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THE FINANCIAL IMPACT OF AUTOMOBILE ACCIDENTS *

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Nearly thirty years have passed since the "Columbia Study" surveyed the financial impact of automobile accidents in America.[1] The Study's findings and proposals are familiar: the pattern of compensation included large areas of economic waste and others of economic

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We also want to record our warm appreciation for the enthusiastic help of Dr. Brady and of Arthur Rabelow, Esq., of the Pennsylvania Bar, who served as "foreman" of the field work and who, in other ways, contributed a great deal indeed to the project.

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

hardship. The trivially injured often enjoyed settlements several times as large as their small out-of-pocket losses, while the seriously injured often received no reparation at all or made settlements for a minor fraction of their losses. The incidence of under-compensation for large losses was greatest among families with low incomes. The causes of hardship lay not only in the financial irresponsibility of many uninsured motorists, but, the survey said, in the unfairness and anachronisms of the common-law system of liability for negligence and in the absence of additional insurance benefits to supplement tort law reparation. The remedy proposed, in 1932, was to jettison common-law liability and supplant it with legislation patterned after workmen's compensation.[2]

The Columbia Study is now dated. The reforms it proposed have languished. But discussion of the problems it disclosed continues. Even a cursory survey of recent legal periodical literature shows wide concern about the justice of existing laws governing allocation of financial loss from accidents, the congestion produced in our courts by the administration of these laws, and the hardship which the total system works on many people. Despite the fact that most motorists now carry liability insurance and despite the development of other health and accident benefit programs, the feeling persists that the pattern of the Columbia Study's findings may still be with us. Yet it is a feeling largely unsupported by data.[3]

This article reports the results of investigations in southeastern Pennsylvania during 1959 and 1960. In a limited way we tried to update the Columbia Study, and on the basis of the facts found, we offer a new proposal to deal with the conditions revealed.

I. The Method of the Study

In the summer of 1959 a team of law students, armed with a questionnaire and schooled with a statistician's advice, investigated the results of a sample of accidents reported to the Philadelphia police. Most of these accidents, we learned, resulted in only trivial injuries, and so the cases which we wanted most to study were sparsely represented. To locate more serious cases, we broadened the geographical base of our survey to include the entire five-county metro-

[2] See generally *Compensation for Automobile Accidents: A Symposium*, 32 Colum. L. Rev. 785 (1932).

[3] See, *e.g.*, James, *The Columbia Study of Compensation for Automobile Accidents: An Unanswered Challenge*, 59 Colum. L. Rev. 408 (1959). *But cf.* note 20 *infra*.

politan area of southeastern Pennsylvania plus one "non-metropolitan" county,[4] and we drew a new sample of cases from accident reports in the principal newspapers serving the area.[5]

The accidents investigated happened in 1956—four years before the interviews. This four-year aging was deliberate; we wanted to study only cases in which all claims for reparation, insurance of every type, and all other benefits paid to compensate for loss resulting from the accident had been either collected or abandoned. Approximately 500 victims were interviewed. A number of interviews, of course, yielded information inadequate for tabulation, and even the new method of selection located many more trivial than severe accidents. Nevertheless, the interviews gave us, we believe, some meaningful information about accident cases. They were designed to elicit details about out-of-pocket medical costs and loss of earnings and to find out to

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[4] We chose Lancaster County, which is outside the Philadelphia metropolitan area and is both an agricultural and an industrial county. Its total population is 278,359, of which 61,055 live in the city of Lancaster. The results of our Lancaster survey, when examined separately, seem to follow pretty much the Philadelphia pattern except for the significant fact that many fewer claimants consulted attorneys in the Lancaster area: in over 75% of the cases, the injured person or someone in his family handled his own claim. Compare text accompanying note 19 *infra*. For another variation, see note 12 *infra*.

[5] The newspapers used were the Philadelphia *Inquirer* and the Philadelphia *Evening Bulletin* and the Lancaster *Intelligencer-Journal*. We believe that these papers reported most of the serious accidents in the Philadelphia and Lancaster metropolitan areas. In all, we found reports of 1,646 cases. We then eliminated all persons who were not residents of either metropolitan area, and this left 1094 cases to investigate. Of these, 520 could not be located. Of the remaining 574 cases, approximately 20% either refused to be interviewed or were unable to give sufficient information to warrant a complete interview. We completed, in all, 464 interviews.

The generalization of the survey results hinges on the characteristics of the cases which could not be located or did not provide the requisite data. A comparison of the characteristics of the families interviewed with the general population indicates that a large proportion of those who could not be located or interviewed were (1) self-supporting individuals living apart from relatives and (2) families with only one breadwinner. The great majority of cases interviewed were members of families that had two or more breadwinners at the time of the accident.

The results of the survey seem to show that the loss of information about unattached individuals and persons from one-earner families does not invalidate the generalizations about the severity of injuries, the expenditures incurred, the sources and amounts of compensation and related topics. The survey indicates that there was no connection between the family situation and the physical and financial consequences of the accident. The persons fatally injured or permanently disabled (suffering an impairment of some kind) came from every type of family and the expenditures on account of the injury did not seem to differ with the size of the family or the number of family members in the labor force.

The lack of information about the "one-person" and one-earner families affected by accidents could, however, limit the generalizations on the long-run economic impact of injuries on the families affected. A very large proportion of the "one-person" units are young people in the labor force, who have not yet established families of their own, and elderly persons living apart from their grown children. The financial problems connected with injuries in these situations may well be transferred to relatives, the parents of the young people, or the children of the elderly.

what extent these losses were offset by payments from outside sources—the "other party" or his liability insurer, the victim's own insurance, workmen's compensation, or any other kind of benefit payments received on account of the accident.

II. Results of the Study

A. Liability Awards

First we analyzed payments from the other party or his liability insurer. The pattern of these payments, which we shall call "*awards*" (to distinguish them from "*benefits*," the term we shall use for other forms of reimbursement) is depicted in Figure I. It shows that 46.8 per cent of those injured secured no award whatsoever—that neither the party perpetrating the injury nor his liability insurer paid any part of the victim's losses in nearly half of the cases studied. And in another 5.4 per cent of the cases, the awards were less than half the victim's "*tangible loss*," that is, the sum of lost earnings and medical expenses.[6] Thus, we can say that in 52 per cent of the cases studied, tort law in action yielded less than one-half the tangible accident loss incurred by the victim. The pattern of awardless victims did not vary much with the economic seriousness of the accident. Figure I shows that in no category into which we divided the cases were fewer than 30 per cent of the victims awardless; generally, the percentage was between 35 and 45 per cent.

