

Reply To "The Case Against Compulsory Automobile Compensation Insurance"

MR. MARX

The very first words of the "*Case Against Compulsory Automobile Compensation Insurance*" reveal a fundamental difference in objectives. Apparently, the main concern of my opponent is to protect the owner or operator from legal liability. The victim is the forgotten man. My main concern is to indemnify the victim and to protect the injured breadwinner, his family, and the dependents of those killed in automobile accidents — and to lift the burden of uncompensated damage from society and place it where it belongs.

We are next told that presently liability insurance is entered into on a voluntary basis — by both insured and insurer. This statement requires much qualification. Taxicabs, trucks, and public motor carriers must carry insurance. It is not voluntary. Minors are compelled in New York and elsewhere to have insurance as a condition precedent to driving. The coercive effect of so-called safety and financial responsibility laws has been noted. The rights of insurance carriers to select risks have been abridged by the Assigned Risk Plan of most states.¹

The claim is made that the safety responsibility laws "tend to promote safe driving" and have the effect of "greatly increasing the number of insured." If this compelling consequence is the indirect effect of these laws which still leave a large percentage uninsured, the logic of the argument is to promote more safe driving by directly eliminating all uninsured drivers and compelling everyone to carry insurance.

The argument that 6,342 licenses were suspended under financial responsibility laws in Ohio highlights the number of uncompensated injuries and damage claims. The 21,238 releases filed in New York by operators of uninsured vehicles point to the numerous inadequate settlements made because the owner or operator was uninsured.²

The assertion that a compulsory system tends to make drivers more reckless or lawless is unsupported by any evidence and is disproved by the experience of Massachusetts which shows a slightly

¹ Upheld by the U.S. Supreme Court in *California State Auto Association, Inter-Insurance Bureau v. Maloney, Insurance Commissioner*, 341 U.S. 105 (1951).

² In *THE PROBLEM OF THE UNINSURED MOTORIST, A REPORT TO THE SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, 1951*, cited in my article, New York officials conclude that perhaps 17 per cent of the owners or operators involved in fatal accidents are uninsured; and that the total uninsured social loss for bodily injury alone, in 1950, was at least \$10,000,000.

lower injury and death ratio than in comparable states where insurance is voluntary. The fact that certain cases are not covered in Massachusetts (out of state — off public road drivers) is not a criticism of compulsory insurance. On the contrary, it is an argument for wider coverage and for an extension of compulsion to adjoining and other states. The adoption of uniform compulsory compensation insurance laws would rapidly remedy this difficulty; so would a *federal law applicable to interstate travel by automobile*. In this connection, note that Saskatchewan insurance guarantees compensation to any resident of Saskatchewan while riding in an insured car anywhere in the United States and Canada. Further, the Saskatchewan insurance package protects the owner from liability wherever the car travels in Canada and the United States.

The author cites the poor mouth complaint that the insurance companies have made for many years, *i.e.*, that the premium rates fixed by the Superintendent of Insurance in Massachusetts are so low that they are virtually forced to write insurance at a loss. This complaint can be taken with a large grain of salt. This insurance has been law in Massachusetts for a quarter of a century — during that time no company has been forced to write it. Complete freedom of choice exists — yet few companies have discontinued writing insurance in Massachusetts. Further, court review of rates exists. The rates are quite high and allow for both reasonable commissions to agents and profits to the owners.

On one point we agree with the “Case Against Compulsory Liability Insurance,” *i.e.* liability insurance only enables recovery by the victims if (1) the driver is legally liable and (2) the victim is free from *all* fault. It should be added, too, if he can survive the long delay and ultimately wins an expensive battle through the courts. Even so, recovery is often limited to the statutory \$5,000 policy for one injury. That is among the reasons we oppose, not the compulsory feature, but the *liability* feature of the Massachusetts Plan and propose compensation insurance in its stead.

