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H. Laurence Ross

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COMMENT

THE INA BILL: A NEW APPROACH TO AUTOMOBILE **INSURANCE**

H. LAURENCE ROSS*

Introduction

At the moment of this writing, the Colorado legislature is considering a new approach to automobile insurance in the form of a bill introduced by Representatives Donald Horst and Richard Lamm of Denver.1 Although the bill represents a step in the direction of "non-fault" insurance, its origin is the generally conservative insurance industry, in particular, the management of the Insurance Company of North America (INA).2 It retains the current tort-liability system virtually intact and adds generous first-party benefits for all drivers; however, its originators believe that coverage for the average driver will cost no more than the prevailing package of insurance benefits. If the bill passes the Colorado legislature, the experience of the next few years will provide a "laboratory test" of a new and promising solution to the dilemma of liability versus compensation principles in automobile insurance which differs significantly from the existing situation in most states and from the well-known reform in effect in Massachusetts.3 Whether or not it passes, the bill presents a model for consideration by other legislatures. The following pages will present the background of the bill, describe it and indicate its theoretical and practical advantages.

FAULT V. No-FAULT

The amounts spent by Americans for automobile-related insurance are staggering, ranging in recent years upwards of ten billion dollars per year.4 The damage caused by automobiles is likewise impressive, including more than 50,000 deaths and several million injuries each

^{*} Professor of Law, University of Denver.

H.B. 1221, 48th Gen. Assembly (Colo.) (1971).
 Incorporated in 1794, the company's main address is 1600 Arch Street, Philadelphia, Pennsylvania 19103.

^{3.} Mass. Ann. Laws ch. 90, §§ 34A-34N (Supp. 1970).

^{4.} U.S. DEP'T OF TRANSP., STRUCTURAL TRENDS AND CONDITIONS IN THE AUTOMO-BILE INSURANCE INDUSTRY 9 (1970).

year.⁵ For more than four decades scholars have looked at such statistics and have questioned the manner in which the insurance funds provided by drivers have been distributed to the victims of automobile accidents. From the pioneering Columbia Study of 1932,⁶ through the work of individual legal scholars in the '50's and '60's,⁷ the Michigan Study of 1964,⁸ and the Department of Transportation Study of 1970,⁹ a pattern of research findings has emerged from which academic critics have launched a barrage of criticism. The findings can be summarized into three general categories:

1. The system is inefficient. As a means of distributing benefits to the injured, the system is among the least efficient of modern institutions. The principal reason for this is the necessity to base payment on a finding of legal liability, thus requiring investigative, processing and administrative steps which are totally unrelated to the severity of the consequences of an accident. These costs plus sales expenses take more than half of every dollar paid into the system. The New York State Insurance Department estimates the returns to victims of automobile liability insurance at 44 cents on the dollar, a sorry contrast to such systems as Blue Cross or private accident and health insurance which return to injured parties 93 percent and 83 percent of receipts respectively. The system is a means of distributing benefits among the least efficient of the system.

Delay is another element of the pattern and is again explained by the same causes. Legal liability is a more time consuming matter to determine than is injury. Delays in compensating automobile victims through liability insurance are forty times as long as under accident and health insurance.¹²

2. The system is inequitable. Again and again research has shown

6. COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES, REPORT BY THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS (1932).

^{5.} See, e.g., NATIONAL SAFETY COUNCIL, ACCIDENT FACTS (1970); NATIONAL SAFETY COUNCIL, ACCIDENT FACTS (1969).

^{7.} See, e.g., James & Law, Compensation for Auto Accident Victims: A Story of Too Little and Too Late, 26 Conn. B.J. 70 (1952); Morris & Paul, The Financial Impact of Automobile Accidents, 110 U. Pa. L. Rev. 913 (1962); Franklin, Chanin & Mark, Accidents, Money and the Law: A Study of the Economics of Personal Injury Litigation, 61 Colum. L. Rev. 1 (1961).

^{8.} A. Conard, J. Morgan, R. Pratt, Jr., C. Volz & R. Bombaugh, Automobile Accident Costs and Payments: Studies in the Economics of Injury Reparation (1964).

^{9.} U.S. Dep't of Transp., Economic Consequences of Automobile Accident In-Juries (1970).

^{10.} State of New York Ins. Dep't, Automobile Insurance . . . For Whose Benefit? 35 n.62 (1970).

^{11.} Id.

^{12.} Id. at 18-19.

that people with small losses collect more in proportion to their losses than do those more seriously injured.¹⁸ Delay is also less with smaller losses. The reason for this disproportion lies partly in the fact that small claims are regarded by insurance companies as nuisances to be bought off, whereas large claims are resisted in order to save significant sums of money.

