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CONSUMER CHOICE IN THE MINNESOTA AUTO INSURANCE MARKET¹

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I. THE PRESENT SITUATION

Traditional tort liability for personal injury from auto accidents has long been criticized on the grounds that the costs are too high and that any compensation therefrom is inefficient, unfair, and dilatory.² But no-fault laws³ themselves are criticized for in-

1. This article is excerpted, updated, and adapted for precise application to the state of Minnesota from three articles, of more general national application, by the same authors (with the addition here of Alexander Karan). See Jeffrey O'Connell et al., *Consumer Choice in the Auto Insurance Market*, 52 MD. L. REV. 1016 (1993) [hereinafter *Maryland One*]; Jeffrey O'Connell et al., *The Costs of Consumer Choice for Auto Insurance in States Without No-Fault Insurance*, 54 MD. L. REV. 281 (1995) (written by the authors of *Maryland One* and Daniel Kaiser) [hereinafter *Maryland Two*]; Jeffrey O'Connell et al., *The Comparative Costs of Allowing Consumer Choice for Auto Insurance in All Fifty States*, 55 MD. L. REV. 160 (1996) (written by the authors of *Maryland One* and Paul Jamieson) [hereinafter *Maryland Three*]; see also ROBERT H. JOOST, *AUTOMOBILE INSURANCE AND NO-FAULT LAW* § 6:26 (2d ed. 1992) (explaining the status of auto insurance in Minnesota).

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2. See STEPHEN J. CARROLL & JAMES S. KAKALIK, *NO-FAULT AUTOMOBILE INSURANCE: A POLICY PERSPECTIVE* vii (1991); JEFFERY O'CONNELL & C. BRIAN KELLY, *THE BLAME GAME: INJURIES, INSURANCE, AND INJUSTICE* 114-15 (1987). For other recent data supporting the various criticisms of traditional tort liability, see gener-

fringing upon the fundamental legal right to be paid not only economic but also noneconomic damages (primarily for pain and suffering), and for failing in their promise to suppress auto insurance costs.⁴ No-fault proponents counter with the argument that any financial shortcomings of the laws are due to the plaintiff's continued ability to press traditional tort claims. These additional claims are in compensation for injuries that exceed either dollar loss or physical (verbally described) severity thresholds.⁵

This article addresses the question of whether there is a compensation scheme that can free Minnesota insureds from the failures of traditional tort law and at the same time mend the shortcomings of current no-fault laws. In 1991, the RAND Corporation, which takes a neutral position in the debate about auto compensation plans, published a comparative study of the two schemes.⁶ RAND examined the following personal injury protection (PIP)⁷ issues:

- (1) The effect of PIP reform on: (a) the costs of compensation; (b) transaction costs (mainly lawyers' fees and allied costs of processing claims); (c) "the adequacy and equity" of compensation; and (d) promptitude of compensation;⁸
- (2) the effect of variations in the design of PIP reforms on items (a)-(d) above;⁹ and
- (3) the variations of PIP among states.¹⁰

The RAND study came to the following conclusions:

- (1) A PIP system can produce either substantial savings com-

ally INSURANCE RESEARCH COUNCIL, *AUTO INJURIES: CLAIMING BEHAVIOR AND ITS IMPACT ON INS. COSTS* (1994) [hereinafter *CLAIMING BEHAVIOR*]. For the terms of a bipartisan federal auto choice bill, see S. 625, 105th Cong., 1st Sess. (1997).

3. A no-fault law mandates the purchase of auto insurance payable by one's own insurer for economic loss without reference to fault, but also precludes accident victims from recovering noneconomic damages in tort unless they can prove another person was at fault and that their losses exceed a threshold defined by the no-fault law.

4. See CARROLL & KAKALIK, *supra* note 2, at vii; O'CONNELL & KELLY, *supra* note 2, at 118.

5. See O'CONNELL & KELLY, *supra* note 2, at 120.

6. See generally CARROLL & KAKALIK, *supra* note 2 (focusing on possible consequences of a state's adoption of a no-fault scheme).

