

# The Comparative Costs of Allowing Consumer Choice for Auto Insurance in All Fifty States

Jeffrey O'Connell

Stephen Carroll

Michael Horowitz

Allan Abrahamse

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Insurance Law Commons](#)

---

### Recommended Citation

Jeffrey O'Connell, Stephen Carroll, Michael Horowitz, & Allan Abrahamse, *The Comparative Costs of Allowing Consumer Choice for Auto Insurance in All Fifty States*, 55 Md. L. Rev. 160 (1996)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol55/iss1/6>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact [smccarty@law.umaryland.edu](mailto:smccarty@law.umaryland.edu).

# THE COMPARATIVE COSTS OF ALLOWING CONSUMER CHOICE FOR AUTO INSURANCE IN ALL FIFTY STATES

JEFFREY O'CONNELL,\* STEPHEN CARROLL,\*\* MICHAEL HOROWITZ,\*\*\*  
ALLAN ABRAHAMSE,\*\*\*\* & PAUL JAMIESON\*\*\*\*\*

## TABLE OF CONTENTS

INTRODUCTION .....	160
I. A SYSTEM ALLOWING CHOICE .....	163
II. A SYSTEM ALLOWING CHOICE AS APPLIED TO ALL FIFTY STATES.....	168
III. THE RESULTS .....	171
IV. EFFECTS ON THE POOR .....	176
CONCLUSION .....	178
APPENDIX A: TABLES AND TREE CHARTS.....	181
APPENDIX B: MODEL LEGISLATION FOR CREATION OF CONSUMER CHOICE IN MOTOR VEHICLE INSURANCE IN A STATE WITH NO-FAULT INSURANCE .....	207
APPENDIX C: SUMMARY OF REQUIREMENTS, BENEFITS, AND THRESHOLDS IN FIFTY STATES .....	214

## INTRODUCTION

This is the third in a series of articles by researchers at RAND's Institute for Civil Justice, the University of Virginia Law School, and the Hudson Institute dealing with reform of auto insurance. We designate the two prior articles, *Maryland One*<sup>1</sup> and *Maryland Two*.<sup>2</sup> All three articles concern allowing motorists to opt out of the status quo by purchasing first-party auto insurance payable without reference to

\* The Samuel H. McCoy II and Class of 1948 Professor of Law, University of Virginia; B.A., Dartmouth College; J.D., Harvard University.

\*\* Senior Economist, RAND; B.S., M.S., Illinois Institute of Technology; Ph.D., Johns Hopkins University.

\*\*\* Senior Fellow, Hudson Institute; B.A., City University of New York; J.D., Yale University.

\*\*\*\* Mathematician, RAND; B.S., Ph.D., University of Michigan.

\*\*\*\*\* B.A., Yale University.

1. Jeffrey O'Connell et al., *Consumer Choice in the Auto Insurance Market*, 52 MD. L. REV. 1016 (1993) [hereinafter *Maryland One*].

2. 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) [hereinafter *Maryland Two*]. Additional articles are a distinct possibility as further updated data become available. See, e.g., *infra* note 61.

fault for personal injury,<sup>3</sup> coupled with abolition of claims for pain and suffering both by and against them (except for drunken, drugged, or intentional misconduct). The first two articles concerned the effects of such laws allowing choice in states without no-fault laws, including "add-on" laws.<sup>4</sup> Throughout all three articles we adopt terminology whereby under either a no-fault or add-on system, insurance payable for economic loss without regard to fault is termed personal injury protection (PIP).<sup>5</sup>

The purpose of this third Article is to include the actuarial results of allowing motorists in states currently with a no-fault law to opt out of claiming and being claimed against for pain and suffering even in cases above the existing no-fault threshold.

*Maryland One* began by discussing an earlier RAND study indicating the following:

\* [No-fault systems] either can produce substantial savings over the fault-based system or [they] can increase costs, depending both on the plan's design and on differences among states that affect auto insurance costs. For example, the level of PIP benefits, the nature and size of barriers to pursuit of tort claims for pain and suffering [*i.e.*, thresholds], and the litigious nature of a state's population will all factor into the cost equation.

\* [No-fault] plans reduce transaction costs.

\* Compensation under [no-fault] plans more closely matches compensation with economic losses—principally medical costs and wage losses. . . .

\* Compensation is more prompt under [no-fault] coverage.

\* [No-fault] laws eliminate compensation for noneconomic losses—principally pain and suffering—but only for less serious injuries.<sup>6</sup>

---

3. *But see infra* note 5 to app. B (discussing a proposal that denying an insured's right to claim in tort for noneconomic loss ought to be in lieu of any obligation to insure).

4. This Article defines a no-fault law as one that mandates the purchase of auto insurance payable by one's own insurer for economic loss without reference to fault, and that also precludes accident victims from recovering noneconomic damages in tort unless they can prove another person was at fault and their losses exceed a threshold defined by the no-fault law. Such no-fault laws are distinguished from "add-on" laws, which similarly require insurers to pay their own injured insureds for economic losses without regard to fault, but do not limit the right of injured parties to claim for noneconomic loss above any threshold.

5. In some states, such coverage is termed personal protection insurance, also commonly termed "PIP."

6. *Maryland One*, *supra* note 1, at 1017 (citing STEPHEN J. CARROLL & JAMES S. KAKALIK, RAND INSTITUTE FOR CIVIL JUSTICE, NO-FAULT AUTOMOBILE INSURANCE: A POLICY PERSPEC-

The RAND study tested the effects of eliminating claims for noneconomic loss no matter how serious the injury, and included its results in the following table.<sup>7</sup>

EFFECTS OF THRESHOLD AND PIP BENEFIT LEVEL  
ON COSTS AND COMPENSATION<sup>8</sup>

	1	2	3	4	5	6
Threshold:	\$ 1,000	\$ 1,000	Strong Verbal	Strong Verbal	Absolute Ban	Absolute Ban
PIP Benefit	\$15,000	\$250,000	\$15,000	\$250,000	\$50,000	Unlimited
Percent change in:						
Total injury						
coverage costs	-12	+13	-22	+ 5	-52	-29
Transaction costs	-27	-22	39	-34	-83	-80
Net Compensation	- 5	+31	-13	+24	-36	- 4

The first four columns of the RAND table show the effect of plans combining PIP benefits with the right to a tort claim for unreimbursed economic losses and for noneconomic losses above the specified monetary or verbal threshold. Column 1 shows the results of a \$1,000 threshold and a fairly low PIP benefit of \$15,000, while column 2 shows the results of combining the same threshold with a very high PIP benefit level of \$250,000.<sup>9</sup> Columns 3 and 4 display the same PIP benefit pattern, but with barriers to any claims for noneconomic

TIVE at vii (1991). (We have reversed the order of the last two items in our text for reasons of continuity.)

7. STEPHEN J. CARROLL ET AL., RAND INSTITUTE FOR CIVIL JUSTICE, NO-FAULT APPROACHES TO COMPENSATING PEOPLE INJURED IN AUTOMOBILE ACCIDENTS 32, tbl. 4 (1991), reprinted in *Maryland One*, *supra* note 1, at 1020.

8. RAND examined the effects of six PIP plans, the first four broadly representative of current laws. Two of the plans (cols. 3 and 4) included what are termed "strong verbal thresholds" similar to those found in Florida, Michigan, and New York. Under a strong verbal threshold, traffic victims can seek payment for noneconomic losses only if they suffer statutorily defined serious injuries. For example, strong verbal thresholds always include "death," but may also include such injury thresholds as "significant and permanent loss of an important bodily function," "permanent serious disfigurement," or "permanent consequential limitation of use of a function or system." Two other plans (cols. 1 and 2) included a \$1,000 threshold that bars traffic victims from seeking compensation for noneconomic losses unless their medical losses exceed the mandatory threshold. RAND thus matched a \$1,000 threshold with a PIP benefit level of \$15,000 (col. 1), and \$250,000 (col. 2). But most significant in the earlier RAND study were data indicating the effects of eliminating *all* claims for noneconomic loss (cols. 5 and 6), not just those above a dollar or verbal threshold, which not one current no-fault law does. All six plans assumed no deductible against PIP benefits, nor any deduction for collateral sources, such as health insurance or sick leave.

9. According to RAND, "less than one percent of the people injured in auto accidents had medical costs in excess of \$250,000." CARROLL ET AL., *supra* note 7, at 32.

loss unless strong verbal thresholds are breached. Columns 5 and 6 show the results of plans that allow for *no* payment at all for noneconomic loss—column 5 with a \$50,000 PIP benefit, and column 6 with unlimited PIP benefits.<sup>10</sup> Column 5 assumes that persons suffering economic losses above the \$50,000 PIP benefit level could seek compensation for their unreimbursed *economic* losses above \$50,000 through a traditional tort claim.<sup>11</sup> By hypothesis, there would be no unreimbursed economic losses in column 6 due to “unlimited” coverage of economic losses. Columns 5 and 6 show that very high PIP benefits can be combined with substantial reductions in total costs. The RAND figures in column 6 indicate the savings from providing even unlimited PIP benefits for economic loss coupled with a ban on all noneconomic losses.<sup>12</sup> The result is savings in personal injury compensation costs of about 29%, which would translate into about half that percentage savings in total auto premiums, including the premium components for both personal injury and all car damage.<sup>13</sup> But are such savings substantial enough to mandate by statute that everyone completely give up tort claims for noneconomic loss?

### I. A SYSTEM ALLOWING CHOICE

As we argued in *Maryland One*, one possible answer to this question is a reform that replaces no-fault laws, burdened as they are not only with payments made without regard to fault for economic losses up to the limits purchased, but also with expensive—and arguably even subsidized—claims for noneconomic loss.<sup>14</sup> This new reform could give motorists the *option* of foregoing claims for noneconomic loss, without forcing them to do so.<sup>15</sup> It would also provide for automatic payment for economic loss at a fixed level. Under this reform, in no-fault or add-on states, motorists are given the option of purchasing PIP coverage at the state’s compulsory insurance level currently required for tort liability for personal injury (PI). For example, if a

---

10. For a chart summarizing minimum coverage requirements in all states, PIP benefit levels in add-on and no-fault states, and thresholds in no-fault states, see *infra* app. C. See also AMERICAN INSURANCE ASS’N, SUMMARY OF SELECTED STATE LAWS AND REGULATIONS RELATING TO AUTOMOBILE INSURANCE 2-11 (1994) (compiling data on state auto insurance laws).

11. CARROLL ET AL., *supra* note 7, at 32.

12. See *supra* text accompanying note 7.

13. *Maryland One*, *supra* note 1, at 1025 n.43; see also *infra* tbl. 1, col. 1 compared to tbl. 2, col. 5; CARROLL ET AL., *supra* note 7, at 41.

14. *Maryland One*, *supra* note 1, at 1026-27. On the subsidy point, see *infra* text accompanying notes 29-48.

15. See *infra* notes 84-85 and accompanying text.

state requires a minimum of \$20,000 of PI tort liability, one could meet that requirement by buying \$20,000 of PIP.<sup>16</sup> (But just as one can buy more than the minimum PI coverage, one could also buy higher PIP limits.) Persons electing such PIP coverage could never sue nor be sued for noneconomic loss if involved in accidents with any other motorist, PIP insured or not. Such PIP motorists would only be allowed to claim in tort against other motorists, whether covered by PIP or otherwise, for *economic* loss in excess of their PIP coverage. If an injury was caused by a tortfeasor's alcohol or drug abuse, however, there would be no restriction on the right to sue in tort. As to accidents between PIP insureds and those electing to stay in the tort system, tort insureds would make a claim against their own insurer for both economic and noneconomic loss (under coverage termed "tort maintenance coverage"),<sup>17</sup> just as they do today under uninsured motorist coverage. Tort claims for economic loss in excess of an insured's own tort maintenance coverage would be allowed against PIP insureds. In accidents between two tort liability insureds, the current common-law tort system allowing claims for economic and noneconomic loss would apply without change.

Further details of the proposal are as follows:<sup>18</sup> PIP coverage would be in excess of all collateral sources,<sup>19</sup> and payable periodically.<sup>20</sup> When claims for economic loss in excess of either PIP or tort maintenance coverages are pursued, a reasonable attorney's fee in addition to economic loss would be recoverable.<sup>21</sup> For the purposes of the cost study in all three articles, we assume no change would be

---

16. For a listing of each state's minimum required limits of PI liability coverage that could be replaced by an equal amount of coverage, see app. C.

17. For a discussion of the controversial philosophical question of whether it is necessary for tort payments to be made by, or even on behalf of, tortfeasors (by their insurers, for example), see Symposium, *Corrective Justice and Formalism: The Care One Gives One's Neighbors*, 77 IOWA L. REV. 403, 443-45, 672-74, 677, 698-99, 703-04 (1991). See also JULES COLEMAN, *RISKS AND WRONGS* chs. 16, 18, 19 (1992).

18. See generally *Maryland One*, *supra* note 1, app. II, at 1045-53 (proposing the terms of a draft bill to implement this proposal authorizing consumers of motor vehicle insurance to choose between two options: (1) their present tort remedies under state law, or (2) a system that combines first-party insurance and the right to sue negligent drivers for all further uncompensated economic losses). See also app. B for a draft bill applicable only to current no-fault states.

19. *Maryland One*, *supra* note 1, at 1027 n.49.

20. *But see infra* note 72 (discussing data limitations in the RAND studies).

21. This is necessary because, under today's rules, attorney's fees normally come out of damages paid for pain and suffering. Thus, a regime not paying for pain and suffering calls for an alternate source for such payment. *Maryland One*, *supra* note 1, at 1027 n.50. As to what would be considered a reasonable attorney's fee, see *infra* notes 7, 12 to app. B.

made in the law applicable to property damage. In other words, liability coverage for property damage claims would still be required.<sup>22</sup>

In *Maryland One*<sup>23</sup> we explained the methodology of costing this new proposal, followed by the percentage effects on premiums for all states without no-fault laws, with particular emphasis on California, Illinois, Louisiana, Ohio, and North Carolina. *Maryland Two*<sup>24</sup> went much further in estimating more precisely the percentage effects in premiums for every state without no-fault insurance, as well as computing the dollar effects on premiums in such states. Detailed results were presented for three states—Maryland, California, and Wisconsin—in a manner such that any interested party could develop detailed data for any of the other thirty-two states without no-fault insurance. *Maryland Two*<sup>25</sup> also discussed the possible savings available to low-income motorists, with emphasis on the heavy burdens placed on them by the high costs of the present tort system.<sup>26</sup> The article also briefly discussed the effects the choice plan will have on deterring unsafe conduct.<sup>27</sup>

Since *Maryland Two*,<sup>28</sup> RAND has done a further study<sup>29</sup> exposing the flaws inherent in a no-fault system that allows tort claims for noneconomic damages (usually pain and suffering) for claims above a threshold. Because pain and suffering damages are generally calculated as a multiple of medical bills, there is an incentive on the part of an injured claimant to pad those bills.<sup>30</sup> Thus, for every dollar incurred in medical bills, an injured party can receive two, three, or more times as much compensation in pain and suffering damages. Insurance padding is not only lucrative for claimants, who receive several times their economic loss, but also for health care providers (including, and perhaps especially, chiropractors) who receive additional business, and for lawyers who receive their contingent fees out of the

---

22. The rationale for excluding property damage from no-fault coverage is explained in ROBERT E. KEETON & JEFFREY O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 280-81 (1965). For a relatively minor change in the bill dealing with car damage and allowing motorists to make the choice proposed herein—but not taken account of in this cost study—see subsection 14e of the Model Legislation, *Maryland Two*, *supra* note 2, app. B at 341.

23. *Maryland One*, *supra* note 1.

24. *Maryland Two*, *supra* note 2.

25. *Id.*

26. *Id.* at 289-93.

27. *Id.* at 293-94.

28. *Id.*

29. STEPHEN CARROLL ET AL., RAND INSTITUTE FOR CIVIL JUSTICE, THE COSTS OF EXCESS MEDICAL CLAIMS FOR AUTOMOBILE PERSONAL INJURIES (1995).

30. *Id.* at 5-6.

pain and suffering component.<sup>31</sup> The new RAND study makes a distinction between "hard" injuries that are objectively verifiable—for example, the loss of a limb or a fracture detected by an x-ray—as opposed to "soft" injuries such as sprains and strains, which are not so objectively verifiable.<sup>32</sup> The latter thus present an opportunity to exaggerate an injury's existence or severity. No-fault auto insurance laws in effect in New York and Michigan, more than in other states, have largely taken the profit out of unnecessary medical bills by virtue of their relatively high verbal thresholds below which claims for pain and suffering are barred.<sup>33</sup> RAND found that in those states seven soft-injury claims are made for every ten hard-injury ones.<sup>34</sup> In Hawaii, where a no-fault law with a dollar threshold provides a greater incentive for exaggerating claims, there are nine soft-injury claims for every ten hard-injury claims.<sup>35</sup> In California, a state without any no-fault law and where the tort system is therefore unimpeded by any barrier to tort claims, twenty-five soft-injury claims are filed for every ten hard ones.<sup>36</sup>

On this score, after Massachusetts amended its automobile no-fault law in 1988 to require a higher threshold of economic damages before tort claims would be allowed, the next year the median number of treatment visits per claim for automobile injuries rose radically from 13 to 30 per claim, or a 131% increase.<sup>37</sup> Similarly, a study by the Insurance Research Council of 1990 auto tort claims in Hawaii revealed that the median number of treatment visits by claimants to chiropractors was a remarkable fifty-eight, with one-quarter of such claimants having more than eighty-four visits.<sup>38</sup> The graph below from the new 1995 RAND study shows the distributions of medical costs for soft-injury claims in Hawaii and New York.<sup>39</sup> The vertical line in the graph indicates Hawaii's dollar threshold. The average cost of soft-injury claims in both states is adjusted for interstate differences in medical costs and treatment patterns.

---

31. CHARLES WOLFRAM, *MODERN LEGAL ETHICS* 528 n.1 (1986).

32. CARROLL ET AL., *supra* note 29, at 10.

33. *See supra* note 8.

34. CARROLL ET AL., *supra* note 29, at 13.

35. *Id.*

36. *Id.*

37. Sarah S. Marter & Herbert I. Weisberg, *Medical Expenses and the Massachusetts Automobile Tort Reform Law: A First Review of 1989 Bodily Injury Liability Claims*, 10 J. INS. REC. 462, 488, tbl. 12 (1992). Even for fracture treatments, health care visits increased in 1989 by 50% following the higher no-fault threshold law.