3. The system is expensive. Premiums have risen to more than \$400 per year for basic liability protection for an average family in the large metropolitan areas. Owners of more than one car and those with teenage children have seen the cost of an adequate insurance package mount to over \$1000 per year. The fact that automobile insurance costs are tied to some of the most inflationary elements of the American economy guarantees continued upward pressure upon rates. However, increases in rates are subject to political resistance, and—high though the rates may be—most insurance companies are finding automobile insurance to be unprofitable. One reaction to this situation has been the attempt on the part of the companies to restrict their underwriting to the most favorable risks, thus denying insurance coverage to increasingly larger segments of the population. Is

These weaknesses in the system as viewed by the critics have generated a wide variety of proposals for change. Perhaps the best known of these is Keeton and O'Connell's Basic Protection plan which is the basis of both the Puerto Rican and Massachusetts legislation in effect today. Though other plans differ in detail, most share with the Keeton-O'Connell plan the following features:

- 1. Payment to victims is based on involvement in an accident rather than on the legal liability of another party. Various restrictions are placed on this non-fault payment principle, but all plans purport to cover the bulk of expenses of most accident victims on a non-fault basis.
- 2. Liability questions are either eliminated or limited in their bearing on most cases with resulting savings in processing costs.
- 3. Intangible losses (pain, suffering, etc.) are excluded from the insurance or drastically limited in the ordinary case, thus providing

^{13.} See, e.g., id. at 26-27.

^{14.} Cf. Main, Why Nobody Likes the Insurers, Fortune, Dec., 1970, at 83.

^{15.} Standard insurance companies are reputed to be reluctant to insure the young, the old, the unemployed and the physically and psychologically handicapped as well as drivers with "excessive" accident, claim or violation records. Cf. U.S. Dep't of Transp., The Price and Availability of Automobile Liability Insurance in the Non-standard Market (1970).

^{16.} R. Keeton & J. O'Connell, Basic Protection for the Traffic Victim: A Blueprint for Reforming Automobile Insurance (1965).

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an additional saving. The savings are utilized in the proposed reforms to pay victims who under formal liability law would have recovered nothing.

Until the last few years, there was relatively little success in enacting reforms of the type described here. An important reason for the political failure of the reformers, despite the obvious validity of much of their criticism, was the vast vested interest existing in the present system. A system which pays the majority of its benefits to processors causes many important parties to be interested in its maintenance. The most vocal has been the plaintiff's bar, speaking through the wellfinanced and effective American Trial Lawyers Association.17 More muted, but equally dedicated to the status quo, has been the defense bar through the Defense Research Institute.18 In addition, the insurance companies have been conservative, unprogressive and primarily interested in salvaging the small profits which could be squeezed out of the system. 10 On the other side have been the bulk of academic intellectuals concerned with insurance and the small consumers' movement.20 The battle to date has been between forces of very unequal strength, and inertia has marked the situation.

In recent years, however, the underlying balance of forces has begun to change. One evident change has been the increasing militancy and effectiveness of the consumers' movement, marching under the banner of Ralph Nader and significantly supported by the federal government.²¹ Perhaps more fundamental has been the increasing inability of insurance companies to raise rates fast enough to maintain profitability in the area of automobile liability insurance. Those companies selling through independent agents have, by and large, been losing money in the automobile liability line. Increasing numbers of managements are becoming convinced that higher rates and more selective underwriting are only stop-gap solutions to their business problems and that automobile liability under the present law is destined to be

19. Cf. Lemon, Ingredients for Reform, TRIAL, Oct.-Nov., 1970, at 56. Mr. Lemmon is the president of the National Association of Independent Insurers.

^{17.} Cf. Am. Trial Lawyers Ass'n, The ATL Position, TRIAL, Oct.-Nov., 1970, at 50.
18. Cf. Ross, DRI Studies Refute Delay Claims of Critics, 36 INS. COUNSEL J. 46

^{20.} According to one defender of the status quo, "[i]t has been said that not one prominent tort professor in the country has opposed automobile compensation. In any event, the danger is a clear and present one and the signs are, indeed, ominous." Ryan, How Can We Improve the Handling of Automobile Claims and Litigation?, 28 Ins. Counsel J. 608 (1961).

^{21.} The consumers' movement approach is best exemplified in *Insurance: The Road to Reform*, 36 Consumer Reports 223 (1971).

unprofitable in the long run. They see the situation as presenting a choice between abandonment either of the present liability law or of automobile liability insurance. Some insurance companies have ceased to write new automobile policies; many have withdrawn from the most critical markets.

