency by about 20 per cent.[8]

Turned around, the New Jersey price is 25 per cent higher than the Pennsylvania price primarily because motorists in this State develop a claim frequency which is 25-30 per cent higher than that produced by motorists in Pennsylvania. At the same time, it should be noted that the traffic flows in New Jersey are very much heavier than in Pennsylvania -- 94 cars per mile of road as against 46 cars.[9]

On the other hand, the claim frequencies in Florida and New Jersey are approximately the same and yet New Jersey's

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8. New Jersey's frequency in 1970 was 2.73/100 as against 2.06/100 in Pennsylvania.
9. New Jersey is a "corridor state" for a very heavy volume of inter-state vehicular crossings.

average price is appreciably higher than Florida's. This is because New Jersey's average claim cost is about 10 per cent higher than Florida's. At the same time, we note that per capita income in New Jersey is 25 per cent higher than in Florida.

In the light of this analysis, the Commission sought evidence as to whether the price of insurance in New Jersey was essentially governed by socio-economic conditions beyond the scope of the Commission's research responsibility, or whether price was determined by and reducible within the reparation system itself.

The original no-fault (Keeton-O'Connell) plan was conceived as a solution to the Massachusetts statutory bodily injury liability insurance problem. And that problem was a cost problem, Massachusetts having the highest average injury coverage price of any state in the nation. In other words, the high ranking of Massachusetts in the national range of average prices was a very important factor in the evolution of no-fault insurance.

But is the ranking of a particular state, for example New Jersey's, in the national range of average prices really an indicator of weakness in that state's reparation system? May it not be merely a reflection of the state's particular socio-economic conditions, as for example its traffic flows and average income levels? Certainly, the excess of New

Jersey's insurance prices over those in Pennsylvania and Florida cannot be attributable to differences in reparation systems because all three states have been utilizing the same system.

The New Jersey Environment: A Special Note On Population Density.

In addition to differences in traffic flows and average state income levels, the Commission found that population density differences also affected the costs and functioning of the reparation systems from state to state.

The DOT Study entitled Automobile Accident Litigation attributes nearly all the variability from state to state in reparation system burden and performance to differences in population density. For example, it demonstrated a high degree of correlation between population density -- people per square mile -- on the one hand and registered automobiles, reported accidents, injury accidents, number of terminated automobile cases, delay between filing and termination, average gross dollar recovery, and various other dependent variables, on the other.

This study caught the attention of the Commission because New Jersey leads the United States in population density as it does also in an associated characteristic, the degree of urbanization.

The average U.S population density is 51 persons per square mile. In Pennsylvania it is 251; New York, 351; Connecticut, 521; Massachusetts, 658, and New Jersey, 806.

The average U.S. urbanization rate is 70 per cent. In Pennsylvania it is 72; Connecticut, 78; Massachusetts, 84; New York, 85; and New Jersey 89. Half of New Jersey's population lives in about 8 per cent of the State's land area.

Nor does New Jersey lack for motorists. Compared with Massachusetts, long the chief trouble spot in automobile insurance, New Jersey, in a somewhat smaller land area, has 30 per cent more drivers, 40 per cent more registrations, 40 per cent more gasoline consumption, and 50 per cent more highway fatalities.

Further, its population growth rate, which is two and a half times that of the Bay State, can be expected to magnify these differences greatly in the next decade.

All of these demographic aspects of the New Jersey environment are exogenous to the reparation system and cannot be controlled by it. Therefore, the Commission was persuaded of the futility of comparing the level of costs and prices in New Jersey with those of other states. New Jersey costs and prices reflect the New Jersey socio-economic environment and cannot be reduced to the level of those in Pennsylvania, Florida, or Wyoming -- with an average price of $23, Wyoming is the lowest-cost state in the nation --

except by modifications in factors which obviously lie beyond the reach of legislative reform.

The Availability Objective. The Commission recognized that the success of any reparation system depends on the ready availability of the insurance necessary to its implementation.

Table 1 indicates that the great majority of insured motorists in New Jersey, 93 per cent of the total, have availability of supply in the voluntary market. About 6.3 per cent are assigned risks, and 7/10 of 1 per cent are insured under the consent-to-rate rule.

Whether the 293,000 uninsured motorists experienced such difficulty in obtaining availability that they chose to remain uninsured is a question the Commission cannot answer except by conjecture.

As noted above, only 30 per cent of this uninsured group made a payment to the Unsatisfied Claim and Judgment Fund as required by New Jersey law. The Commission infers, therefore, that the remaining 70 per cent, or 207,300 motorists, did not wish to make a payment either for insurance or to the Fund.

It has been observed that many motorists incorrectly imagine the Fund to be a form of "insurance" which is made available by the State for $50 -- that is, for less than half the average New Jersey price ($106) for combined bodily injury and property damage liability insurance. If any

motorists so believing misrepresent the truth about their insurance coverage -- say they have insurance when in fact they do not -- so as to avoid any contribution at all to the New Jersey reparation system, the Commission can only conclude that such motorists are uninsured through choice rather than lack of availability.

That a very serious availability problem confronted New Jersey motorists in 1968-1970 has already been described in the Introduction and will be discussed further in a later section on the availability objective.

However, the basic New Jersey insurance data contained in Table 1 show that 90 per cent of all motorists have actually found insurance availability. Of this number 94 per cent are placed in the voluntary market and 6 per cent in the assigned market. It can reasonably be assumed that an appreciable part of the remaining 10 per cent are uninsured more through choice than through lack of availability.

IV

THE REPARATION OBJECTIVE

As the primary purpose of an automobile insurance system is to provide reparation, the Commission gave priority of attention to this objective. As stated in Chapter II, the reparation objective looks to "The prompt and efficient provision of benefits for all injury victims." In terms of the Commission's framework of analysis (Figure 1), the purpose is "to maximize the flow of individual losses into payable claims at conversion point D." While the cost and availability of insurance are obviously related to the provision of reparation, these subjects are reserved for separate consideration in later chapters. We are concerned here only with the provision of injury benefits.

In drafting recommendations leading to improved reparation, the Commission considered five questions:

(1) What is the reparation situation currently in New Jersey?

(2) Should reparation weaknesses be overcome through automobile insurance or through some other insurance system?

(3) Should the present automobile insurance system be retained, replaced, or supplemented?

(4) What is the potential of no-fault insurance as a corrective of current reparation weaknesses?

(5) Should insurance be required on all New Jersey cars?

The Current New Jersey Reparation Situation

The Commission began by considering this question: If a New Jersey citizen is injured in an automobile accident in this State and fails to receive injury benefits from the indemnity fund created by automobile insurance premiums, what would be the most likely cause of this breakdown in reparation? This was a key question in assessing the current reparation system in New Jersey.

Gaps in the Indemnity Program

The Commission thought first, of course, about lack of insurance covering the injury--the uninsured gap problem. That is, the injured victim received no benefit because he could not identify the existence of any applicable form of automobile insurance from which recovery might be obtained.

For several reasons, the Commission found it difficult to accept this answer as a general conclusion. In the first place, as indicated in earlier chapters, somewhere between 85 and 90 per cent of all New Jersey motorists carry automobile injury liability insurance. Furthermore, about 90 per cent of the policies on insured cars provide medical payments and uninsured motorist coverages. And even where an injured person is the victim of an accident in which none of these forms of insurance

applies--and the odds are very much against this contingency--he still has recourse to the New Jersey Unsatisfied Claim and Judgment Fund.

The New Jersey Unsatisfied Claim and Judgment Fund

In 1970, the Fund received about 18,000 "notices of intention to make claims." And as of March 31, 1971, according to the Fund's manager, Mr. Sal Capozzi, there were 15,050 claims pending for which a reserve of $18,148,020 was being carried--about $1,200 a claim. In 1970, 2,871 claims were settled by a payment of $5,820,000 or about $2,000 each. This may be loosely compared with the 63,000 claims, valued at about $1,670 each, shown earlier in this report (Table 1), for the injury liability coverage.

The availability of the Fund, together with the broad distribution of injury liability, medical payments, and uninsured motorist coverages, led the Commission to believe that if any appreciable number of New Jersey citizens are without recourse to injury benefits from the overall automobile insurance reparation system in this State, it is not attributable to a lack of indemnity programs provided by the system.

Nevertheless, a gap exists which may be of serious dimensions. If an uninsured motorist who has violated the New Jersey law with respect to the mandatory payment of the Fund's $50 fee, should

be injured in an accident with another uninsured motorist, he is not qualified to claim against the Fund. And, with no insurance on either car, he is obviously without any benefit provisions so far as the automobile reparation system is concerned.

According to testimony given to the Commission by Mr. Capozzi, only about two per cent of New Jersey motorists--approximately 63,000--currently pay into the Fund.[1] As the proportion of uninsured New Jersey motorists is estimated to be about 10 per cent (approximately 300,000 motorists), it follows that some 8 per cent of New Jersey motorists--about 240,000 motorists--are not "qualified" to claim on the Fund. (See Table 1.)[2] Therefore, as concerns injuries caused by accidents with other uninsured motorists, these motorists may be without a source of benefits.

The Commission views this primarily as an enforcement problem and one which would arise under any form of reparation system whether tort or no-fault. It would be contrary to public policy to allow those who wilfully violate New Jersey law concerning the mandatory disclosure of insured status and the payment of Fund assessments to be gratuitous beneficiaries under the Fund.

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1. This testimony was given in the summer of 1971. "Motorists" refers primarily to owners of private passenger automobiles.
2. Discrepancies between Tables 1 and 2 are attributable to differences in the reporting years. It will be noted that the number of Fund contributors (Table 3) declined by 33 per cent between 1968-69 and 1969-70 despite an increase in registrations.

Table 3

New Jersey Automobile Registrations

Compared with Contributors to the

Unsatisfied Claim and Judgment Fund

1965 -- 1971

Year*	Total Registrations	Fund Contributors
1965-66	2,980,000	127,742
1966-67	3,123,000	97,218
1967-68	3,200,000	96,904
1968-69	3,334,000	103,398
1969-70**	3,490,000	69,170
1970-71	3,650,000	62,937

Source: NJUCJF, Manager's Annual Report, and Bureau of Public Roads, Highway Statistics.

* The Fund's fiscal year begins on July 1st.
** The Motorist's fee was increased from $25 to $50 in this year.

While it is true that the New Jersey voluntary market for automobile liability insurance has been unusually restricted in recent years, the Commission can find no excuse for a refusal by those who have experienced availability difficulties to pay the $50 fee required by the Fund for the financing of benefits to injured victims of uninsured motorists.

Gaps in the Tort System of Reparation

Even if the uninsured gap could be completely closed so that all New Jersey motorists either purchased insurance or contributed to the UCJF, there would still be many instances in which injury victims would be unable to recover benefits.

With respect to the sources of benefits currently available to injury victims in New Jersey--liability, medical payments, uninsured motorist coverages, and in addition, the UCJF--only one, medical payments coverage, provides benefits without regard to fault (tort liability). Table 4 compares the relative importance of these benefit sources in terms of direct premiums written.

Table 4

Sources of New Jersey Injury Benefits

Compared as to Size -- 1969

Source	Size (Premiums)
Auto Liability (BI)	$232,213,000
Auto Medical Payments	20,000,000 (est.)
Auto UM Coverage	8,000,000 (est.)
NJ UCJF	6,000,000 (est.)
Total	$266,213,000

Source: Annual Report of the New Jersey Commissioner of Insurance and the New Jersey UCJF's Manager's Annual Report.

Note: UM coverage premiums may be included in the Auto Liability premiums. They are not listed separately in the Commissioner's Report. (Only the loss portion of the premiums shown is available for benefits.)

It was immediately apparent to the Commission that the great preponderance of the total New Jersey funding for injury reparation was based upon tort liability. Therefore, if injury victims in New Jersey are to any appreciable extent left without loss recovery it must be attributable to the eligibility requirements inherent in that system.

These requirements have been so extensively and repeatedly analyzed in the literature of reparation reform and so widely publicized in the mass media for public information that it would be redundant for this Commission to reiterate what is already well known. But in brief, an injured person is eligible to to claim benefits under third-party liability insurance only if there is reasonably satisfactory proof that his injury resulted proximately from the negligence of a third party and without appreciable contributory negligence on the part of the injured person himself.

As to the actual dimensions of the unindemnified victim problem associated with New Jersey's tort liability system, the Commission had no really reliable data collections to consult. It puts considerable credence in the estimate of 63,000 payable injury claims in 1969. (See Table 1 and Figure 1 and the discussion provided with them.) However, its estimate of 136,000

injury losses for that same year must be supplied with an appreciable margin for error.

According to the DOT study entitled Automobile Personal Injury Claims, 40 per cent of all injury claims result from rear-end accidents, 27 per cent involve traffic signal violations, 7 per cent result from head-on collisions, and 3 per cent involve one-car accidents. Thus 77 per cent of all injury claims arise from accidents in which negligence on the part of one or more of the involved drivers should be fairly obvious. As the DOT study was based on claims actually paid or reserved, such negligence was in fact demonstrated.

However, in addition to the claims studied, there were undoubtedly many others which either were never filed, or if filed were closed without payment, because of a total absence of liability. Thus, these four types of accidents probably account for something more than 77 per cent of the total victim population. For example, in New Jersey, the Division of Motor Vehicles reports that 15 per cent of the total injury cases resulted from single-car accidents. If, as recorded in the DOT study, only 3 per cent of the total injury claims actually paid are traceable to single-car accidents, then about 12 per cent of the total injury cases--the injured drivers themselves--are from this one cause alone ineligible for a tort recovery. And this is a gap in the tort reparation system which cannot be

closed by legislative modifications in tort law such as the comparative negligence statute, abrogation of special immunities, permission for inter-spousal suits, and so on.

The Commission was convinced therefore that if it was to meet the Reparation Objective as defined at the beginning of this chapter, the tort liability system would have to be supplemented.

Should Reparation Weaknesses Be Overcome Through Non-Automobile Insurance?

The existence of proveable negligence in the context of 77 per cent (or more) of the injury cases indicates the viability of tort as a benefit system for innocent victims. It also indicates the dimensions of the unindemnified gap as concerns negligent parties who are themselves injured.

However, while the latter may not be eligible for a tort recovery, they do have access to other sources of benefits. For example, with respect to wage loss, New Jersey's workmen's compensation statute and temporary disability benefits law provide sources of benefits, the former for occupational and the latter for non-occupational automobile accident involvement. (In 1970, 2,126,000 New Jersey "jobs" were covered by TDB.) In addition, there are a variety of Federal disability security programs,

private group and individual life and health insurance plans, union-negotiated wage continuation plans, and so on.

From information supplied the Commission by the State Department of Insurance, it was estimated that perhaps 24 per cent of the aggregate wage loss resulting from automobile accidents might be recovered from these non-automobile reparation systems.

For several reasons, the Commission did not generally favor reliance on non-automobile (collateral) sources of disability benefits to fill the indemnity gaps in the tort liability system. First, it felt that in accordance with the principle of social accounting, the cost of injury loss resulting from automobile accidents should be part of the "price" paid for automobile usage. That is, the benefits provided by automobile insurance should be primary benefits. Second, not all victims with an income loss are necessarily covered by non-automobile insurance, or covered by it to the same extent; and in accordance with the reparation objective, it was the Commission's intent 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 was the purpose of the Commission, within reasonable limits, to provide income replacement

benefits. Fourth, the Commission wished to avoid the inequities and rate-making difficulties which would result if collateral sources were made primary.

However, to minimize costs and duplication of benefits, the Commission did favor the subtraction of workmen's compensation, temporary disability insurance, and also Medicare benefits, from those otherwise payable under a revised automobile insurance reparation system. The first two programs encompass a very large part of the New Jersey labor force; moreover, workmen's compensation benefits are financed by employer contributions. Medicare provides benefits for persons 65 and over.

The Commission's position with respect to the medical-hospital expenses of injury victims does not differ from that taken toward disability benefits--automobile insurance should be primary. According to calculations made by New Jersey's Blue Cross, that Plan might save five per cent in claims costs "if auto accident claims were excluded"--as of course they could be if automobile insurance benefits were made primary.

Should the Present Automobile Insurance System Be Retained?

If a revised New Jersey automobile reparation system is to provide primary injury loss benefits for all victims of automobile accidents, the question arises as to whether the present tort liability system, which restricts benefit eligibility in accordance with negligence law, would any longer be necessary or desirable.

The Commission contemplated several alternatives. First, the tort system might be retained for the reparation of innocent victims who had viable causes of action in tort against insured and financially responsible tort feasors. For other victims, a supplementary benefit system would be made available. The Commission rejected this alternative because of the delays, uncertainties, and expense attending a decision as to whether a victim in a given instance had a viable cause of action in tort.

A second alternative was to eliminate completely the tort system and replace it with a first-party direct payments system under which all victims would receive mandatory hospital-medical-disability benefits together with options to buy additional voluntary benefits including perhaps a "pain and suffering" coverage.

The Commission rejected this alternative also. The reparation objective can be readily achieved without revolution, and it was a settled principle of the Commission to utilize, not destroy, established institutions and agencies in the absence of firm proof of superior alternatives.

Third, a supplementary reparation system could be created which made benefits available to all victims merely upon proof of loss, and thereafter, those who had a viable cause of action

in tort could pursue that remedy as under the existing system. This would effectively solve the reparation problem as earlier described and was the Commission's choice. The details of this dual protection plan will be explained shortly.

Improving Tort Liability Insurance as a Reparation System.

To make tort liability function more effectively as a reparation system, the Commission was convinced that New Jersey's contributory negligence rule should be replaced by a comparative negligence statute. It agreed in substance with the stand taken in the Report of the American Bar Association Special Committee on Automobile Reparation (ABA, 1970, pp. 74-75) that:

> "...the doctrine of contributory negligence is antiquated and unrealistic. The fact that sometimes it is not strictly applied by claims adjusters or juries probably has served to make its formal modification somewhat less imperative. But this is not a sufficient basis for further delaying a change. We do not regard such a change as an abandonment of the central concept of the negligence law--that liability should not be imposed in the absence of fault--but merely as the evolution of an ancient doctrine into a more modern and enlightened one.
>
> "We believe that a change to a system of comparative negligence of the type found in Wisconsin, accompanied by universal financial responsibility, will accomplish, within the framework of the present common law tort system, a great advance toward the objectives of those who are critical of that system.
>
> "The difficulties in measuring degrees of fault seem to have been sufficiently overcome in Wisconsin to justify our confidence that we are not merely substituting a group of new difficulties for those experienced under the contributory negligence rule. If the Wisconsin statute is followed as

a model, fewer cases will be denied any recovery, and the size of the award will be moderated. If it does not have a moderating effect, the result will be some increase in insurance costs.

"The Wisconsin comparative negligence law eliminates contributory negligence as a bar to recovery if the fault of the defendant is established and the defendant's negligence exceeds that of the plaintiff. Recovery is diminished proportionately to the negligence of the person recovering. For example, if 40 per cent of the negligence is attributed to the plaintiff, the damages are reduced by 40 per cent. If the attribution is 60 per cent to the plaintiff and 40 per cent to the defendant, there is no recovery. If the attribution is 50-50, there is no recovery.

"Special verdicts are used. The jury answers specific questions, such as: Was the defendant negligent? If so, was the plaintiff's negligence a cause of the collision? If both defendant and plaintiff were negligent and taking the combined negligence as 100 per cent, what percentage is attributable to the defendant? To the plaintiff?

"The next question the jury answers is what sum of money will fairly and reasonably compensate the plaintiff with respect to the various categories of damages. The judge does the rest."