Our opponents boast of the refusal of the insurance companies to insure “the small group of proven reckless, incapable, irresponsible drivers” who increase accidents and impose “an added burden of cost on everybody.” Precisely, it is “everybody” who now bears the high cost of the uncompensated injuries which these motorists cause. We propose that this burden should be placed specifically on the owners and drivers responsible — not on “everybody.” If this group is insurable they should not be allowed to cruise the streets uninsured. If not insurable, they should be denied insurance and the right to drive — which would be the result if insurance was mandatory.

The plausible plea is made that it is unfair to require a driver to “maintain insurance for injuries for which he is in no way re-

sponsible." Who says he is not responsible? By his very presence on the highways — by his speed — his mechanical difficulties — his human failings — he adds to the danger and the congestion and creates the traffic hazards which result in human death and property damage. The risk of damage and injury is inevitable. It is a risk everyone shares and to which everyone is subject.

Next we are asked a number of technical questions as to the makeup of compensation schedules, most of which are answered in the main article in support of the compensation plan. Saskatchewan has encountered no difficulty in determining the compensation payable to a housewife, or a child, or other non-earner, on a per diem basis. The compensation of the wage earner is geared to his wages and the length and degree of disability.

Most of the problems and questions raised have been answered for years in the various workmen's compensation insurance laws. The administrative agencies which hear and determine disputed claims and the method of appeal to the court could easily follow the pattern established and successfully followed in workmen's compensation cases.

Of course, if more than one injury or death results from one accident each victim will be compensated according to the indemnity provisions applicable to his case.

The fact that the automobile travels in other states than the state of domicile is urged as requiring the owner to carry, in addition to compensation insurance, liability insurance to protect him against out of state claims. The number of miles traveled out of the state is usually a small proportion of the total car mileage and this super-added liability can be carried for comparatively little cost. The proof is that under the Saskatchewan Plan the compulsory insurance includes liability insurance protection everywhere in Canada and in the United States in the same package and for the same premium as the compulsory compensation insurance which every car owner and driver must have.

A feeble effort is made to minimize the extent and evil of the present handling of automobile fatalities and damage. Banquo's ghost will not down. The reports of Judge Peck — of the Superintendent of Insurance of New York — the article by Judge Hofstader — the figures of the National Safety Council — all exhibit the stark tragedy in terms of human misery and destitution of the liability system. One dead every 15 minutes. One injured every 22 seconds. Every year the injured and dead equal the population of St. Louis. Four years delay in New York. Five years delay in Chicago. Delay everywhere. Hospitals crowded with automobile victims. No improvement in the whole miserable system in thirty years. In that period — the radio — television — the atom — all new. The new has displaced the old — but we lawyers still cling with petrified thoughts

to the dead hand of the archaic liability system — devised for the dead past. We are justified in asking — How Long, Oh Lord? — and to answer — the time to improve — to progress — to substitute compensation for litigation is Now!

Finally, the opposition brings out the ancient bogey man of a "State Fund." They say compensation insurance means a state fund. Nonsense. Workmen's compensation insurance is now written by private enterprise in 41 of the 48 states. In 7 states the stupid and stubborn opposition of the private insurance companies to compulsory workmen's compensation insurance led the states to underwrite the insurance through a state fund. Ohio happens to be one of these states. Let us hope that the insurance companies will not be so shortsighted again.

Of course, a monopolistic state fund means the loss of business for insurance agents and companies, which no one wants and which can be avoided. But if the insurance companies refuse to furnish the insurance, they must remember that the public interest is paramount.

Experience in Ohio proves that when no other alternative is left, the people can successfully administer a state compensation insurance fund. There is nothing inherently wrong in social insurance being underwritten by society. Unemployment insurance — old age insurance — social security are examples. It is not our purpose to discuss whether the carrier should be the government as in Saskatchewan — the state as in Ohio — or private companies as in the vast majority of states and provinces. Enough has been shown to prove that here is a great field for private initiative and private enterprise.

But if the private companies do not seize the initiative, and the opportunity, the necessity for action will bring action. Self-preservation comes first and the public will adopt appropriate means and methods to plug the hole in our economy left by uncompensated injury and death due to a motorized age.