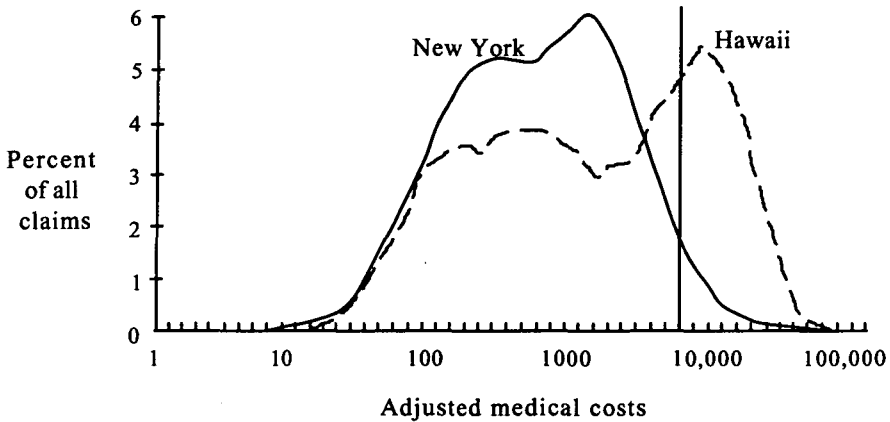
38. INSURANCE RESEARCH COUNCIL, *AUTOMOBILE CLAIMS IN HAWAII* 2, 16-27 (May 1991).

39. CARROLL ET AL., *supra* note 29, at 15.



As can be seen from the graph, the distribution of medical costs in New York rises quickly, peaks, and then declines sharply to the right. The large majority of soft-injury claims in New York entails relatively small medical costs, with very few such soft-injury claims exceeding Hawaii's threshold.<sup>40</sup>

DISTRIBUTION OF ADJUSTED MEDICAL COSTS FOR  
SOFT-INJURY CLAIMS IN HAWAII AND NEW YORK



Hawaii's distribution also rises sharply, flattens out, and then begins to drop off at a relatively low level of medical costs.<sup>41</sup> It then turns up again, rising sharply through the threshold, and then peaks above the threshold before finally falling off.

Thus, a substantial portion of Hawaii's soft-injury claims are for medical costs above its dollar threshold. Compared with New York, with its strong verbal threshold, the distribution of adjusted medical costs in Hawaii shifts substantially to the right, as one would expect given the incentives built into Hawaii's no-fault system.<sup>42</sup> Dollar thresholds, therefore, seem especially fragile compared to verbal ones.

But the key element—often overlooked by those who urge a New York-type strong verbal threshold as the cure for inadequate no-fault

40. *Id.*

41. Note that the horizontal axis is a logarithmic scale: Equal intervals indicate equal percentage differences. *Id.*

42. *Id.* For a report on a Hawaii no-fault auto bill that would have abolished both large and small claims for noneconomic loss (with no choice of retaining tort coverage in place of PIP benefits) but was vetoed by the governor, see Alfred Haggerty, *Hawaii Legislature Lets Veto of Pure No-Fault Stand*, NAT'L UNDERWRITER (Property & Casualty/Risk & Benefit Management ed.), July 10, 1995, at 2.

laws—is that even in New York, claims for pain and suffering above its strong verbal threshold are hugely expensive, contributing disproportionately to auto insurance costs. As discussed in *Maryland One*,<sup>43</sup> a good measure of the propensity for personal injury claims to rise is the change in recent years in the ratio of personal injury (PI) to property-damage claims (PD) claims, that is, the PI-PD ratio. In California, without any no-fault law, that ratio rose steadily from 31.1 PI claims per 100 PD claims in 1980 to 67.2 per 100 in 1992.<sup>44</sup> In New York, on the other hand, with its relatively strong verbal threshold, the PI-PD ratio remained very constant at about 11 per 100 from 1980 to 1989.<sup>45</sup> But as an illustration of the ill effects of PI tort claims even in New York, in the late 1980s studies show that its \$50,000 of benefits contributed only 24.6% of the total pure premiums for PI claims. In other words, the relatively few tort claims preserved over New York's strong verbal threshold contribute disproportionately (over 75%) to total PI costs.<sup>46</sup>

New York, then, has long dealt relatively effectively with higher costs for smaller tort claims, but it has also long dealt ineffectively with higher costs for larger tort claims. Arguably the only way to deal with both is to eliminate claims for noneconomic damages in cases both large and small.<sup>47</sup> Furthermore, even in New York, experienced plaintiffs' counsel are increasingly exploiting the possibility of suing in tort above the state's relatively high verbal threshold. This activity has led to a recent rise of almost 50% in New York's PI-PD ratio from 1989 to 1992 (from 11 per 100 to 15 per 100).<sup>48</sup> Thus, simply reducing the number of tort claims over a strong verbal threshold fails to net optimal savings.

## II. A SYSTEM ALLOWING CHOICE AS APPLIED TO ALL FIFTY STATES

Returning to the thesis of this third Article, under a choice system a state's existing no-fault law is retained both as to the level of PIP benefits and the tort threshold, except that (save for injuries caused intentionally or by drugs or alcohol) motorists can elect to end their rights to claim and be claimed against for noneconomic loss above the

---

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

44. INSURANCE RESEARCH COUNCIL, TRENDS IN AUTO BODILY INJURY CLAIMS, app. A, tbl. A-6 (2d ed. 1995) [hereinafter IRC].

45. *Id.* at tbl. A-34.

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

47. RAND estimates that nationally, in states like New York with high PIP benefits coupled with a high threshold, almost half of the personal injury premiums go for noneconomic losses. *Id.*

48. IRC, *supra* note 44, at tbl. A-24.

threshold. There is a corollary reliance on tort maintenance coverage for noneconomic losses above the threshold for those who prefer insurance coverage allowing such claims. Under the plan allowing choice no one is required to buy PI liability insurance, but those with assets to protect can be expected to do so.<sup>49</sup>

This third Article presents actuarial results for all fifty states, including those currently with no-fault laws. As in *Maryland One*<sup>50</sup> and *Two*,<sup>51</sup> we focus here on the effects of the plan allowing choice on the costs of personal, that is, private passenger, auto insurance.<sup>52</sup> Here as earlier, we first estimate what auto insurers would have to charge the average insured motorist to recover the costs incurred in compensating accident victims under all coverages and limits under the status quo. We also estimate separately the costs of those buying only mandatory coverages and limits.<sup>53</sup> We then develop corresponding estimates for motorists who elect to retain the status quo ("stayers") and for motorists who switch to the new plan allowing choice ("switchers").<sup>54</sup> We next compare 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 coverages.

Under the status quo, motorists can purchase several different personal injury (PI) coverages at various limits—Bodily Injury (BI) Liability, Uninsured Motorist (UM), including Underinsured Motorist (UIM), Medical Payments (MedPay), as well as PIP in an add-on or no-fault state. Accordingly, insured motorists must bear the sum of the compensation costs of any of those coverages at the limits they buy. We estimate the compensation cost of the status quo to the average insured motorist by taking the sum of what insurers pay out plus

---

49. See *infra* notes 56-57, 74-75 and accompanying text.

50. *Maryland One*, *supra* note 1.

51. *Maryland Two*, *supra* note 2.

52. Although this analysis examines only personal auto insurance, this plan would likely have an even more favorable impact on insurance costs for commercial vehicles. This is because the liability exposure of commercial vehicles (especially, but not limited to, large ones) is even greater than for private passenger vehicles. Even more important, traffic victims in commercial vehicles will already be covered by workers' compensation. See generally Jeffrey O'Connell, *A Model Bill Allowing Choice Between Auto Insurance Payable With and Without Regard to Fault*, 51 OHIO ST. L.J. 947, 968 n.74 (1990).

53. See *infra* notes 56-57, 75 and accompanying text (discussing option to buy PI liability insurance, an option particularly appealing to people with assets to protect).

54. In a traditional tort or add-on state, the switch from the status quo will be to PIP insurance with abolition of claims for noneconomic loss both by and against the switchers. In a no-fault state, the switch will be from the status quo to abolition of claims for noneconomic loss by and against switchers above the threshold; PIP benefits will continue to cover economic losses up to the limits purchased, just as they do today.

the associated transactions costs, under all the above applicable coverages and limits, divided by the total number of insured motorists. As indicated, we also compute the average costs for those buying only mandatory coverages and limits. Motorists who are uninsured, of course, bear none of the costs of auto insurance.

Under the plan allowing choice, motorists may remain in their state's current system (stayers), elect the new choice system (switchers), or be illegally uninsured.<sup>55</sup> Stayers will purchase tort maintenance coverage, in addition to BI, and possibly MedPay or UM, and PIP in an add-on or no-fault state. 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 and the associated transactions 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 an insured's behalf in providing compensation under PI tort liability type coverages—BI, UM, and tort maintenance—plus any applicable MedPay coverage, or, in an add-on or no-fault state, PIP. (All of which, per terminology adopted by the National Association of Insurance Commissioners, are subsumed under the term 'liability,' although technically speaking MedPay and PIP coverages are not liability-like coverages.<sup>56</sup>)

Motorists who switch under the plan allowing choice purchase not only PIP but may also (although they are not required to) purchase PI to cover liability claims brought against them by others for losses in excess of either PIP or tort maintenance policy limits. Following the pattern set forth above, we estimate the average switcher's compensation costs as the sum of the costs auto insurers incur on behalf of such motorists for PIP and, if purchased, BI coverage, assuming switchers will not need UM or MedPay,<sup>57</sup> divided by the number of insureds. As was the case under the status quo, people who

---

55. For a proposal allowing motorists to be legally uninsured at the price of losing any right to claim for noneconomic loss, see *infra* note 5 to app. B.

56. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AVERAGE EXPENDITURES & PREMIUMS IN 1993, at page entitled 'Technical Notes' (Nov. 1995). In this regard, see *infra* tables and charts and app. B.

57. PIP insureds are by definition covered for their medical (as well as wage) loss, and therefore will presumably have no need for MedPay. CARROLL ET AL., *supra* note 7, at vii-ix. As for UM, PIP insureds are guaranteed payments for economic loss whether or not the other driver is insured. *Id.* at vii.

go uninsured under the plan allowing choice bear none of the costs of compensating auto accident victims.<sup>58</sup>

In addition to the above-mentioned estimates, this Article updates some of the data. The dollar premium figures in *Maryland Two*<sup>59</sup> were calculated based on those in effect in 1992. (*Maryland One*<sup>60</sup> did not include premium dollar figures.) The study in this Article uses a premium base of 1993. Several other small changes have been made in the assumptions used, thus making for some relatively small differences in the calculations even for tort and add-on states.<sup>61</sup>

### III. THE RESULTS

As noted in our earlier articles,<sup>62</sup> the effects of the plan allowing choice on premiums charged particular drivers will vary with such factors as the coverages they buy, their policy limits, their insurer, mileage driven, location within the state, and of possibly greater significance under the reform compared to the present situation, the type of car driven.<sup>63</sup> So here, as before, our estimates are only meant to indicate the general nature of average cost effects, keeping such variables in mind.

To summarize Table 1 below, savings for switchers in no-fault states (those covered by PIP combined with abolition of both large

58. For more on RAND's methodology, see *Maryland One*, *supra* note 1, at 1054-59. See also ALLAN ABRAHAMSE & STEPHEN CARROLL, RAND INSTITUTE FOR CIVIL JUSTICE, THE EFFECTS OF A CHOICE AUTO INSURANCE PLAN ON INSURANCE COSTS at xiii-xv (1995).

59. *Maryland Two*, *supra* note 2.

60. *Maryland One*, *supra* note 1.

61. All three articles, *Maryland One*, *Maryland Two*, and this one, were based on auto accident data (as opposed to premium data) collected by the Insurance Research Council in 1987 and published in INSURANCE RESEARCH COUNCIL, TRENDS IN AUTO BODILY INJURY CLAIMS (1990). The accident data was updated for 1992 and published in IRC, *supra* note 44. RAND and the authors of this Article hope to update the accident data in this Article based on the latest IRC data once the requisite statistical adaptations can be funded and executed. In the meantime, the authors of this Article expect shortly to publish updated figures in individual state bar journals based on a premium base of 1994, the savings under which will be even larger than those reported here. We expect the total available dollar savings to equal over \$30 billion versus the \$26 billion reported here. See *infra* tbl. 1, cell All States/col. 3.

62. *Maryland One*, *supra* note 1, at 1029; *Maryland Two*, *supra* note 2, at 286.

63. *Maryland Two*, *supra* note 2, at 286. On this last point, we reiterate a statement made in *Maryland Two*, namely that the first-party character of the plan allowing choice will permit insurers to calibrate rates for motorists "switching," and under tort maintenance coverage for those "staying," on the basis of the crashworthy features of the vehicles of their own insureds, thereby creating a market mechanism to enhance auto safety. *Id.* at 286. The proposal will thus replace today's third-party system, under which the obligation of insurers to pay the claims of third parties who sue their insureds makes it infeasible to fix rates on the basis of the crashworthy features of their own insureds' autos. See *Maryland One*, *supra* note 1, at 1040-41.

TABLE 1: TOTAL PREMIUM SAVINGS UNDER CHOICE SYSTEM<sup>a</sup>

State	System	1	2	3
		Total premium savings for all switchers* (%)	Total premium savings for switchers with low incomes and coverages <sup>b</sup> * (%)	Total available savings (\$ millions)**
AL	Tort	19.3%	37.5%	\$176
AK	Tort	17.4	27.9	24
AZ	Tort	37.1	52.7	533
AR	Add-on	28.2	47.2	195
CA	Tort	34.5	53.0	3,622
CO	No-fault	30.6	46.6	462
CT <sup>c</sup>	No-fault	41.0	57.1	678
DE	Add-on	33.7	46.9	93
FL	No-fault	31.7	44.3	1,395
GA <sup>d</sup>	No-fault	23.8	41.8	484
HI	No-fault	43.2	55.4	229
ID	Tort	27.6	45.5	75
IL	Tort	25.1	45.2	772
IN	Tort	26.5	43.7	450
IA	Tort	25.1	47.6	187
KS	No-fault	12.4	22.7	53
KY	No-fault	14.0	21.4	40
LA	Tort	44.6	63.8	592
ME	Tort	31.0	50.7	114
MD	Add-on	38.3	56.0	661
MA <sup>e</sup>	No-fault	41.0	56.7	1,154
MI	No-fault	15.4	27.7	647
MN	No-fault	32.4	48.9	483
MS	Tort	24.9	43.5	137
MO	Tort	26.0	43.8	405
MT	Tort	33.3	57.4	79
NE	Tort	25.1	45.1	113
NV <sup>f</sup>	Tort	37.4	54.8	196
NH	Tort	26.0	42.2	92
NJ <sup>g</sup>	No-fault	35.9	53.0	1,496
NM	Tort	33.3	52.1	173
<b>NY<sup>h</sup></b>	<b>No-fault</b>	<b>34.9</b>	<b>53.3</b>	<b>2,334</b>
NC	Tort	32.2	46.5	658
ND	No-fault	1.5	2.8	-8
<b>OH</b>	<b>Tort</b>	<b>28.8</b>	<b>47.0</b>	<b>840</b>
OK	Tort	29.3	49.1	278
OR	Add-on	29.3	43.0	272
PA <sup>i</sup>	Add-on	31.5	46.8	1,300
RI	Tort	28.4	40.8	103
SC	Add-on	36.3	52.8	398
SD	Add-on	33.5	59.2	61
TN	Tort	21.7	38.6	261
<b>TX</b>	<b>Add-on</b>	<b>36.1</b>	<b>53.6</b>	<b>1,688</b>
UT	No-fault	28.9	45.8	145
VT	Tort	21.0	38.0	31
VA	Add-on	33.6	49.7	612
WA	Add-on	36.8	52.9	621
WV	Tort	36.7	58.4	222
WI	Tort	31.4	52.5	443
WY	Tort	23.5	45.6	31
<b>All States</b>		<b>31.4%</b>	<b>48.1%</b>	<b>\$26,100</b>

\* Assumes 50% switch.

\*\* Assumes 100% switch.

## NOTES TO TABLE 1

- a. Data are based on laws in effect January 1, 1988. For more complete data on insurance requirements in all 50 states, see *infra* app. C.
- b. Low-income motorists will likely buy low (only mandatory) coverages, while higher income motorists will likely buy higher (more than mandatory) coverages. See *supra* text accompanying note 49 and *infra* notes 74-75 and accompanying text.
- c. Connecticut repealed its no-fault law on July 29, 1993. The law had been in effect since 1973. See ROBERT H. JOOST, AUTOMOBILE INSURANCE AND NO-FAULT LAW 2D § 4:11A (Supp. 1994).
- d. Georgia repealed its no-fault law on October 1, 1991. See *id.* § 4:12.
- e. In 1988 Massachusetts amended its threshold no-fault law (effective January 1, 1989) to increase both the no-fault benefit level from \$2,000 to \$8,000 and the threshold dollar amount of medical expenses for bringing a tort suit from \$500 to \$2,000. See *id.* § 6:21.
- f. Nevada repealed its no-fault law June 5, 1979. See *id.* § 4:23.
- g. In 1988 New Jersey changed from a no-fault system to a modest plan allowing choice, in which drivers select either no-fault or tort liability. Motorists choosing no-fault insurance, however, retain the right to bring claims in tort for noneconomic loss in serious cases. See *id.* § 6:24.
- h. In June 1995 New York increased the minimum liability requirements for BI from \$10,000 to \$25,000 for each person in an accident, from \$20,000 to \$50,000 BI coverage for all persons involved in the accident, and from \$5,000 to \$10,000 for property damage. See Kevin Sack, *Rise in Auto Insurance Minimums Is Voted*, N.Y. TIMES, June 30, 1995, at B6.
- i. Pennsylvania enacted a modest choice system, in which drivers could select either no-fault or tort liability, in 1990. Motorists choosing no-fault insurance retain the right to bring claims in tort for noneconomic loss in serious cases. See JOOST, *supra* note c, § 6:28.

and small pain and suffering claims by and against them) turn out, like savings for switchers in tort and add-on states, to be very substantial. On the other hand, comparatively speaking, costs for stayers under the system allowing choice will be only marginally affected in no-fault states, as was the case in tort and add-on states.