The Commission does point out, however, that the impact on costs of this improvement in attaining the reparation objective depends very heavily on just how New Jersey claims adjusters and juries are in fact applying or modifying the doctrine of contributory negligence currently. Consider for example the hypothetical cases scheduled in the accompanying table.

Case	Attribution of Negligence Defendent	Plaintiff	Victim's Damages	Victim's Recovery
1	100%	0%	$2,000	$2,000
2	90	10	2,000	1,800
3	80	20	2,000	1,600
4	70	30	2,000	1,400
5	60	40	2,000	1,200
6	50	50	2,000	0
All			$12,000	$8,000

If adjusters and juries placed a strict interpretation of contributory negligence on all six cases, only one victim could recover and the total cost of reparation for motorists would be $2,000. If, on the other hand, adjusters and juries are already employing de facto comparative negligence, five victims would recover and the total cost to motorists would be $8,000. However, if adjusters and juries are currently applying comparative negligence only up to a negligence-innocence mix of say 80-20, defendant vs. plaintiff--that is, three victims collect at a system cost of $5,400--then, a comparative negligence law would certainly tend to increase reparation at some increase in costs to motorists.

The Commission also took account of the fact that there has been a substantial increase in the cost of hospitalization

and medical treatment and also in wage levels since New Jersey adopted its minimum financial responsibility injury liability limits of $10,000 per person and $20,000 per accident. To help reparation catch up with inflation, the Commission recommended that New Jersey raise its financial responsibility limits to $15,000 per person and $30,000 per accident. These new limits would apply to liability insurance, uninsured motorist coverage, and also to the UCJF.

Finally, the Commission considered that motorist satisfaction with tort liability reparation would be enhanced if the settlement of property damage liability claims could be expedited. One cause of delayed property claim settlement is the time needed to adjust an accompanying injury claim.

According to the New Jersey State Insurance Department, there were 63,000 injury claims and 182,000 property claims in 1969. If we assumed that in most cases there was some damage to automobile property in accidents causing injury claims, the adjustment of about one third of the total property claims might be subject to the delays attending settlement of the accompanying injury claims.

Therefore, the Commission recommended that in cases where the liability of one motorist toward another was clear but the amount of the injury damages was not yet determined, the insurer

of the person claimed against in tort would be privileged to adjust the claimant's property damage loss separately from the bodily injury loss. This adjustment would be allowed without prejudice to the settling insurer's rights with respect to the subsequent adjustment of the injury claim.

No-Fault Insurance as a Corrective of Current Reparation Weaknesses.

If benefits are to be provided to all victims without regard to fault, they are in that sense no-fault benefits and the program which provides them is a no-fault program. However, nearly every law which provides no-fault benefits seeks for reasons of cost control to reduce or modify in one or more diverse ways--tort exemptions, set-offs, a limitation on general damages and so on--the full traditional tort remedy. And to the extent of that reduction or modification, motorists are immunized against fault. For both reasons, then, reforms which substitute in some degree first-party for third-party benefits are referred to as no-fault plans by both practitioners and laymen.

Where the tort remedy is totally eliminated, the substitute first-party system may be designated a total or radical no-fault plan. Where tort is retained as a remedy to greater

or lesser extent, the resulting system may be designated a modified no-fault plan.

This does not mean that the term "no-fault" need necessarily appear in the legislation which implements the revised system. In fact, the terminology of recent legislative enactments substitutes "personal insurance protection," "direct payments insurance," "basic protection insurance," and similar phraseology for "no-fault." And various reform lobbies entitle their no-fault proposals as the "dual protection plan," the "guaranteed protection plan," the "AIA plan," and so on. Nevertheless, the public at large, which prefers simplicity to complexity, lumps all such programs generically under the heading of "no-fault."

The Commission does not feel disposed to cavil over a baptismal name for its proposal. Once its terms are known, the public will in any event call it a no-fault plan.

It proposes that all automobile accident injury victims should receive the following mandatory minimum schedule of first-party benefits:[3]

(a) All reasonable expenses for ambulance, hospital, nursing, medical, surgical, dental and rehabilitative services, including prosthetic devices, made necessary by such injury.

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3. It is recommended that insurers shall also be required to offer at the option of the insured a choice of voluntary excess disability and dependent survivors' benefits coverages providing additional protection for an additional premium charge.

(b) Funeral, burial or cremation expenses not to exceed $1,000 per person.

(c) Disability benefits for loss of income due to inability to work caused by such injury up to $100 a week and subject to an aggregate payment of $5,200 per person. Similar benefits shall be available to dependent survivors where the injury is fatal.

(d) Reasonable extra expense reimbursement up to $12 a day for 365 days for household services interrupted by the injury or death of persons who otherwise would have performed such services without income.

With respect to this schedule of benefits, it is the Commission's further recommendation that:

(a) To avoid the use of lay terminology, the benefit schedule be technically referred to in any implementing legislation as "Personal Injury Protection Coverage" (PIPC) rather than as "no-fault insurance."

(b) To avoid overlap with the schedule of workmen's compensation benefits for operators and passengers injured in the course of their employment,[4] PIPC be mandatorily incorporated only in policies issued to cover "private passenger automobiles" as defined in the manuals of rules and rates approved by the New Jersey State Insurance Department.

(c) The PIPC requirement shall apply to all "private passenger automobiles" registered or principally garaged in New Jersey.

(d) To provide efficiently for the distribution of benefits, PIPC shall cover the named insured and members of his household who are injured in an automobile accident, and to authorized drivers and guest passengers in the insured car who are injured while occupying it, and also to pedestrians struck by the insured car.

(e) For reasons of public policy and also so as not to open the motorists' purse to those guilty of flagrant misconduct, PIPC insurers shall be permitted to exclude benefits for any injured person whose conduct contributed to his injury while operating an automobile in this State with the specific intent of causing injury or damage to himself or others, while under the influence of alcohol or narcotic drugs, or while committing a high misdemeanor or felony.

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4. This refers primarily to trucks, taxis, buses, and classifications other than private passenger automobiles.

(f) To minimize cost and avoid duplication of payments, benefits recoverable under any workmen's compensation, temporary disability benefit statute or medicare shall be credited against any PIPC benefits otherwise payable.

(g) Except for the deductions in (f) above, PIPC benefits shall be payable without regard to collateral sources of benefits which may be available to the injured person. That is, they shall be primary.

The PIPC benefits are of course to be made available without regard to fault or negligence liability. In addition, as indicated in the previous section of this chapter, it is recommended that all injury victims retain the right to pursue a tort remedy for full legal damages subject to three provisos:

(1) That injuries involving and limited to "soft tissue" as to which medical treatment by a licensed physician, osteopath, or chiropractor is valued at not more than $100, shall not be subject to payment of benefits in excess of those provided by PIPC. (Neither diagnostic nor hospital expenses shall be included in valuing the medical treatment for such injuries.) However, this limitation shall not apply to fatal injuries.

(2) That to the extent of the PIPC benefits paid or payable, an insurer shall be subrogated to the injured person's right of action for damages against culpable third parties and their liability insurers. Determination as to whether any insurer is legally entitled to recover damages in tort from another insurer shall be by intercompany agreement or arbitration.

(3) That injured persons shall not plead nor introduce into evidence in an action for damages against a tort feasor those damages for which PIPC benefits are paid or payable.

A principal finding and point of criticism of the DOT study was the overpayment of the minor bodily injury liability claim. This overpayment was largely attributable to the practice of arbitrarily adding to the payment of medical costs for

arbitrary formulas by which general damages are derived as multiples of special damages or medical expenses. By denying the admissibility of PIPC recoveries, which offer special damages only, the jury or arbitration panel, as the case may be, is forced to think its way to a determination of general damages based on the particular merits of each individual case. As formulaic solutions have inevitably led in the past to the overcompensation of many victims with only modest "pain and suffering" losses, this proviso should appreciably reduce the flow of unwarranted general damages into the mainstreams of cost which must be borne by New Jersey motorists in the form of premium payments.

The Commission pretends to no great originality as to its recommendations concerning the specific kinds of PIPC (no-fault) benefits provided for in its first-party reparation program. This question has already been studied in depth by many other reform bodies; however, after careful scrutiny of all available reports and legislative proposals, the Commission selected the benefit pattern which in its collective judgement best meets the reparation needs of New Jersey citizens. Consequently, the proposed program incorporates features as to amounts of PIPC benefits not generally found in programs so far introduced or proposed in most other states.

After considering the limits imposed on medical benefits under most programs, the Commission decided to recommend that there be no limit on such benefits in New Jersey. The Commission was guided

by its findings that the number of cases that would exceed a realistic medical benefit maximum would be so small that extending medical payments benefits without limitation would have no significant effect on the overall cost. Thus, the program will give complete protection as to medical costs to the unfortunate few who may suffer extreme injury in automobile accidents.

As to disability benefits for loss of income, the Commission has not adopted the generally followed practice of reducing the lost income compensation to reflect an average income tax saving of 15%. Such reduction is contrary to the facts of life. The low income earner with a family would be penalized, while the high income earner would enjoy a windfall since his after-tax income is less than 85% of gross. The Commission also recommends keying the basic benefits and the corresponding basic rates to the low income earner with a provision that each insured will have available a lost income benefit commensurate with the actual income he wants to protect. Thus, a low income motorist will not be forced to purchase and pay for more protection than he may need.

Should Insurance Be Made Compulsory?

In Chapter III, The New Jersey Reparation Environment, the Commission has already raised and affirmatively answered this question.

In a sense, New Jersey already has a compulsory insurance system in that motorists must either insure against liability voluntarily or else pay a mandatory fee of $50 per insured car to the New Jersey Unsatisfied Claim and Judgment Fund. That is, it is currently the legislative intent that as a condition of automobile registration all motorists shall help finance the payment of victim benefits.

If the Commission is to achieve the reparation objective, it is important that the first-party insurance necessary to that end be widely distributed over the population of New Jersey motorists. A compulsory law armed with stringent penalties for violators seems indispensable for this purpose and there is considerable precedent for this approach in other states which have enacted or are enacting no-fault bills.

No-fault benefits are first-party benefits; that is, they are provided to the motorist and his family by the motorist's own insurance policy. In the interests of self-protection, motorists should be willing to buy this coverage voluntarily. A strong compulsory law would leave no doubt that society expects them to buy it.

The present uninsured gap of about 10 per cent would mean that approximately 600,000 New Jersey citizens, possibly many

more depending on family size in the uninsured sector, would be left without no-fault benefits in the event of injury. As their only hope of recovery in such cases would be through an action in tort, statutory latitude to forego insurance would not only defeat the reparation objective; it would also impair the cost and judicial objectives. This is so because the Commission's proposal relies heavily on the prompt provision of no-fault benefits to moderate the pace of tort activity.

The UCJF could be modified to provide no-fault benefits to uninsured injury victims who had contributed to the Fund. But in that event, there would be two competing sources of no-fault "insurance" and if the Fund's fee was less than the cost of private insurance, there might be a drift of motorists from insured to uninsured status so far as liability insurance was concerned. Further, the publicity given the no-fault nature of the new program might tempt some motorists to the belief that they could rely on their collateral sources for first-party benefits and avoid the costs of automobile insurance altogether.

Everything considered, the Commission concluded that its reform proposal should at the outset be advertised as a mandatory program to be carried on all registered cars with severe penalties for failure to comply.

V

THE COST OBJECTIVE

Throughout its study, the Commission was concerned with the question of cost. The cost of insurance to the New Jersey motorist is the price he has to pay an insurer in order to obtain coverage. The price charged the motorist by the insurer is regulated by the New Jersey Department of Insurance and is based upon the insurer's costs. The basis for costing is the expected pure premium (P/P) per insured automobile and, as we have seen this is the product of claim frequency (F) per 100 cars and the average claim cost (C). Briefly:

$$F \times C = P/P$$

Given a fixed number of insured cars, the price charged per car is therefore a function of the number of claims produced by those cars times the average cost of each claim.

The Commission lays stress on this point because relative to a given security need, an improvement or expansion in a benefit or reparation program, whether it be welfare or insurance, usually increases both the number of claims (benefit recipients) and the average size of claim (amount of benefit) and consequently is cost increasing. That is, the reparation objective and the cost objective are in most instances antagonistic. To correct inadequate reparation, costs must usually be increased. Conversely, where costs are too high, reparation must usually be decreased.

The Impact of No-Fault on Cost

No-fault plans captured the public's imagination by the unusual and intriguing promise of increased reparation (all victims would be eligible for benefits whether at fault or not) together with decreased cost (price reduction). For example, the Massachusetts and Florida no-fault plans, which provide benefits for all victims, grant an immediate reduction of 15 per cent in price.

In view of the paradoxical nature of this promise the Commission examined it with care. There is of course no difficulty in increasing benefit eligibility. This can be accomplished quite simply by providing for mandatory first-party medical-disability coverage on all cars. The Commission was puzzled however by the attainment of a simultaneous reduction in cost.

Looking at bodily injury liability insurance, the coverage with which no-fault cost saving is customarily identified, it noted that the New Jersey average pure premium per insured car was about $45, the product of a claim frequency (F) of 2.7 claims per 100 cars and an average claim cost (C) of $1,670. Obviously, to reduce cost--that is, to reduce the current New Jersey pure premium of $45--either frequency (F) or cost (C) had to be reduced, and a program offering benefits to all victims without regard to fault or innocence was certainly not likely to reduce frequency. On the contrary, it was likely to increase frequency greatly.

The DOT study, as well as other landmark investigations of automobile accident consequence, had proved beyond doubt what was already

known a priori about tort liability systems: that an absence of fault on the part of the insured motorist, or the presence of contributory negligence on the part of the injured victim, together with other restrictive factors such as lack of financial responsibility on the part of the motorist, prevented many actual losses from becoming payable claims on the tort liability system.

Just how many losses were annually denied claims eligibility in New Jersey was not known.[1] Nationally, and in some other states, the rejection has been placed as high as 50 per cent. At that level of rejection, a modification in the system to allow a free passage of all losses into claims would double claim frequency and hence double the average pure premium barring an offsetting reduction in the average cost of claim. Even the remote possibility of such strong upward pressure on cost and price was naturally of much concern to the Commission.

The proponents of no-fault plans are aware of this possibility and explain the cost reduction promised in their plans in terms of rather extreme reductions in the average claim cost. In the price formula $FxC=P/P$, C is to be reduced more than F is increased so that a net decrease in P/P results.

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[1] In Chapter II on Methods and Objectives, Figure 1, losses are estimated to be 136,000 as compared with claims of 63,000. But these losses are based on injury data published by the New Jersey Division of Motor Vehicles and may not even approximately equate with the number and kind of losses for which claims against insurers may be pressed.

But this too disturbed the Commission because C, the average claim cost, is a measure of the average benefits paid to injured victims, and a substantial decrease in C would probably require a similar reduction in benefits and hence impair the reparation objective.

No-fault plans seek to obtain a reduction in average claim cost primarily by rejecting that part of each victim's loss which is considered to be intangible or imponderable so far as precise standards of pecuniary measurement are concerned. (Actually, the loss of an eye or a body member or a serious disfigurement are all quite tangible to the victim and very damaging to him even though there is no quick and certain way to evaluate that damage in dollars.)

The rejection of intangible loss elements would of course be tantamount to a tort exemption for the offending motorist because if a victim's loss consists of two parts, the tangible (medical-disability loss) and the intangible (general damages loss), and if no-fault rejects the latter and pays the former without regard to fault, then there would be no basis left for an action in tort.

Not only would no-fault reduce claim cost by rejecting intangible losses in whole or in part, but also, by granting what amounts to a tort exemption for negligence, it would reduce the legal fees and costs associated with tort actions. That is, it would reduce that part of the average claim cost which is needed to cover the insurer's allocated claims adjustment expense.

Thus, implicit in the cost-saving argument of no-fault plans are three assumptions: (1) the average claim frequency will rise; (2) the

average claim cost will fall, and most importantly, (3) the decrease in the latter will more than offset the increase in the former. Insurers generally agreed on assumptions (1) and (2); they were not so sure about assumption (3).

HYPOTHETICAL ILLUSTRATIONS OF NO-FAULT IMPACT ON COST

Solely for purposes of illustration, the Commission offers the following comparative examples in which a no-fault plan is assumed to increase claim frequency (eligibility for benefits) from 2.7 to 5.4 per 100 cars while reducing the average claim cost from $1,670 to $740. That is, New Jersey's current F is doubled and its current C is reduced about 56 per cent in the formula F x C = P/P.

Flow Analysis No. 1*

Events →	(1) Automobiles →	(4) Losses →	(5) Claims →	(6) Premiums →	(7) Motorists
Conversion Points	--	D	E	(5÷1) F	
TORT	100 →	$9,000 (5.4@ $1,670) →	$4,500** (2.7@ $1,670) →	$45 →	100 (@$45 each)
NO-FAULT (with limitation on intangibles)	100 →	$9,000 (5.4@ $1,670) →	$4,000** (5.4@ $740) →	$40 →	100 (@$40 each)

* Events (2) and (3)--Accidents and Injuries--are omitted for brevity. (See Figure 1 for a complete flow analysis.)

** Note that while no-fault increases the number of losses flowing into claims, it rejects at D $5,000 of the amount of total loss whereas tort rejects only $4,500 of loss.

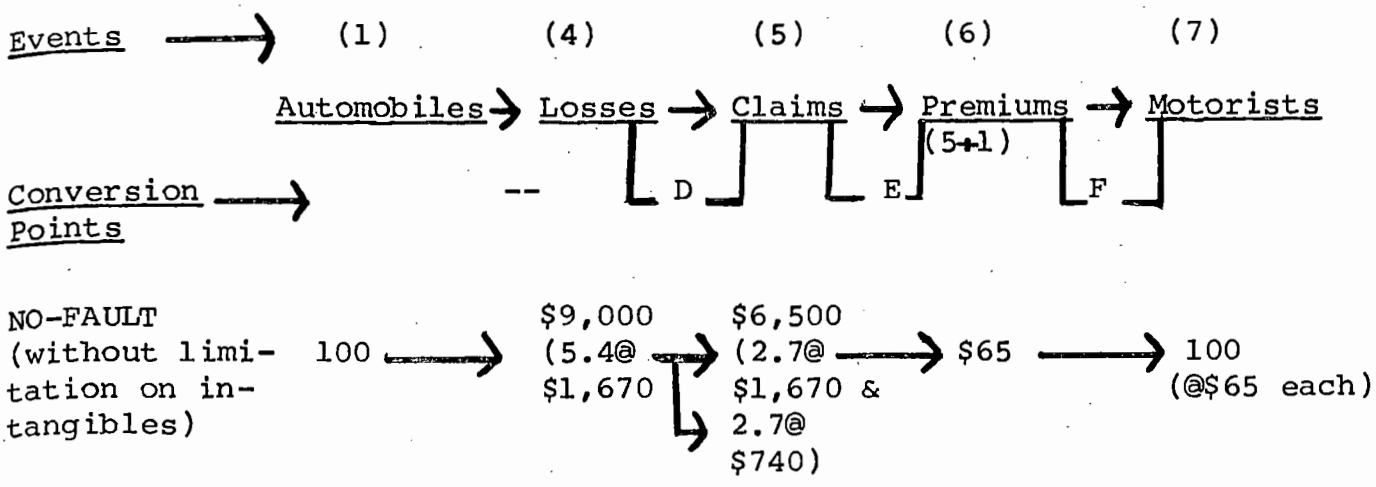
The Commission utilizes this hypothetical comparison to illustrate its understanding of how no-fault simultaneously "increases" (improves) reparation and "decreases" cost and price. The number of losses flowing into claims is indeed increased so that more victims are eligible for benefits. But the amount of loss flowing into claims is decreased so that some victims receive much less under no-fault than under tort (on average 56 per cent less in the given comparison). Disturbingly to the Commission, the victims sustaining the reduction in benefits are the innocent victims of negligent motorists whereas those victims whose admission to benefit eligibility made the reduction in average benefit payments necessary include in large measure the negligent victims of innocent motorists.