The significance of these percentages is, perhaps, better grasped in terms of the actual numbers, which are given in Table I. 166 out of 355 victims received no award (I/4/j).[7] Ninety of these, however, suffered tangible losses under $100 (I/4/a), and another 40 of them had tangible losses under $800 (I/4/b-d).[8]

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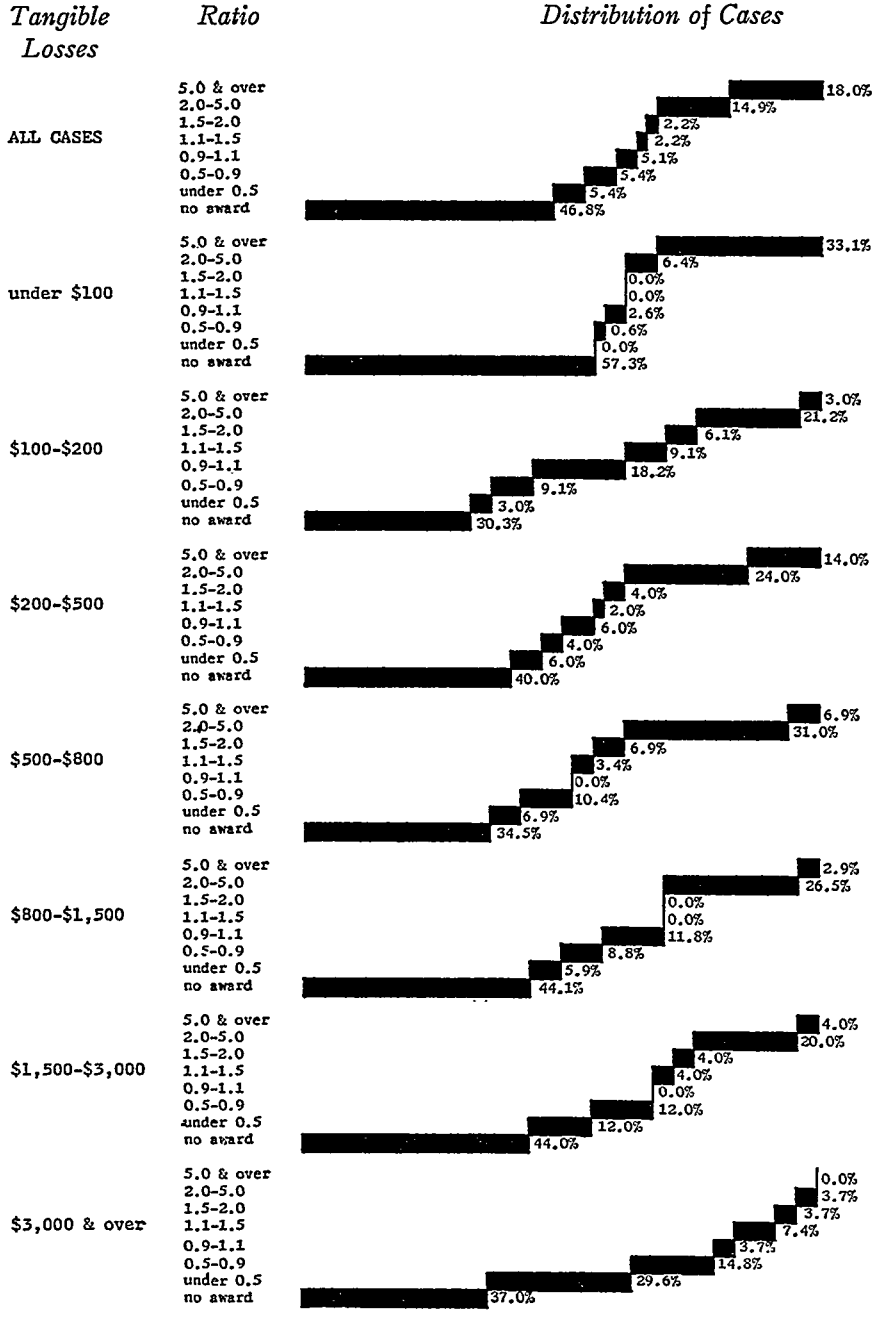
[6] While data were collected for property losses, such as the expense of auto repairs, we have eliminated this element from our definition of "tangible loss" because we want to focus directly on the working of our tort law and insurance systems with respect to medical expenses and earning losses—on the extent to which these out-of-pocket costs are reimbursed. The expense of repairing and replacing a car may be a serious financial problem for some accident victims, but it is a risk which, as we indicate later, ought to be handled by private arrangements. (Already, we suspect, most cars on the road are covered by collision insurance.) It is a problem which differs from the problem of meeting other unreimbursed tangible costs large enough to cause serious economic dislocation to the family involved.

[7] Tables I and II are printed on the fold-out, p. 933. In the reference, (I/4/j), the "I" designates Table I; the "4" designates column 4 of that table; the letter "j" designates the horizontal row so labeled.

[8] Lack of insurance explains many, but by no means all, of the cases in which costs exceeded remuneration. In 46 of our cases (including 2 fatality cases) there

FIGURE I: AWARDS

PERCENTAGE DISTRIBUTION OF INJURED PERSONS BY TANGIBLE LOSSES AND THE RATIO OF AWARDS FROM OTHER PARTIES TO TANGIBLE LOSSES



Nearly all the families in our sample had incomes in 1956 of less than $10,000. Over half had incomes of $5,000 or less. Most of these families could probably weather the shock of a financial loss of from several hundred to a thousand dollars resulting from an accident. But somewhere in that range, the prospect of serious economic disruption becomes great: a family may be forced to borrow hundreds of dollars from relatives; savings may be exhausted; property may have to be sold; a mother or child may be forced to take work to the detriment of homelife. Although the critical loss figure—the threshold at which accident loss will cause some kind of serious hardship—varies from one family to another, we would suggest that it is ordinarily no higher than $800. We believe that most families with unreimbursed tangible losses in that amount (or more) would suffer sufficient disruption to warrant community concern.