Table 1 presents our findings regarding changes in the costs of personal auto insurance for every state—tort, add-on, and no-fault. Column 1 shows the percentage savings in total premiums, including property damage liability, for all switchers, cumulating those who buy only mandatory coverage and those who buy more than mandatory coverage. Column 2 shows percentage savings in total premiums for switchers who buy only mandatory coverage (almost always those with lower incomes). As indicated above, mandatory coverage would not include BI liability coverage nor UM, MedPay, collision or comprehensive coverages.<sup>64</sup> Both columns 1 and 2 assume that 50% of motorists switch although—as a comparison between Table 3 in Appendix A below, columns 1 and 2, and columns 5 and 6, indicates—savings estimates are not greatly altered, except for a few rural state outliers,<sup>65</sup> based on the percentage of switchers.<sup>66</sup> Column 3 of Table 1 shows the total available dollar savings if 100% of motorists switch. Tables 2 and 3, in Appendix A below, present our findings for many other categories, including, for example, PI premium percentage savings for switchers (Table 2, column 5) and stayers (Table 2, column 6), and total premium percentage savings for switchers buying more than mandatory coverage (Table 3, columns 1 and 2) and stayers doing the same (Table 3, columns 3 and 4).

As can be seen from Table 1, switchers would realize significant savings on personal auto insurance premiums. Cumulating the totals for both those who buy only the minimum coverage and those who

---

64. See *supra* text between notes 56-57.

65. These states are as follows: Arkansas, Kansas, Kentucky, and North Dakota.

66. Under the system allowing choice proposed herein, insurers can confidently know that switchers will not be exposed to full liability in tort above the threshold liability, not only to switchers but to stayers as well. See *supra* text accompanying note 17. Thus, the insurer can charge lower premiums to switchers irrespective of how many switch. Under a scheme of inverse liability, or tort maintenance coverage, in a collision between a stayer and a switcher, no normal tort claims above the threshold between the motorists are allowed, but the stayer would be allowed to sue his own company for full tort damages as if his company covered the switcher. *Id.* Such a regime mirrors uninsured motorist coverage, extant today, that allows victims to claim damages against their own companies if the motorist with whom they collide is uninsured. Under the choice system, the costs of current uninsured motorist coverage, including tort maintenance coverage, would increase, but the increase would be neatly offset by fewer claims against the stayer's tort liability coverage because switchers would be precluded from full liability claims. See *Maryland Two*, *supra* note 2, at 323-24 n.2 and *infra* note 3 to app. B.



purchase more than mandatory coverages,<sup>67</sup> switchers would save over 30% on total premiums nationally (Table 1, cell All States/column 1), with those purchasing only mandatory coverages saving approximately 50% (Table 1, cell All States/column 2). Savings on the order of 20 to 40% would be attained in almost every state (Table 1, column 1). If all motorists across the country switched, total annual dollars spent on auto insurance premiums would decline by \$26.1 billion (Table 1, cell All States/column 3). Using New York as an example of an eastern no-fault state, and again cumulating the totals for both those who do and do not purchase more than mandatory coverages, we estimate savings in total premiums for all switchers of 34.9% (Table 1, cell NY/column 1), and savings of 53.3% (Table 1, cell NY/column 2) for those who buy only mandatory coverages.<sup>68</sup> If 100% of insureds switch, a total of \$2.3 billion in premium savings would be available in New York (Table 1, cell NY/column 3). Similarly, in Ohio, as an example from a midwestern tort state, we estimate total premium savings for switchers of 28.8% (Table 1, cell OH/column 1), and savings of 47% for low-income switchers (Table 1, cell OH/column 2), with available annual savings of over \$840 million if 100% switch (Table 1, cell OH/column 3). As a further example, in Texas, a large southwestern add-on<sup>69</sup> state, we estimate total savings for switchers of 36.1% (Table 1, cell TX/column 1), and savings of 53.6% for low-income switchers (Table 1, cell TX/column 2). A 100% switch in Texas would yield over \$1.6 billion (Table 1, cell TX/column 3) in annual premium savings.<sup>70</sup>

Of course, such savings for total auto insurance premiums are remarkably high. The results are particularly noteworthy because they stem from savings in the 30 to 80% range for personal injury premiums for switchers (Table 2, column 5), with no allowance for any change in premiums for losses to property.<sup>71</sup> Furthermore, such estimates are arguably conservative.<sup>72</sup>

---

67. See *supra* text accompanying notes 53, 56.

68. See *supra* text accompanying note 53.

69. See *supra* note 4.

70. These percentages assume that 50% of drivers will switch. Savings for switchers assuming 50%, 80%, or 100% of drivers switch remain remarkably constant, except for a few rural outlier states. See *supra* note 65 and accompanying text. Indeed, this is the purpose of a system of choice with an inverse liability scheme. See *Maryland Two*, *supra* note 2, at 323-24 n.2. Examining the sample state of New York, the RAND data is again illustrative: assuming 50% of drivers switch, New York switchers would save 34% on their total premiums; assuming 80% switch, New York switchers would save 34.5%; assuming 100% switch, New York switchers would save 34.3%.

71. See *supra* note 22 and accompanying text.

72. *Maryland Two*, *supra* note 2, at 289.

## IV. EFFECTS ON THE POOR

As we argued in *Maryland Two*, high auto insurance rates have an especially harsh impact on the poor.<sup>73</sup> As Table 1 indicates, savings under the plan allowing choice mirror progressive taxation in that premium reductions will be proportionately higher for the poor. Nationally, switchers buying only the mandatory PIP limits will save an average of 48.1% on premiums (Table 1, cell All States/column 2). The savings, as we saw for such switchers in New York (Table 1, cell NY/column 2), Ohio (Table 1, cell OH/column 2), and Texas (Table 1, cell TX/column 2) are in this range in state after state. These dramatic savings occur because the plan frees switchers from any obligation to buy supplementary PI liability coverage<sup>74</sup>—a freedom that those having few or no assets to protect will embrace. In addition, the poor generally drive older cars and therefore rarely buy optional collision or comprehensive coverages.<sup>75</sup>

In sum, the choice plan will favorably impact the financial status of low-income motorists. As pointed out in *Maryland Two*,<sup>76</sup> when less

---

For example, because of data limitations [see *Maryland One*, *supra* note 1, at 1054-62], we did not consider the effect of making PIP coverage excess to private health insurance benefits, publicly mandated sources such as Medicare, Medicaid, workers' compensation, and private sick leave or disability coverages for wage loss. Furthermore, premium reductions based on owning safer cars—brought about by the proposal's first party insurance character—should yield lower injury rates per accident [a factor not feasible to weigh precisely at this time]. In addition, because motorists will have less incentive to incur medical bills and wage loss to inflate claims for pain and suffering [Jeffrey O'Connell & Robert Joost, *Giving Motorists a Choice Between Fault and No-Fault Insurance*, 72 VA. L. REV. 61, 70-72 (1986)], those who opt for PIP will have less incentive to pursue personal injury claims or to utilize medical treatment. However, RAND's estimates do not include this last factor in their primary findings, because its data lacks a means of precisely weighing reductions resulting from this drop in incentives. [See CARROLL ET AL., *supra* note 7, at 16-17.]

*Maryland Two*, *supra* note 2, at 289; see also *infra* note 75.

73. *Maryland Two*, *supra* note 2, at 289-93. For an excerpt from an African-American Philadelphia newspaper condemning the effect of expensive mandatory coverage requirements on low-income individuals, see *id.* at 289-90.

74. See *supra* text accompanying notes 49, 56-57, 67 and *infra* note 75.

75. In this regard, RAND's estimates are again conservative, as they are based on the premise that anyone choosing PIP coverage would also buy supplementary PI coverage at the same PI limits they had bought under the traditional tort system. For former tort insureds who had bought liability coverage to protect their assets, that assumption would be correct. But many low-income motorists with few or no assets had previously bought PI only to comply with their state's financial responsibility laws and would be unlikely to purchase supplementary PI coverage under a choice system. See *Maryland Two*, *supra* note 2, at 290.

76. *Id.* at 290-91.

affluent motorists insure at all,<sup>77</sup> they currently can spend over 30%<sup>78</sup> of their annual household income on auto insurance, and many are forced to put off buying basic necessities in order to pay their premiums.<sup>79</sup>

Moreover, the poor not only pay a large percentage of household income for auto insurance, but also are likely to pay significantly more in absolute terms because many reside in urban areas where average personal auto insurance premiums are much higher than for suburban drivers.<sup>80</sup> PIP coverage also assists the poor by providing for more rapid benefit payments for economic loss than does today's adversarial tort system. Such drivers, lacking independent resources to cover the costs of their accidents, are often forced under tort law to accept low settlements because of their need for immediate cash awards of even modest amounts.<sup>81</sup> Prompt insurance payments based on simple proof of injury would be greatly to their advantage.

The choice plan also benefits the poor because it can correlate premium rates with the likely costs of payout. In rating insureds, insurers under today's third-party liability auto insurance only take account of the likelihood that their insureds will be involved in an accident, not what their insureds will be paid in that event. Liability insurers calculate premiums in this way because they do not pay their own insureds, but instead compensate the unknown persons whom their insureds might injure in a future accident. As a result, the poor, as well as the young, are charged very high premiums, even though their own losses in accidents are comparatively small; for example, they likely suffer minimal wage loss, if any. Under third-party liability, the less affluent, along with those with middle incomes, pay into the insurance pool the same as the more affluent for any given level of coverage, even though they stand to be paid much less from the pool.<sup>82</sup> With first-party insurance, the less affluent can at least get credit for the advantageous side of their risk—that their losses are likely to be smaller. Finally, the less affluent generally are least likely

---

77. See, e.g., Gerald Stephens, *Please, No More Complaints*, 91 BEST'S REVIEW (Property/Casualty Ins. ed.) 61, 63 (Jan. 1991) (stating that 52% of the drivers in Los Angeles carry no auto insurance). See also *infra* note 5 to app. B.

78. ROBERT L. MARIL, *THE IMPACT OF MANDATORY AUTO INSURANCE UPON LOW INCOME RESIDENTS OF MARICOPA COUNTY, ARIZONA* 8-9, 11 (1993) (finding that 44% of low-income motorists were forced to postpone buying food to pay their auto insurance premiums); see also *Maryland Two*, *supra* note 2, at 290-91.

79. MARIL, *supra* note 78, at 8-9, 11.

80. See *Maryland Two*, *supra* note 2, at 291-92 (contrasting minimum liability premiums in central Los Angeles and Milwaukee, as opposed to surrounding suburbs).

81. *Id.* at 291-93.

82. *Id.*

to pursue a tort remedy and generally derive the least benefit from the tort system.<sup>83</sup>

### CONCLUSION

We conclude with the remarks of Professor Edward L. Lascher Jr., a professor of public policy at Harvard's Kennedy School of Government.

In early 1993, I began studying the battle over automobile insurance reform in the Rhode Island General Assembly. My original interest was mainly in the legislature itself, and how decisions might be changing as a result of the more open process adopted by the leadership of both houses. I focused on automobile insurance reform, primarily because it seemed to be a hot issue in the Ocean State.

Yet, as someone with no background in the area, I found the issue of automobile insurance reform surprisingly fascinating. It combined many elements of good drama, including the spectacle of well-funded interest groups (trial lawyers and insurance companies) duking it out in public, and fierce debate about the merits of alternative proposals. More importantly, the results of these battles really mattered to ordinary citizens, concerned about high and rising premiums. This was a true "lunch box" issue.

As I became more convinced of the significance of insurance reform, I tried to examine as much information as I could on the subject. I also ventured outside of Rhode Island to review reform efforts in other states, and even in the Canadian provinces.

What I found has convinced me of the wisdom of . . . "choice[?]" . . . legislation . . .<sup>84</sup> I have come to believe that this is a reasonable, balanced approach to the chronic problem of rising premiums—one that can offer drivers meaningful savings.

---

83. *See id.* at 293 (commenting on the unfairness of settlement outcomes for the poor).

84. Professor Lascher refers to a bill introduced in the Rhode Island legislature (S.B. 797, 1995 Sess., passed by the Senate and forwarded to the House Committee on Corporations, where it is pending at the time of this writing; a similar bill, H.B. 6014, Jan. Sess. (1995), was defeated in that Committee) advocating a system allowing choice of a strong verbal threshold below which claims for noneconomic damages would be barred—similar to the existing New York threshold discussed *supra* note 8 and accompanying text. As demonstrated above, we think that such a verbal threshold will be far less effective than the choice system proposed herein. *See supra* text accompanying notes 43-46. Nevertheless, Professor Lascher's comments on the deficiencies of the current system and the benefits of a plan allowing choice apply equally well to the plan proposed herein.

In my judgment, any discussion of reform legislation needs to take account of two key facts. The first is that the auto insurance industry is very competitive, and not unduly profitable. Numerous firms compete for business. Indeed, the last figures I saw from A.M. Best Co. showed that the top three carriers in Rhode Island controlled less than a third of the market. Also, data from the National Association of Insurance Commissioners indicate that auto insurance profits were below the average of other industries from the mid-1980s through the early 1990s.

This was the very time that many states, including Rhode Island, were seeing major rate increases, suggesting that something other than excessive profits was driving the premium hikes.

A second, and related, critical fact is that major, sustainable reductions in insurance premiums require reductions in claims costs. More bluntly, the total amount of money paid on behalf of people in automobile accidents needs to be reduced. Some premium savings can be achieved through efforts to improve safety (e.g., enforcing seat belt laws) and combat fraud. . . .

. . . .

Interestingly, the conclusion about the centrality of reducing claims costs is independent of one's sympathy for insurance companies. Many people have reasons to be irritated with insurance companies, but that doesn't invalidate the evidence that increases in claims costs precipitate premium hikes. . . .

. . . .

It may seem perverse to indicate that premiums can only be reduced by reducing compensation for accidents. This argument appears to suggest that rate savings can only be achieved by a dollar-for-dollar loss of insurance protection.

Yet the seeming perversity of the argument disappears if we examine where claims costs now go. . . . Numerous studies indicate that [the tort] system tends to provide disproportionate benefits in the form of compensation for "pain and suffering" to people with minor injuries, often provides inadequate compensation for accident victims with serious injuries, and requires large expenditures for legal costs. This conclusion suggests a tradeoff . . . .

. . . .

. . . [G]iven the opportunity, might . . . some drivers wish to opt for full compensation (including reimbursement for "pain and suffering") . . . , even if that meant higher premi-

ums? Might . . . some people value their "right to sue" very highly? Undoubtedly the answer to both questions is yes. That's the beauty of the "choice system" . . . . Motorists themselves decide whether they will take a "full tort" option with higher premiums or "[PIP benefits along with elimination of claims for pain and suffering]" with lower premiums.

. . . .

Most important, the choice system avoids the danger of "free lunch" approaches, such as California's "Proposition 103," which sought to cut rates without cutting claims costs, and that in large part has never been implemented. Tempted as we may be by such approaches, most of us realize that a free lunch is an illusion. The best we can hope for is something that is a relative bargain. A choice . . . system may offer that option for . . . motorists.<sup>85</sup>

---

85. Edward L. Lascher Jr., "Choice No-Fault" Insurance May Well Work in Rhode Island, PROVIDENCE J. BULL., July 9, 1995, at D7.

As a follow-up on Professor Lascher's point that some people perhaps "value their 'right to sue' [for pain and suffering] very highly," *id.*, Professors Steven Croley of Michigan and Jon Hanson of Harvard recently challenged any movement to abolish rights to noneconomic damages. Steven P. Croley & Jon D. Hanson, *The Nonpecuniary Costs of Accidents: Pain-and-Suffering Damages in Tort Cases*, 108 HARV. L. REV. 1785 (1995). Croley and Hanson particularly emphasized the persistent interest of motorists in purchasing uninsured motorist coverage (with its payment based on fault for pain and suffering) as indicating strong consumer desire for such coverage. *Id.* at 1862-67. They emphasize that indeed UM coverage is unique in offering a voluntary choice of tort-based noneconomic damages. *Id.* Croley and Hanson thus can be seen as supporting the thesis of this Article, namely to allow consumers a broader choice between a coverage closely modeled on uninsured motorist coverage (that is, tort maintenance coverage) or to opt out of such coverage for payment of only economic loss without reference to fault.

## APPENDIX A: TABLES AND TREE CHARTS

We present here further documentation of RAND data, supporting and expanding on the foregoing material, with scenarios for 50% and 100% switching to PIP.<sup>86</sup> The 100% assumption applies to both a plan allowing choice and a mandatory plan. The following data include personal auto insurance premium data for all fifty states, highlighting the three above-mentioned states—New York, Ohio, and Texas.<sup>87</sup>

Included for these three states are tree-charts that illustrate how RAND computed the data, accompanied by explanatory notes for each figure on the tree charts, and preceded by additional tables providing more of both the input and output figures for and from the tree charts. By using either the New York, Ohio, or Texas example, corresponding data, including tree charts and tables, can be formulated for any state.

---

86. See *infra* app. A, tbl. 2, cols. 5, 7, and tbl. 3, cols. 1, 2, 5, 6. The savings for switchers are slightly higher if 50% of motorists switch rather than if 100% switch. This would occur because switchers must pay the economic loss of the person they tortiously injure above that person's PIP or tort maintenance coverage. See *supra* text accompanying notes 11-13. With that premise, RAND assumes that stayers will buy tort maintenance coverage at the same limits that they buy coverage under the present tort system, with many motorists today buying more than the state financial responsibility limits. On the other hand, RAND assumes that switchers will buy only minimum PIP insurance limits—which is consistent with what PIP insureds do today in no-fault states. Thus the exposure of switchers to tort payment for economic loss above their victims' first-party limits will be somewhat higher as more motorists switch. See also *Maryland Two*, *supra* note 2, app. A n.1.