While the Commission unanimously favored the increase in the number of losses accorded claims (and hence benefit) eligibility, it was divided on the wisdom of reducing the amount of loss admitted to claims eligibility where innocence on the part of the victim and fault on the part of the motorist obtained. In the end, a majority of the Commission decided that if the decision involved a choice between reparation and cost objectives, considered as necessary alternatives, it would have to vote in favor of the reparation objective.

Thus, to the two hypothetical examples shown above, the Commission would add a third possibility, one in which the losses flowing into claims under tort would remain undisturbed at an average claim cost of $1,670, while those formerly rejected under tort, would be allowed to flow into claims at the reduced value of $740. The hypothetical

impact of this modified no-fault plan is illustrated below.

Flow Analysis No. 2*



*Again, events (2) and (3)--Accidents and Injuries-- are omitted for brevity.

In this third example, a decision to provide no-fault benefits for all victims without regard to fault, while at the same time placing no limitations on general damages for the innocent victims of negligent motorists, results in a 44 per cent increase in cost and price. ($65-$45=$20; $20/$45=44 per cent.)

However, it must be stressed that the results in these hypothetical examples derive from the assumption that losses exceed claims currently by two to one. While this assumption is supported by the DOT study and the data shown in Figure 1, it was used here for purpose of illustration only.

The excess of losses over claims in New Jersey cannot be known with any certainty until after the claim frequency developed by no-fault is revealed through actual operations. At that time it may prove to be far less than the relationship shown in the examples.

Nevertheless, a decision to avoid severe limitations on the right to claim general damages definitely means a sacrifice of the cost objective in favor of a gain for the reparation objective.

The Commission's majority decision on this very important issue[2] was influenced by a careful study of four very closely related issues: (1) the results of the Massachusetts no-fault law; (2) the level and distribution of costs and prices in New Jersey; (3) the division of the New Jersey motorist's insurance bill between injury and property damage items, and (4) the recent improvement in the general experience with bodily injury liability insurance. Each of these four issues is discussed below.

The No-Fault Results in Massachusetts

The Massachusetts no-fault law places limitations on the flow of losses into claims so far as intangible loss elements are concerned. These limitations may be depicted diagrammatically as shown in the accompanying chart (Figure 2).

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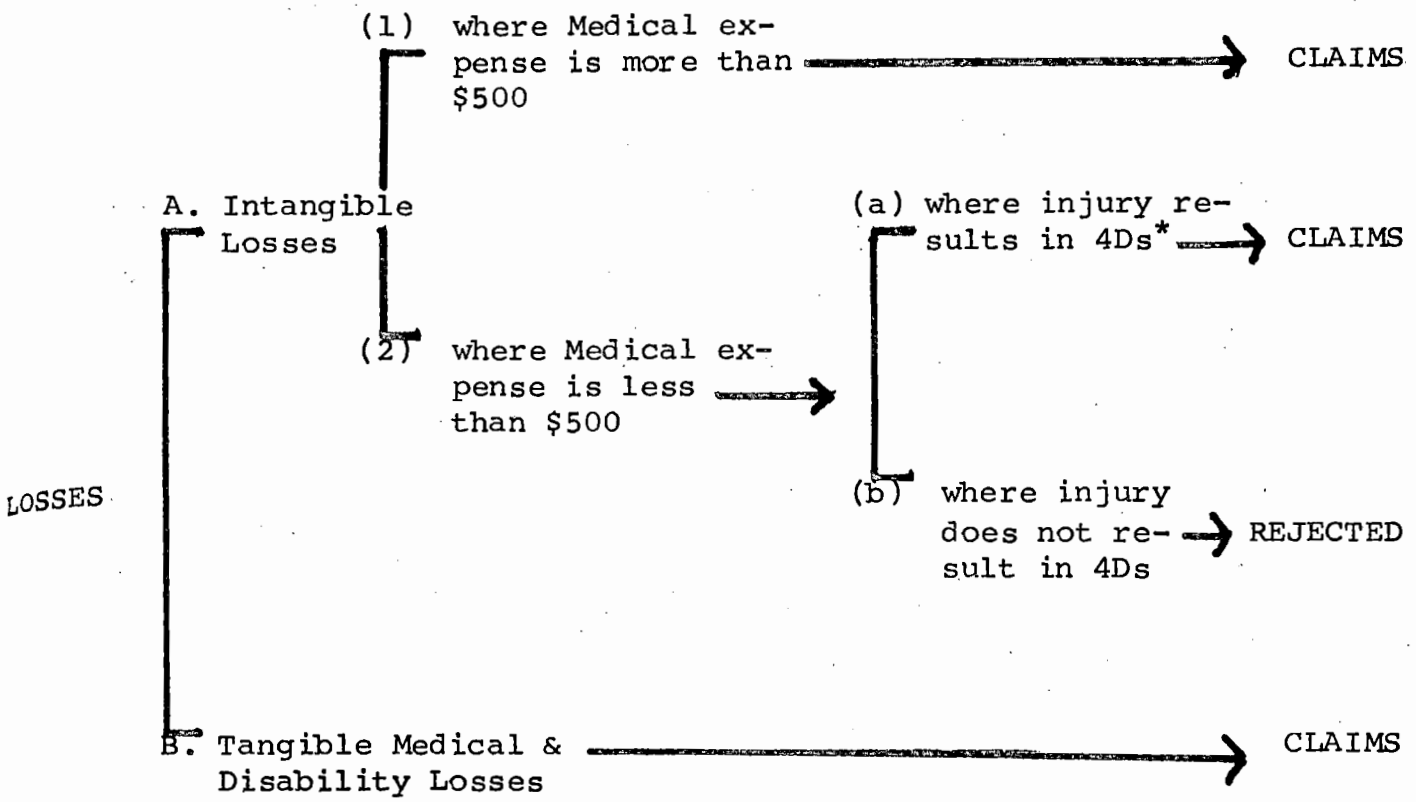
[2]For the Commission's recommendations concerning minor limitations on claims for general damages, see Chapter IV, section (4) "No-Fault Insurance as a Corrective of Current Reparation Weaknesses."

Figure 2

The Flow of Losses into Claims in Massachusetts



*The "4Ds" refers to very serious intangible losses, those resulting in Death, Dismemberment, Disability, and Disfigurement.

Looking at the flow of losses into claims as charted in the accompanying diagram, the Commission noted that, without regard to fault, all losses consisting of medical or disability items moved freely into claims. However, not all losses consisting of intangible items did so. Those at A (3) (b) were rejected.

But, as an intangible loss was not likely to occur in the absence of a medical-disability loss item, the number of intangible losses was included within the number of medical-disability items.

Therefore, while the limited access to general damages in Massachusetts could reduce the average claim cost, it could not reduce the claim frequency.

If injury victims could be divided cleanly into two mutually exclusive categories, Class A and Class B, the former suffering only intangible losses and the latter sustaining only tangible losses, then Class A would not lie within or overlap with Class B and restrictions on the payment of intangible losses would obviously reduce the total number of claims payable and hence the claim frequency. That is, Class A victims would be rejected in whole or in part leaving only Class B victims for payment.

However, in the Commission's view of the matter this is not the case. An intangible loss does not usually exist without the co-existence in some degree of a tangible loss. In other words, the total number of claims is determined by the number of victims with tangible losses. Some of these victims may have intangible losses in addition to their tangible losses; others may not.

For example, Mr. X has a $1,000 medical bill (tangible loss) and is claiming in addition $2,000 of "pain and suffering" (intangible loss). The elimination of intangible loss from claims eligibility does not eliminate the tangible loss from claims eligibility. Mr. X can still claim for his $1,000 medical loss. Therefore, in the Commission's view, limitations on claims for intangible losses can reduce the average cost of claim but cannot reduce the claim frequency.

Thus, every claim for general damages also includes a claim for medical or disability loss in some degree by the same person. And that person even if denied a claim for general damages would nevertheless file a no-fault claim for his out-of-pocket expenses.

A very curious concomitant of the Massachusetts no-fault law, therefore, is the fact that claim frequency has actually decreased, not increased. According to statistics published by the Massachusetts Insurance Department, claim frequency in Massachusetts, following the implementation of its no-fault law on January 1, 1971, fell by 55 per cent in the first six months of the plan's operation.

If the limited access to general damages in the Massachusetts law was not the cause of the decrease in claims--and according to the Commission's analysis it should not have been--then the reduction in frequency must be attributable to other factors which have not yet been analyzed. But so far as the cost-price objective is concerned, the limitation on claims for intangible loss is at issue only as an offset to an expected increase in claim frequency. When claim frequency actually falls by as much as 55 per cent, the need for a limitation on intangible loss evaporates.

The Commission was therefore receptive to the thesis that the necessity for substantially limited access to general damages in New Jersey's reform program had not been demonstrated by the experience of the only state which, to the time of the Commission's decision, had had experience of a no-fault program.

A second factor in the Commission's decision on the treatment of general damages (intangible losses) concerned the extent of the burden which present costs and prices placed upon New Jersey motorists.

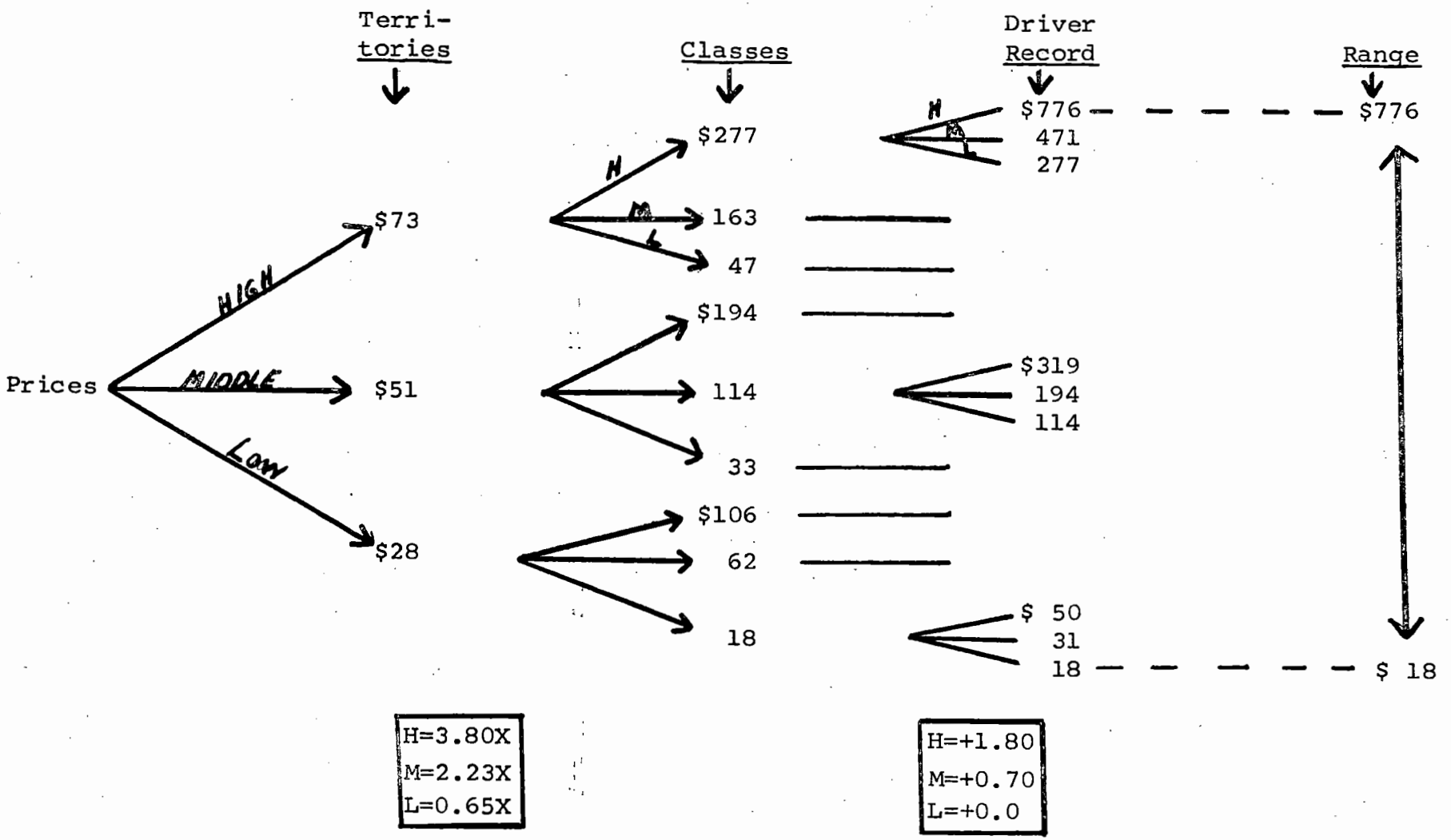
The Commission recognized that it is idle to talk about average costs and prices in a market which is characterized by extreme cost-price variability.

The average pure premium for bodily injury liability insurance in New Jersey has already been discussed. It is $45 and is derived as the product of an average claim frequency of 2.7 claims per 100 cars and an average claim cost of $1,670. (2.7/100 x $1,670 = $45.) When to this basic determinant of price is added the insurer's overhead "loading" of $26--a cost element which is largely irrelevant to the issue of no-fault and limitations on general damages--the average price payable for insurance becomes $71.

However, this average price is modified greatly by cost differences resulting from territorial relativities and classification differentials. When all of the factors causing New Jersey motorists to differ in both claim frequency (F) and average claim cost (C) are taken into account, a range of prices results which is characterized by extreme variability.

The accompanying chart of price variability in New Jersey, Figure 3, demonstrates this point. Prices for liability coverages range from a low of $18 to a high of $776, a spread of $758 or 42 times the lowest price.

Figure 3. Price Variability in New Jersey*



*Based on 1969 data supplied by the Insurance Services Office.

With respect to physical damage insurance, the ISO manual of New Jersey rates shows somewhat similar contrasts. Comprehensive rates range from a low of $5 to a high of $80, a spread of $75 or 15 times the lowest price. The manual rates for $50 deductible collision coverage range from a low of $34 to a high of $148 and this range can be extended considerably by the application of class differentials.

According to an analysis made by one of the nation's leading automobile insurers, the distribution of motorists according to the prices paid for liability insurance in New Jersey is as shown in Table 5.

Table 5

New Jersey Auto BI & PD Liability Insurance Rates Combined--1968

Price Class	Percent of Motorists
$ 0 - 24.99	2.0%
25 - 49.00	3.6
50 - 74.99	34.8
75 - 99.99	29.6
100 - 124.99	12.0
125 - 149.99	5.5
150 - 174.99	3.7
175 - 199.99	1.8
200 or more	6.9

Looking at this distribution, the Commission noticed that only a relatively small proportion of motorists pay what may be considered high prices. Seventy per cent pay less than $100 for combined bodily injury and property damage liability

insurance and 40 per cent pay less than $75. As the price for injury liability insurance alone is about 63 per cent of the combined injury-property liability price, this distribution also indicates that the great majority of New Jersey motorists pay a relatively modest sum for that coverage which is the main target of no-fault reform. For bodily injury liability, about 90 per cent pay less than $100; 85 per cent pay less than $80; 70 per cent pay less than $65, and 40 per cent pay less than $50.

To be sure, Table 6 indicates that New Jersey's average combined-coverage rate of $106.26 (1971) ranks the State as the twelfth highest in the United States.[3] But as mentioned earlier in Chapter III, The New Jersey Reparation Environment, interstate comparisons of automobile insurance prices are meaningless unless interstate differences in wage and income levels are also taken into account. As New Jersey ranks sixth among the states in average income, a twelfth-place ranking in automobile insurance costs is not in itself indicative of high prices.

3. See also Table 7.

Table 6. INTERSTATE PRICE COMPARISONS

Automobile Liability Insurance - Private Passenger Cars--
10/20/5 Average Rates for Voluntary Risks
As of August 1, 1971

	State	Bodily Injury	Property Damage	Combined
1	Alabama	43.67	25.64	69.31
2	Arizona	66.12	42.85	108.97
3	Arkansas	40.20	24.56	64.76
4	California	62.14	42.04	104.18
5	Colorado	36.56	27.21	63.77
6	Connecticut	62.13	41.30	103.43
7	Delaware	39.45	35.74	75.19
8	Dist. of Columbia	79.58	50.64	130.22
9	Florida	53.65	25.60	79.25
10	Georgia	33.89	19.33	53.22
11	Idaho	30.44	29.66	60.10
12	Illinois	69.39	44.24	113.63
13	Indiana	43.91	46.08	89.99
14	Iowa	33.29	36.48	69.77
15	Kansas	30.84	35.29	66.13
16	Kentucky	45.55	37.35	82.90
17	Louisiana	67.00	36.68	103.68
18	Maine	37.46	35.55	73.01
19	Maryland	52.72	25.67	78.39
20	Massachusetts	72.58	57.35	129.93
21	Michigan	63.82	52.29	116.11
22	Minnesota	71.15	46.75	117.90
23	Mississippi	47.63	30.79	78.42
24	Missouri	68.86	44.82	113.68
25	Montana	29.47	24.51	53.98
26	Nebraska	34.64	33.15	67.79
27	Nevada	57.84	34.91	92.75
28	New Hampshire	52.22	31.89	84.11
29	New Jersey	67.34	38.92	106.26
30	New Mexico	38.75	29.38	68.13
31	New York	84.01	47.23	131.24
32	North Carolina	41.68	27.36	69.04
33	North Dakota	28.29	28.35	56.64
34	Ohio	62.87	47.05	109.92

	State	Bodily Injury	Property Damage	Combined
35	Oklahoma	39.38	24.98	64.36
36	Oregon	45.00	31.13	76.13
37	Pennsylvania	53.27	34.59	87.86
38	Rhode Island	66.51	31.19	97.70
39	South Carolina	44.62	28.55	73.17
40	South Dakota	21.71	22.31	44.02
41	Tennessee	45.32	20.39	65.71
42	Texas	34.82	40.02	74.84
43	Utah	40.78	37.09	77.87
44	Vermont	46.60	37.57	84.17
45	Virginia	43.91	32.90	76.81
46	Washington	47.48	28.24	75.72
47	West Virginia	46.94	33.74	80.68
48	Wisconsin	56.85	33.32	90.17
49	Wyoming	22.90	27.28	50.18
52	Hawaii	80.66	44.39	125.05
54	Alaska	54.68	32.58	87.26
58	Puerto Rico	61.93	53.82	115.75
	Countrywide	56.98	38.74	95.72

Source: Insurance Services Office
[Note: Caution must be used in the interpretation of these price data as some are based on ISO manual advisory rates and may not represent true averages of the actual rates used.]

Table 7.