On the basis of this assumption, unless other kinds of succour were forthcoming, the families of the 36 victims whose tangible losses exceeded $800 and who received no reimbursement award (I/4/e-i) were likely to have experienced serious difficulties. The 11 victims whose tangible losses were over $1,500 and whose awards failed to equal half their losses (I/10/f-i) were similarly situated. Thus, our survey turned up 47 out of 355 random-selected, press-reported accident victims who suffered losses large enough to cause serious economic disruption after taking into account any help in dealing with their shock loss from the other party to the accident or his insurer.

Contrast the 47 victims who received so little with those who received so much. About a third of the victims (33 per cent) were paid awards more than double their medical expenses and lost earnings, and nearly a fifth (18 per cent) received more than five times the sum of these tangible losses. Only 7.3 per cent received awards about the size of their tangible losses. In terms of actual numbers, 117 had reparation more than double their tangible losses (I/40/j, 46/j). Many of these victims clearly appeared to have suffered economically trivial injuries,[9] but it is notable that in the range of accidents

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was no liability insurance. Of these 46 cases: in 31 there was no award (I/3/j); in 4 the award was less than 50% of the costs (I/9/j); in 4 the award was between 50 and 100% of the costs (I/15/j); and in 5 the award exceeded costs (I/33/j, 39/j, 45/j).

[9] Another way to look at these data is to observe the large number of trivially injured persons who received awards greatly exceeding the tangible costs of the accident. Our study received reports on 157 persons with tangible losses less than $100 (I/55/a). A third of these—52 persons—received awards in excess of five times their tangible loss (I/46/a). Indeed, it seems that if one's injuries are slight, he will receive either nothing or a windfall: whereas 57.3% of those with losses under $100 received nothing, 33.1% received 5 times their loss or better, and 6.4% received between 2 and 5 times their loss. That leaves only 3.2% who received some award

with tangible costs ranging from $200 to $3,000, a persistent 20 to 40 per cent of all our cases received liability awards totaling at least twice the sum of their medical expenses and lost earnings.[10]

B. Benefits From Other Sources

Changes since the Columbia Study have meliorated the economic insecurity of many Americans. We now have more public and private programs to protect individuals against economic disaster. Payments from these sources often work to supplement or overlap tort liability awards to automobile accident victims.

Before evaluating the combined effect of "awards" derived from the liability system and the various "benefit" programs, we pause to consider the latter working alone. Nearly half (49.1 per cent) of the reporting victims—184 out of 375—received no benefits at all from workmen's compensation, sick leave pay, Blue Cross or other hospital insurance, accident insurance, or any other similar sources (I/5/j, 57/j). Although the preponderance of this no-benefits group had tangible losses under $500 (I/5/a-c), and although the likelihood of some benefits increased significantly when tangible losses exceeded $800, the amount of benefit payments seldom approached the accident's tangible cost. Thus, of 59 victims whose losses were over $1,500, 44 received some benefits, but only 13 received benefits which amounted to half or more of their losses (I/5/f-i, 11/f-i, 57/f-i). In only a very few serious cases did the benefits, taken alone, exceed

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but one that was less than double the loss. See Figure I. In almost all cases of windfall awards for trivial losses, the other party was insured. Conversely, 80% of all cases in which the victim was trivially injured (under $100) and the other party was uninsured resulted in no award (I/3/a, 53/a). The total cost of adjusting and settling these trivial cases must be enormous, particularly when one takes into account their great volume year in and year out.

[10] The awards that exceeded tangible costs are not always easy to explain. The element of pain and suffering seems to be the only explanation for the high settlement value which many claims seem to command. To a far lesser extent, excess payments may have been made because the claimant, while not an income earner, appeared to have suffered a physical impairment of indefinite duration. In a few cases the "excess" shown in the graphs and charts may reflect auto loss or damage.

Among cases in which tangible losses amounted to less than $800 and claimants received awards of 2 or more times their tangible losses, 78% of the reporting families had no unreimbursed auto expense, 25% of the claimants suffered a physical impairment which, while apparently not affecting earning capacity, lasted at least to the time of the survey, 45% of the claimants were female, 49% were children, 61% were passengers, and 23% were pedestrians.

A further check of our interview reports of 144 cases in which the award exceeded tangible costs leads us to believe that in only 7 can the excess probably be explained by payments for automobile damage. In 10 cases the seriousness of the injuries was great enough that it is the probable explanation. In 127 neither of these explanations seems correct and the only explanation for the excess of the award is pain and suffering.

tangible losses.[11] The more serious the accident (in financial terms), the more likely it was that the victim would need an award if he was to recover his lost earnings and meet his medical expenses.[12]

C. The Effect of Liability Awards and Benefits Combined

Now we come to the crucial data. Figure II reveals that when we look at the combined effects of the awards produced by our legal liability system and the benefits produced by various other economic security systems, we find 23.9 per cent of the victims still receiving nothing. Although victims with losses less than $100 predominated in this totally unaided class—39.5 per cent of victims suffering tangible loss under $100 received nothing—, a substantial number—about 10 per cent—persist in the serious cases of loss over $800. This number is augmented by a much higher percentage of cases in which tangible loss exceeded $1,500 and the sum of awards and benefits fell short of one-half of the victims' tangible losses: nearly one-half of all automobile accident victims with tangible losses over $1,500 had to absorb from their own resources uninsured shock losses of at least $800,[13] and in many cases the total shock was much greater.

The boldface entries in Table I cover the same ground in actual numbers, rather than percentages. They show that 9 of the 84 victims who received no award and no benefit payments had tangible losses over $800 (I/6/e-j), and that 21 of the 43 who received awards and benefits totaling less than one-half of their tangible losses were in the over-$1,500 loss category (I/12/f-j). So 30 seriously injured victims out of 352 got grossly inadequate aid from award and benefit combined.[14] Thus, we find from this sampling that between 8 and 9 per

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[11] Only 3.7% of the victims received benefits more than double their tangible losses, and none of these had tangible losses exceeding $1,500 (I/41, 47). Only 2.4% of the victims received benefits more than five times their tangible losses, and all of these had tangible losses less than $100 (I/47).