These developments have resulted in a split in the ranks of the insurance industry, thus weakening the previously unbeatable coalition of Bar and Industry to an important degree. A prestigious segment of the industry—the American Insurance Association—has proposed a complete abandonment of liability law in the automobile area, and more moderate departures from the status quo are being supported by other industry-wide groups and individual companies.²² The first flower of this splitting of the opposition has been the enactment into law of a version of the Keeton-O'Connell reform in Massachusetts.²⁸

THE INA BILL

The Insurance Company of North America, long-known for its independence in policy and action, was among the first members of the insurance industry to express support for fundamental reform of the automobile insurance system. In an advertisement placed in several national media in 1967, INA put its position on record:

The present system is hopelessly outmoded; it delays justice, frustrates the claimant, and costs insurance companies far more than they earn in premiums. In its place INA recommends that a plan for compensating all innocent victims be adopted.²⁴

Although in 1967 INA management was considering endorsing the Keeton-O'Connell proposal, they eventually decided otherwise on the grounds that the proposal was too complex and drastic; instead, they worked out their own reform bill which was first introduced into a state legislature in Delaware in 1970 but failed to pass.

The INA Bill was one of several which were considered by Colorado Representatives Donald Horst and Richard Lamm in their proposal to ameliorate the insurance system which was experiencing problems even

^{22.} Among these groups are the American Mutual Insurance Alliance and the National Association of Independent Insurers. For a summary of major proposals see Insurance Information Institute, Auto Insurance Systems: Existing and Proposed (1970).

^{23.} Mass. Gen. Laws ch. 90, §§ 34A-34N (Supp. 1970).

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in the relatively carefree climate of Colorado.²⁵ They believed that the INA Bill had the greatest chance for enactment under conditions where the crisis characteristics of the Massachusetts situation were absent.

A striking aspect of the INA Bill is its simplicity. Its main features are as follows:

- 1. Liability insurance is required as a condition for registering an automobile. No license plates are issued without proof of insurance. The amount and type of insurance are such as to meet the state's pre-existing requirements under its financial responsibility act.
- 2. Also required is first-party insurance, payable to the insured, his family and anyone he injures with his automobile except the occupants of another automobile without regard to fault. The amount is the same as that required for liability insurance, and the coverage includes both medical expenses and lost income. Certain types of socially reprehensible behavior will limit this coverage.²⁶
- 3. Reductions of premiums for the required first-party benefits are to be offered to those insureds who are covered by more general insurance policies, e.g., Blue Cross and Blue Shield, and who elect to forego any duplication of benefits with their automobile policies.
- 4. The liability law remains as before except that benefits recoverable under the compulsory first-party coverage may not be pleaded or used as evidence in any suit based on liability.

ADVANTAGES OF THE INA BILL

The INA Bill promises to provide coverage for the major out-of-pocket losses associated with automobile accidents for nearly all citizens of the state enacting it. Anyone injured by a properly registered automobile is covered for his medical bills and income loss by at least one policy without regard to considerations of fault. Where negligence can be proved, compensation is available for pain and suffering, inconvenience, etc. through the procedure of a tort suit. Although it can be expected that some people will obtain insurance only to be able to register a vehicle and will cancel it afterward, the resultant harm falls primarily

26. See Appendix $infra \$ 13-25-6. https://scholar.valpo.edu/vulr/vo15/iss3/4

^{25.} Representative Horst had unsuccessfully introduced a version of the Keeton-O'Connell plan into the previous session of the Colorado legislature. Colorado now permits drivers to be uninsured until their first accident; at such time, the driver must prove financial responsibility or have his license suspended. As a result, one of five accidents within the state involves an uninsured driver who often lacks the ability to pay the damages he may have inflicted upon another party. In addition, Colorado experiences the familiar problems of delay, overpayment of small claims, underpayment of large claims and high processing costs relative to payouts. For a general overview of the situation, see U.S. Dep't of Transp., Automobile Personal Injury Claims (1970).

on the delinquent and his family; in any event, no citizen will be worse off than under the present system. No additional problems are presented when driving out-of-state or with out-of-state motorists driving in the enacting state.

The cost is not expected to be higher than that of the present system. Savings are to be realized from two sources: the elimination of coverage duplication with Blue Cross and similar plans which already cover most Colorado citizens and the fact, known from current experience with no-release settlements, that most people with minor injuries are reluctant to sue on liability grounds if their out-of-pocket expenses are paid.²⁷ Although these expectations are subject to verification in practice, the Insurance Company of North America indicates that it is prepared initially to offer the new insurance at a price not exceeding the old.