7. Insurance that is payable for economic loss without regard to fault is termed "personal injury protection" (PIP) insurance. See *Maryland One*, *supra* note 1, at 1017 n.7.

8. See CARROLL & KAKALIK, *supra* note 2, at 4.

9. See *id.* at xi.

10. See *id.* at xv.

pared to the fault-based system or, depending on the plan's design and variables in different states that affect auto insurance costs, it can increase those costs. Such variables include the size of PIP benefits, the nature and extent of any barrier to tort claims for noneconomic damages, the litigiousness of the state's populace, and so on;¹¹

- (2) PIP plans decrease transaction costs;¹²
- (3) compensation under PIP reforms is more closely aligned with economic losses (mainly expenses for medical costs and wage loss) than tort law;¹³
- (4) present PIP reforms eliminate compensation for noneconomic losses (mainly for pain and suffering) but only in cases of less serious injuries;¹⁴
- (5) compensation is paid more promptly from PIP coverage;¹⁵ and
- (6) in choosing between traditional tort law and PIP reforms, policymakers must determine "whether to cut costs or to preserve or increase compensation for injured people, and what balance to seek between compensation for economic and for noneconomic losses."¹⁶

A good measure of an underlying cause for the rise in auto insurance premiums is the change in recent years in the ratio of bodily injury (BI) to property damage (PD) claims, i.e., the BI-PD ratio.¹⁷ The higher ratio indicates a greater proportion of insureds claiming bodily injury. Nationally, that ratio has steadily risen. In Minnesota, it rose from 5.8 BI claims per 100 PD claims in 1980 to 12.1 per 100 by 1995.¹⁸ It might be noted that the BI-PD ratio is 27% higher in Minneapolis than in the rest of the state, reflecting more aggressive claim practices in urban areas.¹⁹ These recent in-

11. *See id.* at 43.

12. *See id.* at 21.

13. *See id.* at 23.

14. *See id.* at 21-22.

15. *See id.* at 26.

16. *See Maryland One, supra* note 1, at 1018.

17. *See id.* at 1021-24.

18. *See* INSURANCE RESEARCH COUNCIL, TRENDS IN AUTO BODILY INJURY CLAIMS, app. A, tbl. A-25 (2d ed. 1995) [hereinafter TRENDS].

19. *See* JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, AUTO CHOICE: IMPACT ON CITIES AND THE POOR 9, tbl. 2 (1998). The JEC report is truly a stunning compendium of numerous counterproductive aspects of the tort system as applied to auto accidents especially not limited to urban areas and the poor. *See*

creases in frequency of personal injury claims are all the more dramatic for having occurred while many correlative indices have decreased. Technological advances and public policy initiatives have decreased both the frequency and severity of automobile accidents.²⁰ Examples include: (1) safer cars containing collapsible steering wheels, padded dashboards, energy-absorbing fronts, and airbags; (2) massive education and law enforcement campaigns against drunk driving; (3) increased urbanization, with resultant lower rates of speed which diminish accident severity; and (4) use of seat belts and child-restraint devices. According to a study by the Insurance Research Council, most of the additional automobile personal injury claims made in the United States during the period 1987 to 1992 were for soft-tissue injuries (e.g., sprains and strains to the neck and back),²¹ which, not coincidentally, are difficult to objectively diagnose. During the same period there was a manifest drop in the number of automobile injuries that could be objectively diagnosed (e.g., broken bones), as well as a drop in hospital admissions and disabilities caused by automobile accidents.²² Such decreases make a dramatic contemporaneous increase in bodily injury claims all the more anomalous. Once again the problems are more acute in urban areas. The frequency of BI claims in Minneapolis is 63% higher than in the rest of the state, with average loss costs 53% higher though the severity of accidents is 3% lower.²³

How to explain the anomaly? Obviously, the key is the increasing tendency of claimants (encouraged by their lawyers) to inflate their claims to exceed the threshold above which claimants can "double dip," by being paid both by PIP benefits and tort liability insurance.²⁴ Thus the often-suggested reform is to strengthen the

id. passim.