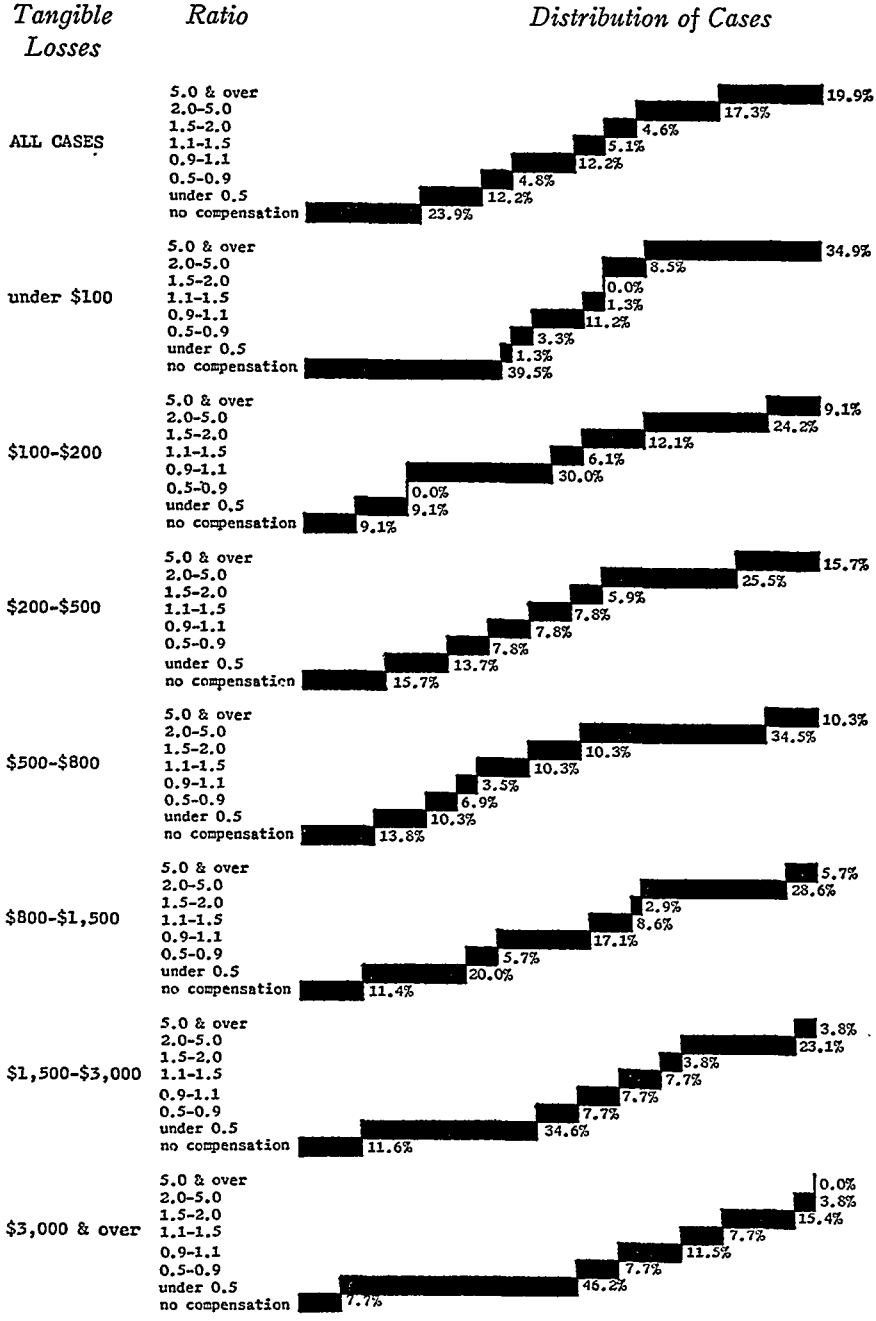
[12] It appears that "benefit" payments may operate more effectively in the non-metropolitan county represented in our survey, see note 5 *supra*, than in metropolitan Philadelphia: approximately 25% of victims in Lancaster County recovered all or nearly all their costs this way; the comparable figure in the Philadelphia sample area was about 16%. Generally, however, the Lancaster patterns of remuneration through awards and benefits in comparison to tangible costs seem to follow closely those noted in the Philadelphia area.

[13] The reader who is even slightly concerned with mathematical accuracy will have by this time become aware of the fact that we have equated "all of more than $800" with "more than half of more than $1500." This $50 incongruity results from the fact that our statistical information was classified before we hit upon the figure of $800 uncompensated loss as representing serious economic disruption; it has been allowed to remain because we doubt that $750 is a markedly less accurate guess at the proper cut-off point and because few, if any, of those victims whose loss could mathematically be less than $800 actually did suffer the smaller losses.

[14] A few might be added to this 30 from the 14 cases that fall in equivocal classes of our table (I/12/e, 18/f-g, 24/g-h).

FIGURE II: AWARDS PLUS BENEFITS

PERCENTAGE DISTRIBUTION OF INJURED PERSONS BY TANGIBLE LOSSES AND THE RATIO OF THE SUM OF AWARDS AND BENEFITS TO TANGIBLE LOSSES



cent of the automobile accident injuries reported in the press result in economic shock of substantial proportions. And, as has been noted, most of the families involved were in modest income brackets.

One should bear in mind that we are talking here only of reimbursement for medical expenses and earning losses actually incurred. Yet in a number of our cases the injury caused an ongoing disability—probable future losses which will probably not be reimbursed. And in a number of cases the victim's automobile was destroyed or damaged, and this loss, too, may have been thrust upon the family, though we deliberately chose not to reckon with it in our figures. Thus, 10 per cent is probably a conservative estimate of the number of cases in our sample in which an accident on the highways imposed a substantial ($800 or more) burden on a family.[15] When families involved in this situation cannot meet resulting expenses from their accumulated and uncommitted savings, they must appeal for help to relatives, friends, charity, or relief authorities—all unhappy alternatives, to say the least.

That is one end of the spectrum. At the other end are the cases where award and benefit payments ran high in comparison to tangible losses suffered. Thus, in 131 out of 352 reported cases, the victim recovered over twice the amount of his loss (I/42/j, 48/j). In over half of these cases the victim's loss was relatively trivial—less than $200 (I/42/a-b, 48/a-b). But among cases in which the tangible losses were between $200 and $3,000, there was a substantial number—about 10 per cent—in which the victim received more than five times the sum of his medical expenses and earning losses (I/48/c-f, 59/c-f), and an even more substantial bloc of victims—over 25 per cent—received between two and five times their loss (I/42/c-f, 59/c-f).