COMPARATIVE AUTOMOBILE INSURANCE RATES: NEW JERSEY vs. OTHER STATES*
August 1971

Coverage	Highest State	Lowest State	New Jersey	Countrywide	N.J. Rank**	N.J./CW
(1) B.I. Liab.#	$84 (NY)	$22 (SD)	$67	$57	8th	117%
(2) P.D. Liab.##	57 (Mass)	20 (Tenn)	39	39	16th	100
Combined Liab.	131 (NY)	44 (SD)	106	96	12th	110
(3) Comprehensive	65 (PR)	14 (NH)	24	27	33rd	89
(4) $100 Ded. Collision	130 (PR)	41 (Fla)	81	71	15th	114
TOTAL	--	--	$211	$194	--	109%
B.I. Liab/Total			$67/$211 = 32%	$57/$194 = 29%		
% Property of Total			68%	71%		

Source: Compiled from data supplied by ISO.

*The comparisons are based on ISO rates.

**Ranking is from the highest to the lowest state. #Limits of 10/20. ##Limit of 5,000.

After examining these and other New Jersey price data, the Commission was impressed with the futility of attempting to determine whether prices generally were in fact "too high." It could obviously not take the subjective opinions of individual motorists as an objective criterion of prices. For motorists who do not want insurance, price is irrelevant. For motorists who feel that they need insurance but cannot "afford" it, because of the low priority given insurance in their budgeting for living costs generally, who can say what an "affordable" price is? For those who even with the strictest budgeting have barely enough income to cover their other needs, an "affordable" price is no price at all. For such motorists, it is not so much a question of prices being "too high" as it is of incomes being too low.

Finally, there are motorists who complain that the prices charged for their particular risks are "too high" in the sense that they are much higher than the average statewide price. Such motorists seem to be arguing for a single-price market in which the well-documented differences in claim frequency and claim cost between different classes of motorists are totally ignored.

However, to ignore such differences would be in violation of the insurance statutes of the State of New Jersey which require, in the interests of equity and non-discrimination, that rates "shall not be unfairly discriminatory;" that is, that they shall be proportional to underlying classification costs. In any event, a market in which all motorists were charged the same price could not be a free, competitive, private enterprise market. Even radical no-fault plans will not solve the price problem of the extra-risk motorists.

For the New Jersey market as a whole, "too high" would mean literally that the actual price charged motorists lies above some other price which is considered to be right. But how is that other price to be determined if not on the basis of claim frequency and claim cost--that is, on the average pure premium per car? If Claims are to be reduced (see Figure 1), then either the incidence of Injuries must be reduced--a function of prevention rather than reparation--or else Losses to some degree must be rejected at conversion point D. But in that event, motorists and their families--the potential victims of injury--must self-insure the losses which are rejected from the reparation system. And self-insurance itself has a very definite cost for the self-insurers.

Injury versus Property Damage as to Costs and Prices.

The issue of limited access to general damages together with a concomitant reduction in allocated claims adjustment expense applies solely to the cost and price of bodily injury liability insurance. It would have no effect on the cost and price of three other coverages which many New Jersey motorists customarily buy in conjunction with the injury coverage. These are: (1) property damage liability coverage; (2) comprehensive (fire and theft) coverage, and (3) deductible collision coverage. All three pertain to property losses and taken together frequently account for over 60 per cent of the New Jersey motorist's total insurance bill.

For example, in the rate territory for Trenton, New Jersey, the State's capital, the manual prices for insuring a fairly new Chevrolet Bel Air Sedan would be as follows:

Bodily injury liability (10/20).....	$42	
Property damage liability (5,000).....		$25
Comprehensive (fire & theft).....		24
$50 Deductible Collision.....		81
Subtotals	$42	$130
Total	$172	
Property coverages/Total Cost	$130/$172 = 76%	

In this particular case, the property coverages account for three fourths of the insured's total insurance bill. A 10 per cent reduction in the injury liability coverage, or $4.20--a little over a penny a day--would reduce the total bill by only 2.4 per cent.

In this connection, the Commission would like to quote from a press release issued in April, 1971, by the New Jersey Department of Insurance.

> "Commissioner Clifford calls attention to the noticeably better experience on bodily injury liability than is apparent on the coverages insuring against automobile property losses....The overall lowering of the bodily injury premium level is due to a sharp reduction in bodily injury claim frequency. For one group of companies, the number of claim payments per 100 cars declined 5.5% annually over the three-year period ended March 1970....In contrast, the loss picture has not improved regarding damage to automobiles...For the largest group of companies, the average annual increase in property damage loss cost during the three-year period amounted to 9.8%."

Clearly, the potential for substantial price savings for New Jersey motorists lies in a reduction in the losses resulting from property damage and especially from the damageability of automobiles. (See Figure 4.)

Major insurers like Allstate, Liberty Mutual, and Safeco have already indicated a willingness to allow significant discounts for automobiles certified by manufacturers to be capable of sustaining 5 mph impacts without significant damage to the automobile.[4] When manufacturers are forced to comply with legislation governing anti-damageability standards, the Commission is of the opinion that New Jersey motorists will receive appreciable cost-price relief in the property damage coverages.

In New Jersey, property damage liability claims are approximately three times the bodily injury liability claims in number. When collision claims are also taken into account, legislation aimed at cost reduction through safer and less fragile automobile construction seems far more important and justifiable from an insurance cost-price standpoint than legislation designed to abrogate the injury benefit entitlement of innocent victims of negligent motorists.

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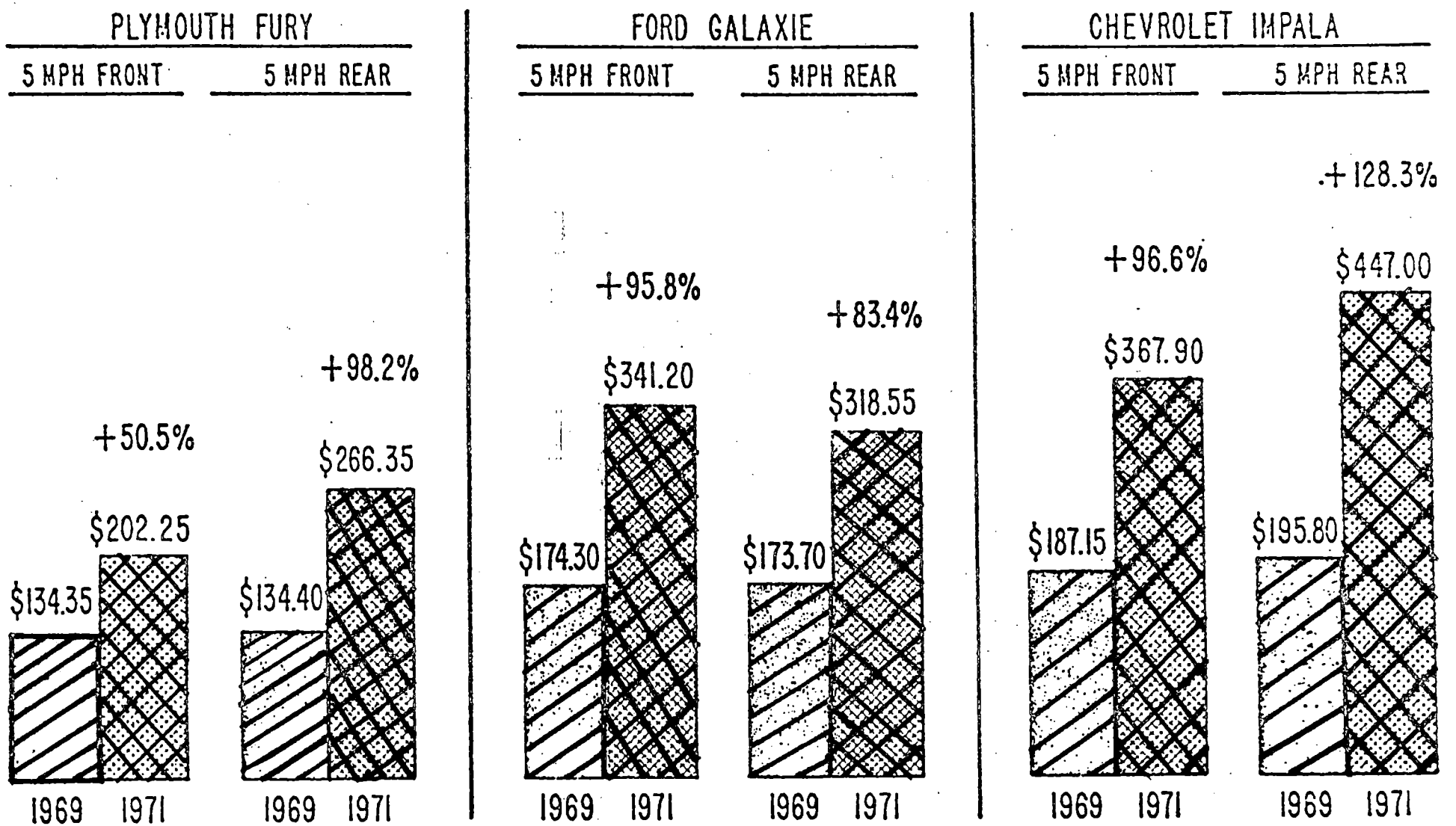
4. For example, Allstate grants a 15 per cent reduction on the Saab automobile because of its compliance with the anti-damageability standard.

Figure 4.

TYPICAL AUTOMOBILE REPAIR COSTS

RESULTING FROM CRASH INTO BARRIER AT 5 MPH



SOURCE: INSURANCE INSTITUTE FOR HIGHWAY SAFETY FROM TESTIMONY BEFORE U.S. SENATE COMMITTEE ON COMMERCE, MARCH 10, 1971

Recent Improvement in Bodily Injury Liability Experience.

No-fault reform was originally designed primarily to reduce injury liability insurance prices through the curtailment of general damages and legal fees. And the need for reduction or stabilization in prices was very acute at a time when injury liability prices were; as the usual expression has it, "soaring."

Not only was some modification needed to contain costs, but perhaps more importantly, there was a concomitant need to prevent the loss of market availability. As rates could not keep pace with costs, insurer loss ratios were rising rapidly, and availability diminished as loss ratios rose.

Under such circumstances, limitations on general damages and the rights of innocent victims to seek recovery for full damages against negligent drivers might appear to be a lesser evil than a continued increase in costs and loss of availability for motorists generally.

However, at a time when injury liability claim frequency in New Jersey and elsewhere appears to be declining, with a consequent lowering of insurer loss ratios, and even in some instances of prices, the Commission was extremely hesitant to recommend legislative and perhaps irreversible abrogation of an innocent victim's rights to claim for general damages.

As indicated above, the New Jersey Department of Insurance has pointed to statistical documentation for recent cost improvement in the injury lines, and to the very real need for containing costs in the automobile damage lines, a problem which obviously does not relate to general damages and intangible loss.

In addition, Best's Executive Data Services has supplied the Commission with data reflecting an appreciable improvement in New Jersey loss ratios and there are indications that this improvement still continues. (See Table 8.)

Table 8.

New Jersey Automobile BI Liability Experience
(Reviewed as of May 31, 1971.)

New Jersey Insurers	Loss Ratios 1969	1970
National Companies	71.3%	63.2%
State Leaders	70.8	67.4
Direct Writers	75.7	74.7
Total	73.1	68.7

Summary and Conclusions

There are two components in premium costs: the pure premium and the loading. The former is for paying claims; the latter is for selling and administrative expense. In order to reduce premium costs, it is necessary to reduce the dollar amount of either or both of these components. Actually, as the loading

is computed as a per cent markup on the pure premium, a reduction in the latter will automatically reduce the dollar amount of the former.

The average pure premium for bodily injury liability insurance in New Jersey is about $45 and is determined as the product of claim frequency and average claim cost--2.7 claims per 100 cars and $1,670--as both factors develop under tort law.

There are three elements in the average claim cost under tort: (a) the medical-disability loss element; (b) the intangible "pain and suffering" loss element; (c) the insurer's adjustment expense including defense of suits.

There are only two cost elements in the average claim cost under a no-fault benefit system: (a) the medical-disability loss element and (b) the adjustment expense element. The second element should be less under no-fault than under tort because of a reduced need to defend against suits.

Therefore, the average claim cost under no-fault should be considerably less than that under tort.

It is the Commission's hope that its recommended personal injury protection coverage (PIPC), which is a mandatory, first-party, no-fault benefit system, will absorb many claims which otherwise would flow into the higher-cost tort benefit system.

Further, for such claims as may still flow into the tort benefit system, the Commission's recommended $100 medical treatment "threshold" for pain and suffering damages in connection with "soft-tissue" injuries together with the inadmissibility of evidence as to recoverable no-fault benefits, should effect appreciable cost savings. (See Recommendations 1.6 and 3.0 and also the discussion provided in Chapter IV under section 4.)

Although the Commission did not develop any body of evidence on the subject, it accepts the premise based on statements made by certain insurance industry spokesmen that fraudulent claims can and probably do inflate premium costs in New Jersey as elsewhere. For this reason, it included Recommendation 11 in its Summary Statement of Commission's Recommendations. This recommendation calls for heavy fines and/or imprisonment for false and fraudulent representations concerning the collection of claimants' benefits.

The 1971 ruling of the New Jersey State Department of Insurance concerning a mandatory minimum deductible of $100 on all collision insurance contracts has already effected cost savings in that coverage. Further recommendations for cost savings in both property damage and injury coverages are contained in Chapter VIII, Highway Safety.

However, after a careful consideration of New Jersey's present price structure, and extensive debate, the Commission by majority vote concluded that the best interests of New Jersey citizens would not be served by placing severe limitations on the rights of injury

victims to claim general damages under tort law.

Finally, the Commission believes that cost reduction through increased selling and administrative efficiency is already evolving in the market place without need for specific legislative proposals at this time.

VI

THE AVAILABILITY OBJECTIVE

In the Introduction and other chapters of this Report, the Commission has already made reference to the very serious availability problem which in the recent past has afflicted the automobile insurance market in New Jersey and other states. A recent illustration of this problem is found in a class action suit for $3.75 billion in damages brought by New York City agents against 175 insurers. As reported in the Wall Street Journal (September 16, 1971):

> "Insurance agents here (NYC) sued 175 insurance companies for $3.75 billion in damages including $1.5 billion the agents want returned to policyholders whose policies were canceled or who were refused normal coverage as a result of their agents' contracts being terminated."
>
> "Over the past few years, in an effort to reverse heavy losses in auto and homeowner lines, many insurance companies have widely terminated certain agency contracts....."
>
> (Emphasis supplied.)

First-Party Reparation. No Guarantee of Availability

Parenthetically, the Commission would point out that this article refers to "heavy losses" in the homeowner lines as well as in automobile insurance. According to a survey made by A.M. Best Company (Best's Review, July 1971, p. 11), the homeowners line compares with the automobile bodily injury liability line as follows:

Line	1970 Total Premiums	Loss Ratio 1970	Loss Ratio 1969
Homeowners	$2.7 Billion	61.4%	61.2%
Auto BI	$6.6 Billion	62.5%	63.3%

Noteworthy is the close similarity in loss ratios between the two lines and the increase in the homeowners loss ratio as compared with the decrease in the auto BI loss ratio. No-fault insurance has often been likened to homeowners insurance because under both coverages the insured collects first-party benefits directly from his own insurance company. The difficulties insurers have encountered with homeowners insurance suggests to the Commission that the substitution of first-party coverage for third-party coverage does not necessarily imply a solution to either the cost or availability problems.

Availability in General

The ready availability of insurance coverage is of course crucial to the success of any reparation system, for without insurance there cannot be reparation. A loss of market availability, whether caused by termination of agents' contracts, reductions in commissions, or the refusal to write or renew individual policies, reflects an inadequate rate level as insurers determine adequacy. It is futile for a court or a state insurance department to argue that rates are adequate if in the eyes of the supplier they are seen not to be.

In a free private enterprise economic system, there is always competition for investment capital, and other things being equal,

capital will tend to flow on a risk-adjusted basis from low-return enterprise to high-return enterprise.

According to the DOT study entitled Price Variability in the Automobile Insurance Market, pp. 47-48, the average or unit cost of automobile injury liability insurance contains very little element of fixed cost; that is, it is primarily a variable cost. And while firms may occasionally set prices at less than full costs, "price will never be set below unit variable costs."

If, therefore, New Jersey wishes to retain a free, competitive, private enterprise source of supply of automobile insurance it is imperative, as regards the availability objective, that the New Jersey rate level--regardless of the system of reparation employed--be adequate as adequacy is fairly to be judged by parties to the rate regulatory process. In the Commission's framework of analysis, Figure 1, this means that at conversion point E, Claims must be allowed to convert freely into Premiums.

The fact that a reparation system is changed from a tort (third-party) to a no-fault (first-party) basis does not in itself guarantee the free flow of Claims to Premiums. In the long run, the impediment to the onward flow of Claims at conversion point E may be as great under no-fault as under tort.

Temporarily, however, if no-fault can reduce the aggregate dollar amount of claims relative to existing premium billings, or if the reduction in claims is equal to or greater than such reduction in

premium billings as may be contemplated by a change to no-fault, then, in the short run at least, market availability should respond promptly to the relief afforded insurers.

The probable impact on claims costs of the first-party benefits program recommended by the Commission has already been discussed in Chapter V, entitled The Cost Objective. For all the reasons presented therein, it is the Commission's belief that that program will produce claims cost reduction with consequent improvement in general market availability for New Jersey motorists.

The Availability Problem for Extra-Risk Motorists

Regardless of the adequacy of the general New Jersey rate level--and in the judgment of the Department of Insurance it is now in fact adequate--the problem of availability for certain atypical or extra-risk motorists remains.[1]

The Commission believes that just as the hard-to-place risk problem is undoubtedly aggravated by inadequate rate levels, an improvement in rate-level adequacy will mitigate the problem.

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[1]See Table 1 in Chapter III for the dimensions of the "assigned risk" and "consent to rate" components of the New Jersey automobile insurance market. In 1969, the assigned risk/registered vehicles ratio ranged from 0.1 in Arizona to 22.9 in North Carolina. It was 1.9 in Pennsylvania, 3.2 in Delaware, 6.6 in Maryland, 6.8 in New Jersey and 9.4 in New York.

However, something more is needed for a substantial solution and this was in large measure supplied, in the Commission's opinion, when midway through its deliberations, the New Jersey State Department of Insurance devised a new and rational approach to the treatment of motorists in the non-voluntary market.

The Revised New Jersey Automobile Insurance Plan

Initiated by Commissioner of Insurance Robert L. Clifford, and effective June 1, 1971, this plan offers qualified insureds broader coverages at reduced rates while at the same time providing premium penalties for "flagrant violators of traffic laws."

The increased availability results from the discouragement of non-renewals by insurers of insureds who met the insurer's underwriting standards at the time the last policy was written on a voluntary basis, and who since then have done nothing that makes them more hazardous to the insurer.

The new plan distinguishes as to rates and coverages between such insureds and others. In general, the former will be granted the same coverages at the same rates as those who obtained insurance in the voluntary market.

Those who do not qualify as average risks--for example, those who had accidents or those convicted of more than one moving violation or a high misdemeanor involving an automobile in the preceding 36

months--will be charged higher rates and be more limited in the amount of coverage they can obtain. For basic limits of injury liability, rates would be approximately 10% higher, with additional charges depending on the individual insured's driving record.

In addition, and for the first time, risks insured through the Plan will be granted the convenience and economy of premium installment payments.

Full details of the new Automobile Insurance Plan are available from the New Jersey Department of Insurance. The Plan should be instrumental in providing greater availability in the voluntary market and thus help solve one of the important problems referred to the Commission's attention in JR 4.

Inasmuch as an extra-risk availability problem can arise under no-fault as well as under tort, the Plan will have equal utility under both plans in achieving the availability objective.