20. See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 609 (112th ed. 1992) [hereinafter 1992 STATISTICAL ABSTRACT]; Daniel Popes, *The Fraud Tax: The Cost of Hidden Corruption in America's Tax Law*, Legal Backgrounder (Wash. Legal Found., Wash., D.C.), Mar. 27, 1992, at 1.

21. See CLAIMING BEHAVIOR, *supra* note 2, at 21.

22. See *id.* at Fig. 3-9.

23. See *supra* note 19 and accompanying text.

24. The following is comparative information on Minnesota and other national data compiled by the Insurance Research Council.

A. Four major trends

1. More people involved in auto accidents are making claims for injuries, even though accidental injury rates are declining because of
 - a) increased seat belt use
 - b) increased use of air bags

-
- c) tougher DWI laws
 - 2. Additional claims for relatively minor injuries
 - 3. Medical expenses climbing rapidly
 - 4. People more likely to hire attorney for help
 - B. PIP Claims—1980-1995
 - 1. Countrywide
 - a) Claim frequency—up 1.1%
 - b) Claim severity—up 157%
 - c) Average loss cost—up 160%
 - 2. Minnesota
 - a) Claim frequency—up 46.7%
 - b) Claim severity—up 109.5%
 - c) Average loss cost—up 208.4%
 - C. BI Claims—1980-1995
 - 1. Countrywide
 - a) Claim frequency—up 38.6%
 - b) Claim severity—up 100.1%
 - c) Average loss cost—up 176.7%
 - 2. Minnesota
 - a) Claim frequency—up 80.8%
 - b) Claim severity—up 32.2%
 - c) Average loss cost—up 147.6%
 - D. P.D. Trends—1980-1995, Countrywide and Minnesota similar—downward
 - 1. Countrywide—down 16.2% (frequency)
 - 2. Minnesota—down 13.2% (frequency)
 - E. Number of BI Claims per 100 P.D. Claims (i.e., measures likelihood of injury claim being paid given an accident serious enough to cause some danger); 1980-1995
 - 1. Countrywide
 - a) Increased 64.8% (17.9 to 29.5)
 - 2. Minnesota
 - a) Increased 109.4% (5.8 to 12.1)
 - F. Insurance Research Council additional data based on 1987-1994 supports trends
 - 1. Average injury loss (BI, PIP, UM, UIM)
 - a) Countrywide—up 52.1% (6.2% per year)
 - b) Minnesota—up 83.2% (9.0% per year)
 - 2. Average property damage loss
 - a) Countrywide—up 26.9% (3.5% per year)
 - b) Minnesota—up 54.7% (6.4% per year)
 - 3. Injury to property damage cost index
 - a) Countrywide—up 19.8% (2.6% per year)
 - b) Minnesota—up 18.5% (2.4% per year)
 - G. Insurance Research Council Study of 62,000 closed claims nationwide supports trends
 - 1. Sprains/strains growing share of all injuries
 - a) BI claimants, 1987-1992, 66% to 71%
 - b) PIP claimants, 1987-1992, 58% to 62%
 - 2. BI and PIP claimants with no recorded periods of disability, 1977-1992
 - a) BI—40% to 59%

tort threshold by adopting a verbal threshold like New York's. That state's claimants must suffer a "significant" injury before suing in tort, as opposed to Minnesota law which includes a dollar threshold.