1. Fatality Cases

Our study also included 73 fully reported cases of victims who were killed.[16] In 10 cases, survivors received neither awards nor benefits (II/3/j); in none of these cases was the loss under $500, and in 8 the loss was over $800 (II/3/e). In 8 cases awards and benefits together totaled less than half the loss (II/6/j), and in 5 of these the loss was over $1,500 and, therefore, awards plus benefits still left the family in the shock-loss zone (II/6/f-h). Thus in at least 13 of 73 death cases—17.8 per cent—the sum of awards and benefits left the survivors with unreimbursed losses in excess of $800 at the time of

[15] When we combine all cases it is clearly 10%. See p. 923 *infra*.

[16] See Table II.

burial, and this is without reference to the ongoing losses suffered in cases where the deceased was a breadwinner.[17]

2. The Fatality and Nonfatality Cases Combined

Altogether, our limited survey disclosed 151 cases occasioning tangible losses exceeding $800—some of them, of course, involving thousands of dollars of loss (I/60/e-i, II/30/e-h). In 17 of these cases the economic shock was wholly unrelieved (I/6/e-i; II/3/e-h); in another 26 the relief was insufficient to cover tangible losses exceeding $800 (I/12/f-i; II/6/f-h). Thus, in 28 per cent of cases involving $800 or more loss and 10 per cent of the entire group of 425 fully reported cases studied, there were unrelieved losses of sufficient magnitude to create a significant likelihood of immediate, serious economic dislocation to the accident victim and his family.

D. Some Further Observations

1. Delay

Another source of hardship and disruption is delay in the payment of awards. A seriously injured victim whose final award turned out to be adequate may nevertheless have gone financially unaided for months or even years, struggling with a discouraging burden. In a majority of cases in which there was any award, that is, any settlement or verdict at all, it took more than a year to reach the result. In a substantial number, particularly in the lowest income group, it took more than three years to conclude the case.[18] Our interview reports

[17] In 45 out of the 73 fatality cases, the decedent was head of a family. In 7 of these 45, no award or benefits were paid. In 15 the decedent was in the lowest income group, that is, he was employed, if at all, as a laborer or service employee. In 6 of these low-income, family-head death cases, survivors were left with expenses which exceeded their awards and benefits. Life insurance seems to have been a critical factor; without it, 14 family-head death cases would have left survivors with awards and benefits insufficient to pay debts resulting from the accident as well as no substitute resources for the victim's wages.

[18] The following table shows the percentage distribution of families of persons whose injuries incapacitated them for at least one full day, including the fatally injured, by the time elapsed between the accident and the settlement or verdict.

Length of Time Between Accident and Settlement	*Economic Group of Injured Persons*		
	Low	*Middle*	*High*
under 6 months	29%	36%	34%
6 months to 1 year	17%	16%	5%
1 to 3 years	28%	36%	44%
3 years or more	26%	12%	17%
Total	100%	100%	100%

In the "3 years or more" category, there were 4 cases reported as still pending, all in the low economic group.

suggest that the delays of this sort, which now seem so entrenched in our personal injury system, often may have exacted a heavy toll in terms of frustration and financial difficulty.

2. The Need for Legal Services

The survey reflects the need for lawyers if adequate awards are to be secured by accident victims. Indeed, retention of a lawyer greatly increases the prospect not only of an award but of an award in excess of tangible loss. In all but 6 of the 117 fully reported nonfatality cases in which the victim or his family retained an attorney, the victim had some sort of award (I/1/j, 49/j); in 78 the award was at least twice the out-of-pocket costs of the accident (I/37/j, 43/j).[19]

Those who retained no lawyer hardly fared as well. We have data on 194 nonfatality cases where no lawyer was retained (I/51/j). The "other party" was insured in each of these cases. Yet in 129 of them the victim received no award (I/2/j). Even among the 52 cases in which the tangible loss was over $500, there was no award in 34 cases (I/2/d-i, 51/d-i).

III. Evaluation of the Data

At the beginning of this article we reported having undertaken our statistical study because of suspicions that existing tort law and the benefit systems that supplement it do not allocate the economic burdens of automobile accidents satisfactorily. Of course, a judgment that the present system does not work well is only intelligible when measured with reference to the goals that are desired. We see the need for a system that will, at a minimum, (1) provide security against the *serious* economic dislocation that results from some automobile accidents, (2) and do so with reasonable dispatch, (3) and impose the lowest practicable administrative cost, as well as (4) put the smallest practicable financial burden of insurance costs on the motoring public, and (5) command a maximum of public confidence in the fairness and efficiency of the system.

The results of our survey indicate that the present system does not adequately protect many who, by dint of accident, come to need help desperately. The results also indicate that tort law in action—the business of securing awards—is fraught with delay and uncertainty; its generosities are largely reserved for the trivially injured,

[19] And note that any portion of an award that went to pay for legal services was not calculated as part of the award.

and there it seems prodigal, nor, in all probability, does the law in action conform with the law in theory. Our results also seem to coincide with findings made by others who (like us) have taken modest samples of the financial impact of accidents on the highways.[20] Of course there is room for much more research in this area. But we seem to have in hand some important evidence indicating disturbing defects in our system for disbursing accident losses.

Many proposals have been made for change. All of them reflect the conviction that deficiencies of the kind we are talking about are not likely to be cured by judicial development or redevelopment of tort and damage law—that at least some significant needed changes can come only through legislation.[21] Thus far legislatures have been persuaded only to alleviate hardships resulting from the financial irresponsibility of motorists.[22] But even assuming financially responsible drivers, our survey indicates that tort law supplemented by existing benefit programs does not provide a system that adequately meets the goals posited above. The "unsatisfied judgment fund" is the newest experiment.[23] In our view, these programs, too, may be both inadequate and costly. They do not cut to the heart of the problem: the need of some families forced into serious financial distress by the inadequacies of our present system of automobile accident awards and benefits. Furthermore, they may impose high charges on the motoring public to furnish benefits in trivial cases where the claimants, at worst, are already protected by other schemes and, at best, are fairly well able to take care of their own losses which are nevertheless shifted to a blameless public.