VII

THE JUDICIAL OBJECTIVE

The Commission's reparation reform proposal for New Jersey motorists supplements the present tort liability system with a package of first-party benefits. This package carries all injury victims, without regard to fault, a fair and reasonable distance toward their reparation objectives. Thereafter, they are free to pursue a tort action for further reparation if the circumstances of the case warrant it. For this reason, the Commission was concerned to lighten the burden both for the courts and the litigants where the flow of reparation still depends on judicial procedures. To achieve this relief is the purpose of the Judicial Objective.

The Burden of Litigation

As long ago as 1932, the Report of the Committee to Study Compensation for Automobile Accidents (Columbia University) described the burden placed upon courts and litigants in motor vehicle accident cases.

> "A statement of the plaintiff's claim is filed with the court and a copy is served on the defendant. The case is put on a list to await its turn for trial. The delay which ensues before the date of trial is reached extends for months and in the large cities for as much as three years" (p. 29).

> "The long delay in the trial of cases in large cities, running as it does from one to three years, indicates a serious congestion of judicial business" (p. 36).

"The costs of jury trials including those of judges, court officers, jurors, courtroom space, services, etc., appears to be heavy in proportion to the results obtained. The daily cost of running a common pleas trial courtroom in Philadelphia is $232 (1930 dollars) and the average auto accident trial takes from a day to a day and a half. The verdicts are usually small, 57% less than $500, and 75% less than $1,000" (p. 37).

"In the large cities, auto accident trials form a considerable proportion of all civil trials, ranging from one-fifth to one-half or more, and the duration of litigation is from one to three years or even more" (p. 36).

(Emphasis supplied.)

This Columbia Report may be considered the bible of the no-fault, anti-tort reform movement all tenets of which derive from it. The Commission refers to it in order to refute the contention that modern highway traffic flows and densities render the tort liability system obsolete. The DOT study of 1968-70 in large part, merely reflects the criticisms which were formulated over forty years ago when there were but 23,000,000 registered cars in the United States, only 6,000,000 of which were insured.

Lightening the Burden of Litigation Through Arbitration

The central thesis of the Columbia Report of forty years ago, reaffirmed more recently in the DOT study, centers on delay, congestion, and cost. For example, in 1930, a $500 auto accident case involving a one-day trial at a court cost of $200 and valuable plaintiff attorney time worth $150, may have waited a year or more for adjudication on a clogged court calendar.

The Commission's reform proposal should lighten the modern day version of this same burden appreciably by the prompt and fair reparation of medical-disability loss for all victims without regard to fault. That is, in many if not most cases, it will render civil actions for special damages unnecessary, except as under subrogation such actions may be warrented.[1]

However, for instances when victims do pursue a tort remedy, the Commission proposes a further reform which should greatly reduce the central judicial problem of delay, congestion, and cost. After examining various alternative solutions to this problem, the Commission finally adopted for endorsement the recent recommendation of the Report of the Joint New Jersey Supreme Court and the New Jersey State Bar Association Committees on Expedition of the Civil Calendar (March 1971). This joint recommendation is constructively made a part of the Commission's report. In substance it provides:

(1) Calendar Calls: Calendar problems in each county are to be discussed regularly by a Calendar Committee and the Assignment Judge.

(2) Mandatory Settlement Conference (Jurisdictional maximum level of $5,000): At least nine months from date of first answer, the matter shall be listed for settlement conference before a judge in the county of venue. Plaintiffs must be present and defendant's represen-

[1]In accordance with the Commission's recommended reform program, most of this subrogation will take place outside the courts through intercompany settlement agreements or arbitration.

tative with authority to settle must be available. Where no settlements are reached, judge shall indicate which cases are in his opinion $5,000 or less in value.

(3) Mandatory Arbitration (Jurisdictional maximum level of $5,000): Cases of $5,000 or less shall be listed for arbitration with an arbitration panel which conducts hearings and makes awards. The award may be in excess of $5,000 or may find no reasonable basis for a claim. A dissatisfied party may appeal to have the matter decided de novo by a jury trial. After expiration of appeal time and upon court order the award is entered with the force and effect of a judgment. (Arbitrators receive $50 per day per case, $150 per day maximum.)

(4) Use of Masters: Masters could conduct mandatory settlement conferences as in (2) above.

(5) Motion Practice: Attorneys are permitted to serve demands on adversay attorneys requiring answers to outstanding interrogatories within 35 days.

(6) Bifurcated Trials: There shall be bifurcated trials on the issues of liability and damages (except in products and malpractice cases).

(7) Six-Man Juries: Litigants are to be encouraged to use six-man juries. No jury fee would be charged and a 5/6th verdict would be valid. A litigant demanding a 12-man jury would pay $50 to help defray extra costs.

(8) Non-Jury Trials: Are to be encouraged where feasible; Court and Bar should always seek mutual consent to non-jury trials.

(9) Comparative Negligence: Should be adopted to increase settlements and produce a more just result.

The Committee endorses these recommendations and makes them part of its reply to the charge given it in JR 4 wherein "It shall be the duty of the Commission to compare present methods of compensating victims...through court proceedings with other judicial or quasi-judicial proceedings."

Lightening of Burden of Litigation Through Rule of Evidence

The Commission recommends a change in the admissibility of evidence rule to provide that injured persons shall not plead or introduce into evidence in an action for damages against a tortfeasor those damages for which PIPC benefits are available. This rule will effectively prevent duplicate recovery in cases tried in the courts, in congruence with the recommended subrogation procedure in cases settled outside the courts. Further, the prohibition on presenting to the courts evidence as to amounts of indemnity already obtained under PIPC benefits will have the effect of leveling the size of verdict or settlements.

VIII

HIGHWAY SAFETY

The two prongs of any economic security program are prevention and alleviation. To the extent that prevention activity can reduce claim frequency and average claim cost, it reduces the burden placed upon the reparation system with respect to the cost, availability, and judicial problems associated with the alleviation of loss. For this reason, the Commission, even though not directly charged with the responsibility in JR 4, gave consideration to highway traffic safety in New Jersey.

Alleviation vs. Prevention

It is well recognized in textbooks on insurance and risk management that the provision of contractual alleviation for loss tends to increase moral or morale hazard. That is, if a person is certain to be indemnified for loss, he is likely to be less concerned about taking thought and measures to prevent the occurrence of loss.

The Commission has recommended compulsory alleviation for all victims of automobile accidents without regard to fault. And to a considerable extent, this is an abrogation of the tort principle that he who is injured through a failure to exercise the care of a reasonable and prudent man under like circumstances shall not be eligible to recover indemnity for personal loss from the fund created by injury liability premiums.

Changes in the system of reparation do not of course have any immediate or direct effect on the number or magnitude of losses which actually exist at the time of system change. Aside from the possibility of a reduction in the expenses connected with the provision of reparation, a system change can reduce costs only by rejecting loss--by transfering loss back to the victims themselves or across to other reparation systems to which victims may belong. The only true means of reducing reparation costs without increasing the burden of loss transfers is through prevention--reducing the number of accidents and the extent of injury and injury loss resulting from accidents.

With respect to the economic theory of prevention, loss-reduction activity should be carried on up to the point where the marginal cost of the prevention effort equals the marginal gain from the resulting reduction in loss. It is the Commission's belief that the prevention effort in this State falls far short of the utilization margin suggested by this theory.

Safety Measures Endorsed By the Commission

Looking first at injury loss, the Commission endorses both State and Federal legislation devised to reduce the toll of fatal and serious injuries resulting from the unsafe use of alcohol and drugs.

Specifically it endorses the alcohol safety action program of the National Highway Traffic Safety Administration (NHTSA) and the intent and purpose of various New Jersey bills such as:[1]

(1) Senate No. 497 (Senator Lynch, January 29, 1970).

Provides for the loss of driving privileges for stipulated periods to persons convicted of the illegal use or dispensation of narcotic drugs.

(2) Assembly No. 694 (Assemblymen Raymond and Shusted, February 16, 1970).

Prescribes fines, imprisonment, and forfeiture of driving privileges for those who operate motor vehicles while under the influence of intoxicating liquor or drugs as defined.

The DOT and other authoritative treatises on automobile accident injuries prove that the losses from fatal and serious injuries exceed by far the indemnity which can currently be provided by the injury liability premium fund for such losses. And it is agreed that these losses are primarily attributable to aberrant driving induced by alcohol and to a lesser extent by drugs. That severe penalties for drunken driving can be effective in reducing this most destructive of highway hazards is indicated by the experience of those jurisdictions at home and abroad which have experimented with them. As the result-

[1] During 1970 and 1971 various bills were introduced in the New Jersey Legislature for the purpose of deterring the unsafe use of alcohol and drugs. The Commission is pleased to note that some of these have already been enacted.

ing savings in injury loss far exceed the cost of the prevention which produces it, the benefit-cost ratio of such legislation promises to be very high.

However, the Commission also believes that the deterrence to be achieved by punitive legislation should be supplemented by a greater effort at educational rehabilitation for drunken drivers. To this end, it recommends to the earnest attention of municipal magistrates, police officials, educators, and the State Division of Motor Vehicles, the rehabilitative program sponsored by the American Automobile Association the substance of which is taken from the Phoenix DWI (driving while intoxicated) Program.

The Phoenix DWI Program

The methodology of this program which has been successfully utilized in Phoenix, Arizona, for over six years, is found in Ernest I. Stewart and James L. Malfetti, Rehabilitation of the Drunken Driver (New York: Teachers College Press, 1970). The step-by-step operations of the program are briefly summarized below.

(1) Drivers convicted of DWI pay a routine fine of $150 plus a $15 surcharge.

(2) The Magistrate assigns the convicted driver to a DWI course with instructions that the individual's performance in the course will influence his ultimate sentence--additional fines, license revocation, and/or imprisonment.

(3) The driver attends four sessions of a DWI course conducted as a non-credit extension service of Arizona State University and pays a required fee to the University; that is, the course is self-supporting.

(4) Session 1: The Drinking Driver. The instructor introduces the Chief Magistrate who gives the history and purpose of the course

and emphasizes its regulatory aspects. The instructor presents films, charts, statistics, and case histories to dramatize the effects of drunken driving on society. Reading materials are assigned for home study and written testing in session 2.

(5) Session 2: Alcohol and Driving Skill. Through films, charts, lectures, and discussions, the instructor drives home the adverse effects of alcohol on driving abilities and attitudes. A written test is given on the homework assignments.

(6) Session 3: Problem Drinking. This session concentrates on helping students determine by means of tests whether they are problem drinkers and how they are to avoid future DWI behavior.

(7) Session 4: Personal Action. The instructor reviews previous sessions and by means of films, cases, tape recordings and discussions, prepares students to write 40-minute essays on their individual plans to avoid future DWI behavior.

(8) After "graduation", the individuals appear for sentencing before the Magistrate who reviews their course performance and plans for self-improvement.

The Commission believes that the favorable and documented results of this program recommend it for adoption wherever feasible in New Jersey as an important means of reducing both the accident toll and the costs of reparation. In the Commission's framework of analysis (Figure 1), the program should reduce the number of accidents and serious injuries and consequently the number of losses which have to be fed into claims and premium billings in its recommended reparation reform program.

Other Recommended Safety Measures

While the deterrence of drunken driving is probably the most important single factor in promoting highway safety and reducing insurance costs in New Jersey, the Commission gave consideration also to other areas of accident and injury prevention: motor vehicle safety

standards, crash protection for occupants of automobiles, driver licensing and education, emergency medical services, safety research and coordination, improved highways, and so on.

Motor vehicle safety standards concerning the effectiveness and cost-benefit ratios of such aspects of loss prevention as brake cups and fluids, material flammability, pendulum and barrier impact criteria for front and rear surfaces, passive protection systems, child seating systems, control location, identification, and illumination, rear underride protection, and so on, must be formulated with a view to all cars in the national market and hence are properly the province of the NHTSA.

The Commission of course endorses the efforts of the DOT and the NHTSA to effect and regulate these and other standards as will lower both the total economic loss of accidents in the State of New Jersey and the costs of the reformed reparation system recommended by the Commission.

With respect to prevention measures at the State level, the Commission would offer two recommendations.

(1) Seat Belt Usage. The principal post-crash cause of fatal and serious injuries is ejection from the car upon impact or rollover. And the principal means of prevention is the use of seat belts. The cost of this prevention is very low compared to the savings which may be obtained. However, seat belts are of no utility unless they are employed and such employment is the exception rather than the rule. Pending Federally mandated full passive occupant crash protection and

seat belt activation systems, the Commission recommends that the general education effort to promote seat belt usage be supplemented by experimental legislative compulsion such as (but not confined to):

Assembly, No. 1337 (Assemblyman Shusted, December 7, 1970).[2]

> Persons failing to wear seat belts as defined are subject to arrest and upon conviction the payment of fines.

(2) General Loss Prevention Measures. While the Commission recognizes the growing and pressing demands made upon the State's revenues for vital services, it would point out that:

(a) New Jersey motorists contribute over a third of those revenues;

(b) New Jersey has the highest vehicle density per road mile of any state in the nation;

(c) The economic loss from traffic accidents in New Jersey will probably exceed $1.5 billion in the 1971-1976 period;

(d) New Jersey leads the nation in the percentage of highway user revenues diverted to non-highway purposes; and

(e) According to DOT, New Jersey ranks in the lower middle grouping of all states in that Agency's "Highway Safety Standards Compliance Ranking"--without a single "A" rating in any category of standards.

These statistics are taken from the New Jersey Citizens Highway Committee's Highway Safety In New Jersey (Hopewell, N.J., 1971). According to the report of this Committee, New Jersey's greatest shortcomings include driver education and licensing, accident location identification, traffic records, highway design, construction and maintence, pedestrian safety, police traffic services, debris hazard control and cleanup.

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[2]Law, Public Safety and Defense Committee.

As, quite apart from humanitarian considerations, the expenditures needed to correct such highway hazards will produce offsetting and long-lasting reparation cost savings for New Jersey motorists, the Commission finds logic in more adequate funding of the agencies responsible for the needed improvements.

The Commission respectfully recommends to the attention of the Legislature the safety proposals contained in the aforesaid report and also the correlative Proposals For Saving Life and Property and Reducing the Costs of Automobile Insurance (Philadelphia, Pa., 1970-1971), prepared and published by the Pennsylvania Action Committee for Highway Safety of which Dr. Herbert S. Denenberg, Insurance Commissioner for Pennsylvania, was the chairman. The remedial safety measures proposed by this Committee have applicability in New Jersey as well as in Pennsylvania.

Reducing Property Damage Costs

The average New Jersey motorist purchases four principal automobile insurance coverages--bodily injury liability, property damage liability, comprehensive (fire and theft), and deductible collision. The bulk of his total premium billing, about 60-70 per cent of it, is for the three property coverages. Therefore, if substantial cost savings in the overall insurance premium are to be achieved, the causes of property damage loss, including automobile thefts, must be brought under better control.

To this end, the Commission supports the intent and purpose of current New Jersey bills drafted to reduce the incidence of automobile thefts.

To control the most important single cause of high property damage insurance costs--the extreme fragility and damageability of automobiles in minor crashes--the Commission endorses:

Senate No. 2090 (Senators Italiano, et al., February 11, 1971).[3]

> Automobile manufacturers shall warrant that cars sold and licensed in New Jersey on and after January 1, 1973, are equipped with appropriate energy absorption and anti-damageability systems capable of withstanding low-speed impact collisions, front and rear, without damage to the car or its equipment.

A Note on No-Fault Property Insurance

The foregoing recommendations pertain to reduced insurance costs through actual loss prevention. It is always possible alternatively to achieve insurance cost savings by transferring all or part of the loss down and out of the reparation flow and back to the insureds themselves.[4]

For example, the cost of property damage liability insurance could be completely eliminated by granting negligent motorists full tort exemption for the property losses they cause. And in some states, no-fault legislation has moved in this direction.

However, to the extent that tort exemptions apply, the innocent victim of a negligent motorist would have to bear his own property loss, a loss transfer from negligence to innocence rather than the reverse flow which many motorists consider to be equitable and just.

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[3]Law, Public Safety and Defense Committee.

[4]See the Commission's Flow Diagram in Figure 1, Chapter II.

Certainly, a system under which the innocent victim of a negligent motorist was forced to pay his own loss would impose on that victim a hidden "premium" for self-insurance. In the long run, the mathematical expectation of such compulsory[5] self-insured losses would have to be weighed against the cost of the property damage liability insurance the victim would otherwise have to buy before any valid conclusions about insurance cost savings could legitimately be reached.

Those who did not wish to self-insure property damage loss, absent a tort remedy, might of course purchase deductible collision insurance. But currently, under tort, the cost of this coverage in New Jersey is minimized by a mandatory minimum $100 deductible and by subrogation recoveries from negligent motorists and their liability insurers. A tort exemption for the latter would mean a two-way increase in costs for the innocent victims of negligent motorists. First, they would be unable to recover their $100 deductibles, and second, because of the loss of subrogation rights for collision insurers, the cost of that coverage would rise.

Further, even under the existing system, the present price structure for collision coverage makes the insuring of older cars undesirable as a matter of economics. That is, the collision insurance alternative to self-insurance--absent a tort remedy--is not really available to many New Jersey motorists.

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[5]To the extent that tort exemptions force accident victims to absorb their own losses compulsory self-insurance is being applied.

For these reasons, the Commission, at least at this stage in the development of no-fault property insurance, would recommend that a major emphasis be placed on loss prevention rather than on self-insurance as a means of reducing property insurance costs.[6]

[6]For further discussion of this subject, see Chapter IX, No-Fault Insurance.

IX

NO-FAULT INSURANCE

The No-Fault movement born of the Keeton-O'Connell plan in 1965 has been the seedbed for all subsequent studies of automobile insurance reform including the work of this Commission. Nearly all of the extensive publicity given in New Jersey to the question of reparation reform, both before the creation of the Commission and during its hearings, has echoed and re-echoed to the theme of No-Fault. And the Commission's mandate as stipulated in JR 4 was "to study certain automobile insurance matters, including the matter of a 'no fault' automobile accident insurance plan."

It probably does not strain the legislative intent of JR 4 to say that the Commission's basic assignment was to study No-Fault insurance for possible adoption in New Jersey.[1] Accordingly, the Commission has given high priority to No-Fault throughout its research activities. The purpose of this chapter is to review the Commission's deliberations on No-Fault and to draw together in the context of that subject many of the findings presented separately in earlier chapters.

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[1] The Newark Star Ledger of April 28, 1970, referred to the Commission as a "No Fault Panel."

The Meaning of No-Fault.

If the Commission was to make recommendations concerning the adoption of a no-fault insurance plan for New Jersey, it was important that the semantic confusion created by that term should be held to a minimum.

Therefore, in addition to hearing expert witnesses on the nature and meaning of no-fault, the Commission carefully studied the no-fault laws proposed or actually adopted in Delaware, Florida, Illinois, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, Wisconsin, and other states. It also studied the commission reports of states, notably California and North Carolina, which recommended a cautious deferral of action on no-fault until other states had developed an experimental basis for decision making. Finally, it examined the draft legislation of "model" no-fault bills proposed by various insurer organizations.

This research led the Commission to certain conclusions concerning the meaning of no-fault.

First, no-fault is a generic not a specific term.

Second, as used in the generic sense, no-fault simply means the provision of first-party medical and disability benefits to all injury victims of automobile accidents without regard to fault (liability). These first-party benefits are usually pro-

vided by the owner of the motor vehicle (the named insured) to cover: (1) the named insured and his family against injury loss caused by automobile accidents in nearly all circumstances; (2) other drivers and occupants of the owner's car injured in that car, and (3) pedestrians and other non-occupants injured by the owner's car.