The key element, overlooked by the many who urge a New York-type high verbal threshold as a model for no-fault laws, is that even in New York, claims for pain and suffering above its high threshold are hugely expensive, contributing disproportionately to auto insurance costs. As indicated above,²⁵ the BI-PD ratio more than doubled in Minnesota from 1980 to 1995. Contrast this to New York, with a high threshold barring pain and suffering claims, where the BI-PD ratio remained very constant during the time period of 1980 to 1989.²⁶ To illustrate the ill effects of BI tort claims, even New York's \$50,000 threshold in no-fault benefits contributed only 36% of the total pure premiums for a category of claims including both BI tort claims and no-fault (PIP) benefits. In other words, the relatively few (approximately 15% of the total) tort claims preserved over New York's high threshold contribute disproportionately (64%) to total personal injury costs (including both BI and PIP coverage).²⁷

Therefore, even New York's law is by no means an optimal model. New York has long dealt relatively effectively with higher costs for smaller tort claims, but it deals ineffectively with higher costs for larger tort claims. The only way to deal with both is to get rid of claims for noneconomic damages in cases both large and small. RAND estimates that nationwide almost half of the bodily injury premiums are used for paying noneconomic losses in states like New York, which have high PIP benefits coupled with high thresholds.²⁸ Furthermore, even in New York the possibility of suing in tort above its relatively high threshold is being exploited by increasingly experienced plaintiffs' counsels. This activity has led

b) PIP—45% to 56%

3. Attorney representation countrywide—all coverage combined increased significantly

a) 1977—31%

b) 1987—42%

c) 1992—46%

See TRENDS, *supra* note 18, at Part One, 1-4; app. A, tbl. A-1; app. B, tbl. B-24; app. C, tbl. C-1; CLAIMING BEHAVIOR, *supra* note 2, at 44; Fig. 3-3; Fig. 3-8.

25. See *id.*; see also *supra* note 18 and accompanying text.

26. See TRENDS, *supra* note 18, tbl. A-34.

27. See *Maryland One*, *supra* note 1, at 1019-20.

28. See *id.*

to a more recent rise in New York's BI-PD ratio of almost 50% from 1989 to 1993.²⁹ Thus, for Minnesota, simply reducing the number of tort claims for noneconomic loss over a higher threshold, including only a verbal definition as in New York, would fail to net optimal savings.

II. THE CHOICE SYSTEM

Under Minnesota's current no-fault law, every insured motorist is insured on a no-fault basis for reparation benefits (PIP) covering economic loss up to \$20,000 for medical expenses and \$20,000 for other benefits.³⁰ A Minnesota motorist, however, can generally recover in tort for noneconomic loss if: 1) he or she has suffered a permanent injury or disfigurement; 2) death; 3) over \$4,000 in medical treatment; or 4) 60 days of disability.³¹

Proposed here is reform that replaces Minnesota's no-fault law, burdened as it is not only by payments made without regard to fault for economic losses, but also with the expensive, and arguably even subsidized,³² claims for noneconomic loss. This new reform could give motorists the *option* of forgoing claims for noneconomic loss above Minnesota's threshold without forcing them to do so.³³

Persons electing such coverage (called "switchers") could never sue or be sued for noneconomic loss if involved in accidents with any other motorist, switchers or otherwise. Such switchers would only be allowed to claim in tort against other motorists, whether switchers or otherwise, for *economic* loss in excess of their no-fault PIP coverage.³⁴ As to accidents between switchers and those electing to stay in the current system ("stayers"), the latter would make a claim based on fault against their own insurer for noneconomic loss above Minnesota's threshold (under coverage

29. See TRENDS, *supra* note 18, at tbl. A-34.

30. See *Maryland Three*, *supra* note 1, at 217. The other benefits include 85% of lost income up to \$250 per week; additional PIP benefits include \$200 per week for replacement services, up to \$200 per week for survivor's replacement service loss, and \$2000 for funeral benefits. See *id.*

31. See MINN. STAT. § 65B.51, subd. 3 (1996).

32. See *Maryland Two*, *supra* note 1, at 282 & n.7.

33. See *id.* at 283; This type of insurance grew out of an article by Jeffrey O'Connell and Robert H. Joost. See Jeffrey O'Connell & Robert H. Joost, *Giving Motorists a Choice Between Fault and No-Fault Insurance*, 72 VA. L. REV. 61 (1986).