The more radical reforms thus far suggested—those which would abandon fault as the basis of legal liability—have not marshalled broad-based political support, and there is no great indication that they will. The fault principle may still be deeply rooted, closely tied to popular concepts of justice in our society; the public may well believe

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20 ADAMS, A SURVEY OF THE ECONOMIC-FINANCIAL CONSEQUENCES OF PERSONAL INJURIES RESULTING FROM AUTOMOBILE ACCIDENTS IN THE CITY OF PHILADELPHIA, 1953 at 42-56 (1955); Franklin, Chanin & Mark, *Accidents, Money, and The Law: A Study of the Economics of Personal Injury Litigation*, 61 COLUM. L. REV. 1, 4, 32, 33-35 (1961); James & Law, *Compensation for Auto Accident Victims: A Story of Too Little and Too Late*, 26 CONN. B.J. 70, 78 (1952). Professor Albert F. Conard of the Law School of the University of Michigan is presently engaged in a survey which, we understand, will include, among other things, findings on the financial impact of auto accident cases.

21 See, *e.g.*, EHRENZWEIG, "FULL AID" INSURANCE FOR THE TRAFFIC VICTIM (1954); GREEN, TRAFFIC VICTIMS—TORT LAW AND INSURANCE (1958). Compare Keeton, *Creative Continuity in the Law of Torts*, 75 HARV. L. REV. 463 (1962).

22 The various statutory methods are succinctly described in Plummer, *The Uncompensated Automobile Accident Victim*, 1956 INS. L.J. 459.

23 See, *e.g.*, N.J. STAT. ANN. §§ 39:6-61 to -91 (1961), as amended, §§ 39.6-64 to -70 (Supp. 1961); Plummer, *supra* note 22, at 462-63.

that negligence ought to be the criterion of legal liability for accidents. But it is difficult to condone, in today's world, the economic hardship and waste which our survey seems to disclose. The most likely improvement may be one which least disturbs the *status quo* and yet still advances the goals set forth above—particularly the goal of providing some security for all motorists and pedestrians against economic loss of disastrous proportions.

IV. A Proposal: Supplementary Compensation in Economic Disaster Cases

We present here the bare outlines of legislation designed to meet the inadequacies disclosed by this study. Its objective is to give limited help to those who have been seriously injured, irrespective of their fault, by a system of supplementary insurance—but only when their reimbursement from established sources has fallen disastrously short of the "tangible loss" inflicted by the accident. A corollary objective is to eliminate the dissipation of insurance resources that may result from paying proportionately large sums to those who have suffered little in the way of tangible losses. If savings can be effected that way, it may be possible to establish and maintain the supplementary insurance fund through minimal charges on owning or operating motor vehicles;[24] and it may be that this can be done without adding to the heavy burden which that activity already bears in the form of high rates for liability insurance.

A. Eligibility

To conserve resources for helping automobile victims, to reduce the administrating burden, and to limit the scope and impact of substantive changes (and thus ameliorate difficulties normally attendant upon basic change in basic law), we would make the relief of supplementary insurance available only in economic "disaster" cases. Recognizing the complexity of defining a disaster case, we suggest, tentatively, that supplementary insurance benefits be limited to those whose unreimbursed medical expenses and earning losses total more than, say, $800. As already indicated, we are by no means certain that $800 should be the figure. But we start with the premise that a line must

[24] The fund could be a state fund, collected by taxing drivers or motor vehicles or the gasoline they use. It could be a privately amassed fund, collected by automobile liability insurers as an incident of all policies sold—a fund to which all who buy liability insurance would contribute if they wanted liability insurance at all. (And, of course, other laws would provide the incentive for "wanting" it.) Under the latter arrangement, automobile liability insurers would be required to hold themselves—as a group—under obligation to automobile accident victims.

be drawn to distinguish cases of serious proportions.[25] It is probably wise to draw that line relatively high at first. We suspect that, in most cases, tangible losses of less than $800 can somehow be met from savings or credit without so disrupting the victim's family that its misfortune should become a fiscal concern of the state or the motoring public as a whole. Families that cannot weather a certain amount of loss may be so close to the subsistence level that any other costly misfortune could easily put them on relief. Their economic security can hardly be guaranteed effectively by trying to protect them against auto accident losses while ignoring other common risks. Furthermore, if the figure is fixed very far below $800, the cost of the program might rise out of proportion to the need for supplementary aid. In any event, we only suggest $800 as a reasonable figure for purposes of illustration.

We would exclude the costs of auto repair or replacement in calculating a family's qualification for supplementary relief. Of course, cars are an economic necessity to many families; but the risk of this loss can be, and probably is in most cases, handled through private insurance. The cost of collision insurance may be high, and its administration may beget problems; but we do not believe these costs and problems should be imposed on an insurance fund created by law to meet the pressing needs of families facing severe economic hardship. To do so would add immensely to both the administrative overhead of the fund and the reserves needed to pay claims against it, and would saddle the motoring public with expenses disproportionate to our social needs.

B. Extent of Relief

Like other excess insurance, the fund's relief should leave some burdens with the victim, as a brake on medical extravagance and malingering and as an incentive to private insurance and private prosecution of liability claims. The fund should pay only, say, 85 per cent of the medical expenses that it covers. Perhaps standards of reasonable medical expense could be developed as a further limitation. Earning-loss relief should be calculated on, say, a $600 per month take-home maximum, with the thought that income greater than that is not needed to ward off the kind of economic disaster we are trying to avoid. The rate of reimbursement of earning losses should be

25 Of course, it might be possible to construct a formula to vary the point at which supplementary insurance would become available, depending, for example, on the net income and other resources of the victim's family. But such a formula might produce dangerously difficult problems of administration. The better choice, we think, is to set a fixed figure.

further limited to a rate of 85 per cent of average earnings in the year preceding the injury, with proper exceptions for cases in which such a formula would be unwise. Disability relief for earning losses should end at normal retirement age when social security and other retirement benefits accrue. Perhaps some protection of private retirement benefits up to modest limits should be attempted.