A collateral advantage of the INA Bill is that it will partly redress the subsidization of the rich by the poor that is inherent in liability insurance. When a poor man buys insurance, the company must be prepared for the possibility that he will injure a rich man. Injury to a rich man costs more than injury to a poor man since the rich have more lost income and use more expensive doctors. The poor man's liability insurance premium is higher in consequence. Conversely, the rich man pays proportionately less because he may well run into a poor man. Under the INA Bill's first-party coverage, premiums will reflect the income level of the policyholder and will be higher for the rich and lower for the poor. Perhaps the lowest rates of all will go to the unmarried serviceman who, under the present system, pays one of the highest rates. The serviceman's income and medical bills are guaranteed by the Government, and he will be able to opt out of most of the compulsory coverage and premiums envisaged by the Bill.

An important feature of the INA Bill, as contrasted with other reform proposals, is its moderate nature which helps to render it politically acceptable. Its backing by a segment of the insurance industry is assured, and it meets the objections of the organized bar better than any of its competitors. Although Horst and Lamm have not been able to obtain a positive endorsement from any of the bar organizations, the opposition has been relatively moderate, and several leading plaintiff's lawyers have commented that the Bill is not objectionable. Growing opposition may well be expected as the Bill progresses through the

^{27.} See H. Laurence Ross, Settled Out of Court: The Social Process of Insurance Claims Adjustment 257-67 (1970). It is expected that any subrogation claims between insurance companies on liability grounds will be arbitrated as is now the case for collision payments. Such arbitration is handled at minimal cost. Produced by The Berkeley Electronic Press, 1971

564

VALPARAISO UNIVERSITY LAW REVIEW [Vol. 5

legislature, especially from defense attorneys and from those plaintiff's attorneys who handle the more routine cases and whose stock in trade is nuisance claims.

The moderate nature of the reform proposed is intimately linked to a final advantage of the INA Bill—it is reversible. It utilizes the same machinery for writing and selling insurance, processing claims and representing claimants as is now in use with liability-based claims. The state financial responsibility law remains unchanged, and a liability policy is part of the package contained in the Bill. Should the reformed system not work to expectation, the present scheme could be reinstated by the simple expedient of repealing the provisions for compulsory insurance and reinstating the prevailing rules. The INA Bill is ideally suited to be an experiment in non-fault automobile insurance from which one could return or beyond which one could proceed without excessive commitment.

Conclusion

Dissatisfaction with the present system of automobile insurance has now become a national issue. Senator Philip Hart's Uniform Motor Vehicle Insurance Act, currently before Congress, would completely replace the tort law in the automobile accident area for all losses of less than \$30,000, with first-party direct benefits.28 The passage of this legislation would render unnecessary any consideration of change at the state level. This writer joins the Secretary of Transportation in the view that there are advantages in state rather than federal action and further believes that even if national legislation be inevitable, such legislation could be better and wiser if founded upon the experience of experiments carried out in the states. A comparison of the INA Bill in action with the Massachusetts law and other reforms which various localities may enact will surely be the best guides for Congress and the administration in planning any nation-wide reform. Indeed, one possible finding from the comparison might be that different local situations contain their own specific problems for which special provision ought to be made in the federal law.

In sum, the simplicity, adequacy, fairness and moderateness of the INA Bill make it one of the most promising of the reform measures currently being proposed to modify the automobile liability insurance system. The ease with which it can be implemented and, if experience

^{28.} S. 945-48, 92d Cong., 1st Sess. (1971). Cf. Hart, A Federal Answer to a Public Demand, Trial, Oct.-Nov., 1970, at 27. https://scholar.valpo.edu/vulr/vol5/iss3/4

1971] THE INA BILL 565

proves adverse, abandoned, supports its consideration as an experimental first step in designing a system in which the needs of accident victims have priority over the costly luxury of determining who, if anyone, was at fault in an automobile accident.

Appendix: The INA Bill as Offered in Colorado*

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 13, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 25

MOTOR VEHICLE INSURANCE

13-25-1. Legislative declaration. The general assembly hereby declares that its purpose in enacting this article is to require registrants of motor vehicles in this state to procure insurance covering legal liability arising out of ownership or use of such vehicles, and also providing benefits to persons occupying such vehicles and to persons injured in accidents involving such vehicles.