34. See *Maryland Two*, *supra* note 1, at 283. Note that just as one can opt to buy more liability insurance than compulsory insurance limits mandate, one could also opt to buy more PIP coverage than compulsory insurance limits mandate.

termed "tort maintenance coverage"), much as they do now under uninsured motorist coverage.³⁵ Stayers' tort claims for economic loss in excess of their own no-fault coverage would be allowed against switchers. In accidents between two stayers, Minnesota's current system would apply without change. When claims for only economic loss by switchers or stayers are pursued, a reasonable attorney's fee in addition to economic loss would be recoverable. If an injury was caused by a tortfeasor's intent or by alcohol or drug abuse, there would be no restriction on anyone's right to sue for noneconomic loss.³⁶ No change would be made in the law applicable to property damage.³⁷

III. ESTIMATING THE EFFECTS OF THE CHOICE PLAN

A. *General Approach*

In reaching these cost conclusions, we first estimated what auto insurers would have to charge the average private passenger car insured motorist in Minnesota, under the status quo, to recover the costs incurred in compensating accident victims under all coverages and limits. We also estimated separately the costs of those buying only mandatory coverage and limits.³⁸ We then developed corresponding estimates for stayers who elect to retain the status quo and for switchers who opt for the new plan allowed by choice. Next, we compared these estimates to determine how the adoption of the plan allowing choice would affect the costs of auto insurance, depending on whether motorists stay or switch, and whether they buy more than mandatory coverage.

Under the status quo, Minnesota motorists can purchase several different personal injury coverages at various limits – PIP, Bod-

35. See *Maryland One*, *supra* note 1, at 1026 & n.48. Uninsured Motorist (UM) coverage pays up to the limit specified in the policy when the insured, or others in the insured vehicle, are injured by uninsured or hit-and-run motorists. Thus the insured's own insurer pays what the injured person is eligible to recover in tort from the other uninsured, at-fault motorist. Underinsured Motorist (UIM) coverage similarly pays the insured and other occupants of the insured vehicle when the at-fault motorist has liability coverage but with lower limits than those carried by the insured. See *id.* at 1028.

36. See *Maryland Two*, *supra* note 1, at 283 & n.12.

37. For the rationale for excluding property damage from PIP coverage, see ROBERT E. KEETON & JEFFERY O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 280-81 (1965).

38. See *Maryland Three*, *supra* note 1, at 169 n.53.

ily Injury (BI),³⁹ and Uninsured Motorist(UM), including Underinsured Motorist (UIM).⁴⁰ Accordingly, insured motorists must bear the sum of the compensation costs of any of those coverages at the limits they buy. We estimated the compensation cost of the status quo to the average insured motorist by taking the sum of what insurers pay out plus the associated transaction costs, under all the above applicable coverages and limits, divided by the total number of insured motorists. As indicated, we also computed the average costs for those buying only mandatory coverages. Motorists who are uninsured, of course, bear none of the costs of auto insurance.

Under the plan allowing choice, then, motorists may remain in Minnesota's current system (stayers), elect the new system (switchers), or be illegally uninsured.⁴¹ Stayers will purchase not only PIP but also tort maintenance coverage, in addition to BI coverage to cover claims brought against them by others for both economic and noneconomic losses of stayers and for economic losses in excess of the PIP policies of switchers. They may also purchase UM coverage. Following the pattern set forth in the foregoing paragraph, we estimate the average stayer's compensation costs under the plan allowing choice as the sum of what auto insurers pay injured people plus the association transaction costs under all coverages and limits on behalf of stayers, divided by the total number of stayers. Note that the average stayer's compensation costs include the costs insurers incur on one's behalf in providing compensation under personal injury tort liability type coverages –PIP, BI, UM, and tort maintenance.⁴²

Motorists who switch, under the plan allowing choice, purchase not only PIP but also BI to cover tort liability claims brought against them for economic losses in excess of their victim's own policy limits.⁴³ Following the pattern set forth above, we estimate

39. Bodily Injury (BI) coverage refers to tort liability coverage for personal injury, thereby excluding property damage. See *Maryland One*, *supra* note 1, at 1028 n.54.