Death of the victim should not relieve the fund from paying to his dependents (if he has any) whatever benefits it would have had to pay to him up to the time of his death. Perhaps the fund should insure funeral expenses up to some modest amount, subject, of course, to the same $800 deductible provision. The fund might also provide additional death benefits where fatality victims were principal breadwinners.[26] For a period of, say, four years, the family would be guaranteed resources equal to some fraction of the decedent's earning rate at the time of the accident—again, with a ceiling of $600 a month. If reparation from the other party or his liability insurer, insurance benefits, social security, employment death benefits, and the value of the decedent's estate (not counting, perhaps, moderate investment in a family home) did not produce that amount, the fund would do so.

C. Financing the Fund

The fund, as we have noted, would be financed by some sort of charge, slight we hope, on the motoring public. In addition, of course, it would enjoy full subrogation rights. But we believe additional steps must be taken to offset the financial burden that establishing and replenishing the fund would impose on drivers or car owners.

Our study indicates that automobile accident victims who incur small tangible losses often get awards and benefits equal to more than twice the tangible losses that the accident inflicted. If some of this money could be diverted, it could be used to aid those in serious straits.

Small claims usually have a nuisance value, for although settlement of them costs insurance companies a great deal, litigation, apparently, would cost even more. This nuisance value is augmented by the insurance practice of maintaining reserves for unsettled claims. These reserves may tie up funds that would otherwise be available for other purposes. Insurance companies are often eager to liquidate claims and free the "salvage" in these reserves. Most important in

[26] Although these benefits would be restricted to cases in which the decedent was the principal breadwinner, some provision for short-term benefits might be made in the case of a decedent who provided over a quarter of the support of a family whose total income is less than $400 per month. Similarly, a small fixed sum might be appropriate when the death of a mother who cared for small children will necessitate child-care expenditures for a few years. Of course, these benefits, too, should be available only if other resources were significantly inadequate.

endowing these claims with nuisance value, however, is the fact that they are unliquidated; since claimants are entitled by law to damages for pain and suffering and since a jury verdict may far exceed a small claimant's tangible losses, he can usually demand and get much more in litigation than the special damages he can prove.

The law of liability for pain and suffering does not depend on the magnitude of the plaintiff's medical expenses and loss of earnings. And our survey shows, we think, that this law frequently produces prodigal settlements in trivial cases, whereas it seldom does so for those who are seriously injured, with, of course, spectacular exceptions. In some cases this is probably because the available insurance coverage is exhausted by payment of tangible losses. But probably more important is the fact that large claims do not have the nuisance value that small claims do; determined opposition to large claims is more feasible and more economical. The nuisance value of small claims is increased by the fact that quick settlement plus release protects the insurance company from slowly developing injuries not yet recognized at the time of the settlement. Sometimes small claims turn into larger ones; it may often pay to be forehanded and get them settled, thus avoiding some of the responsibilities that might otherwise develop.

The value beyond tangible losses that small claims now have may well be a major burden on motor vehicle operation. Other studies [27] indicate that this "over-compensation" may in fact be a widespread phenomenon and may be regarded by a large element of the public as something of a "gravy-train" for those who are tempted to pad their claims. Resources now dedicated to giving relatively large awards to the trivially injured could be more wisely used if they were diverted to where the need is a crying one. This can be accomplished only by changing the law of torts governing small claims for personal injuries arising out of automobile accidents. We would propose that in all cases involving tangible losses under $800: (1) the right to pain, suffering and mental anguish damages be abolished; (2) claimants' benefits be allowed to inure to the benefit of the other party to the accident; and, as a necessary corollary of those changes, (3) small claimants be given the right to recover their reasonable legal expenses.

1. Pain and Suffering

Liability for pain and suffering appears to inflate many small claims; when, however, a victim's total out-of-pocket medical expense

[27] See HUNTING & NEUWIRTH, WHO SUES IN NEW YORK CITY: A STUDY OF AUTOMOBILE ACCIDENT CLAIMS 153-80 (1962) (resumés of "case histories" eliciting attitudes of claimants). *But see* ADAMS, *op. cit. supra* note 20, at 57-60.

and earning loss—past and prospective—can be liquidated at less than $800, compensation for pain very often seems to place an unwise burden on motor vehicle operation. Of course, some pain and suffering has economic consequences; it may reduce earnings and earning capacity or require medical expenditures. Such losses should be treated as tangible losses for purposes of determining whether the "costs" of the accident (as we use that term here) exceed $800.[28] But insofar as the total tangible losses caused by the accident, including actual costs inflicted by pain, are less than $800—insofar as the economic consequences are slight—we should try to conserve resources needed for the relief of accident victims who face economic disaster.

2. Collateral Benefits

For the same reason it would seem wise to withhold double payments to reimburse the same costs in relatively trivial cases. Thus liability awards would be reduced to the extent that benefits have been received. Giving the other party to the accident the advantage of deducting the injured person's medical, health, and accident insurance will often keep the victim from setting in motion complicated collection machinery used to get payments for costs which have already been dispersed.[29]

3. Recovery of Legal Expenses

Eliminating recoveries for pain and suffering and abolishing the collateral benefits rule would reduce the settlement value of these small claims cases and make them less attractive to lawyers. Our plan seeks to offset this consequence, for the study shows that claimants who are

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[28] The facts of Carminati v. Philadelphia Transp. Co., 405 Pa. 500, 176 A.2d 440 (1962), provide an interesting analogy for explaining this distinction. A ten-year-old girl was run down by a streetcar and knocked unconscious. Apparently there were no permanent physical injuries except for an impairment of her ability to coordinate her eyes. Her medical expenses totaled only $199, and it seems that no evidence beyond the injury itself was offered to show impairment of her earning capacity. The Pennsylvania Supreme Court sustained a verdict of $79,500. The opinion does not say how much of this award was for pain and suffering and how much was for impairment of the child's earning capacity and other economic prospects —the court discussed loss of prospects of marriage in an economic vein. Under our formula, even though the medical expenses were "trivial," this case would probably be governed by existing damage law, since we surmise that the plaintiff could have shown a probable tangible economic loss, such as the impairment of her earning capacity and possible loss of the support of a husband, that could be valued at over $800. It is only when elements of damage like this add up to less than $800 that we would exclude damages for pain and suffering.