87. See *supra* text accompanying notes 68-70.

TABLE 2: TREE CHART INPUT DATA

State	1 <sup>*</sup>	2 <sup>*</sup>	3 <sup>*</sup>	4	5	6	7
	Total Premium (\$ millions)	Collision and Comprehensive Premium Total (\$ millions)	Liability Premium Total (\$ millions)	Percent of column (3) that is Personal Injury (PI) Premium	PI premium savings for switchers if 50% switch	PI premium savings for stayers if 50% switch	PI premium savings if 100% switch
AL	\$1,090	\$530	\$559	69.0%	54.4%	-3.6%	45.7%
AK	198	74	123	71.0	39.4	-11.9	27.2
AZ	1,535	455	1,080	82.0	64.3	-0.9	60.2
AR	713	286	426	67.0	70.5	4.7	68.4
CA	11,001	3,830	7,171	81.0	65.4	1.1	62.4
CO	1,535	526	1,009	81.0	57.5	0.1	56.5
CT	1,729	488	1,241	76.0	75.2	2.0	71.8
DE	325	92	233	79.0	59.4	-3.4	50.3
FL	5,182	1,469	3,713	81.0	54.6	-3.2	46.4
GA	2,325	1,003	1,323	71.0	58.9	-4.8	51.6
HI	567	124	442	83.0	66.7	-4.3	62.3
ID	275	108	167	71.0	64.1	6.4	63.1
IL	3,318	1,472	1,846	71.0	63.6	2.1	58.9
IN	1,769	695	1,074	66.0	66.2	4.5	63.5
IA	776	335	441	71.0	67.0	-7.7	59.6
KS	768	347	421	63.0	36.0	-17.0	19.9
KY	1,146	397	749	70.0	30.6	-27.0	7.6
LA	1,372	413	959	82.0	77.8	8.0	75.3
ME	375	146	229	70.0	72.4	4.4	71.2
MD	1,946	614	1,331	78.0	71.8	-4.2	63.7
MA	3,052	845	2,207	77.0	73.7	-0.2	67.9
MI	4,207	1,871	2,336	92.0	30.1	1.2	30.1
MN	1,585	536	1,050	78.0	62.7	1.9	59.0
MS	641	275	366	73.0	59.6	-6.8	51.1
MO	1,610	654	956	65.0	67.3	4.6	65.3
MT	239	100	138	72.0	79.7	7.5	79.7
NE	472	209	263	70.0	64.5	5.4	61.6
NV	560	178	383	83.0	66.1	1.7	61.6
NH	430	166	264	72.0	58.7	-5.1	48.4
NJ	4,170	1,345	2,825	81.0	65.4	3.5	65.4
NM	527	190	337	78.0	66.8	5.1	65.6
<b>NY</b>	<b>6,807</b>	<b>2,353</b>	<b>4,454</b>	<b>75.0</b>	<b>71.1</b>	<b>1.0</b>	<b>69.9</b>
NC	2,132	655	1,477	71.0	65.5	6.0	62.8
ND	137	63	74	64.0	4.4	-25.0	-17.5
<b>OH</b>	<b>3,241</b>	<b>1,256</b>	<b>1,986</b>	<b>72.0</b>	<b>65.3</b>	<b>-2.5</b>	<b>58.8</b>
OK	1,020	411	609	71.0	69.1	-1.2	64.4
OR	1,096	350	746	77.0	55.8	-7.1	47.4
PA	4,478	1,466	3,012	75.0	62.4	0.7	57.6
RI	454	138	316	78.0	52.3	-7.3	41.7
SC	1,286	402	883	72.0	73.4	-8.2	62.5
SD	182	79	103	74.0	80.0	9.1	80.0
TN	1,381	606	775	68.0	56.8	-1.4	49.35
<b>TX</b>	<b>5,326</b>	<b>1,740</b>	<b>3,586</b>	<b>75.0</b>	<b>71.4</b>	<b>-3.6</b>	<b>62.8</b>
UT	519	191	328	73.0	62.7	2.2	60.8
VT	184	83	102	71.0	53.5	-8.4	42.4
VA	2,111	683	1,428	75.0	66.2	-4.6	57.2
WA	1,778	541	1,237	79.0	67.0	0.9	63.5
WV	631	235	397	78.0	74.9	7.3	71.8
WI	1,465	590	875	74.0	71.0	3.1	68.5
WY	130	63	67	72.0	63.3	9.9	63.3
<b>All States</b>	<b>\$89,796</b>	<b>\$31,678</b>	<b>\$58,117</b>	<b>76.6%</b>	<b>63.4%</b>	<b>-0.5%</b>	<b>58.6%</b>

\* National Association of Insurance Commissioners, December 1993.



TABLE 3: TREE CHART OUTPUT DATA

State	1	2	3	4	5	6
	50% SWITCH				100% SWITCH	
	% Total Premium Savings for Switchers		% Total Premium Savings for Stayers		% Total Premium Savings for Switchers	
	Low Income and Coverages*	Higher Income and Coverages**	Low Income and Coverages*	Higher Income and Coverages**	Low Income and Coverages*	Higher Income and Coverages**
AL	37.5%	16.6%	-2.5%	-1.1%	31.5%	13.9%
AK	27.9	15.5	-8.5	-4.7	19.3	10.7
AZ	52.7	33.8	-0.7	-0.5	49.4	31.6
AR	47.2	24.9	3.1	1.7	45.9	24.2
CA	53.0	30.9	0.9	0.5	50.5	29.5
CO	46.6	27.5	-0.1	-0.1	45.8	27.0
CT	57.1	37.5	1.5	1.0	54.6	35.8
DE	46.9	30.8	-6.6	-4.4	39.7	26.1
FL	44.3	29.0	-2.6	-1.7	37.6	24.6
GA	41.8	20.8	-3.4	-1.7	36.6	18.2
HI	55.4	40.3	-3.6	-2.6	51.7	37.6
ID	45.5	24.4	4.5	2.4	44.8	24.1
IL	45.2	21.9	1.5	0.7	41.8	20.3
IN	43.7	23.5	3.0	1.6	41.9	22.5
IA	47.6	23.6	-5.4	-2.7	42.3	21.0
KS	22.7	10.8	-10.7	-5.1	12.5	6.0
KY	21.4	12.5	-18.9	-11.1	5.3	3.1
LA	63.8	40.5	6.6	4.2	61.8	39.2
ME	50.7	27.4	3.1	1.7	49.8	27.0
MD	56.0	34.7	-3.3	-2.0	49.7	30.7
MA	56.7	37.6	-0.2	-0.1	52.3	34.6
MI	27.7	13.4	1.1	0.6	27.7	13.4
MN	48.9	29.1	1.5	0.9	46.0	27.4
MS	43.5	21.8	-5.0	-2.5	37.3	18.7
MO	43.8	22.9	3.0	1.6	42.4	22.2
MT	57.4	29.2	5.4	2.8	57.4	29.2
NE	45.1	21.9	3.8	1.8	43.1	20.9
NV	54.8	33.9	1.4	0.9	51.1	31.6
NH	42.2	23.0	-3.7	-2.0	34.8	19.0
NJ	53.0	32.4	2.8	1.7	53.0	32.4
NM	52.1	29.7	3.9	2.3	51.2	29.2
<b>NY</b>	<b>53.3</b>	<b>31.3</b>	<b>0.7</b>	<b>0.4</b>	<b>52.4</b>	<b>30.8</b>
NC	46.5	29.2	4.3	2.7	44.6	28.0
ND	2.8	1.3	-16.0	-7.5	-11.2	-5.2
<b>OH</b>	<b>47.0</b>	<b>25.5</b>	<b>-1.8</b>	<b>-1.0</b>	<b>42.3</b>	<b>23.0</b>
OK	49.1	25.8	-0.8	-0.4	45.7	24.1
OR	43.0	26.4	-5.5	-3.4	36.5	22.4
PA	46.8	28.4	0.5	0.3	43.2	26.2
RI	40.8	25.8	-5.7	-3.6	32.6	20.6
SC	52.8	32.9	-5.9	-3.7	45.0	28.0
SD	59.2	29.3	6.7	3.3	59.2	29.3
TN	38.6	18.9	-1.0	-0.5	33.6	16.5
<b>TX</b>	<b>53.6</b>	<b>32.5</b>	<b>-2.7</b>	<b>-1.7</b>	<b>47.1</b>	<b>28.6</b>
UT	45.8	25.8	1.6	0.9	44.4	25.0
VT	38.0	18.2	-6.0	-2.9	30.1	14.4
VA	49.7	30.3	-3.5	-2.1	42.9	26.2
WA	52.9	33.4	0.7	0.5	50.2	31.7
WV	58.4	32.7	5.7	3.2	56.0	31.3
WI	52.9	27.6	2.3	1.2	50.7	26.7
WY	45.6	20.3	7.1	3.2	45.6	20.3
<b>All States</b>	<b>48.6%</b>	<b>28.1%</b>	<b>-0.4%</b>	<b>-0.2%</b>	<b>44.9%</b>	<b>26.0%</b>

\* Low-income motorists will likely buy low (only mandatory) coverages. See *supra* text accompanying notes 16, 74-75.

\*\* Higher income motorists will likely buy higher (more than mandatory) coverages. See *supra* text accompanying note 49 and *supra* note 75.



## NOTES FOR TREE CHART A

*Relative Savings in New York if 50% Switch*

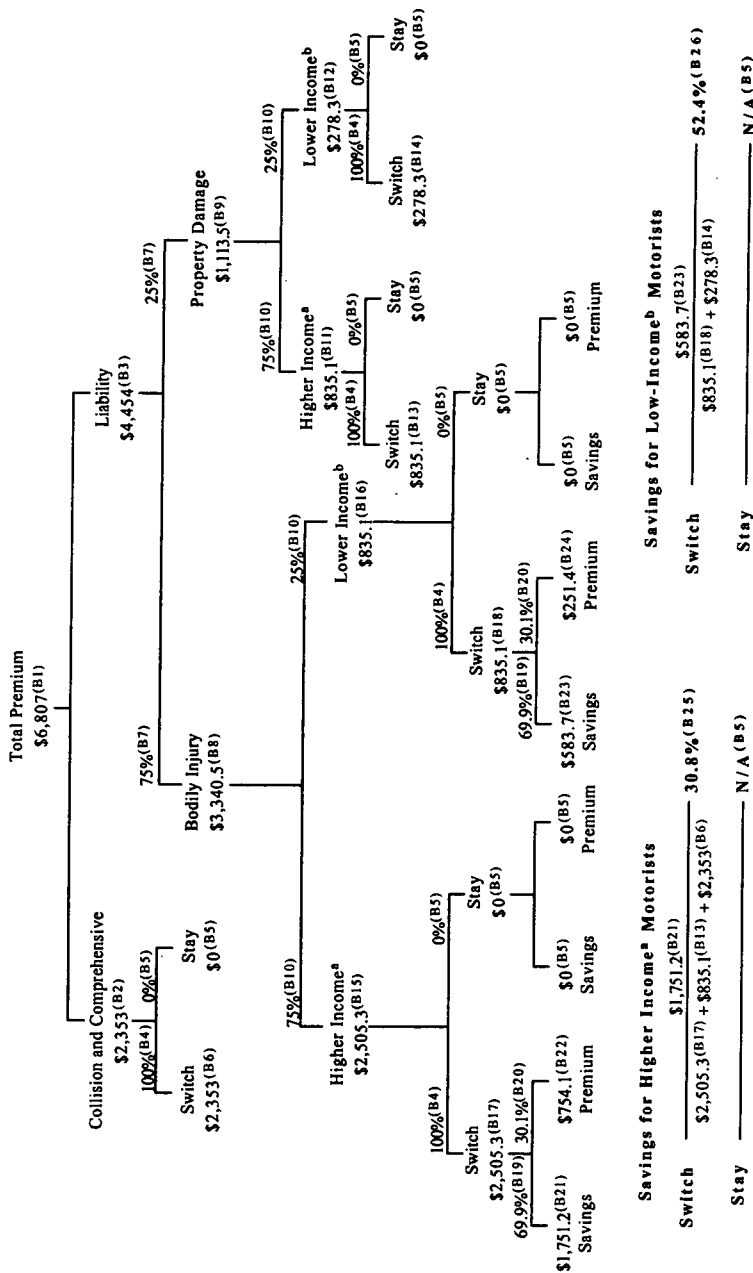
\* All dollar figures are in millions

- A1. Total 1993 personal auto insurance premiums for New York: \$6,807 (tbl. 2, col. 1).
- A2. Total premiums for collision and comprehensive (CC) for New York: \$2,353 (tbl. 2, col. 2). (Collision and comprehensive are complementary physical damage coverages. Collision covers automobile damage due to collision with any other object or due to upset. Comprehensive is a catch-all provision affording coverage for damage caused by a variety of perils other than collision or upset, e.g., theft, falling objects, fire, wind, hail, glass breakage, vandalism.)
- A3. Total liability premiums (personal injury (PI) plus property damage (PD) liability) for New York: \$4,454 (tbl. 2, col. 3); *see also supra* main text note 56 and accompanying text.
- A4. The assumption here is that 50% of insured motorists will switch.
- A5. Total premiums for CC coverages for switchers or stayers: \$2,353, *supra* note A2, multiplied by 50%, *supra* note A4, equals \$1,176.5.
- A6. The ratio of PI liability premiums to PD liability premiums in New York is 75 to 25. *See* tbl. 2, col. 4; 25% is the remaining percentage ( $100\% - 75\% = 25\%$ ).
- A7. Total premiums for PI liability: \$4,454, *supra* note A3, multiplied by 75%, *supra* note A6, equals \$3,340.5.
- A8. Total premiums for PD liability: \$4,454, *supra* note A3, multiplied by 25%, *supra* note A6, equals \$1,113.5.
- A9. RAND assumed that 75% of insured motorists have higher income and carry more than mandatory coverage, and 25% have lower income and carry only mandatory coverage.
- A10. Total premiums for PD liability for higher income motorists: \$1,113.5, *supra* note A8, multiplied by 75%, *supra* note A9, equals \$835.1.
- A11. Total premiums for PD liability coverage for low-income motorists: \$1,113.5, *supra* note A8, multiplied by 25%, *supra* note A9, equals \$278.3.
- A12. Total premiums for PD liability coverage for higher income switchers or stayers: \$835.1, *supra* note A10, multiplied by 50%, *supra* note A4, equals \$417.5.

- A13. Total premiums for PD liability coverage for low-income switchers or stayers: \$278.3, *supra* note A11, multiplied by 50%, *supra* note A4, equals \$139.1.
- A14. Total premiums for PI liability coverage for higher income motorists: \$3,340.5, *supra* note A7, multiplied by 75%, *supra* note A9, equals \$2,505.3.
- A15. Total premiums for PI liability coverage for low-income motorists: \$3,340.5, *supra* note A7, multiplied by 25%, *supra* note A9, equals \$835.1.
- A16. Total premiums for PI liability coverage for higher income switchers or stayers: \$2,505.3, *supra* note A14, multiplied by 50%, *supra* note A4, equals \$1,252.6.
- A17. Total premiums for PI liability coverage for low-income switchers or stayers: \$835.1, *supra* note A15, multiplied by 50%, *supra* note A4, equals \$417.5.
- A18. Percent of premium savings for PI liability coverage for switchers in New York equals 71.1% (tbl. 2, col. 5).
- A19. Total premium multiple for PI liability coverage for switchers: 100% minus 71.1%, *supra* note A18, equals 28.9%.
- A20. Percent of premium savings for PI liability coverage for stayers in New York equals 1% (tbl. 2, col. 6).
- A21. Total premium multiple for PI liability coverage for stayers: 100% minus 1%, *supra* note A20, equals 99%.
- A22. Total dollar savings available for PI liability coverage for higher income switchers: \$1,252.6, *supra* note A16, multiplied by 71.1%, *supra* note A18, equals \$890.3.
- A23. Total premiums for PI liability coverage for higher income switchers: \$1,252.6, *supra* note A16, multiplied by 28.9%, *supra* note A19, equals \$362.
- A24. Total dollar savings available for PI liability coverage for higher income stayers: \$1,252.6, *supra* note A16, multiplied by 1%, *supra* note A20, equals \$12.5.
- A25. Total premiums for PI liability coverage for higher income stayers: \$1,252.6, *supra* note A16, multiplied by 99%, *supra* note A21, equals \$1,240.
- A26. Total dollar savings available for PI liability coverage for low-income switchers: \$417.5, *supra* note A17, multiplied by 71.1%, *supra* note A18, equals \$296.8.
- A27. Total premiums for PI liability coverage for low-income switchers: \$417.5, *supra* note A17, multiplied by 28.9%, *supra* note A19, equals \$120.6.

- A28. Total dollar savings available for PI liability coverage for low-income stayers: \$417.5, *supra* note A17, multiplied by 1%, *supra* note A20, equals \$4.2.
- A29. Total premiums for PI liability coverage for low-income stayers: \$417.5, *supra* note A17, multiplied by 99%, *supra* note A21, equals \$413.3.
- A30. The total percent savings for higher income switchers who choose coverage including collision and comprehensive, PI liability, and PD liability coverages in New York equals 31.3% (tbl. 3, col. 2).
- A31. The total percent savings for low-income switchers in New York equals 53.3% (tbl. 3, col. 1).
- A32. The total percent savings for higher income stayers who choose coverage including collision and comprehensive, PI liability, and PD liability in New York equals 0.4% (tbl. 3, col. 4).
- A33. The total percent savings for low-income stayers in New York equals 0.7% (tbl. 3, col. 3).

**B. RELATIVE SAVINGS IN NEW YORK IF 100% SWITCH AND 0% STAY (In Millions)**



<sup>a</sup> Higher income motorists will likely buy higher (more than mandatory) coverages. See *supra* text accompanying note 49 and *supra* note 75.

<sup>b</sup> Low-income motorists will likely buy low (only mandatory) coverage. See *supra* text accompanying notes 16, 74-75.