Benefits payable under the first-party provisions of the named insured's policy, usually a modified bodily injury liability insurance coverage such as that provided by the Family Automobile Policy, are set off in one of various ways against such recovery as the injured person may make in an action for damages in tort. That is, the injured person may not effect a double recovery under both no-fault and tort.

Third, under the "genus" no-fault, there is a bewildering variety of specific plans which can vary radically one from the other as to the treatment accorded: general damages; collateral sources; subrogation; liens, set-offs, and tort exemptions; intercompany settlements; arbitration; amounts, kinds, and duration of benefits; property damage provisions; compulsory insurance; mandatory rate reductions; and many other features, all of which can affect costs, reparation, and market availability, and their interrelationships, in quite different ways.

Fourth, only specific plans can exist as legislative enactment possibilities. Generic no-fault is largely meaningless for purposes of applied reparation reform. Therefore, questions such as the one most frequently asked the Commission--"Would no-fault reduce cost?"--are also meaningless. No-fault has relevancy to the cost, availability, and reparation objectives only when its terms and provisions are specifically identified. At this stage in the development of no-fault legislation, the Commission believes that the best way to identify no-fault plans specifically is by reference to the states in which they have already been adopted or proposed, thus: Massachusetts No-Fault, New York No-Fault, Florida No-Fault, and so on.

Fifth, with respect to the impact of no-fault on costs, some specific plans have a strong and others a weak, if not negative, potential for cost reduction. Specific no-fault plans have been adopted in low-cost as well as in high-cost states. For example, in Delaware and Oregon, the average prices of bodily injury liability coverage are respectively $39 (32 per cent below the countrywide level of $57) and $45 (21 per cent below countrywide). By comparison, in Massachusetts, the average price, even with that State's mandatory 15 per cent reduction, is $73 (28 per cent above countrywide). It is noticeable that plans

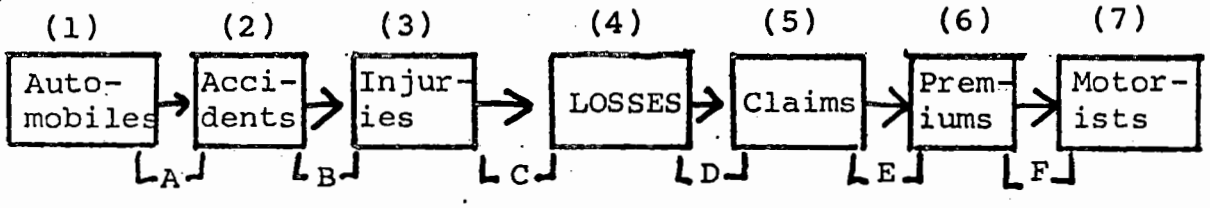
adopted in low-cost states have less built-in potential for cost reduction than those adopted or proposed in high-cost states.

The Meaning of Cost Reduction Through No-Fault.

As indicated earlier, the most frequent and important question raised with respect to a specific no-fault plan concerned the effect it would have on cost (price). This was also the question to which the most conflicting testimony was addressed.

Referring to the analytical framework provided in earlier sections (see Figure 1) and reproduced again below the Commission would argue that cost (price) is determined at conversion point D where Losses "flow" into Claims, and unless some means can be found to reduce that flow no real or lasting cost reduction is possible.

Flow Diagram



Spurious Cost Reduction. If, as in New Jersey, Losses flow into Claims at a frequency of 2.7 claims per 100 cars and at an average claim cost of $1,670 a claim, then the cost (pure premium) per car is, as already noted, $45. And the Premiums

(charges for insurance) passed along to Motorists must provide for this unit cost if insurers are to make insurance readily available in the market.

That is, to attempt to cut cost (price) at conversion point E by the regulatory creation of a pure premium of $40 where the actual claim cost is $45, would be spurious cost reduction and would "achieve" the Cost Objective only by sacrificing to it the Reparation and Availability Objectives. Forced to sell coverage at a net operating loss, insurers will nearly always constrict markets and tighten claim settlements. Obviously, such spurious cost reduction is no respecter of reparation systems and could exist whether the $45 claim cost was developed under tort or no-fault.

Real Cost Reduction. If a specific no-fault plan is to reduce in any real sense the claim cost (pure premium) of $45 currently generated by the tort system in New Jersey, it must significantly reduce either the claim frequency of 2.7 or the average claim cost of $1,670, or both.

One way to accomplish this purpose, and by far the best way, would be to restrict the "flows" from Automobiles to Accidents to Injuries such that the number and size of Losses to be converted into Claims at conversion point D were less than

they are currently under tort. (See diagram.)

The Commission is entirely agreed that no-fault makes no pretence of reducing in any way the number of accidents, injuries, and losses generated by automobile usage in New Jersey.

Therefore, any cost reduction to be achieved by no-fault must exercise its effect exclusively at conversion point D, by reducing either claim frequency or cost relative to the existing number and distribution of losses.

(1) Reducing Claim Frequency. Under tort it has always been assumed, and quite logically, that the claim frequency is considerably less than the loss frequency. This must be true unless insurers totally ignore the tort principles which their contracts are supposed to implement. If automobile insurers currently pay third-party benefits to all victims without regard to fault, so that claims equal losses, then no-fault is already in effect. As this is an absurd proposition, it follows that the number of losses per 100 cars in New Jersey currently is appreciably higher than the number of claims per 100 cars. Further, as the paramount purpose of no-fault is to equate claims with losses, the Commission can only conclude that a

no-fault plan in New Jersey would appreciably increase, not decrease, the current claim frequency of 2.7 per 100 cars.

(2) Reducing Average Claim Cost. As no-fault increases claim frequency--the rate of "flow" of individual losses into claims--it will cause an increase in premiums and price unless it can reduce average claim cost sufficiently to offset the increase in claim frequency.

The Commission could not determine the actual increase in claim frequency which would be likely to result in New Jersey under any no-fault plan which equated claim frequency with loss frequency. Therefore, it could not estimate the reduction in average claim cost needed to achieve a cost (price) reduction of say 15 per cent in the current pure premium of $45.

However, it could and did construct a schedule of the reductions in average claim cost which would have to accompany various assumed claim frequencies if a 15 per cent reduction in price were to be realized. This schedule is shown in Table 9.

An examination of this table shows that in order to achieve a price reduction of 15 per cent, no-fault would have to reduce the current New Jersey claim cost from $1,670 to $1,190 if claim frequency increased by 20 per cent; from $1,670 to $1,000 if

frequency increased by 40 per cent; from $1,670 to $780 if frequency increased by 80 per cent. Other relationships are also shown.

As authoritative studies of automobile accident reparation, including the DOT Study, have placed the proportion of injury victims who receive a tort payment at only 50 to 60 per cent of the total victim population, it is not inconceivable that some varieties of no-fault could increase claim frequency by nearly 100 per cent. In Table 9, an 80 per cent increase in frequency would necessitate a 53 per cent decrease in average claim cost if no-fault were to make good its promise of a 15 per cent reduction in price.

How No-Fault Attempts to Reduce Average Claim Cost.

While the Commission could not prognosticate the impact of different varieties of no-fault on New Jersey's average claim frequency, it was willing to make an assumption and see where it led.

For this purpose it arbitrarily took from Table 9 a frequency of 3.8 per 100 cars. This represents a 40 per cent increase in the current frequency. To achieve a 15 per cent price reduction with a frequency of 3.8, a no-fault plan would have to reduce the average claim cost from $1,670 to $1,000. This is a dollar reduction of $670 and a percentage reduction of

Table 9

SCHEDULE OF AVERAGE CLAIM COSTS WHICH REDUCE NEW JERSEY'S PURE PREMIUM OF $45 TO $38 ASSUMING GIVEN CLAIM FREQUENCIES

(1) % Increase over 2.7	(2) Claim Frequency		(3) Average Claim Cost	=	(4) Pure Premium	(5) Reduction Dollar	: %
0 %	2.7	x	$1,410	=	$38	$260	16 %
10	3.0	x	1,270	=	38	400	24
20	3.2	x	1,190	=	38	480	29
30	3.5	x	1,090	=	38	580	35
40	3.8	x	1,000	=	38	670	40
50	4.1	x	930	=	38	740	44
60	4.3	x	880	=	38	790	47
70	4.6	x	830	=	38	840	50
80	4.9	x	780	=	38	890	53
90	5.1	x	750	=	38	920	55
100	5.4	x	700	=	38	970	58

40 per cent. How might this reduction be achieved through no-fault?

The average claim cost of $1,670 may be divided into two parts: (1) the cost to the insurer of investigating and "adjusting" the claim, and (2) the benefit payment actually made to the claimant. This two-way division is about $370 for the former and $1,300 for the latter.

Looking first at the insurer's adjustment expense, it was obvious that even a complete elimination of the $370 cost item would not by itself attain the goal of a $1,000 average claim cost.

Looking second at the claimant's recovery, and assuming the complete elimination of adjustment expense, it would be necessary to reduce the benefit payment of $1,300 by $300 to attain the target cost of $1,000.

However, the Commission also found it totally unrealistic to imagine that under any kind of no-fault plan, and especially not in the mixed tort-no-fault plans certain states have already adopted, either adjustment expense or attorney fees could be totally eliminated.

Reducing the Benefit Payment. If, in the example given, with an arbitrarily assumed 40 per cent increase in claim frequency, a no-fault plan could reduce both adjustment expense and benefit payment by 40 per cent, then it could achieve its objective of modest price reduction. But in this event, the average benefit payment would have to be reduced by $520, from $1,300 to $780. How might this be accomplished?

Under tort, the average benefit payment consists of two parts: (1) the economic loss and (2) the intangible loss or, as it is called at law, general damages. Obviously, the average benefit payment can be reduced only by withholding indemnity for one or the other or both of these two parts.

The Commission found that all existing no-fault laws place certain limitations on economic loss recovery so far as first-party benefits are concerned. Some no-fault laws also place explicit limitations on recovery for general damages. Even where no explicit limitations are placed on access to general damages, it is presumed that the intangible loss part of the average benefit payment would be reduced by a process of selective loss assumption

on the part of the injury victims themselves. That is, those claimants who had received prompt and adequate recovery of economic loss under first-party coverage, and who in their own judgment had not sustained appreciable intangible loss, would neither expect to receive nor claim for general damages.

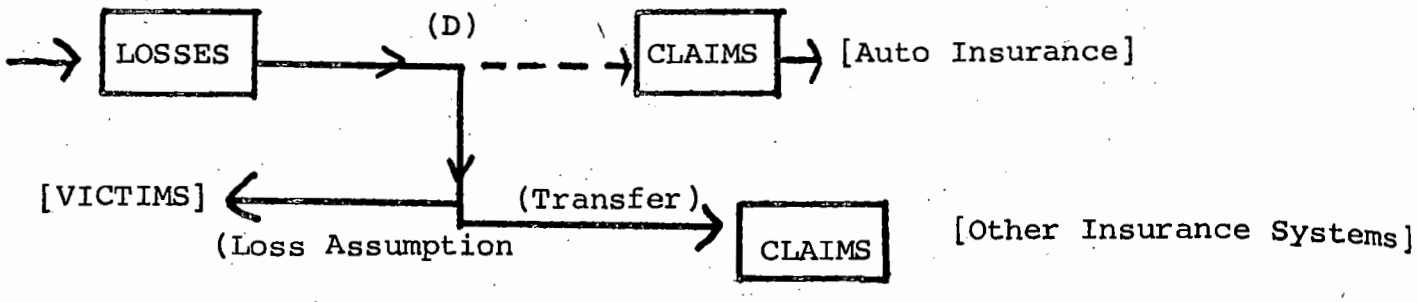
Whether, in the example studied by the Commission, the limitations placed by no-fault on economic loss, and either explicitly or implicitly on general damages, would suffice to reduce the current average New Jersey benefit payment of $1,300 by 40 per cent ($520), the Commission has no way of predicting.

But the Commission would point out that if no-fault is to succeed in price reduction, it must reduce the average claim cost and hence the benefit payment. And if claim frequency were to increase by as much as 40 per cent, the benefit payment would have to be reduced by 40 per cent. (See Table 9.)

The Loss-Assumption and Loss-Transfer Devices. If the success of a no-fault plan in achieving price reduction depends on reducing the aggregate dollar flow from Losses to Claims, that part of the losses rejected at conversion point D may either

be returned unindemnified to the injured victim, or else transferred by the victim to other insurance systems. This is illustrated in the accompanying diagram.

Diagram of Loss Assumption and Transfer



For cost reduction in one type of no-fault proposal, heavy reliance is placed on compulsory transfers of losses to other insurance and benefit systems--social, group, and individual--wherever possible. No-fault benefits are withheld to the extent that injured persons can recover economic loss from other sources--Blue Cross, Blue Shield, Major Medical, Disability Income, Wage Continuation, Social Security, and so on.

For many reasons, some of which are presented below, the majority of modern no-fault plans, including those recently adopted by various state legislatures, usually do not attempt to transfer losses to other systems.

First, equity in pricing would require insurers to allow suitable actuarial credits for other insurance coverages collateral to the no-fault coverage, and this requirement, both in the rating of risks and in the adjustment of claims, would create what has been rightfully called an "administrative monster."

Second, if other benefit sources were exhausted in order to indemnify an automobile injury loss and subsequently the insured should suffer a non-automobile injury loss, he might be left without protection for the second loss.

Third, to the extent losses are transferred to other systems, the principle of social accounting, on which no-fault is predicated, would be violated.

Fourth, it would deny non-automobile insurers, who now utilize the right of subrogation against the automobile reparation system, the means of minimizing their losses and hence prices.

Everything considered, the Commission did not favor a transfer of losses outside the automobile insurance system as a means of reducing the average claim cost. That is, the Commission believes that the benefits provided by the automobile reparation system should be primary. Three possible exceptions to this general rule would be where the injury victim was

entitled to: (1) workmen's compensation benefits; (2) to benefits payable under temporary disability insurance plans, and (3) to Medicare.

With respect to other insurance programs available to automobile owners, the primary function of the proposed Automobile Reparation System will give insureds an opportunity to eliminate duplicate benefits for economic losses due to automobile accidents. Such elimination of duplicate coverage could result either in premium savings under such voluntary programs or in substitution of other needed insurance protection. In this connection, the Commission is keenly aware of the possible reduction in Blue Cross and Blue Shield Costs through special arrangements with these health care intermediaries.

A second device which might be used to reduce the average claim cost involves loss-assumption. That is, the system would be so designed at conversion point D--between Losses and Claims--that economic and/or intangible loss would be returned in some measure to the victim himself. While this might eventually be necessary in order to achieve cost and price reduction under no-fault, the Commission was reluctant to force loss-assumption on the innocent victims of negligent motorists.

Containing Fraud. It is possible for some "Losses" to flow into Claims which are not bona fide losses. That is: (1) there was no injury at all, or (2) the injury was so slight

that it did not occasion any significant loss, or (3) the loss actually occasioned was greatly exaggerated. All three possibilities involve fraud in varying degrees.

From the conflicting testimony presented to it, the Commission was not able to determine whether no-fault in the long run would diminish, increase, or have no effect on such fraud as may now exist in the New Jersey automobile accident reparation system. But to the extent that the insurance mechanism at conversion point D allows false and fraudulent "losses" to become payable claims, the system's claim frequency is, of course, inflated, with the inevitable result that part of the pure premiums financed by motorists are used to sustain fraud rather than to indemnify loss.

The potential for price reduction through anti-fraud controls at point D can be illustrated by means of a hypothetical example.

If a stringent anti-fraud device at point D could screen out fraudulent losses and thereby reduce the claim frequency from 2.7 to say 2.0, the average New Jersey pure premium could be reduced from $45 to $33 and the average price from $71 to $52, a reduction of 27 per cent.

	F	x	C	=	P/P - - - →	Price
Actual	2.7	x	$1,670	=	$45 - - - →	$71
Hypothetical	2.0	x	1,670	=	33 - - - →	52 (-27%)

The Commission notes that no-fault laws generally provide very stringent penalties--heavy fines and prison sentences--for fraud and it agrees that in the interests of both cost and reparation objectives this is desirable.[2]

The Massachusetts No-Fault Results.

In studying the possible impact of a no-fault plan on New Jersey's costs and prices, the Commission was naturally

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2. That no-fault proposals provide severe penalties for fraud may reflect a fear that no-fault benefit systems are vulnerable to false and exaggerated claims.

intrigued by the reports of the Massachusetts Insurance Department that following the passage of a no-fault law in that State--in the first six months--the average claim frequency fell by about 50 per cent over the comparable 1970 frequency. If a similar no-fault plan could accomplish the same result in New Jersey, the average price in this State might be reduced from $71 to $37 even without any reduction at all in the average claim cost. Thus--

	F	x	C	=	P/P - - - →	Price
Actual	2.70	x	$1,670	=	$45 - - - →	$71
Hypothetical	1.35	x	1,670	=	23 - - - →	37

It is possible that the reported Massachusetts results reflect a statistical understatement attributable to the fact that the experience under no-fault has not yet fully matured. However, if a significant and lasting drop in claim frequency actually has occurred, the explanation for the decline must lie in one or more of the five causally-related events up to and including Claims in the flow diagram. (See diagram presented above.)

Possible explanations:

(1) Automobiles: There has been a reduction either in the number or in the usage of automobiles (and especially in hazardous usage).

(2) Accidents: Even if there is no reduction in automobile numbers or usage, the accident rate has declined for diverse reasons including improved highways, cars, driving attitudes and skills, and so on.

(3) Injuries: Even if there is no change in automobile usage or accident rates, the injury rate has dropped because of safer cars, increased use of safety equipment, improved first-aid facilities and services, and so on.

(4) Losses: Even without any changes in the foregoing factors, losses have been reduced through improved medical technology and greater effort and desire on the part of injured persons to effect an earlier rehabilitation and return to employment.

(5) Claims: Even without any improvement in the foregoing events, claim frequency has been reduced by either of two means: (a) returning loss unindemnified to the victims, which constitutes a reduction in reparation, or (b) forcing the victim to transfer loss from the automobile insurance system to other insurance and benefit systems. In this connection, it is entirely possible that the effect of the Massachusetts no-fault system, if not the legislative intent of the no-fault law itself, has been in the direction of both of these means. (A third possibility is that fraudulent claims have been substantially eliminated.)

The Commission found that both the measurement and explanation of the Massachusetts claim frequency change under No-Fault depends on so many variables and unknowns that it would be unwarranted at this time to infer that in general no-fault reduces rather than increases claim frequency other things being equal.

The reparation purpose of no-fault is to increase, not decrease, the number of claims which are entitled to benefits from the automobile insurance system. If the effect of no-fault is actually to decrease the number of claimants who are entitled to benefits, then the case for no-fault has to be completely rewritten and it is not what it purports to be.

The Commission finds it contradictory to hold that no-fault increases the proportion of injury victims entitled to automobile insurance benefits and at the same time reduces the claim frequency--other things being equal.

Cost Reducing Factors in Proposed Program

After reviewing reform features that would drastically reduce either the access to recovery or the extent of recovery for all accident victims in order to produce either a reduction in claim frequency or claim cost, the Commission decided on measures that will reduce costs selectively.

A measurable reduction in claim cost can be expected from the proposed Limited Tort Exemption for soft tissue injuries where the cost of treatment does not exceed $100. According to the DOT study, the total settlement cost for relatively slight injuries under the present tort system amounts to a greater multiple of the actual economic loss than prevails for the more serious cases. In most of these cases, the difference between the settlement amount and the actual economic loss represents more often reparation for inconvenience than for actual pain and suffering.