[29] We would be less persuaded by this argument in more serious cases, in which benefits are more likely to be *de minimis*, often much less than the attorney's fees that the victim will have to pay to get an adequate award. If the benefit involved is workmen's compensation, the benefit payer is usually subrogated to the tort claim, and there is no overlap of benefit and award, so far as the victim is concerned.

not represented by lawyers tend to fare poorly.[30] Accordingly, in cases in which the pain and suffering award is abolished, and the claim is settled (or a judgment entered) in the claimant's favor, we would require the defendant to pay the claimant's attorney according to a schedule that would allow a basic fee of half as much as the claimant's recovery (the equivalent of a one-third contingent fee).[31] This requirement might stimulate more generous treatment of unrepresented small claimants, and we do not believe that it would swallow up the saving resulting from the diminution of small claims by means of eliminating pain and suffering damages and giving the defendant the advantage of the claimant's health and accident insurance. Over a third of the victims we studied whose tangible losses were under $800 received awards more than double their tangible losses, with a substantial number of those whose tangible losses were between $100 and $800 getting over five times their tangible losses (after deducting lawyers' fees). If these recoveries were reduced to tangible losses, the defendant allowed to set off claimant's benefits, and counsel fees held, for the most part, to at least half the amount collected, substantial savings should be effected.

This change in tort law provides more satisfactory settlement practice between those with small claims who are unrepresented by lawyers and liability insurers' claims agents. Since damages are easily liquidated and since the insurance company can avoid liability for claimants' attorneys' fees by settling promptly, settlements are likely to be effected more often, more cheaply, and more quickly, with more fairness to the motoring public.

D. Compensation for the Cost of Recovering From the Fund

Those seriously injured and entitled to relief from the new fund will often need legal representation to collect their claims. Their problems will be like workmen's compensation claimants', though sometimes more complicated. Not only will they have to show that their injuries (or their decedent's death) "arose out of and in the course of" an automobile accident—if that is the proper formula—but they will

[30] Table I shows that while 102 out of 153 victims with tangible losses of $800 or less who did not retain lawyers received no payment from the other party to the accident or his liability insurer (I/2/a-d, 51/a-d), only 2 out of 79 who did have lawyers fared so badly (I/1/a-d, 49/a-d). Of course, many of those who did not retain lawyers might not have had claims in which a lawyer would have been much help, and of the 102 who had no lawyer and who got no award, 74 had tangible losses under $100 (I/2/a).

[31] For all small claim cases a minimum fee should be allowed—we suggest $25. And in cases in which substantial litigational services have been needed for collection or in which defendants have procrastinated unreasonably in settlement, the allowable fee should be increased.

have to establish other elements of entitlement. This is lawyers' work. The cost of needed legal services engaged in consequence of an automobile accident flows as surely from the accident as the cost of medical services; it should be calculated as a tangible financial loss resulting from the accident for which the fund will compensate. Legal fees, like medical bills, should be compensable at, say, an 85 per cent rate and subject to standards of reasonableness. In determining a reasonable legal fee, it should be borne in mind that collecting from the fund will usually be much less difficult than collecting a liability claim. The claimant's attorney need not be concerned with negligence, contributory negligence, or pain and suffering. If disability payments are periodic, he need be little concerned with prognosis. Although he may occasionally have difficult questions as to his claimant's eligibility or the extent of the claim, the routine case will rarely merit a fee of more than 15 to 20 per cent of the sum collected. On the other hand, if fee allowances are ungenerous, the quality of representation generally available to claimants will be too low. Fees should be attractive enough to enlist well-qualified champions for claimants.

E. Adjusting the Plan to Future Needs

There will be no organized political forces working to keep the fund and its benefits at appropriate levels as inflation or deflation skew them out of line. At the outset, legislation should fix the more or less arbitrary boundary between trivial and substantial claims, maximum disability payments, and so forth. But these arbitrary figures are not likely to remain satisfactory. The legislature can probably preserve both the scheme and its own time if it provides for periodic administrative recalculation of the original figures according to variations in an index such as the Bureau of Labor Standards' cost-of-living index.

Eventually, of course, changed conditions are bound to outmode the very foundations of the plan we have proposed. In our estimation, it is politic for our own times. But if and when social security becomes more adequate or the pattern of transportation, automobile accidents or insurance programs change, the plan may become fundamentally defective. The law, like the technology of transportation, must keep on changing with the times.[32]

[32] We have not discussed here the desirability of a comparative negligence rule. While comparative negligence might alleviate some of the hardships and, possibly, some of the economic waste which concerns us, we believe the changes advocated here would still be necessary.

NOTES

TANGIBLE LOSSES include medical expenses and loss of earnings but do not include legal expenses. In cases of fatality (Table II), Tangible Losses also include funeral expenses, and lost earnings are limited to the period between the time of the accident and the time of death, so that the fact that earning capacity is destroyed by death is not reflected in the table.

COMPENSATION includes *awards* and *benefits;* it does not include reimbursement for legal expenses.

AWARDS include payments to injured persons from either the other party to the accident or the other party's liability insurer, whether resulting from litigation or settlement.

BENEFITS include all forms of reimbursement other than *awards,* such as workmen's compensation, sick-leave pay, accident insurance, etc. In cases of fatality (Table II) they also include life insurance benefits.

COMPENSATION RATIO is the ratio of *compensation, awards,* or *benefits* (as the case may be) to *tangible losses.* (For example, a victim whose tangible loss was $1,000 and who received $1,200 from the other party by way of settlement and $400 from Blue Cross would be listed as having a compensation ratio, considering *awards* only, of 1.2 (I/28/e); a compensation ratio, considering *benefits* only, of 0.4 (I/11/e); and a compensation ratio, considering both *awards and benefits,* of 1.6 (I/36/e).

INS. & LAW.—These columns include persons injured in accidents in which the other party was insured and the injured person retained a lawyer.

INS. & NO LAW.—These columns include persons injured in accidents in which the other party was insured and the injured person did not retain a lawyer.

NO INS.—These columns include persons injured in accidents in which the other party was uninsured. (They include two cases of persons fatally injured in accidents involving uninsured drivers.)

TOTAL CASES.—The totals for each category are indicated by two figures. The figure on the left, without parentheses, is the total number of cases in the category as to which relevant information was actually reported. Only such cases are broken down for inclusion elsewhere on the table. The figure on the right, in parentheses, is the total number of cases in the category that were contained in the sample.