## NOTES FOR TREE CHART B

*Relative Savings in New York if 100% Switch*

\*All dollar figures are in millions

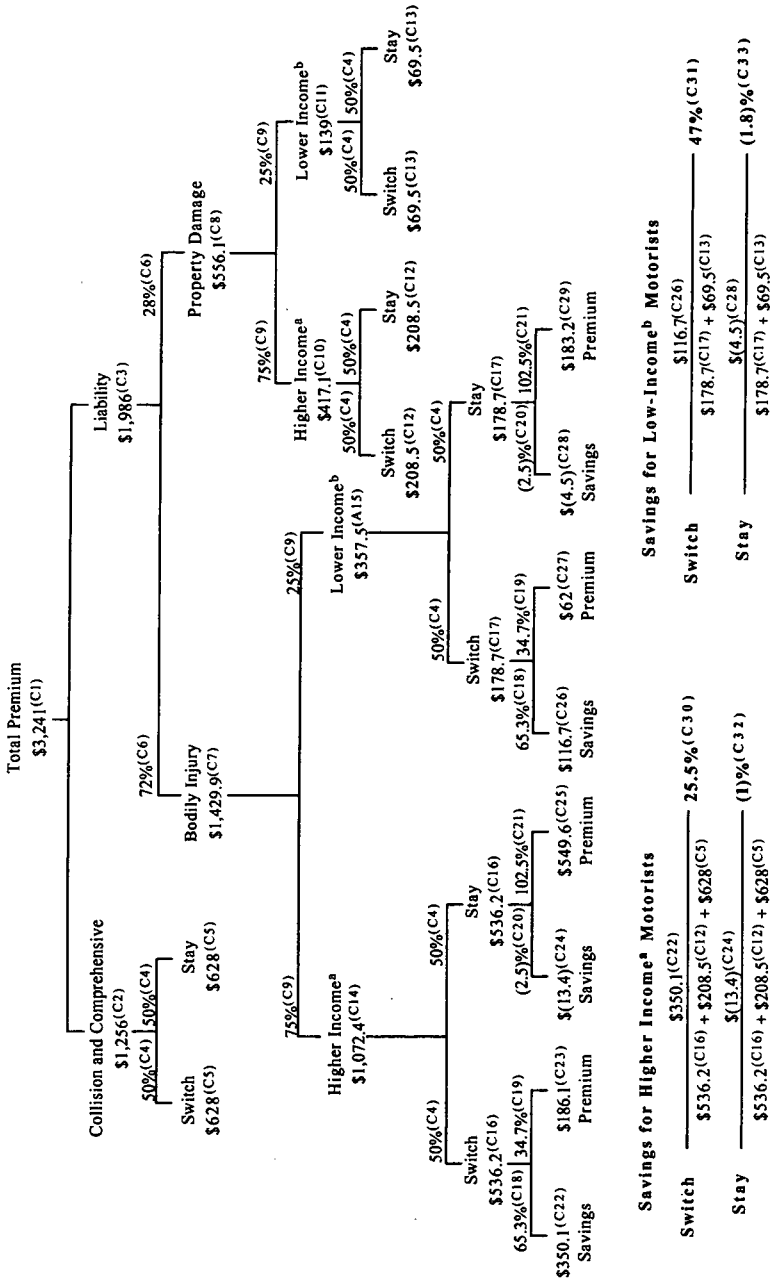
- B1. Total 1993 personal auto insurance premiums for New York: \$6,807 (tbl. 2, col. 1).
- B2. Total premiums for collision and comprehensive (CC) for New York: \$2,353 (tbl. 2, col. 2). (Collision and comprehensive are complementary physical damage coverages. Collision covers automobile damage due to collision with any other object or due to upset. Comprehensive is a catch-all provision affording coverage for damage caused by a variety of perils other than collision or upset, e.g., theft, falling objects, fire, wind, hail, glass breakage, vandalism.)
- B3. Total liability premiums (personal injury (PI) plus property damage (PD) liability) for New York: \$4,454 (tbl. 2, col. 3); *see also supra* main text note 56 and accompanying text.
- B4. The assumption here is that 100% of insured motorists will switch.
- B5. All figures on the tort side of the branches will be zero because the assumption here is that all insured motorists will switch.
- B6. Total premiums for CC coverages for insured motorists: \$2,353, *supra* note B2, multiplied by 100%, *supra* note B4, equals \$2,353.
- B7. The ratio of PI liability premiums to PD liability premiums in New York is 75 to 25. *See* tbl. 2, col. 4; 25% is the remaining percentage ( $100\% - 75\% = 25\%$ ).
- B8. Total premiums for PI liability: \$4,454, *supra* note B3, multiplied by 75%, *supra* note B7, equals \$3,340.5.
- B9. Total premiums for PD liability: \$4,454, *supra* note B3, multiplied by 25%, *supra* note B7, equals \$1,113.5.
- B10. RAND assumed for all states that 75% of insured motorists have higher income and carry higher than mandatory coverage, and 25% have lower income and carry only mandatory coverage.
- B11. Total premiums for PD liability for higher income switchers and stayers: \$1,113.5, *supra* note B9, multiplied by 75%, *supra* note B10, equals \$835.1.
- B12. Total premiums for PD liability coverage for low-income motorists: \$1,113.5, *supra* note B9, multiplied by 25%, *supra* note B10, equals \$278.3.

- B13. Total premiums for PD liability coverage for higher income motorists: \$835.1, *supra* note B11, multiplied by 100%, *supra* note B4, equals \$835.1.
- B14. Total premiums for PD liability coverage for low-income motorists: \$278.3, *supra* note B12, multiplied by 100%, *supra* note B4, equals \$278.3.
- B15. Total premiums for PI liability coverage for higher income motorists: \$3,340.5, *supra* note B8, multiplied by 75%, *supra* note B10, equals \$2,505.3.
- B16. Total premiums for PI liability coverage for low-income motorists: \$3,340.5, *supra* note B8, multiplied by 25%, *supra* note B10, equals \$835.1.
- B17. Total premiums for PI liability coverage for higher income motorists where all insureds switch: \$2,505.3, *supra* note B15, multiplied by 100%, *supra* note B4, equals \$2,505.3.
- B18. Total premiums for PI liability coverage for low-income motorists where all insureds switch: \$835.1, *supra* note B16, multiplied by 100%, *supra* note B4, equals \$835.1.
- B19. Percent of premium savings for PI liability coverage in New York equals 69.9% (tbl. 2, col. 7).
- B20. Total premium multiple for personal (PI) liability coverage for insured motorists: 100% minus 69.9%, *supra* note B19, equals 30.1%.
- B21. Total dollar savings available for PI liability coverage for higher income motorists: \$2,505.3, *supra* note B17, multiplied by 69.9%, *supra* note B19, equals \$1,751.2.
- B22. Total premiums for PI liability coverage for higher income motorists: \$2,505.3, *supra* note B17, multiplied by 30.1%, *supra* note B20, equals \$754.1.
- B23. Total dollar savings available for PI liability coverage for low-income motorists: \$835.1, *supra* note B18, multiplied by 69.9%, *supra* note B19, equals \$583.7.
- B24. Total premiums for PI liability coverage for low-income motorists: \$835.1, *supra* note B18, multiplied by 30.1%, *supra* note B20, equals \$251.4.
- B25. The total percent savings for higher income motorists who choose coverage including collision and comprehensive, PI liability, and PD liability coverages in New York equals 30.8% (tbl. 3, col. 6).
- B26. The total percent savings for low-income motorists in New York equals 52.4% (tbl. 3, col. 5).



**THIS PAGE INTENTIONALLY BLANK.**

C. RELATIVE SAVINGS IN OHIO IF 50% SWITCH AND 50% STAY (In Millions)



<sup>a</sup> Higher income motorists will likely buy higher (more than mandatory) coverages. See *supra* text accompanying note 49 and *supra* note 75.  
<sup>b</sup> Low-income motorists will likely buy low (only mandatory) coverage. See *supra* text accompanying notes 16, 74-75.

## NOTES FOR TREE CHART C

*Relative Savings in Ohio if 50% Switch*

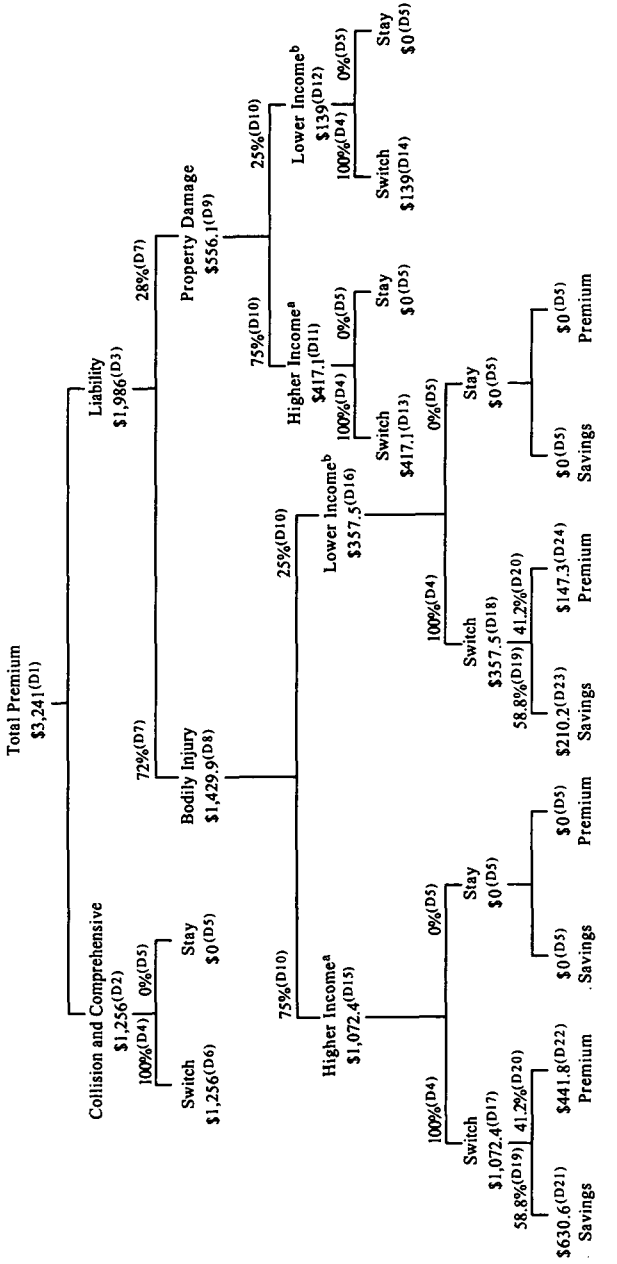
\*All dollar figures are in millions

- C1. Total 1993 personal auto insurance premiums for Ohio: \$3,241 (tbl. 2, col. 1).
- C2. Total premiums for collision and comprehensive (CC) for Ohio: \$1,256 (tbl. 2, col. 2). (Collision and comprehensive are complementary physical damage coverages. Collision covers automobile damage due to collision with any other object or due to upset. Comprehensive is a catch-all provision affording coverage for damage caused by a variety of perils other than collision or upset, e.g., theft, falling objects, fire, wind, hail, glass breakage, vandalism.)
- C3. Total liability premiums (personal injury (PI) plus property damage (PD) liability) for Ohio: \$1,986 (tbl. 2, col. 3); *see also supra* main text note 56 and accompanying text.
- C4. The assumption here is that 50% of insured motorists will switch.
- C5. Total premiums for CC coverages for insured motorists who switch or stay: \$1,256, *supra* note C2, multiplied by 50%, *supra* note C4, equals \$628.
- C6. The ratio of PI liability premiums to PD liability premiums in Ohio is 72 to 28. *See* tbl. 2, col. 4; 28% is the remaining percentage ( $100\% - 72\% = 28\%$ ).
- C7. Total premiums for PI liability: \$1,986, *supra* note C3, multiplied by 72%, *supra* note C6, equals \$1,429.9.
- C8. Total premiums for PD liability: \$1,986, *supra* note C3, multiplied by 28%, *supra* note C6, equals \$556.1.
- C9. RAND assumed that 75% of insured motorists have higher income and carry higher than mandatory coverage, and 25% have lower income and carry only mandatory coverage.
- C10. Total premiums for PD liability for higher income motorists: \$556.1, *supra* note C8, multiplied by 75%, *supra* note C9, equals \$417.1.
- C11. Total premiums for PD liability coverage for low-income motorists: \$556.1, *supra* note C8, multiplied by 25%, *supra* note C9, equals \$139.
- C12. Total premiums for PD liability coverage for higher income motorists who switch or stay: \$417.1, *supra* note C10, multiplied by 50%, *supra* note C4, equals \$208.5.

- C13. Total premiums for PD liability coverage for low-income switchers or stayers: \$139, *supra* note C11, multiplied by 50%, *supra* note C4, equals \$69.5.
- C14. Total premiums for PI liability coverage for higher income motorists: \$1,429.9, *supra* note C7, multiplied by 75%, *supra* note C9, equals \$1,072.4.
- C15. Total premiums for PI liability coverage for low-income motorists: \$1,429.9, *supra* note C7, multiplied by 25%, *supra* note C9, equals \$357.5.
- C16. Total premiums for PI liability coverage for higher income motorists who switch or stay: \$1,072.4, *supra* note C14, multiplied by 50%, *supra* note C4, equals \$536.2.
- C17. Total premiums for PI liability coverage for low-income switchers or stayers: \$357.5, *supra* note C15, multiplied by 50%, *supra* note C4, equals \$178.7.
- C18. Percent of premium savings for PI liability coverage for switchers in Ohio equals 65.3% (tbl. 2, col. 5).
- C19. Total premium multiple for PI liability coverage for switchers: 100% minus 65.3%, *supra* note C18, equals 34.7%.
- C20. Percent of premium savings for PI liability coverage for stayers in Ohio equals -2.5% (tbl. 2, col. 6).
- C21. Total premium multiple for PI liability coverage for insured motorists who stay: 100% minus -2.5%, *supra* note C20, equals 102.5%.
- C22. Total dollar savings available for PI liability coverage for higher income switchers: \$536.2, *supra* note C16, multiplied by 65.3%, *supra* note C18, equals \$350.1.
- C23. Total premiums for PI liability coverage for higher income switchers: \$536.2, *supra* note C16, multiplied by 34.7%, *supra* note C19, equals \$186.1.
- C24. Total dollar savings available for PI liability coverage for motorists who stay with higher than mandatory coverage: \$536.2, *supra* note C16, multiplied by -2.5%, *supra* note C20, equals -\$13.4.
- C25. Total premiums for PI liability coverage for motorists who stay with higher than mandatory coverage: \$536.2, *supra* note C16, multiplied by 102.5%, *supra* note C21, equals \$549.6.
- C26. Total dollar savings available for PI liability coverage for insured motorists who switch with only mandatory coverage: \$178.7, *supra* note C17, multiplied by 65.3%, *supra* note C18, equals \$116.7.

- C27. Total premiums for PI liability coverage for insured motorists who switch with only mandatory coverage: \$178.7, *supra* note C17, multiplied by 34.7%, *supra* note C19, equals \$62.
- C28. Total dollar savings available for PI liability coverage for motorists who stay with only mandatory coverage: \$178.7, *supra* note C17, multiplied by -2.5%, *supra* note C20, equals -\$4.5.
- C29. Total premiums for PI liability coverage for motorists who stay with only mandatory coverage: \$178.7, *supra* note C17, multiplied by 102.5%, *supra* note C21, equals \$183.2.
- C30. The total percent savings for insured motorists who switch with higher than mandatory coverage including collision and comprehensive, PI liability, and PD liability coverages in Ohio equals 25.5% (tbl. 3, col. 2).
- C31. The total percent savings for insured motorists who switch with only mandatory coverage in Ohio equals 47% (tbl. 3, col. 1).
- C32. The total percent savings for insured motorists who stay with higher than mandatory coverage including collision and comprehensive, PI liability, and PD liability in Ohio equals -1% (tbl. 3, col. 4).
- C33. The total percent savings for insured motorists who stay with only mandatory coverage in Ohio equals -1.8% (tbl. 3, col. 3).

D. RELATIVE SAVINGS IN OHIO IF 100% SWITCH AND 0% STAY (In Millions)



<b>Savings for Higher Income<sup>a</sup> Drivers (More Than Mandatory Coverage)</b>	<b>Savings for Low-Income<sup>b</sup> Drivers (Mandatory Coverage Only)</b>
Stay \$630.6(D21)	Stay \$210.2(D23)
Switch \$1,072.4(D17) + \$417.1(D13) + \$1,256(D6)	Switch \$357.5(D18) + \$139(D14)
23%(D25)	42.3%(D26)
N/A(D5)	N/A(D5)

<sup>a</sup> Higher income motorists will likely buy higher (more than mandatory) coverages. See *supra* text accompanying note 49 and *supra* note 75.  
<sup>b</sup> Low-income motorists will likely buy low (only mandatory) coverage. See *supra* text accompanying notes 16, 74-75.

## NOTES FOR TREE CHART D

*Relative Savings in Ohio if 100% Switch*

\*All dollar figures are in millions

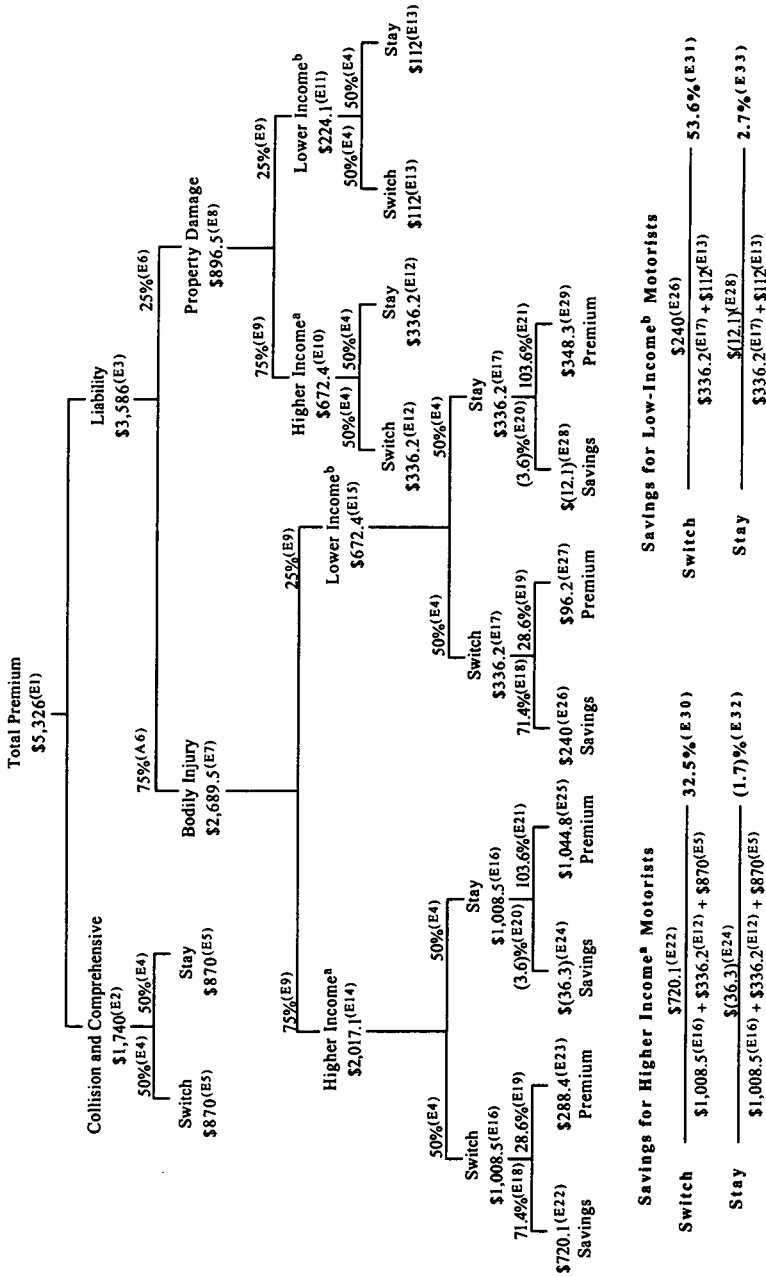
- D1. Total 1993 personal auto insurance premiums for Ohio: \$3,241 (tbl. 2, col. 1).
- D2. Total premiums for collision and comprehensive (CC) for Ohio: \$1,256 (tbl. 2, col. 2). (Collision and comprehensive are complementary physical damage coverages. Collision covers automobile damage due to collision with any other object or due to upset. Comprehensive is a catch-all provision affording coverage for damage caused by a variety of perils other than collision or upset, e.g., theft, falling objects, fire, wind, hail, glass breakage, vandalism.)
- D3. Total liability premiums (personal injury (PI) plus property damage (PD) liability) for Ohio: \$1,986 (tbl. 2, col. 3); *see also supra* main text note 56 and accompanying text. .
- D4. The assumption here is that 100% of insured motorists will switch.
- D5. All figures on the tort side of the branches will be zero because the assumption here is that all insured motorists will switch.
- D6. Total premiums for CC coverages for insured motorists: \$1,256, *supra* note D2, multiplied by 100%, *supra* note D4, equals \$1,256.
- D7. The ratio of PI liability premiums to PD liability premiums in Ohio is 72 to 28. *See* tbl. 2, col. 4; 28% is the remaining percentage ( $100\% - 72\% = 28$ ).
- D8. Total premiums for PI liability: \$1,986, *supra* note D3, multiplied by 72%, *supra* note D7, equals \$1,429.9.
- D9. Total premiums for PD liability: \$1,986, *supra* note D3, multiplied by 28%, *supra* note D7, equals \$556.1.
- D10. RAND assumed for all states that 75% of insured motorists have higher income and carry higher than mandatory coverage and 25% have lower income and carry only mandatory coverage.
- D11. Total premiums for PD liability for higher income motorists: \$556.1, *supra* note D9, multiplied by 75%, *supra* note D10, equals \$417.1.
- D12. Total premiums for PD liability coverage for low-income motorists: \$556.1, *supra* note D9, multiplied by 25%, *supra* note D10, equals \$139.