13-25-2. Registration of vehicles—insurance coverage required. (1) No owner of a motor vehicle which is required to be registered in this state shall be granted such registration unless he has first procured motor vehicle insurance as provided by this article. Only policies validly

Unfortunately, the efforts of the Colorado sponsors of the INA Bill had been limited to the House, and no groundwork had been laid in the Senate. No Senator had been won over to outright support of the Bill. Moreover, lobbyists representing significant insurance interests opposed to the Bill became active in the Senate, and the Bill failed to pass the Senate Judiciary Committee, where it had only lukewarm support and severe opposition. A last-minute attempt to rescue the bill through a House-Senate Conference Committee on the related file and use measure failed.

Preliminary analysis of the legislative history of the INA Bill suggests the source of its problems to be the lack of a significant public groundswell against the present system, along with strong vested interests in maintining the system or in substitutions of a different kind.

^{*}While the Bill was being discussed in the Colorado House of Representatives Business Affairs Committee, Secretary of Transportation Volpe testified in Washington to the Nixon Administration's endorsement of no-fault principles, with the desire that enactment be left to the states. Letters of support were received by Colorado Republican leaders, and the INA Bill was commandeered by the Republican Majority Leader of the House, Carl Gustafson. The names of Democrats Horst and Lamm were left on the Bill, but the support of Gustafson gave it much more potential. The Bill garnered surprisingly little opposition, and passed the House of Representatives, where it was attached as an amendment to a file-and-use insurance bill very dear to the insurance industry and Senate Republicans.

issued by companies authorized to write in this state all the kinds of insurance embodied in the required coverages shall satisfy the requirements of this article.

- (2) (a) Minimum coverages required are as follows:
- (b) Indemnity for legal liability for bodily injury, death, or property damage arising out of use of the motor vehicle to a limit, exclusive of interest and costs, of twenty thousand dollars in any one accident.
- (c) Compensation to injured persons for reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, and prosthetic services, loss of earnings, and extra expense for personal services not connected with his business or occupation which would have been performed by the injured person for himself or for members of his household, arising out of an accident involving the motor vehicle and incurred within twelve months of said accident, to limits of ten thousand dollars to any one person and twenty thousand dollars to all persons, in any one accident.
- 13-25-3. Direct benefits. (1) The benefits described in section 13-25-2 (2) (c) shall be available to all persons occupying the described motor vehicle and all persons injured in accidents involving the described motor vehicle, except occupants of another motor vehicle.
- (2) At the election of the named insured, the benefits described in section 13-25-2 (2) (c) may be provided subject to deductibles, waiting periods, sublimits, percentage reductions, excess provisions, and similar reduction offered by insurers applicable to expenses incurred as a result of injury to the named insured or members of his household. It is intended through this subsection (2), to permit the named insured to minimize insofar as practical duplications in benefits available through other insurance, contract rights, statutory benefits, and government benefit programs. Insurers issuing policies purporting to satisfy the requirements of this article may not require such reductions. Insurers shall not be required to offer any particular form of reduction in benefits.
- 13-25-4. Required coverages are minimum. Nothing in this article shall be construed to prohibit the issuance of policies providing coverages more extensive than the minimum coverages required as a condition for registration, nor to require the segregation of such minimum coverages from other coverages in the same policy.
- 13-25-5. Required provision. Any policy purporting to satisfy the requirements of this article shall contain a provision to the effect that, notwithstanding any of its other terms and conditions, the coverage afforded shall be at least as extensive as the minimum coverages required

1971] THE INA BILL 567

- 13-25-6. Conditions and exclusion. (1) The coverage described in section 13-25-2 (2) may be subject to conditions and exclusions which are customary in the field of liability insurance and are not inconsistent with the requirements of this article.
- (2) (a) The coverage described in section 13-25-2 (2) (c) may also be subject to exclusions where the injured person:
 - (b) Causes injury to himself intentionally;
- (c) Is injured while operating a motor vehicle while under the influence of intoxicants, narcotics, or hallucinogens;
- (d) Is operating, or is occupping a vehicle being operated without authority of the owner knowing that it is being operated without such authority;
 - (e) Is operating a vehicle without a valid license;
 - (f) Is engaged in a race or similar competition; or
 - (g) Is seeking to elude lawful apprehension or arrest.
- 13-25-7. Subrogation. Insurers providing benefits described in section 13-25-2 (2) shall be subrogated to the rights of the persons for whom benefits are provided to the extent of the benefits provided.
- 13-25-8. Benefits not to be pleaded or used as evidence. Any person eligible for benefits described in section 13-25-2 (2) (c) is precluded from pleading or introducing as evidence in an action for damages against a tortfeasor the amount of benefits which would be recoverable under those coverages without regard to any elective reductions in such coverage, whether or not such benefits are actually recovered.

SECTION 2. Effective date. This act shall take effect January 1, 1972.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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5 VAL. U.L. REV. 000