The proportion of cases that will be subject to this Limited Tort Exemption is estimated to be considerable. Since the claim cost on these cases will be substantially reduced, the over-all average claim cost will also be reduced, without infringing upon the right to full recovery of those who have suffered more severe injuries.

With respect to more serious cases which eventually may reach the courts, the recommendation regarding admissibility of evidence (1.6) is expected to have a leveling effect on verdicts or settlements. Under that rule, injured persons shall not plead or introduce into evidence in an action for damages against a tortfeasor those damages for which PIPC benefits are available. This rule will also effectively prevent any duplication of benefits under the automobile insurance system, which also will result in reduction of loss costs.

Recommendation 5 provides for a mandatory settlement and arbitration program for claims with an estimated value of $5,000 or less. If such program is instituted, it should contribute to a reduction of loss adjustment expenses as well as the legal costs to the claimants; further it will create an atmosphere conducive to a more realistic evaluation of justifiable reparation than is very often the case under the present system.

On balance, the Commission holds that the cost reducing factors in the proposed program will at least balance the factors leading to cost increases resulting from the broader access to recovery for economic losses by all accident victims regardless of fault. There are indications that the savings will be greater than the cost increases, leaving a margin that could lead to a reduction in the required bodily injury insurance premium.

However, the Commission makes no recommendation regarding a rate adjustment concurrent with change in the reparation system. The Commission holds that any determination in this regard should be left to the Commissioner of Insurance who has the statutory authority of regulating rates and the expertise and technical assistance to do so.

No-Fault and Property Damage Liability.

The DOT study highlighted two aspects of the tort liability system which more than any others have drawn attention to no-fault as a cost-reducing mechanism. One is the "billion dollars" of attorney fees generated annually by the system, and the other is the addition of general damages to economic loss in the valuation of claims.

The DOT study measured both these items in the field of injury reparation and the implication was that a transfer of injury reparation from a third-party "adversary" system to a first-party no-fault system would eliminate or greatly reduce both items and hence effect cost reduction or at least some offset to the increased costs resulting from an increase in the number of claimants entitled to benefits under a no-fault system.

It has recently been proposed that a no-fault system could effect similar savings in the property damage field. This proposition has received the attention of the Commission.

Attorney fees and general damages relate of course to injury reparation. It is true that in disputed cases, the attorney includes property loss as well as injury loss in his request for damages and bases his fee on the combined recovery for both losses. It is also true that an insurer splits its defense-of-suit cost between property and injury claims in proportion to their respective amounts. However, the Commission deems it fanciful to place property loss and injury loss in the same category so far as the potential impact of no-fault on costs is concerned.

According to data supplied the Commission by the New Jersey State Insurance Department, the average claim frequency and cost for property damage liability insurance compare with the injury data as follows:

Liability	F	x	C		P/P
Injury	2.7/100 cars	x	$1,670	=	$45
Property	7.8/100 cars	x	290	=	22

With respect to injury reparation, it is the dual purpose of no-fault to provide first-party benefits to all victims and at the same time to reduce the injury pure premium from $45 to say $38. It hopes to accomplish this dual purpose by reducing claim cost through the elimination or reduction of (1) legal fees and costs and (2) general damages. (The Commission has already examined this proposition earlier in this chapter.)

To apply this same reparation strategy to property loss, a no-fault plan would have to provide first-party property damage benefits to all victims of property loss and at the same time reduce the property pure premium from $22 to say $19 (that is, by about 15 per cent).

The Commission cannot determine for property loss any more than it could for injury loss the current excess in New Jersey of losses over claims. But it seems reasonable to assume that insurers would be more lenient with doubtful injury cases than they would be with doubtful property cases. That is, no-fault would be likely to increase the property claim frequency more than it would the injury claim frequency.

For purposes of illustration, it may be assumed that no-fault would increase property claim frequency by 40 per cent, the same percentage increase assumed earlier in the injury loss example. In this event, to achieve a reduction of 15 per cent in pure premium (and hence in price), no-fault would have to reduce the average claim cost from $290 to $174, a reduction of $116 or 40 per cent.

	F	x	C	=	P/P
Actual	7.8	x	$290	=	$22
Hypothetical	10.9	x	174	=	19

How might no-fault achieve a reduction of this magnitude in the average property claim cost? Not by the elimination of general damages because the actual $290 New Jersey claim cost is purely for economic loss. And not by the elimination of litigation and attorney fees because property cases do not warrant litigation to anywhere near the same extent that injury cases do.

It was the Commission's conclusion that, for claim cost reduction, no-fault would have to rely on one of the two devices previously mentioned: (1) passing the loss back to the victim, or (2) forcing the victim to transfer the loss to some other first-party insurance system--in this case to collision insurance.

Considering the transfer device, it is the practice of collision insurers, wherever liability exists, to transfer (subrogate) collision losses back to the property liability insurance system thereby (1) reducing collision insurance costs and (2) obtaining recovery of the deductible amount for the innocent victim of the collision loss. If no-fault legislation forced victims to transfer loss from P.D. liability claims to collision claims, the costs of collision insurance would rise by the amount of cost reductions in the property damage liability system. Further, the victim would lose the recovery of his deductible amount.

Considering next the loss-assumption device, the device employed where the innocent victim of a negligent motorist has no collision insurance--and collision insurance on older cars is not economically feasible--no-fault would force the victim, usually by a tort exemption granted the negligent motorist, to assume all or an appreciable part of his own property loss.

The Commission concluded, therefore, that no-fault's pursuit of the cost objective in property liability insurance would impair equity and justice in the reparation objective and was not to be recommended at this time.

Types of No-Fault Plans.

No-fault plans fall into one of two categories: (1) total no-fault which completely eliminates the third-party tort system, and (2) mixed no-fault plans which preserve for injured persons a third-party tort remedy under circumstances which vary from plan to plan. The latter are also called "modified" no-fault plans.

The Commission has studied both categories and noted that total no-fault, because of its radical exclusion of the negligence principle, has not to date had legislative success in any state. On the other hand, mixed tort and no-fault plans have been quite successful.

The mixed plans may be subdivided into three subclasses depending largely on the extent to which reparation through claims in tort is replaced or abrogated by no-fault. These three subclasses may be identified as: (1) the Delaware type, (2) the Massachusetts type, and (3) the Florida type.

Delaware (January 1, 1972).

(1) This is a compulsory law. All automobile owners must carry bodily injury (10/20) and property damage (5,000) liability insurance.

(2) The injury liability coverage must be expanded to provide first-party no-fault benefits for (a) medical expense, (b) funeral expense, (c) loss of earnings, and (d) extra expense for personal services, up to $10,000 per person and $20,000 per accident. Coverage applies to occupants of the insured owner's car and to non-occupants injured by his car.

(3) There are no limitations on actions for damages. Insurers are subrogated to the rights "of the person for whom benefits are provided, to the extent of the benefits provided."

Comment: This is no-fault in its simplest form. It merely adds compulsory first-party medical-disability benefits to the existing tort liability system, subrogation being the device employed to prevent duplicate recovery. There is no limitation on general damages.

Massachusetts (January 1, 1971).

(1) This too is a compulsory law, all automobile owners must carry bodily injury (5/10) liability insurance.

(2) The injury liability coverage (Coverage A) is divided into two parts, Division 1, Liability, and Division 2, No-Fault. No-Fault benefits must be provided for (a) medical expense, (b) funeral expense, (c) loss of earnings, and (d) extra expense for personal services. However, unlike the Delaware law, there are specified limitations on medical and wage loss and the total no-fault payment provided for is $2,000 rather than $10,000 per person. Coverage applies to the insured owner, members of his household, authorized operators of and passengers in the insured car, and pedestrians struck by the car.

(3) Unlike Delaware, Massachusetts grants a tort exemption to motorists to the extent that persons injured by them can recover no-fault benefits. However, notwithstanding the exemption, any insurer who makes a no-fault payment to the innocent victim of a negligent motorist can claim against the latter's liability insurer for reimbursement (intercompany settlement).

(4) Also unlike Delaware, the Massachusetts law limits actions for general damages to cases where (a) the victim's medical expenses ("threshold") exceed $500, or (b) the injury results in death, dismemberment, serious disfigurement, loss

of sight or hearing, or a fracture.

Comment: This is more complex than the Delaware law and by granting a tort exemption to motorists and restricting general damages for victims, invades the tort principle to a greater degree than does the Delaware law. However, because of the low $2,000 limit on total no-fault benefits, it must be considered a moderate form of no-fault. A one-year 15 per cent mandatory price reduction for Coverage A was written into the bill.

Florida (January 1, 1972).

(1) Like Delaware and Massachusetts, Florida has made its law compulsory.

(2) The injury liability coverage is expanded to include no-fault medical, funeral, and disability benefits up to $5,000 per person. Coverage applies to the insured, relatives in his household, persons operating the insured's car and passengers therein, and also to non-occupants struck by the car.

(3) Like Massachusetts, Florida grants motorists a tort exemption to the extent no-fault benefits are payable. But unlike Massachusetts, Florida also grants a tort exemption for damage to motor vehicles up to $550 unless the vehicle was parked at the time of damage.

(4) Like Massachusetts, Florida limits recovery for general damages. However, the medical expense "threshold" is raised to $1,000. As in Massachusetts, recovery for general damages is permitted for death, dismemberment, disfigurement and permanent disability.

(5) Because of the tort exemption for property (vehicle) damage, a Florida car owner must either buy some form of collision insurance or be prepared to absorb the first $550 of damage himself.

(6) Any insurer making a no-fault payment to an injured person has a lien to the extent of its payment on any recovery realized by the injured person on a claim in tort.

Comment: This is a very complex law and goes beyond the Delaware and Massachusetts laws in the extent to which no-fault replaces tort. General damages are more severely curtailed and tort exemptions apply to property damage as well as to bodily injury. Like Massachusetts, a one-year 15 per cent reduction in price was tied to the bill.

The Commission's Recommended No-Fault Bill.

For reasons which have been analyzed in some depth in this and other chapters, and after a careful consideration of various kinds of no-fault plans viewed in the context of the

relevant New Jersey reparation environment, the Commission has recommended a mixed tort and no-fault bill which borrows in part from the three types of law described above.

First, the law should be compulsory as in all three types.

Second, it should provide no-fault first-party medical, funeral, disability, and extra expense benefits similar in kind and approximate amount to those in the Florida bill, and coverage for persons as in all three bills.

Third, similar to the Delaware bill, neither tort exemption nor limited access to general damages should be employed to any appreciable degree.

Fourth, as in all three laws, the no-fault benefits are primary.

Fifth, as in the Delaware bill, the insurer of no-fault benefits is subrogated to the extent of its payment to any rights the victim may have in tort.

Sixth, as in Massachusetts, any insurer who makes a no-fault payment to the innocent victim of a negligent motorist has the right to claim on an intercompany settlement basis from the liability insurer of the negligent motorist.

Seventh, as in Delaware, no mandatory rate reduction is to be tied to the bill.

The Commission has summarized the principal features of its no-fault bill in the Recommendations set forth at the beginning of its report.

X

STATE FUNDING

Introduction

According to an authoritative work by Professors Turnbull, Williams, and Cheit[1], social insurance, as distinct from competitive, private enterprise insurance, is characterized by three distinguishing features: (1) Participation is compulsory; all eligible persons are to be covered. (2) Benefits are prescribed in the law and provide a floor of protection for all covered persons. (3) Social adequacy rather than individual equity is stressed.

It is apparent that a compulsory system of first-party medical-disability benefits payable to all automobile accident victims without regard to fault could be viewed as satisfying these three criteria of social insurance.

As the financing and administration of social insurance is closely related in philosophy and logic with the use of state funds, the Commission desired to explore the potential of government operated insurance enterprise in connection with its recommended reparation reform program.

New Jersey already utilizes the state fund device in connection with the social risks covered by unemployment insurance and temporary disability insurance. The New Jersey Unsatisfied Claim and Judgment Fund is also in the nature of a state fund.

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1. Economic and Social Security (New York: The Ronald Press, 1967.)

Elsewhere, state funds are actually in use in the Canadian province of Saskatchewan (1946) and in the United States Commonwealth of Puerto Rico (1970). Both of these funds operate no-fault reparation systems. In addition, Secretary John R. Jewell of Maryland's Department of Licensing and Regulation, recently recommended (1971) a state fund to administer Maryland's reparation reform program. The Commission has examined all three of these plans.

Maryland's "Pay-As-You-Drive Plan."

The dissatisfactions which gave rise to the Maryland proposal are similar to those which brought about the creation of the AISC in New Jersey: (1) cancellations; (2) lack of availability, and (3) "soaring costs." In response to these dissatisfactions, Governor Marvin Mandel specifically asked Secretary Jewell to study "a state program under which motorists could obtain minimum protection at reasonable rates."[2] Within six months of the date of that directive, Secretary Jewell proposed the Maryland plan described below.

(1) Premiums Payable Upon Purchase of License Plates. Upon purchasing license plates, each owner will pay an insurance premium equal to the registration fee. For example, where the fee is $20, the owner will pay an additional $20 for insurance. The additional $20 automatically insures the car for one year under a blanket or group "social" contract which provides bodily injury and property damage liability insurance at the State's financial responsibility limits. (Some form of no-fault medical benefits will probably be incorporated in this policy.)

2. Directive of January 28,1971 from Governor Mandel to Secretary Jewell

Comments: This feature of the plan automatically eliminates the uninsured car and effectively closes the uninsured gap. All registered cars are insured cars and there are no loopholes. There is no availability or cancellation problem. All persons entitled to register cars are automatically provided with automobile insurance. This insurance is co-terminous with registrations. There is no need to apply for insurance in a separate transaction. There are no policies, no cancellations, no nonrenewals, and no enforcement problem.

(2) Premiums Payable Upon Purchase & Renewal of Drivers' Licenses. Upon purchase of a driver's license, each operator must pay an insurance fee of $20. (A higher fee is charged for operators with points charged against their driving records.)

Comments: Every operator with a valid driver's license is automatically an insured driver and, as with insurance on the car itself, there are no policies to apply for, issue, endorse, cancel, or nonrenew. The fact that one driver in a household is a high risk does not affect the entitlement of the owner to insure his car or of other members in the household to obtain insurance at rates commensurate with their risks.

(3) Premiums Payable in the Form of Gasoline Taxes. In addition to the insurance fees payable in connection with registrations and operators' licenses, a premium of 2¢ a gallon is levied on the purchase of gasoline.

Comments: This component of funding logically correlates premiums with automobile usage and type of car. Thus, of two cars with equal engine power (and gasoline consumption), the owner and operators of a car which is used 30,000 miles a year (within the State) will pay twice the gasoline premium of one which is driven only 15,000 miles. Of two cars which are driven the same number of miles a year, that with the higher horsepower (and gas consumption) will pay the higher premium. (An incidental benefit of this arrangement concerns pollution. To reduce premiums it is necessary to reduce gasoline consumption either by avoiding unnecessary driving or by getting more mileage with less gasoline consumption. Usually, the liability risk is lowered by both solutions.)

Puerto Rico's Automobile Accident Social Protection Act.

The Commonwealth of Puerto Rico was the first jurisdicition in the United States to employ a no-fault reparation system. Designed by Dr. Herbert S. Denenberg, who is now Insurance Commissioner for Pennsylvania,[3] it has been in effect now for

3. Dr. Denenberg was ably assisted by Dr. Juan Aponte of the University of Puerto Rico.

over a year and a half and is financed and administered through a state fund. The law is entitled the Automobile Accident Social Protection Act and the state fund is called the Automobile Accident Compensation Administration (AACA). AACA's Executive Director, Mr. Frank W. Fournier, has kindly supplied the Commission with the Fund's financial statements.

In brief, for the fiscal year 1970-71, AACA's total premium income was $18,450,000. Of this amount, $2,015,300 in expenses were incurred for operating the fund's nine district offices and the seven departments of its central office headquarters in San Juan. These departments and district offices service the benefit program as well as the administration of the fund.

Like the Maryland plan, the Puerto Rico Social Protection plan is financed by means of an insurance fee payable at the time of registration. It therefore has all the advantages of the Maryland plan with respect to insurance availability, noncancellable coverage on all registered cars, closing of the uninsured gap, and avoidance of the compulsory coverage enforcement problem.

Unlike the Maryland plan, there is a flat fee of $35 per registration. No supplementary levy is made on operators' licenses or on the retail sales of gasoline. Further, the plan is purely a no-fault reparation program for death, dismemberment, medical expense and wage loss.

Saskatchewan's Automobile Accident Insurance Act.

The Saskatchewan plan, which became effective in 1946, is a combination reparation system including both no-fault benefits and liability insurance (limit of $35,000) all of which is funded

and administered by the Saskatchewan Government Insurance Office, a state fund.

As in the Maryland and Puerto Rico plans, all licensed cars are automatically insured at the time of registration by the payment of an additional fee, in effect an insurance premium, of from $5 to $40 a car. As in the Maryland plan, licensed operators must also pay an additional fee (premium). However, it is a much smaller charge, $2 as against $20.

State funding in Saskatchewan produces the usual advantages with respect to availability, closing of the uninsured gap, non-cancellable coverage, avoidance of enforcement problems and expense, and so on.

The Commission notes also that an expanded Saskatchewan plan has been enacted effective January 1, 1972, in the Canadian province of Manitoba. This too will be state funded.

New Jersey's TDB and Unsatisfied Claim and Judgment Funds.

To a certain extent, these two reparation systems can be considered under the heading of state funding in the automobile accident field. The TDB plan currently offers limited no-fault disability benefits to insured workers who are injured in automobile accidents. And the UCJ Fund, which provides full tort benefits based on fault,[4] is essentially license-plate "insurance," the automobile owner currently paying an extra fee of $50 at the time of registration, a collection method employed in the three

4. Up to the State's financial responsibility limits of $10,000/$20,000 BI and $5,000 PD.

plans discussed above.

According to the 33rd Annual Report of the New Jersey Division of Employment Security, TDB's fund appropriations for all reporting periods, which ended September 30, 1969, were divided as follows: Expenses $33,833,000 and losses (benefits) $357,694,000.

The Manager's Annual Report to the Unsatisfied Claim and Judgment Fund Board covering the 12-month period from April 1, 1970 to March 31, 1971, showed allocations between administrative expenses and claim payments (losses) as follows: Expenses $506,000 and Losses $5,820,000.

The Commission's Decision.

The Commission acknowledges the advantages offered by state funding. These advantages have a special attraction when viewed against a recent history of what Insurance Commissioner Clifford has called "an unprecedented restriction in the New Jersey market."[5] There are only two sources of insurance, one state, the other private. Any appreciable reluctance on the part of private insurers to supply the New Jersey market would naturally be an argument for state funding.

Nevertheless, after careful consideration of all aspects of the problem, the Commission does not recommend state funding at this time. The Commission does recommend that, by appropriate legislation, a special commission be created for the specific purpose of studying state funding of New Jersey's automobile accident reparation system.

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5. The Commissioner's news release of June, 1970, covering the New Jersey 90-day moratorium on terminations.

A. Improvement In Market Behavior.

Reference has already been made to recent improvements in the adequacy of the New Jersey rate level due to diminishing injury claim frequencies. For the market as a whole, availability normally increases with improvements in rate level adequacy. According to the Department of Insurance, the New Jersey rate level is now adequate and insurers are increasing their writings.

A recent survey conducted by the Department of Insurance indicates that the number of private passenger automobiles insured through the voluntary market in New Jersey has increased by five per cent from the first half of 1970 to the first half of 1971. These date indicate a definite expansion rather than a contraction in the general market supply.