- D13. Total premiums for PD liability coverage for higher income motorists: \$417.1, *supra* note D11, multiplied by 100%, *supra* note D4, equals \$417.1.
- D14. Total premiums for PD liability coverage for low-income motorists: \$139, *supra* note D12, multiplied by 100%, *supra* note D4, equals \$139.
- D15. Total premiums for PI liability coverage for higher income motorists: \$1,429.9, *supra* note D8, multiplied by 75%, *supra* note D10, equals \$1,072.4.
- D16. Total premiums for PI liability coverage for low-income motorists: \$1,429.9, *supra* note D8, multiplied by 25%, *supra* note D10, equals \$357.5.
- D17. Total premiums for PI liability coverage for higher income motorists where all insureds switch: \$1,072.4, *supra* note D15, multiplied by 100%, *supra* note D4, equals \$1,072.4.
- D18. Total premiums for PI liability coverage for low-income motorists where all insureds switch: \$357.5, *supra* note D16, multiplied by 100%, *supra* note D4, equals \$357.5.
- D19. Percent of premium savings for PI liability coverage in Ohio equals 58.8% (tbl. 2, col. 7).
- D20. Total premium multiple for personal (PI) liability coverage for insured motorists: 100% minus 58.8%, *supra* note D19, equals 41.2%.
- D21. Total dollar savings available for PI liability coverage for higher income motorists: \$1,072.4, *supra* note D17, multiplied by 58.8%, *supra* note D19, equals \$630.6.
- D22. Total premiums for PI liability coverage for higher income motorists: \$1,072.4, *supra* note D17, multiplied by 41.2%, *supra* note D20, equals \$441.8.
- D23. Total dollar savings available for PI liability coverage for low-income motorists: \$357.5, *supra* note D18, multiplied by 58.8%, *supra* note D19, equals \$210.2.
- D24. Total premiums for PI liability coverage for low-income motorists: \$357.5, *supra* note D18, multiplied by 41.2%, *supra* note D20, equals \$147.3.
- D25. The total percent savings for higher income motorists who choose coverage including collision and comprehensive, PI liability, and PD liability coverages in Ohio equals 23% (tbl. 3, col. 6).
- D26. The total percent savings for low-income motorists in Ohio equals 42.3% (tbl. 3, col. 5).



**THIS PAGE INTENTIONALLY BLANK.**

E. RELATIVE SAVINGS IN TEXAS IF 50% SWITCH AND 50% STAY (In Millions)



<sup>a</sup> Higher income motorists will likely buy higher (more than mandatory) coverages. See *supra* text accompanying note 49 and *supra* note 75.

<sup>b</sup> Low-income motorists will likely buy low (only mandatory) coverage. See *supra* text accompanying notes 16, 74-75.

## NOTES FOR TREE CHART E

*Relative Savings in Texas if 50% Switch*

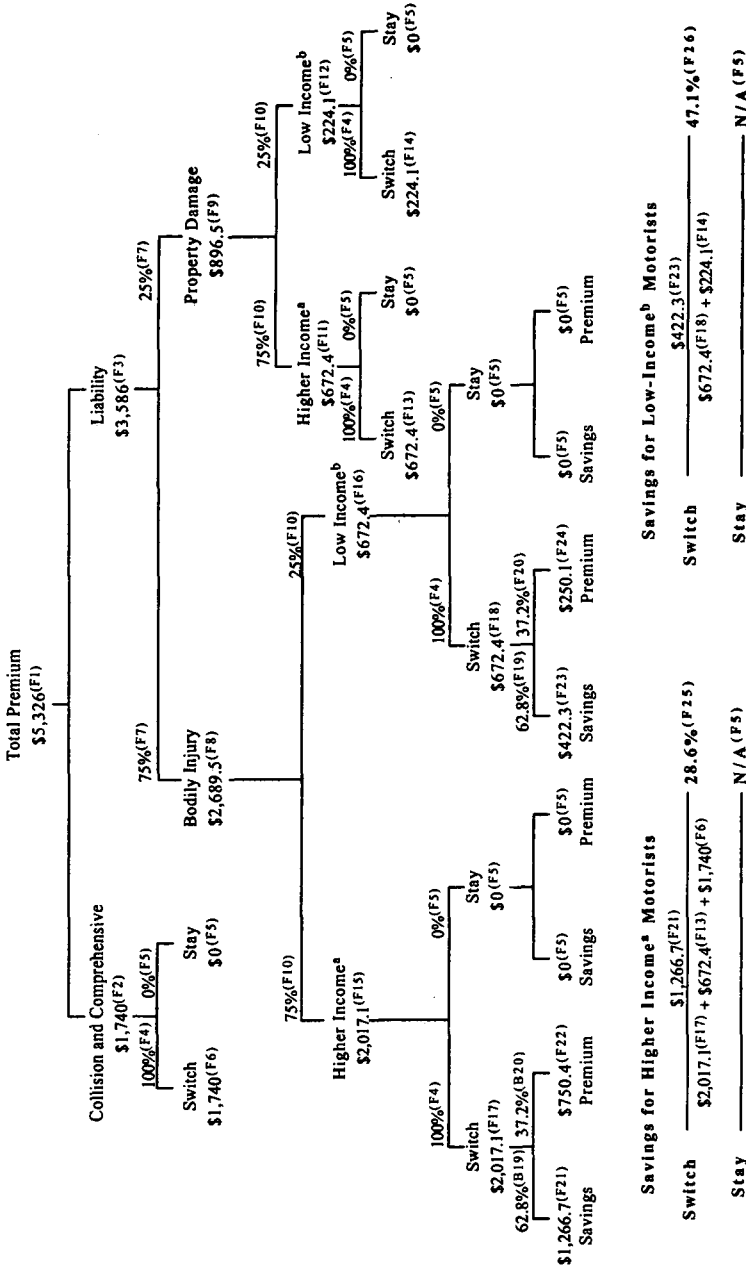
\*All dollar figures are in millions

- E1. Total 1993 personal auto insurance premiums for Texas: \$5,326 (tbl. 2, col. 1).
- E2. Total premiums for collision and comprehensive (CC) for Texas: \$1,740 (tbl. 2, col. 2). (Collision and comprehensive are complementary physical damage coverages. Collision covers automobile damage due to collision with any other object or due to upset. Comprehensive is a catch-all provision affording coverage for damage caused by a variety of perils other than collision or upset, e.g., theft, falling objects, fire, wind, hail, glass breakage, vandalism.)
- E3. Total liability premiums (personal injury (PI) plus property damage (PD) liability) for Texas: \$3,586 (tbl. 2, col. 3); *see also supra* main text note 56 and accompanying text. .
- E4. The assumption here is that 50% of insured motorists will switch.
- E5. Total premiums for CC coverages for insured motorists who switch or stay: \$1,740, *supra* note E2, multiplied by 50%, *supra* note E4, equals \$870.
- E6. The ratio of PI liability premiums to PD liability premiums in Texas is 75 to 25. *See* tbl. 2, col. 4; 25% is the remaining percentage ( $100\% - 75\% = 25\%$ ).
- E7. Total premiums for PI liability: \$3,586, *supra* note E3, multiplied by 75%, *supra* note E6, equals \$2,689.5.
- E8. Total premiums for PD liability: \$3,586, *supra* note E3, multiplied by 25%, *supra* note E6, equals \$896.5.
- E9. RAND assumed that 75% of insured motorists have higher income and carry higher than mandatory coverage, and 25% have lower income and carry only mandatory coverage.
- E10. Total premiums for PD liability for higher income motorists: \$896.5, *supra* note E8, multiplied by 75%, *supra* note E9, equals \$672.4.
- E11. Total premiums for PD liability coverage for low-income motorists: \$896.5, *supra* note E8, multiplied by 25%, *supra* note E9, equals \$224.1.
- E12. Total premiums for PD liability coverage for higher income motorists who switch or stay: \$672.4, *supra* note E10, multiplied by 50%, *supra* note E4, equals \$336.2.

- E13. Total premiums for PD liability coverage for low-income switchers or stayers: \$224.1, *supra* note E11, multiplied by 50%, *supra* note E4, equals \$112.
- E14. Total premiums for PI liability coverage for higher income motorists: \$2,689.5, *supra* note E7, multiplied by 75%, *supra* note E9, equals \$2,017.1.
- E15. Total premiums for PI liability coverage for low-income motorists: \$2,689.5, *supra* note E7, multiplied by 25%, *supra* note E9, equals \$672.4.
- E16. Total premiums for PI liability coverage for higher income motorists who switch or stay: \$2,017.1, *supra* note E14, multiplied by 50%, *supra* note E4, equals \$1,008.5.
- E17. Total premiums for PI liability coverage for low-income switchers or stayers: \$672.4, *supra* note E15, multiplied by 50%, *supra* note E4, equals \$336.2.
- E18. Percent of premium savings for PI liability coverage for insured motorists who switch in Texas equals 71.4% (tbl. 2, col. 5).
- E19. Total premium multiple for PI liability coverage for insured motorists who switch: 100% minus 71.4%, *supra* note E18, equals 28.6%.
- E20. Percent of premium savings for PI liability coverage for stayers in Texas equals -3.6% (tbl. 2, col. 6).
- E21. Total premium multiple for PI liability coverage for insured motorists who stay: 100% minus -3.6%, *supra* note E20, equals 103.6%.
- E22. Total dollar savings available for PI liability coverage for insured motorists who switch with higher than mandatory coverage: \$1,008.5, *supra* note E16, multiplied by 71.4%, *supra* note E18, equals \$720.1.
- E23. Total premiums for PI liability coverage for insured motorists who switch with higher than mandatory coverage: \$1,008.5, *supra* note E16, multiplied by 28.6%, *supra* note E19, equals \$288.4.
- E24. Total dollar savings available for PI liability coverage for motorists who stay with higher than mandatory coverage: \$1,008.5, *supra* note E16, multiplied by -3.6%, *supra* note E20, equals -\$36.3.
- E25. Total premiums for PI liability coverage for motorists who stay with higher than mandatory coverage: \$1,008.5, *supra* note E16, multiplied by 103.6%, *supra* note E21, equals \$1,044.8.
- E26. Total dollar savings available for PI liability coverage for insured motorists who switch with only mandatory coverage:

- \$336.2, *supra* note E17, multiplied by 71.4%, *supra* note E18, equals \$240.
- E27. Total premiums for PI liability coverage for insured motorists who switch with only mandatory coverage: \$336.1, *supra* note E17, multiplied by 28.6%, *supra* note E19, equals \$96.2.
- E28. Total dollar savings available for PI liability coverage for motorists who stay with only mandatory coverage: \$336.2, *supra* note E17, multiplied by -3.6%, *supra* note E20, equals -\$12.1.
- E29. Total premiums for PI liability coverage for motorists who stay with only mandatory coverage: \$336.2, *supra* note E17, multiplied by 103.6%, *supra* note E21, equals \$348.3.
- E30. The total percent savings for insured motorists who switch with higher than mandatory coverage including collision and comprehensive, PI liability, and PD liability coverages in Texas equals 32.5% (tbl. 3, col. 2).
- E31. The total percent savings for insured motorists who switch with only mandatory coverage in Texas equals 53.6% (tbl. 3, col. 1).
- E32. The total percent savings for insured motorists who stay with higher than mandatory coverage including collision and comprehensive, PI liability, and PD liability in Texas equals -1.7% (tbl. 3, col. 4).
- E33. The total percent savings for insured motorists who stay with only mandatory coverage in Texas equals -2.7% (tbl. 3, col. 3).

F. RELATIVE SAVINGS IN TEXAS IF 100% SWITCH AND 0% STAY (In Millions)



## NOTES FOR TREE CHART F

*Relative Savings in Texas if 100% Switch*

\*All dollar figures are in millions

- F1. Total 1993 personal auto insurance premiums for Texas: \$5,326 (tbl. 2, col. 1).
- F2. Total premiums for collision and comprehensive (CC) for Texas: \$1,740 (tbl. 2, col. 2). (Collision and comprehensive are complementary physical damage coverages. Collision covers automobile damage due to collision with any other object or due to upset. Comprehensive is a catch-all provision affording coverage for damage caused by a variety of perils other than collision or upset, e.g., theft, falling objects, fire, wind, hail, glass breakage, vandalism.)
- F3. Total liability premiums (personal injury (PI) plus property damage (PD) liability) for Texas: \$3,586 (tbl. 2, col. 3); *see also supra* main text note 56 and accompanying text. .
- F4. The assumption here is that 100% of insured motorists will switch.
- F5. All figures on the tort side of the branches will be zero because the assumption here is that all insured motorists will switch.
- F6. Total premiums for CC coverages for insured motorists: \$1,740, *supra* note F2, multiplied by 100%, *supra* note F4, equals \$1,740.
- F7. The ratio of PI liability premiums to PD liability premiums in Texas is 75 to 25. *See* tbl. 2, col. 4; 25% is the remaining percentage ( $100\% - 75\% = 25\%$ ).
- F8. Total premiums for PI liability: \$3,585.7, *supra* note F3, multiplied by 75%, *supra* note F7, equals \$2,689.5.
- F9. Total premiums for PD liability: \$3,585.7, *supra* note F3, multiplied by 25%, *supra* note F7, equals \$896.5.
- F10. RAND assumed for all states that 75% of insured motorists have higher income and carry higher than mandatory coverage and 25% have lower income and carry only mandatory coverage.
- F11. Total premiums for PD liability for higher income motorists: \$896.5, *supra* note F9, multiplied by 75%, *supra* note F10, equals \$672.4.
- F12. Total premiums for PD liability coverage for low-income motorists: \$896.5, *supra* note F9, multiplied by 25%, *supra* note F10, equals \$224.1.

- F13. Total premiums for PD liability coverage for higher income motorists: \$672.4, *supra* note F11, multiplied by 100%, *supra* note F4, equals \$672.4.
- F14. Total premiums for PD liability coverage for low-income motorists: \$224.1, *supra* note F12, multiplied by 100%, *supra* note F4, equals \$224.1.
- F15. Total premiums for PI liability coverage for higher income motorists: \$2,689.5, *supra* note F8, multiplied by 75%, *supra* note F10, equals \$2,017.1.
- F16. Total premiums for PI liability coverage for low-income motorists: \$2,689.5, *supra* note F8, multiplied by 25%, *supra* note F10, equals \$672.4.
- F17. Total premiums for PI liability coverage for higher income motorists where all insureds switch: \$2,017.1, *supra* note F15, multiplied by 100%, *supra* note F4, equals \$2,017.1.
- F18. Total premiums for PI liability coverage for low-income motorists where all insureds switch: \$672.4, *supra* note F16, multiplied by 100%, *supra* note F4, equals \$672.4.
- F19. Percent of premium savings for PI liability coverage in Texas equals 62.8% (tbl. 2, col. 7).
- F20. Total premium multiple for personal (PI) liability coverage for insured motorists: 100% minus 62.8%, *supra* note F19, equals 37.2%.
- F21. Total dollar savings available for PI liability coverage for higher income motorists: \$2,017.1, *supra* note F17, multiplied by 62.8%, *supra* note F19, equals \$1,266.7.
- F22. Total premiums for PI liability coverage for higher income motorists: \$2,017.1, *supra* note F17, multiplied by 37.2%, *supra* note F20, equals \$750.4.
- F23. Total dollar savings available for PI liability coverage for low-income motorists: \$672.4, *supra* note F18, multiplied by 62.8%, *supra* note F19, equals \$422.3.
- F24. Total premiums for PI liability coverage for low-income motorists: \$672.4, *supra* note F18, multiplied by 37.2%, *supra* note F20, equals \$250.1.
- F25. The total percent savings for higher income motorists who choose coverage including collision and comprehensive, PI liability, and PD liability coverages in Texas equals 28.6% (tbl. 3, col. 6).
- F26. The total percent savings for low-income motorists in Texas equals 47.1% (tbl. 3, col. 5).



APPENDIX B: MODEL LEGISLATION FOR CREATION OF CONSUMER  
CHOICE IN MOTOR VEHICLE INSURANCE IN A STATE WITH  
NO-FAULT INSURANCE<sup>1</sup>

AN ACT relating to insurance; creating a system of motor vehicle insurance that offers a choice of methods of claiming for losses from personal injury above the tort threshold arising out of the maintenance or use of motor vehicles; abolishing tort liability in certain cases; and providing other matters properly relating thereto:

CONSUMER CHOICE IN MOTOR VEHICLE INSURANCE ACT

- SECTION 1. TITLE
- SECTION 2. STATEMENT OF PURPOSE
- SECTION 3. DEFINITIONS
- SECTION 4. INSURANCE REQUIREMENTS
- SECTION 5. ELECTION OF TORT WAIVER OPTION OR TORT MAINTENANCE OPTION
- SECTION 6. APPLICATION OF COVERAGE
- SECTION 7. TORT RIGHTS AND LEGAL LIABILITY UNDER THIS ACT
- SECTION 8. APPLICABLE PROVISIONS TO TORT MAINTENANCE COVERAGE

THE PEOPLE OF THE STATE OF [NAME], REPRESENTED IN THEIR  
LEGISLATURE, DO ENACT AS FOLLOWS:

SECTION 1. TITLE. This Act may be cited as the Consumer Choice in Motor Vehicle Insurance Act.<sup>2</sup>

SECTION 2. STATEMENT OF PURPOSE.<sup>3</sup>

a. Tort Liability Insurance versus Personal Injury Protection<sup>4</sup> coverage.