40. See *supra* note 35.

41. For a proposal allowing motorists to be *legally* uninsured at the price of losing any right to claim for noneconomic loss, see *Maryland Three*, *supra* note 1, at 207-13.

42. All of these coverages, per terminology adopted by the National Association of Insurance Commissioners, are subsumed under the term "liability." See NATIONAL ASS'N OF INS. COMM'RS, AVERAGE EXPENDITURES & PREMIUMS IN 1994 Technical Notes (1995); see also *id.* tbl. 2, col. 3.

43. Although no one is required to buy BI liability insurance, those with assets to protect can be expected to do so.

the average switcher's compensation costs as the sum of the costs auto insurers incur on behalf of such motorists for PIP and BI coverage, divided by the number of switchers. Note that switchers will not need UM coverage.⁴⁴ As was the case under the status quo, people who go uninsured under the plan allowing choice bear none of the costs of compensating auto accident victims.⁴⁵

B. *The Results*

According to an analysis performed by The Joint Economic Committee (JEC) of the U.S. Congress based on data compiled by RAND,⁴⁶ the total available savings under the choice plan, if all Minnesota motorists switched, would be \$568 million.⁴⁷ Regardless of how many motorists switched to the new plan allowed by choice, the savings in total auto insurance premiums would be 31% for switchers who bought only mandatory coverage and 21% for all switchers.⁴⁸ The JEC estimates that the premium dollar savings per Minnesota motorist would be \$155. Premiums for stayers would be relatively unchanged.⁴⁹

The savings described above for total auto insurance premiums payable by switchers are very substantial because they stem from savings of about 40% for bodily injury premiums. No change in premiums for losses to property are envisioned⁵⁰. Furthermore, such estimates are arguably conservative.⁵¹ For example, with no or at least greatly lessened incentives to incur medical bills and wage loss as a means of inflating claims for pain and suffering,⁵² those who switch should be inclined to incur lower economic losses and/or forgo making claims at all, compared to their inclinations

44. Switchers will not need UM coverage because they are guaranteed payments for economic loss whether or not the other driver is insured. See STEPHEN CARROLL ET AL., RAND INST. FOR CIVIL JUSTICE, NO-FAULT APPROACHES TO COMPENSATING PEOPLE INJURED IN AUTOMOBILE ACCIDENTS vii (1991).

45. For more on RAND's methodology, see ALLAN ABRAHAMSE & STEPHEN CARROLL, RAND INST. FOR CIVIL JUSTICE, THE EFFECTS OF A CHOICE AUTO INS. PLAN ON INS. COSTS (1995).

46. See STEPHEN CARROLL, ET AL., RAND INST. FOR CIVIL JUSTICE, THE EFFECT OF A CHOICE AUTO. INS. PLAN ON INS. COSTS & COMPENSATION: AN UPDATED ANALYSIS tbl. 5 (1998).

47. See JOINT ECONOMIC COMMITTEE, *supra* note 19, at 35.

48. See *id.*

49. See *id.*

50. See *Maryland Three*, *supra* note 1, at 165 n.22.

51. See *id.* at 175 n.72.

52. See *supra* notes 24-26 and accompanying text.

under the tort system. The above estimates, however, do not include such reductions.⁵³ Note that the savings mirror progressive taxation in that they are higher still for the less affluent. Because the poor generally drive older cars and therefore rarely buy optional collision or comprehensive coverages, low income motorists who buy only mandatory coverage under a choice plan save the most in absolute terms. The result will be a significantly positive impact on the fragile financial status of low-income motorists. Motorists with low incomes have little left for discretionary spending; thus each dollar of savings may go directly to necessities such as food and shelter that may otherwise be sacrificed. Currently, less affluent motorists may spend over 30%⁵⁴ of their annual household income on auto insurance and many are forced to put off buying basic necessities in order to pay their premium.⁵⁵ A study of low income insured motorists of Maricopa County, Arizona found that 44% were forced at some point to postpone buying food in order to pay their auto insurance premiums,⁵⁶ thus being forced to choose between putting food on the family table or complying with the law. In addition to consuming an exorbitant amount of income, the prohibitive cost of auto insurance has the potential of even more dire effects on the less affluent. Minnesota, like many states, has a compulsory insurance law penalizing those who go uninsured.⁵⁷ Financially strapped individuals reliant on their vehicles for transportation to work may be forced to give up their driving privileges due to their inability to afford auto insurance.⁵⁸ The loss of driving privileges may in turn result in the loss of employment opportunities and propel them into total impoverishment and dependency on publicly funded support.