With respect to availability for extra-risk motorists, Commissioner Clifford's new Automobile Insurance Plan, which went into effect in June, 1971, should provide material relaxation of market restrictions.

Further, the Commission's recommended reform proposals, with the provision of no-fault benefits for motorists and price stabilization for insurers, should increase both the willingness of motorists to purchase and of insurers to supply insurance.

Finally, increasing use of mass marketing methods and computerized information and billing systems should materially reduce the overhead costs of insurers in the next several years.

B. Other Reasons.

The Commission has already mentioned its resolve to utilize and improve existing institutions and agencies wherever possible in the attainment of its reform objectives. Some 140 private insurers are currently organized in New Jersey to provide and underwrite automobile insurance and to settle the diverse claims which arise under it. In addition, New Jersey motorists with a great variety of needs and interests can obtain insurance counsel and service from over 12,000 casualty agents located throughout the State.

The modified no-fault program recommended by the Commission will require the continued services of private enterprise marketing, underwriting, and claims adjustment organizations.

With respect to the marketing function, motorists will need optional forms of insurance in addition to the compulsory statutory coverage. Furthermore, they will still need the services of agents for various forms of non-automobile insurance.

Concerning underwriting, the Commission strongly favors an equitable distribution of the system's aggregate loss costs among different classes of motorists according to the contributions such classes severally make to loss costs.

Finally, the loss adjustment services of a skilled and experienced claims organization such as private insurers currently supply, will be necessary to handle the combined tort and no-fault benefit system which the Commission has recommended. And private insurers would in any event continue to maintain claims staffs to handle other lines of business.

Thus, a state fund would not eliminate the necessity for a full-function private enterprise insurance operation but rather would exist side by side with it, duplicating to a considerable degree its output potential. Such duplication would drain revenues from private insurance operations with the result that some units would be forced to discontinue operations while others would have to increase the loading charge on remaining lines of business in order to survive.

For example, an agent whose business was split 50-50 between automobile insurance and other lines, and who--even after state funding--continued to service most of his original customers for optional coverages, would suffer a large reduction in commission income without any appreciable reduction in the number of accounts handled.

If the Commission's reform recommendations are to be implemented at an early date, the readily available services of an existent, fully-staffed and funded private enterprise source of insurance supply would seem to be an advantage rather than a disadvantage.

Further, during at least the first three years of the new system's operations, there will be a vital need for flexibility, adjustment, and adaptation. Policy forms, claims settlement procedures, rate methods and structures, and other technical aspects of the changeover, will have to evolve from those based primarily on tort liability to those based on no-fault. Unlike state funds, private insurers function in a national market and the lessons learned and the experience acquired in the national market's experiments with no-fault will have great value for New Jersey if that State preserves a private enterprise source of supply.

In sum, the innovations and improvements to be derived from 140 mature and competitive private insurers constitute a valuable resource which should not be lost to New Jersey at a time when it is embarking on a new and untried system of reparation for victims of automobile accidents.

The Commission was mindful also of pending Federal legislation in the field of national health insurance, legislation which may have such impact on the whole issue of automobile accident reparation as to make consideration of state funding at this time premature if not precipitate.

XI

CONCLUSIONS

The objectives of the Automobile Insurance Study Commission were determined under JR 4 for the purpose of bringing relief to three parties at interest in New Jersey's automobile accident reparation system: accident victims, motorists, and the courts.

The Commission sought prompt and certain alleviation of loss for accident victims, an adequate supply of insurance at stabilized costs for motorists, and a reduction in litigation burden for the courts. Specifically and succinctly, these objectives were labelled: (1) Reparation, (2) Cost, (3) Availability, and (4) Judicial.

The means selected by the Commission for the attainment of these four objectives have been set forth in the 16 recommendations which appear at the beginning of this report.[1] These recommendations relate to objectives as indicated in the following analysis.

Objective	Recommendations[2] Number	Subject
(1) Reparation	1.	Mandatory no-fault medical-disability benefits for all victims.
	2.	Compulsory insurance for all motorists and increased limits of liability.
	3.	Right of injured persons to bring tort actions for damages over and beyond the level of no-fault benefits.

[1] See "Summary Statement of Commission's Recommendations."
[2] The recommendations bear the identifying numbers given them in the "Summary Statement."

	4.	Comparative negligence statute.
	5.	Mandatory arbitration provision.
	6.	Modification of the Unsatisfied Claim and Judgment Fund to provide no-fault benefits.
	8.	Mandatory Uninsured Motorist coverage at increased limits of liability.
	9.	Mandatory offer of excess first-party disability benefits at the insured's option to decline.
	12.	Advance payment of property damage claims.
(2) Cost	1.	Mandatory no-fault benefits. (The provision of prompt first-party alleviation for loss at low cost should reduce the need for third-party claims at high cost.)
	1.	Admissibility of evidence. (Prevents double recovery under no-fault and tort, induces greater objectivity in valuing general damages.)
	1.	Subrogation by no-fault insurers. (This prevents double recovery under both no-fault and tort.)
	3.	Limited $100 tort exemption (threshold) for general damages in connection with soft-tissue injuries.
	4.	Mandatory arbitration. (This should reduce legal and court costs.)
	11.	Penalties for false and fraudulent representations regarding claims for benefits. (Some observers have assessed the cost of fraudulent claims at 15 per cent of current insurance premiums.)
	13.	Anti-damageability standards for automobiles sold in New Jersey.

	14.	Rehabilitation of drunken drivers.
	15.	Loss prevention in general.
(3) Availability		Without listing it as a specific recommendation, the Commission has endorsed Insurance Commissioner Clifford's revised Automobile Insurance Plan as an effective device for mitigating the hard-to-place driver problem. In addition, all of the recommendations apropos to cost reduction should also promote the general availability of insurance.
(4) Judicial	1.	Mandatory no-fault benefits. (The prompt provision of first-party alleviation for loss should reduce the volume of third-party suits.)
	1.	Subrogation of no-fault insurers by means of inter-company settlement agreements. (Subrogation proceedings will be by arbitration and not through the courts.)
	2.	Admissibility of evidence will minimize tort actions for general damages.
	3.	Limited tort exemption will reduce court action.
	5.	Mandatory arbitration for tort actions under $5,000.
	14. & 15.	Loss prevention. (To the extent that loss prevention reduced the frequency of accidents, the number of third-party claims and suits should be similarly reduced.)

That these recommendation will provide reasonable benefits promptly and efficiently for all accident victims and transfer many third-party disputes from courtroom to arbitration panel seems certain. That they will stabilize or reduce costs and open insurance markets for motorists is likely. At least they have been formulated with that purpose in view.

No one can predict with any degree of precision what effect a no-fault benefit program will have on claim frequency and average claim cost. These determinants of insurance prices will be revealed only through actual operating experience with the program. Should experience indicate the need for a greater emphasis on cost reduction, the reparation program can be adjusted downward to provide that emphasis. However, the Commission, by majority vote, was reluctant to sacrifice reparation to cost before the need therefor had actually been demonstrated. The Commission does not recommend a state funding for New Jersey's automobile accident reparation system at this time but does recommend (16.0) that a special legislative study commission be created and funded for the purpose of studying such a system.

In Chapters II through IX, the report articulates and discusses the findings and conclusions from which the recommendations were derived. They contain the end results of many months of research and deliberation during which the Commission's attention was engaged by public hearings,[3] compilations of data and statutory materials, analyses of the DOT studies, reviews of no-fault proposals and laws, consultations with actuaries and insurance experts, attendance at a national no-fault conference, meetings with officials from various State agencies, and other wide ranging activities.

The Commission's deliberations were materially assisted through valuable commentary supplied by the Honorable Robert L. Clifford,

[3]The Commission's Hearings have already been published.

Commissioner, and Mr. Philipp K. Stern, Actuary, of the New Jersey State Department of Insurance; by Mr. Sal Capozzi, Manager of the Unsatisfied Claim and Judgment Fund; by Mr. Fred Mann of the Division of Motor Vehicles; by Mr. Charles Marciante, State President, New Jersey AFL-CIO; by Dr. Calvin H. Brainard, consultant to the Commission; by Mr. Raynor A. Fairty of New Jersey's Blue Cross organization; and by Mr. D. Murray Franklin, Assistant Secretary of the Maryland Department of Licensing and Regulation.

The Commission members extend their thanks to Mr. Mario Iavicoli, for his assistance as Commission counsel and to Peter P. Guzzo, Research Assistant, Division of Legislative Information and Research, who served as Commission secretary, for his assistance in managing administrative details, and commend both of them for their invaluable service in compiling and analyzing many automobile insurance reparation plans considered in the preparation of this report.

To these and other persons who gave generously of their time to assist it, the Commission expresses its indebtedness and gratitude.

The Commission offers this report to the Governor and the Legislature in the belief and hope that it will provide a substantial basis for early progress toward the goal expressed in the report's title--Reparation Reform for New Jersey Motorists.

A P P E N D I X

BIOGRAPHICAL SKETCHES OF COMMISSION MEMBERS

JOHN J. BROWN

JOHN J. BROWN, a resident of West Orange, is a graduate of St. Rose of Lima School, Newark, and Barringer High School. He studied Labor Relations at Cornell University.

Mr. Brown was a business representative and a union organizer for the International Union of Operating Engineers, Local #68, and is now the Secretary-Treasurer of the New Jersey State AFL-CIO.

Mr. Brown is a Trustee of Local #68 and has, for many years, been a delegate to the New Jersey State Building and Construction Trades Council. He was also a delegate to the Bergen and Hudson County Central Labor Union and was an executive board member of the Essex-West Hudson Central Labor Union and an executive member of the Political Education Committee.

Mr. Brown is married to the former Margaret Leddy and has four children. He is a trustee of St. Joseph's Roman Catholic Church of West Orange.

Mr. Brown holds membership in many civic and fraternal organizations.

GEORGE W. CONNELL, ESQUIRE

Mr. Connell is a resident of Essex Fells. He is a graduate of Immaculate Conception High School, Montclair; Montclair Academy, Montclair; and Rutgers University College of Law. He was admitted to the Bar of the State of New Jersey in 1951 and at present is a partner in the Law Firm of Hughes, McElroy, Connell, Foley & Geiser.

Mr. Connell is a member of the Essex County Bar Association, New Jersey State Bar Association and American Bar Association. He has served on the New Jersey State Bar Association Committee on Comparative Negligence and is a former member of the Executive Committee of the Civil Procedure Section of the New Jersey State Bar Association.

He is married to the former Cathleen Patricia Murray of Montclair. They have two children, Peter and Cathleen.

ASSEMBLYMAN THOMAS J. DEVERIN

Assemblyman Deverin resides in Carteret and was the Mayor of the borough of Carteret during the period 1967-1969. He also has served as a member and President of the Carteret Board of Education.

He has been in the General Assembly since 1970 and is a member of the Commerce, Industry and Professions Committee and the Labor Relations Committee.

Assemblyman Deverin was educated in St. Mary's High School, Perth Amboy and is Personnel Assistant with United States Metals Refining Company. He is a former member of the Board of Directors, American Red Cross, Perth Amboy-Carteret Chapter, and former chairman of Community Chest-Carteret Fund Drive. A member of St. Joseph's Roman Catholic Church, Carteret, he and his wife, Lillian, are the parents of twin daughters and a son.

DAVID W. DOWD, ESQUIRE

Mr. Dowd resides in Livingston, where he served as Township Councilman for five years and Mayor of Livingston Township in 1959. He also served as State Senator, representing District 11 (Essex County), from 1968 to November, 1971, at which time he resigned from the Senate to assume the position of General Counsel to the New Jersey Turnpike Authority.

An attorney by profession, Mr. Dowd was educated at Malvern Preparatory School, Pennsylvania; Villanova University; and Rutgers University School of Law. He is a member of the Knights of Columbus; the B.P.O.E.; a past board member of the West Essex Red Cross; a past chairman of the March of Dimes; a past president of the Livingston Republican Club; and a member of the Essex County Bar Association. He is also a member and trustee of Saint Raphael's Church.

WILLIAM K. DUNCAN

Mr. Duncan, Executive Vice President of the Shore Motor Club AAA, headquartered in Atlantic City, New Jersey, has also served as Vice Chairman and Chairman of the Public Affairs Council of the "AAA Auto Clubs of New Jersey". A holder of both a New Jersey Insurance Agents and a New Jersey Insurance Brokers license, Mr. Duncan directs the affairs of his auto club's Insurance Agency Department. He also heads-up an active and busy World Wide Travel Agency and in this capacity has traveled widely throughout Europe, Asia and the South Pacific. In addition he conducts and is responsible for the regular affairs of Auto Club Operations covering such fields as membership development and sales; Emergency Road Service; AAA School Safety Patrols; Pedestrian Safety Programs; and legislation, State and Federal, affecting the motoring public.

Educated in East Orange, Bloomfield and Newark public schools, Mr. Duncan attended Barringer High School in Newark and has completed several advanced management seminars at Ohio State University. He and his wife, Julie, have two daughters, and reside in Absecon. He is a Marine Corps veteran of World War II having served with the famed 1st Marine Division at Guadalcanal and in the South Pacific Theatre of operations. He is an active private pilot who has also served as Executive Officer of the Florham Park Squadron, New Jersey Wing, Civil Air Patrol. During his association with this flying organization he flew over 50 hours of air-search and rescue missions for the United States Air Force.

JAMES HUNTER, III, ESQUIRE

Mr. Hunter, an attorney by profession, has been associated with the law firm of Archer, Greener, Hunter and Read, Camden, New Jersey, since December of 1945, and has been a partner since January of 1948. During all of this time he has devoted himself almost entirely to the civil side of the practice. He has had an active role in the work of the organized bar, serving as a member of the Board of Managers of Camden County Bar Association and, more recently, as a Director of the New Jersey State Bar Association. He has also served, inter alia, for three years as Secretary of the New Jersey Supreme Court's Ethics and Grievance Committee; as a member of that Court's Committee on Unauthorized Practice; on the State Bar Judicial and County Prosecutors Appointments Committee; and as a delegate to the Judicial Conference for the Third Circuit. He was, moreover, instrumental in establishing the continuing cordial relationship in Camden County of the joint Medico-Legal Committee.

Mr. Hunter was educated in Woodbury High School; Temple University; and the University of Pennsylvania Law School. He is a Major in the Retired Reserve of the United States Marine Corps, and resides in Haddonfield. He and his wife, Jane are the parents of three daughters.

Mr. Hunter was appointed and confirmed as Circuit Judge of the Court of Appeals for the Third Circuit and necessarily resigned from the Automobile Insurance Study Commission, effective on October 26, 1971.

SENATOR JOHN A. LYNCH

Senator Lynch is a resident of New Brunswick and is a graduate of St. Peter's High School in New Brunswick and Fordham University School of Law in New York. He was a Magistrate of the City of New Brunswick through 1935 to 1941. In 1941 he was appointed by Governor Edison as Middlesex County Prosecutor and served in this position until 1946. In December, 1946, he was appointed by the City Commission of the City of New Brunswick to fill a vacancy as a Commissioner and served in such capacity until May, 1951. He was elected as Mayor of the City of New Brunswick in May, 1951, and served until May, 1956. He was first elected to the State Senate of New Jersey in November, 1955, and was re-elected in 1959, 1963, 1965, 1967 and 1971. In 1966 he served as President of the State Senate of New Jersey and Acting Governor.

Senator Lynch is the senior partner in the law firm of Lynch, Mannion, Lutz & Lewandowski, having law offices at 75 Paterson Street, New Brunswick and is a member of the Middlesex County Bar Association; New Jersey State Bar Association; and is a member of the American College of Trial Lawyers.

He is married to the former Evelyn Rooney and has four children. His oldest daughter, Barbara Ann, was a victim of the polio epidemic in 1949 and lived in an iron lung until her death in 1965.

EUGENE H. RAYMOND, III

Assemblyman Eugene Raymond, III, resides in Pennsauken Township, where he was a Township Committeeman for nine years and Mayor for four years. He has represented District 3C (Part of Camden County) in the General Assembly since 1968. He is a member of the Appropriations Committee and the Transportation and Public Utilities Committee.

A graduate of the Wharton School, University of Pennsylvania, Mr. Raymond also attended Harvard Business School and is an executive of the Atlantic Richfield Company. He attained the rank of Captain as a B-29 pilot in World War II. He and his wife, Virginia, have three children. He has served as President of the Pennsauken United Republican Club, and is a former chairman for the Camden County Republican Executive Committee. He also is a past chairman of the Zone 1 United Fund Drive; current Secretary of the Pennsauken Planning Board; and a member of the South Jersey Public Relations Association; American Legion 125; Sons of the American Revolution; Merchantville Masonic Lodge #119; Excelsior Consistory and the Crescent Shrine. Mr. Raymond is a member of the Episcopalian Church.

DAVID TEESE

Mr. Teese, Claims Manager of Fireman's Fund American Insurance Companies, an affiliate of the American Express, has been a professional claims adjuster for over 32 years. He has managed the New Jersey claims operation of the American Auto Insurance Company, and has headed the National Field Claims Administration of the American Associated Companies at St. Louis, Missouri and thereafter served as National Field Superintendent of Claims of the American Insurance Company of Newark, New Jersey.

Mr. Teese is also a member of the North Jersey Claim Managers Council and has been past president of the New Jersey Claims Association. He presently serves as a member of the Board of Governors of the New Jersey Unsatisfied Claim and Judgment Fund.

A father of three, he resides with his wife in Warren Township, Somerset County and North Beach, Ocean County. Mr. Teese was educated in New York public schools, matriculated at Columbia University and attended Pace College.

CALVIN H. BRAINARD, AISC CONSULTANT

Dr. Calvin H. Brainard is Professor of Finance and Insurance at the University of Rhode Island.

After graduating from Columbia University, he engaged for ten years in the automobile insurance business before entering the teaching profession at Stevens Institute of Technology in Hoboken, New Jersey. In 1954, he accepted the Chairmanship of the Insurance Department at the University of Rhode Island, long noted for its comprehensive curriculum of insurance courses.

He is the author of a textbook and numerous publications on automobile insurance including the DOT Study entitled Price Variability in the Automobile Insurance Market.

In 1967, he received a grant from the Walter E. Meyer Research Institute of Law to study the costing of automobile insurance systems and shortly afterward participated actively in the debate on no-fault insurance in Massachusetts and Rhode Island.

He has been consultant to various organizations including the Federal Trade Commission at the time of that Agency's participation in the DOT Automobile Insurance Study.

MARIO IAVICOLI, AISC COUNSEL

Mr. Iavicoli received his Doctor of Law degree from the University of Pennsylvania in 1965. In 1962 he received a Bachelor of Science degree in Mechanical Engineering from Drexel University. He is a partner in the law firm of Maressa, Console and Iavicoli in Berlin, New Jersey.

Mr. Iavicoli was appointed in 1970 as Counsel to the Speaker of the New Jersey General Assembly by Speaker William K. Dickey. In 1971 he was reappointed to that post by Speaker Barry T. Parker. He has been a prosecutor in a municipality and has been a solicitor for various municipalities, boards of education and municipal utility authorities. Mr. Iavicoli also periodically lectures at Drexel University on Patents and Trademarks and Engineering and the Law.

He is a member of the Camden County Bar Association, the New Jersey State Bar Association and the American Bar Association. He is also a director of a Drexel University Endowment Fund.

Mr. Iavicoli resides in Haddonfield with his wife, the former Arleen LeDonne and his three children Michelle, Denise, and Laura.