(1) Motorists who choose the Tort Maintenance Option and who are involved in an accident with another motorist remain under

1. This Model Legislation is authored by Jeffrey O'Connell.

2. This generic bill incorporates a state's current no-fault law and thus is considerably shorter than the bill included in *Maryland Two*, *supra* main text note 2, at 321, which assumes that a no-fault law is not in effect.

3. A pivotal requirement of any law allowing motorists to choose to waive tort rights to noneconomic damages above the state's no-fault law threshold is the proper allocation of benefits from the surrender of tort rights.

To illustrate the problem, consider the impact of the possible combinations of insurance coverages as to noneconomic damages above the threshold in a two-car collision: (1) both vehicles could be covered by insurance waiving tort rights; (2) both vehicles could be covered by insurance retaining tort rights; or (3) one vehicle could be covered by insurance waiving tort rights and the other by insurance retaining tort rights.

As to the various means for resolving the proper allocation of costs under a choice scheme, see *id.* at 323-24 n.2.

4. See *supra* main text note 85.

the tort system above the tort threshold, except that, based on fault they (a) can be sued by those who choose the Tort Waiver Option only for uncompensated economic losses in excess of the limits of the Personal Injury Protection (PIP) policy, and (b) cannot claim against those who choose Tort Waiver Coverage except for uncompensated economic loss in excess of the limits of their own first-party Tort Maintenance Coverage.

(2) Motorists who choose the Tort Waiver Option lose the right to claim and sue for "pain and suffering" and other noneconomic loss above the tort threshold, but if they suffer economic loss in excess of their PIP policy's benefit levels, they retain the right to claim for uncompensated economic loss based on fault.

(3) When two motorists who each choose Tort Maintenance Coverage are involved in an accident with each other, their rights against each other above the tort threshold are unaffected by this Act.

(4) If motorists who have chosen Tort Maintenance Insurance are involved in an accident with an uninsured motorist, they will be compensated for losses above the tort threshold under any uninsured motorist provisions of their own policy based on fault and have an unlimited right to claim for damages based on fault. Uninsured motorists forfeit the right to claim above the tort threshold for noneconomic loss against motorists who have chosen Tort Maintenance Insurance.<sup>5</sup>

---

5. See Jeffrey O'Connell, *Allowing Motorists a Choice to Be Legally Uninsured by Surrendering Tort Claims for Noneconomic Loss (With Some Further Thoughts on Choices Between PIP and Tort Coverage)*, 1 CONN. INS. L.J. 33 (1995) (proposing that denial of an uninsured's right to claim in tort for noneconomic loss ought to replace any obligation, or other punishment, for failure to insure).

What is the potential interaction between the proposal to allow motorists to be legally uninsured at the price of surrendering claims for either PIP or noneconomic loss in tort and the proposal herein for making optional Personal Injury Protection (PIP) coverage an alternative to requiring purchase of personal injury liability insurance? In addition to two choices for personal injury coverage (tort or PIP), motorists will have a third way to meet the law's demands by surrendering their claims for noneconomic loss and insuring neither for PIP nor for tort liability coverage. In this connection, a further alternative would enable relatively affluent motorists with adequate collateral sources to forgo even PIP coverage and to insure only for tort liability with a provision for abandonment of claims for pain and suffering both by and against themselves. (For a further feature that could be applicable to those waiving claims for noneconomic losses, see *infra* note 11 to Model Legislation and accompanying text.) This might be an attractive alternative, for example, for retired individuals with adequate pension coverage for their wage loss and adequate health insurance from their retirement plans and Medicare.

Thus, the following categories of motorists would comply with a financial responsibility law so far as it pertains to personal injury: (1) motorists buying Tort Maintenance Coverage for personal injury; (2) motorists buying PIP coverage (with motorists in categories (1) and (2) perhaps buying Tort Liability Coverage also, mostly to cover economic loss); (3) motorists buying only Tort Liability Coverage, but waiving their claims for pain and suffering; and (4) motorists buying neither tort coverage nor PIP.

(5) If motorists who have chosen the Tort Waiver Policy are involved in an accident with an uninsured motorist, they will be promptly compensated for losses without regard to fault under their Personal Injury Protection policy, and have an unlimited right to claim for damages based on fault. The uninsured motorist forfeits the right to claim for noneconomic loss against the motorist who has chosen the Tort Waiver Policy.<sup>6</sup>

(6) Recovery of uncompensated economic loss includes reasonable expenses incurred by the party in collecting such benefits, including a reasonable attorney's fee for advising and representing a claimant for such loss. No part of the fee for representing a claimant in connection with such loss is a charge against payment otherwise due the claimant, and no additional fee may be charged by an attorney to any party in collecting for such loss. All or part of the fee may be deducted from payment otherwise due the claimant if any significant part of the claim for such loss was fraudulent or so excessive as to have no reasonable foundation.<sup>7</sup> In any claim brought against an in-

---

The consequences of each choice would be as follows:

(1) For motorists buying at least the minimum of Tort Liability coverage, their rights to claim and to be claimed against when they collide with another motorist in this category remain as they are at common law. Such motorists colliding with a PIP motorist claim against their own insurer for common-law damages, including noneconomic losses, under tort maintenance coverage, with the further right to claim against a PIP motorist for uncompensated economic loss, plus attorney's fees, above their own first-party inverse liability coverage.

PIP motorists, buying at least the minimum of PIP coverage and, colliding with another PIP or tort motorist, receive PIP benefits without reference to fault to the extent of the PIP coverage purchased, and can claim in tort against either a PIP or tort motorist for economic loss above their own PIP coverage.

In any of the above instances, any tort right against a motorist insured only for PIP would be relatively worthless, with these results under the other three categories of motorists:

(2) For motorists who purchased either PIP or Tort Maintenance Insurance, their right to claim in tort for economic loss above their own first-party coverage (whether tort or PIP) would be redeemable as a practical matter only to the extent of another motorist's third-party Tort Liability Coverage.

(3) Motorists buying only Tort Liability Insurance but waiving their right to claim for noneconomic loss are solely dependent on their own collateral sources for payment of economic loss. To the extent that such sources are inadequate, these motorists can claim in tort for excess economic loss—with that right also, as a practical matter, only redeemable to the extent of the other motorist's third-party liability insurance.

(4) Motorists buying neither liability insurance nor PIP, only can claim in tort for economic loss against any other motorist.

In all of the above situations, motorists, regardless of how or whether insured, retain claims for both economic and noneconomic losses against any motorist guilty of intentional, drunken, or illegally drugged misconduct. See *supra* main text between notes 16-17.

6. See *supra* note 5 to Model Legislation.

7. Because payment is made only for a claimant's economic loss, unless a claimant's attorney's fees were paid in addition to the damages, attorney's fees would come out of the claimant's pocket. We assume the fee would be one-third of the amount due. But see *infra*

jured person by a Personal Injury Protection Insurer, the court may award the injured person's attorney a reasonable attorney's fee for defending the action if the injured person was the prevailing party.<sup>8</sup>

b. No tort rights above the tort threshold are ever lost against a motorist driving under the influence of alcohol or illegal drugs or guilty of intentional misconduct.

**SECTION 3. DEFINITIONS.** AS used in this Act, unless the context requires otherwise, the following terms have the meaning ascribed to them in this section:

a. "Economic loss" means medical expenses, loss of income from work, replacement services loss,<sup>9</sup> and funeral expenses incurred by or on behalf of an injured person as the result of an accidental personal injury to such injured person.

b. "Resident relative" means a person related to the owner of a motor vehicle by blood, marriage, adoption, or otherwise, and residing in the same household. A person resides in the same household if he or she usually makes his or her home in the same family unit, even though temporarily living elsewhere.

c. "Tort Maintenance Coverage" means coverage under which persons who have elected such option, when involved in an accident with an insured who has chosen the Tort Waiver Option, claim for liability above the tort threshold against their own insurer to the extent of such coverage.

d. "Uncompensated economic loss" means that portion of economic loss arising out of an accidental personal injury of an injured person that exceeds any benefits provided by (i) Personal Injury Protection coverage, (ii) Tort Maintenance Coverage, or (iii) collateral sources.

**SECTION 4. INSURANCE REQUIREMENTS.** An insurance policy written by a motor vehicle liability insurer pursuant to this Act to provide coverage under the Tort Maintenance Option includes thereby coverage for accidental personal injury of an insured under the Tort Maintenance Option caused by the negligence, in whole or in part, of an insured under the Tort Waiver Option. Such insurance will pay such damages as might have been recovered against a Tort Waiver Insured

---

note 12 to Model Legislation (discussing an alternate proposal in which, under certain circumstances, attorney's fees would be capped at 10% of the award).

8. Thus, if an insurer brought an action against a claimant for failing to undertake reasonable employment, the claimant would be awarded attorney's fees if he prevailed in the litigation.

9. Replacement services cover the costs of services affected by the injury, for example, when the spouse of an injured party must alter his schedule to care for the couple's children.

but for the exemption from tort liability provided by section 7 up to the liability limits of the Tort Maintenance Coverage.

**SECTION 5. ELECTION OF TORT WAIVER OPTION OR TORT MAINTENANCE OPTION.**<sup>10</sup> Upon the earliest and first renewal of any applicable motor vehicle liability insurance policy on or after the effective date of this Act, or before the issuance of a policy required by this Act, a choice must be made of either the Tort Maintenance or the Tort Waiver Option. In order to minimize conflict between the two options, motor vehicle insurers are authorized to maintain underwriting rules that encourage uniformity within a household. A choice made pursuant to this Act is binding with respect to any continuation, renewal, or reinstatement of an applicable motor vehicle insurance policy, and continues with respect to any policy that extends, supersedes, or replaces the policy unless the named insured subsequently makes a different choice in writing.

**SECTION 6. APPLICATION OF COVERAGE.**

a. If there is only one vehicle owned by the named insured or any member of the household of the named insured, the choice made by the named insured under section 7 is applicable to his or her spouse and to any resident relatives of the household. That choice also applies to all persons insured under the policy while occupying other motor vehicles or if struck by another motor vehicle.

b. If there is more than one motor vehicle in the household, and the named insured chooses different options for different vehicles, the choice applicable to the vehicle in use governs not only the named insured, but also all other persons insured under the policy whose injury arises out of the use of that motor vehicle unless the named insured has specifically identified resident relatives to be Tort Waiver Insureds. If the named insured is injured while occupying or by being struck by another motor vehicle, the Tort Maintenance Option is applicable. If any other person insured under two or more policies covering different options is injured while occupying or by being struck by another motor vehicle, and that insured has not been specifically identified by the named insured as being a Tort Waiver Insured at all times, the Tort Maintenance Option is applicable.

c. If there are two or more vehicles in the household, each owned by different persons, each such person has the right to choose

---

10. This section requires motorists to elect between the Tort Waiver System and the Tort Maintenance System for claims for noneconomic loss above the tort threshold. It establishes procedures for such elections and for establishing the effective date of such elections. It also provides that a motor vehicle insurer may encourage that all the motor vehicle insurance policies within the same household be of the same type. Without this provision an insurer might find it administratively burdensome to have different options made by individual family members.

either the Tort Waiver Option or the Tort Maintenance Option for himself or herself. That person's choice determines that person's rights no matter which vehicle he or she is occupying or which vehicle he or she might be struck by. The rights of all resident relatives who are not motor vehicle owners are governed by the choice applicable to the motor vehicle that they were occupying at the time of the injury, if that vehicle was owned by a member of the household.

d. In the event of a personal injury occurring prior to the effective date of a required choice, if there are conflicting choices within the household creating questions as to the applicability of the Tort Waiver Option or the Tort Maintenance Option, or if there is a failure to make a choice as required by this Act, the Tort Maintenance Option is applicable.

#### SECTION 7. TORT RIGHTS AND LEGAL LIABILITY UNDER THIS ACT.<sup>11</sup>

a. No Tort Waiver Insured has a cause of action for injury above the tort threshold against, nor is liable to, any other person on account of an accident occurring within this State, except as provided in subsections b, c, d, and except that such an insured has a cause of action, regardless of the tort threshold, for injury caused other than by the ownership, operation, or use of a motor vehicle, and against an uninsured motorist.

b. A Tort Waiver Insured has a cause of action for personal injury above the tort threshold for uncompensated economic loss against, and is liable for same to, any person insured under Tort Waiver or Tort Maintenance Coverage.

c. A person covered by Tort Maintenance Coverages has an unlimited cause of action for injury against another person so covered.

d. An uninsured motorist has no cause of action against a Tort Waiver Insured for (1) injury above the tort threshold other than for uncompensated economic loss and (2) damage to property except damage in excess of the property damage liability limits mandated under this State's financial responsibility law.

[e. Notwithstanding the foregoing, when a claim is made for uncompensated economic loss, if the party claimed against fails to provide the claimant, within ninety days after either the accident or the claim, with a written obligation to pay the uncompensated economic loss, plus a reasonable attorney's fee as provided under subsection 2(a)(6), the claimant can pursue a claim for both noneconomic and uncompensated economic loss. Even if a party claimed against undertakes such a timely obligation, when, beyond a reasonable

---

11. This section defines the extent to which someone who is injured in a motor vehicle accident is prohibited from bringing a claim above the tort threshold. A railroad, for example, covering the motor vehicles it owns under Personal Injury Protection remains liable for accidents in which its train negligently collides with a motor vehicle.

doubt, the party claimed against was guilty of wanton or intentional misconduct in causing the accident, the claimant has an unlimited cause of action for injury against such a party.<sup>12]</sup>

SECTION 8. APPLICABLE PROVISIONS TO TORT MAINTENANCE COVERAGE. Where appropriate, laws and regulations of this State applicable to uninsured motorist coverage are applicable to Tort Maintenance Coverage.

---

12. Under this alternative proposal, when a claim is made for uncompensated economic loss, the claimant is foreclosed from pursuing the tort claim any further only if the defendant provides the victim, within 90 days, a written commitment to pay the claimant's economic loss in excess of any other available coverage, plus a reasonable attorney's fee (perhaps capped at 10% of the amount due, due to less work required by the early offer). The claimant, however, could still pursue the claim if it could be proven beyond a reasonable doubt that the defendant was guilty of intentional or wanton misconduct in causing the accident. (As another alternative, the provision could allow only actions for economic loss and punitive damages to survive such an early offer.)

For the origins of this approach, whereby full-scale tort liability can be avoided only by such early offers, see Jeffrey O'Connell, *Offers That Can't Be Refused: Foreclosure of Personal Injury Claims by Defendant's Prompt Tender of Claimant's Net Economic Losses*, 77 Nw. U. L. REV. 589 (1982). Under this approach, defendants are encouraged, but not required, to expeditiously offer to pay benefits covering only net economic loss above collateral sources, rather than spending precious resources litigating fault and the value of noneconomic loss, as well as paying for the latter. *Id.*

This "early offers" service might well be seen as preferable, for example, than simply allowing an injury victim to claim in tort for only uncompensated economic loss. Under the latter device, a defending insurer is arguably under a strong incentive to resist and delay payment of a tort claim for uncompensated economic loss, knowing its exposure is thus limited. This is a common complaint for property damage tort claims against some insurers when they similarly face no spur of possible payment of noneconomic loss. Under the "early offers" approach, an insurer must earn the right to pay only economic loss, by promptly (within 90 days) offering to do so. On the other hand, a defendant with either no, or very doubtful, liability would not be pressured to make an early offer to evade full-scale tort liability.

APPENDIX C: SUMMARY OF REQUIREMENTS, BENEFITS, AND THRESHOLDS IN FIFTY STATES<sup>1</sup>

1 STATE	2 SYSTEM <sup>2</sup>	3 C/FR <sup>3</sup>	4 MINIMUM LIMITS	5 PIP BENEFITS FOR ADD-ON (AO)/NO- FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
AL	T	FR	20/40/10	N/A	N/A	N/A	N/A
AK	T	C	50/100/25	N/A	N/A	N/A	N/A
AZ	T	FR	15/30/10	N/A	N/A	N/A	N/A
AR <sup>a</sup>	AO	C	25/50/15	Purchase is optional. \$5,000/person for medical and hospital expenses. Wage loss: 70% of lost wages up to \$140/week, beginning 8 days after accident, up to 52 weeks. Essential services: up to \$70/week, subject to an 8-day waiting period. Death benefit: \$8,000.	N/A	Continues under tort system.	July 1, 1974.
CA	T	FR	15/30/5	N/A	N/A	N/A	N/A
GO <sup>b</sup>	NF	C	25/50/15	\$50,000 for medical expenses. \$50,000 for rehabilitation. Lost income: benefits for 100% of the first \$125/week, 70% of the next \$125, and 60% of the remainder up to \$400/week, limited to 52 weeks. Essential services: up to \$25/day for up to 52 weeks. Death benefit: \$1,000.	Cannot recover for noneconomic loss unless medical and rehabilitation services have reasonable value of more than \$2,500, or injury causes permanent disfigurement, permanent disability, dismemberment, loss of earnings for more than 52 weeks, or death.	Continues under tort system.	April 1, 1974. These provisions effective Jan. 1, 1985.
CT <sup>c</sup>	NF	C	20/40/10	\$5,000 benefits for medical, hospital, funeral (limit \$2,000), lost wages, survivor's loss, and substitute service expenses. Wage loss: substitute service, and survivor's benefits limited to 85% of actual loss.	Could not recover for noneconomic loss unless economic loss exceeded \$400, or permanent injury, bone fracture, disfigurement, dismemberment, or death resulted.	Continued under NF law and continues under tort system.	Jan. 1, 1973. Repealed July 1, 1993 (effective Jan. 1, 1994).

<sup>a</sup> Arkansas's death benefit was increased from \$5,000 in 1988.<sup>b</sup> Colorado's law was amended in 1991 to permit insurers to offer insureds the option of receiving medical and rehabilitation care through managed care organizations such as health maintenance organizations and preferred provider organizations.<sup>c</sup> See *supra* note c to tbl. 1.