The cost estimates contained herein are somewhat lower than previous estimates by RAND and the JEC.⁵⁹ The previous estimates

53. See *Maryland Two*, *supra* note 1, at 289 & n.42.

54. See ROBERT L. MARIL, *THE IMPACT OF MANDATORY AUTO INS. UPON LOW INCOME RESIDENTS OF MARICOPA COUNTY, ARIZONA* 8-9, 11 (1993).

55. See *id.*

56. See *id.*

57. See *Maryland Three*, *supra* note 1, at 217; see also MINN. STAT. § 169.797 (1996).

58. See JOINT ECONOMIC COMMITTEE, *supra* note 19, at 35. Cf. *infra* note 59 and accompanying text.

59. For example, the JEC, based on RAND data findings, assumed earlier that the (1) total savings in Minnesota would be \$1,041,000 if all motorists switched to PIP; and (2) that regardless of how many motorists switched the savings in total auto insurance for low income switchers who bought only the mandatory coverage

were based on 1987 data whereas the latest ones are based on 1992 data. Economic losses from auto accidents increased from 1987 to 1992: Due to inflation, accident victims in RAND's 1992 database suffered economic losses that were significantly greater, on average, than the losses suffered by accident victims in RAND's 1987 database. In California, as an example, 1987 accident victims incurred an average of \$5,433 (1987 dollars) in economic losses, whereas in 1992 California accident victims incurred an average of \$10,286 (1992 dollars) in economic losses. Motorists nonetheless, have generally not increased their policy limits to keep pace with the rate of growth in losses. As a larger fraction of 1992 accident victims' economic losses neared insurance policy limits, compensation from auto insurance grew at a slower rate than did economic losses claimed. For example, the ratio of auto insurance compensation to economic loss in California fell from 1.04 in 1987, to 0.88 in 1992.

As a result, more auto insurance premium payments went for economic, rather than noneconomic losses. Thus eliminating noneconomic damages results in lower savings. Therefore, 1992-based estimates of the cost of compensating auto accident victims for economic losses alone under the choice plan are greater. Hence, its updated estimates of the plan's savings from eliminating payment for noneconomic losses are lower than were the earlier 1987-based estimates.

This is a "bad news, good news" scenario for advocates of auto choice. The "bad news" is that the percentage of savings for motorists who choose to abandon claims for pain and suffering declines as passing years inflate economic losses from auto accidents while financial responsibility limits remain stable. The "good news" for auto choice advocates is that as the years go by the tort system is paying less and less for noneconomic loss and more and more for only economic loss—and paying for the latter based on fault. If motorists are to be paid only for economic loss, critics of the tort system might ask, why filter such payment though a fault-based system with all its attendant transaction costs, including one third for the claimant's lawyer, increasingly extracted not from the "extra" payment for pain and suffering but from the amount meant to compensate for the client's own economic losses?⁶⁰

would be about 60%, and 41% for all switchers, with an average premium savings per motorist of \$296. See JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, *THE BENEFITS AND SAVINGS OF AUTO-CHOICE* 9 (1997).

60. For a study emphasizing the necessity of combining payments without

reference to fault with the concomitant elimination of claims for pain and suffering as a means of controlling auto insurance costs, see J. David Cummins & Sharon Tennyson, *Controlling Automobile Insurance Costs*, 6 J. ECON. PERSP. 95 (1992); see also Kevin Eastman et al., *The New York Verbal Threshold for Third-Party Liability Under No-Fault Insurance*, 12 J. INS. REG. 369 (1994).