1 STATE	2 SYSTEM <sup>2</sup>	3 C/FR <sup>3</sup>	4 MINIMUM LIMITS	5 PIP BENEFITS FOR ADD-ON (AO)/NO-FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
DE	AO	C	15/30/10	\$15,000/person and \$30,000/accident. Covers medical costs, loss of income, loss of services, and funeral expenses (limited to \$3,000.)	N/A, except that amount of no-fault benefits received cannot be used as evidence in suits for general damages.	Continues under tort system.	Jan. 1, 1972.
FL <sup>d</sup>	NF	FR	10/20/10 or at least \$30,000 for combined PD and BI liability	\$10,000/person. Pays 80% of medical costs, 60% of lost income, replacement services, and funeral costs (limited to \$5,000). Deductibles of \$250, \$500, \$1,000, and \$2,000 are available.	Cannot recover for noneconomic loss unless injury results in significant, permanent loss of important body function; permanent injury, significant and permanent scarring or disfigurement; or death.	Continues under tort system.	Jan. 1, 1972, for original law. These provisions effective Oct. 1, 1982.
GA <sup>c</sup>	NF	C	15/30/10	Aggregate limit of \$5,000. Up to \$2,500 for medical costs, 85% of lost income with maximum \$200/week. \$20/day for necessary services. Survivor's benefits same as lost income benefits had victim lived. \$1,500 funeral benefit.	Could not recover for noneconomic loss unless medical costs exceeded \$500; disability lasted 10 days; or injury resulted in death, fractured bone, permanent disfigurement, dismemberment, permanent loss of body function, permanent, partial or total loss of sight or hearing.	Continued under NF law and continues under tort system.	Mar. 1, 1975. Repealed Apr. 17, 1991 (effective Oct. 1, 1991).
HI <sup>f</sup>	NF	C	25/ unlimited/10	Aggregate limit of \$15,000. Pays for medical and hospital services; rehabilitation; occupational, psychiatric, and physical therapy; up to \$8,000 monthly for income loss; \$800/month or substitute services; and up to \$1,500 for funeral expenses.	Cannot recover for noneconomic loss unless medical and rehabilitation expenses exceed a floating threshold established annually by the insurance commissioner. Can also recover if injury results in death; significant, permanent loss of use of body part or function; or permanent and serious disfigurement that subjects injured person to mental or emotional suffering.	Continues under tort system.	Sept. 1, 1974.
ID	T	C	25/50/15	N/A	N/A	N/A	N/A
IL <sup>g</sup>	T	C	20/40/15	N/A	N/A	N/A	N/A

<sup>d</sup> Florida required \$5,000 of PD liability insurance in 1988. More important, Florida does not include under its financial responsibility law any obligation to buy BI liability insurance; only no-fault benefits are included.

<sup>e</sup> See *supra* note d to tbl. 1.

<sup>f</sup> Hawaii required \$35,000 in per person BI liability coverage in 1988. The 1973 law has been amended several times over the years. The current lawsuit threshold was adopted in 1992 and includes a fee schedule for medical care tied to provisions for fees and allowable doctor visits in the state's workers' compensation system.

<sup>g</sup> Illinois's minimum limits were 15/30/10 in 1988.

1 STATE	2 SYSTEM <sup>2</sup>	3 C/FR <sup>3</sup>	4 MINIMUM LIMITS	5 PIP BENEFITS FOR ADD-ON (AO)/NO- FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
IN	T	C	25/50/10	N/A	N/A	N/A	N/A
IA	T	FR	20/40/15	N/A	N/A	N/A	N/A
KS	NF	C	25/50/10	\$4,500/person for medical expenses. Wage loss: up to \$900/month for one year. \$4,500 for rehabilitation costs. Substitute service benefits of \$25/day for 365 days. Survivor's benefits: up to \$900/month for lost income, \$25/day for substitution benefits, for not over one year after death, minus any disability benefits victim received before death. Funeral benefit: \$2,000.	Cannot recover for noneconomic loss unless medical costs exceed \$2,000, or injury results in permanent disfigurement; fracture to a weight-bearing bone; a compound, comminuted (i.e., pulverized), displaced, or compressed fracture; loss of a body member; permanent injury; permanent loss of a body function; or death.	Continues under tort system.	Original law adopted Jan. 1, 1974. These provisions effective 1987.
KY <sup>h</sup>	NF	C	25/50/10 or single limits liability coverage of \$60,000 for all damages	Aggregate limit of \$10,000. Covers medical expenses; funeral expenses up to \$1,000; income loss up to \$200 weekly, with as much as 15% deducted for income tax savings; up to \$200/week each for replacement services loss, survivor's economic loss, and survivor's replacement services loss. Motorist has right to reject no-fault.	Cannot recover for noneconomic loss unless medical expenses exceed \$1,000, or injury results in permanent disfigurement; fracture of a bone; a compound, comminuted (i.e., pulverized), displaced, or compressed fracture; loss of a body member; permanent injury; permanent loss of a body function; or death. But limitation does not apply to those who reject no-fault system or to those injured by driver who has rejected it.	Continues under tort system.	July 1, 1975.
LA	T	C	10/20/10	N/A	N/A	N/A	N/A
ME	T	C	20/40/10	N/A	N/A	N/A	N/A
MD	AO	C	20/40/10	\$2,500 in benefits for medical, hospital, funeral, wage loss, and substitute service expenses.	N/A	Continues under tort system.	Jan. 1, 1973.

<sup>h</sup> Kentucky's minimum limits were 10/20/5 in 1988.

1 STATE	2 SYSTEM <sup>2</sup>	3 C/FR <sup>3</sup>	4 MINIMUM LIMITS	5 PIP BENEFITS FOR ADD-ON (AO)/NO- FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
MA <sup>1</sup>	NF	C	20/40/5	\$8,000 in benefits for medical, funeral, wage loss, and substitute service expenses. Wage loss and substitute service benefits are limited to 75% of actual loss.	Cannot recover for noneconomic loss unless medical costs exceed \$2,000, or in case of death, loss of all or part of body member, permanent and serious disfigurement, loss of sight or hearing, or a fracture.	Continues under tort system after Jan. 1, 1977. Prior to that date, no tort liability for vehicle damage.	Jan. 1, 1971 for original law. These provisions effective Jan. 1, 1989.
MI	NF	C	20/40/10	Medical and hospital expense benefits with no dollar limits; \$1,475/month, adjusted annually by insurance commissioner for up to 3 years. Replacement services up to \$20/day for up to three years; funeral expense benefits of not less than \$1,750 or more than \$5,000.	Cannot recover for noneconomic loss unless injury results in death; serious impairment of a body function; or permanent, serious disfigurement.	Cannot recover unless damage is less than \$400.	Oct. 1, 1973.
MN	NF	C	30/60/10	\$20,000 for medical expenses; \$20,000 for other benefits, including 85% of lost income up to \$250 weekly; \$200/week for replacement services; with 8-day waiting period; up to \$200 weekly for survivor's replacement service loss; and \$2,000 for funeral benefits.	Cannot recover for noneconomic loss unless medical expenses (not including x-rays and rehabilitation) exceed \$4,000; or disability exceeds 60 days; or the injury results in permanent disfigurement, permanent injury, or death.	Continues under tort system.	Jan. 1, 1975.
MS	T	FR	10/20/5	N/A	N/A	N/A	N/A
MO	T	C	25/50/10	N/A	N/A	N/A	N/A
MT <sup>1</sup>	T	C	25/50/10	N/A	N/A	N/A	N/A
NE	T	C	25/50/25	N/A	N/A	N/A	N/A
NV	NF	C	15/30/10	Aggregate limit was \$10,000. Paid for medical and rehabilitation expenses, up to \$175/week for loss of income, up to \$18/day for 104 weeks for replacement services, survivor's benefits of not less than \$5,000 and not more than victim would have received in disability benefits for 1 year, and \$1,000 for death.	Cannot recover for noneconomic loss unless medical benefits exceeded \$750 or injury caused chronic or permanent injury, permanent partial or permanent total disability, disfigurement, more than 180 days of inability to work at occupation, fracture of a major bone, dismemberment, permanent loss of a body function, or death.	Continues under tort system.	Feb. 1, 1974. Repealed June 5, 1979 (effective Jan 1, 1980).
NH	T	FR	25/50/25	N/A	N/A	N/A	N/A

<sup>i</sup> See *supra* note e to tbl. 1 for recent changes. Massachusetts's minimum limits were 10/20/5 in 1988.

<sup>j</sup> Montana's PD liability insurance minimum limit was \$5,000 in 1988.

1 STATE	2 SYSTEM <sup>2</sup>	3 C/PR <sup>3</sup>	4 MINIMUM LIMITS <sup>4</sup>	5 PIP BENEFITS FOR ADD-ON (AO)/NO-FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
NJ <sup>k</sup>	NF	C	15/30/5	Up to \$250,000 for medical and hospital costs, subject to a \$250 deductible and 20% co-insurance between \$250 and \$5,000. Wage loss up to \$100/week for one year. Substitute services up to \$12/day for maximum of \$4,380/person. Funeral expenses of \$1,000. Survivor's benefits equal to amount victim would have received if he had not died. Motorist may exclude all benefits except medical and hospital. Medical coverage may be bought with deductibles of \$500, \$1,000, or \$2,500.	Motorist selects one of these two options: (1) Will be able to claim for any noneconomic loss as result of motor vehicle accident. (2) Will not be able to claim for noneconomic loss unless one suffers death, dismemberment, permanent loss or use of body organ, member, function or system, permanent consequential limitation of use of a body organ or member, significant limitation of use of body function or system, non-permanent impairment that disables victim for at least 90 of the 180 days following injury. Motorist choosing second option pay a lower insurance premium.	Continues under tort system.	Jan. 1, 1973 for original law. These provisions effective Jan. 1, 1991.
NM	T	C	25/50/10	N/A	N/A	N/A	N/A
NY <sup>l</sup>	NF	C	25/50/10	Aggregate limit of \$50,000 for medical, wage loss, and substitute service benefits. Wage loss: 80% of actual loss with benefit limited to \$2,000/month. Substitute services benefits: \$25/day for one year. In fatal cases, estate gets \$2,000 in addition to above benefits.	Cannot recover for noneconomic loss unless disabled for 90 of the 180 days after accident or injury causes dismemberment, significant disfigurement; fracture; loss of a fetus; permanent loss of use of body organ, member, function, or system; permanent consequential limitation of use of body organ or member; significant limitation of use of body function or system; or death.	Continues under tort system.	Feb. 1, 1974.
NC <sup>m</sup>	T	C	25/50/15	N/A	N/A	N/A	N/A
ND <sup>n</sup>	NF	C	25/50/25	Overall limit of \$30,000/person. Covers medical and rehabilitation costs, up to \$150/week for income loss, up to \$15/day for replacement services, up to \$150/week for survivor's income loss, up to \$15/day for survivor's replacement services loss, and up to \$3,500 for funeral expenses.	Cannot recover for noneconomic loss unless injury results in more than \$2,500 in medical expenses, more than 60 days of disability, serious and permanent disfigurement, dismemberment, or death.	Continues under tort system.	Jan. 1, 1976. This version effective 1991.

<sup>k</sup> See *supra* note g to tbl. 1.  
<sup>l</sup> See *supra* note h to tbl. 1 (discussing recent changes in New York).  
<sup>m</sup> North Carolina's minimum PD liability insurance limit was \$10,000 in 1988.  
<sup>n</sup> North Dakota's limit on funeral expenses was \$1,000 in 1988.

1 STATE	2 SYSTEM <sup>2</sup>	3 C/FR <sup>3</sup>	4 MINIMUM LIMITS	5 PIP BENEFITS FOR ADD-ON (AO)/NO- FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
OH	T	C	12.5/25/7.5	N/A	N/A	N/A	N/A
OK	T	C	10/20/10	N/A	N/A	N/A	N/A
OR	AO	C	25/50/10	\$10,000 medical benefits; 70% of lost wages up to \$1,250/month, \$30/day for substitute services; \$15/day for child care, to maximum of \$450; wage loss and substitute services paid from first day if disability lasts 14 days, limited to 52 weeks.	N/A	Continues under tort system.	Jan. 1, 1972 for original law. These provisions effective Jan. 1, 1990.
PA <sup>o</sup>	AO	C	15/30/5	\$5,000 for medical expenses. Optional coverages are available up to \$177,500, including income loss benefits, accidental death benefits, and funeral benefits, in addition to medical benefits. An extraordinary medical benefit coverage up to \$1.1 million is available.	Motorist chooses between a full tort option, with no limit on noneconomic loss, and a limited tort option. Those choosing the limited tort option cannot recover for noneconomic loss unless injury results in serious impairment of body function; permanent, serious disfigurement; or death. Motorists choosing limited tort option pay a lower insurance premium.	Continues under tort system.	July 1, 1990.
RI <sup>p</sup>	T	C	25/50/25 or \$75,000 combined single unit	N/A	N/A	N/A	N/A
SC	AO	C	15/30/5	N/A	N/A	N/A	July 1, 1987.
SD	AO	C	25/50/25	Purchase is optional. \$2,000 in medical expenses. \$60/week for wage loss, starting 14 days after injury, for up to 52 weeks. \$10,000 death benefit.	N/A	Continues under tort system.	Jan. 1, 1972.

<sup>o</sup> See *supra* note i to tbl. 1.

<sup>p</sup> Rhode Island's minimum PD liability insurance limit was \$10,000 in 1988.

1 STATE	2 SYSTEM <sup>2</sup>	3 C/FR <sup>3</sup>	4 MINIMUM LIMITS	5 PIP BENEFITS FOR ADD-ON (AO)/NO- FAULT (NF) STATES	6 TORT THRESHOLD IN NF STATES	7 CAR DAMAGE	8 EFFECTIVE DATE OF AO/NF LAW
TN <sup>4</sup>	T	FR	25/50/10	N/A	N/A	N/A	N/A
TX	AO	C	20/40/15	\$2,500/person overall limit. Covers medical and funeral expenses, lost income, and loss of services. Purchase optional.	N/A	Continues under tort system.	90 days after adjournment of 1973 regular session.
UT <sup>5</sup>	NF	FR	25/50/15 or single limit of \$65,000	\$3,000/person for medical and hospital expenses. 85% of gross income loss, up to \$250/a week, for up to 52 weeks. \$20/ day for loss of services for up to 365 days. Both wage loss and service loss coverages subject to 3-day waiting periods that disappear if disability lasts longer than two weeks. \$1,500 funeral benefit. \$3,000 survivor's benefit.	Cannot recover for noneconomic loss unless medical expenses exceed \$3,000, or injury results in dismemberment or fracture, permanent disfigurement, permanent disability, permanent impairment, or death.	Continues under tort system.	Jan. 1, 1974. These provisions effective July 1, 1986.
VT	T	C	20/40/10	N/A	N/A	N/A	N/A
VA <sup>3</sup>	AO	C	25/50/20	Purchase is optional. \$2,000 for medical and funeral costs. \$100/week for wage loss with limit of 52 weeks.	N/A	Continues under tort system.	July 1, 1972.
WA	AO	C	25/50/10	Purchase is optional. Up to \$35,000 in medical benefits, up to \$35,000 in benefits for lost income, up to \$5,000 in loss of service benefits, and \$2,000 for funeral expenses.	N/A	Continues under tort system.	July 1, 1994 for original law. These provisions effective July 1, 1994.
WV	T	C	20/40/10	N/A	N/A	N/A	N/A
WI	T	FR	25/50/10	N/A	N/A	N/A	N/A
WY	T	C	25/50/20	N/A	N/A	N/A	N/A

<sup>4</sup> Tennessee's minimum per accident BI liability insurance limit was \$40,000 in 1988.

<sup>5</sup> Utah's minimum limits were 20/40/10 in 1988.

<sup>3</sup> Virginia's minimum PD liability insurance limit was \$10,000 in 1988.

## NOTES TO APPENDIX C

1. This Appendix was developed by Jeffrey O'Connell and Paul Jamieson. It was compiled with the permission of and is based on data and descriptions in STATE FARM INS. COS., NO-FAULT REFERENCE MANUAL E-101 to E-106 (Robert Sasser ed., 1995) [hereinafter STATE FARM MANUAL], AMERICAN INS. ASS'N, SUMMARY OF SELECTED STATE LAWS AND REGULATIONS RELATING TO AUTOMOBILE INSURANCE 16, 20-34 (1988) [hereinafter AIA-1988], and AMERICAN INS. ASS'N, SUMMARY OF SELECTED STATE LAWS AND REGULATIONS RELATING TO AUTOMOBILE INSURANCE 22-32 (1995) [hereinafter AIA-1995]. Specifically, information in columns 5-8 is taken from STATE FARM MANUAL, *supra*, while the figures in column 4 are taken from AIA-1988 and AIA-1995, *supra*. This Appendix is based on current law, while the data in Tables 1-3, *supra* main text, are based on laws in effect January 1, 1988. For information on how and when RAND calculated its data, see *supra* main text at notes 58-63 and accompanying text. For substantive changes to no-fault laws since 1988 in Connecticut, Georgia, Massachusetts, Nevada, New Jersey, New York, and Pennsylvania, see notes accompanying tbl. 1, *supra*. These changes, as well as less significant changes between 1988 and 1995, have been noted in notes a-t to this Appendix. For more detailed descriptions of all changes, including some not noted here, see STATE FARM MANUAL, *supra*. See also ROBERT H. JOOST, AUTOMOBILE INSURANCE AND NO-FAULT LAW (Supp. 1994 & forthcoming 1995).
2. "T" designates states with tort laws currently in effect; "NF" designates no-fault states; "AO" designates add-on states. For definitions of these terms, see *supra* main text at note 4.
3. "C" and "FR" designate whether the state has compulsory or financial responsibility minimum requirements. Compulsory insurance means "[i]nsurance required by law. Under compulsory tort liability insurance legislation, for instance, such insurance is a prerequisite to registration of the automobile, which in turn is a prerequisite to its legal operation." ROBERT E. KEETON & JEFFREY O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 573 (1965). Financial responsibility laws mean  

[l]egislation requiring a driver convicted of a serious driving violation or involved in an accident causing specified results (for example, personal injury or property damage above a statutory minimum) to post "security" (usually in the form of a certificate of insurance) in a designated amount against any liability arising from a past accident

invoking the law, and "proof" (also usually in the form of a certificate of insurance) of financial ability to meet obligations arising from future accidents. More inclusive definitions sometimes cover on the one hand compulsory insurance legislation and on the other hand legislation requiring less demonstration of financial responsibility than that incident to furnishing both "proof" (as to future accidents) and "security" (as to a past accident).

*Id.* at 577; *see also, e.g.*, U.S. CHAMBER OF COMMERCE, DICTIONARY OF INSURANCE TERMS 26 (1949).

4. The first number denotes the minimum dollar amount of per person Bodily Injury (BI) liability insurance required; the second number denotes the minimum dollar amount of per accident BI liability insurance required (*but see supra* note d); the third number denotes the minimum dollar amount of Property Damage (PD) liability insurance required (all numbers denote dollars in thousands). These limits reflect the status of the laws as of November 11, 1994.