

Reply To "The Case For Compulsory Automobile Compensation Insurance"

MR. McVAY

Robert S. Marx, in his article, "*Compensation Insurance for Automobile Accident Victims*", advocates the adoption of compulsory compensation insurance for the victims of automobile accidents, regardless of fault. He says, "This insurance is proposed as a substitute for the present system of liability insurance which has proved costly, unworkable, and inequitable, and leaves an overwhelming sum of uncompensated damages and injuries to be borne by automobile accident victims." This is typical of statements that are made by the advocates of the abandonment of the present system of common law liability. It is not borne out by the facts given in Mr. Marx' paper. The writer has never seen any authority anywhere to substantiate this statement or to show that there is any justification for the claim that any social or economic problem exists which would justify a program so drastic as the one suggested by Mr. Marx. Some years ago, an effort was made in the State of California by a questionnaire submitted to all the members of the California Bar and by investigation through police officials, hospitals, and welfare agencies, to learn if the extravagant statements relative to uncompensated accident victims were true and the legislature was unable to develop any evidence of any appreciable number of persons who had become the objects of public charity as a result of automobile accidents. Recently, extensive efforts were made in the State of New York to establish this claim as a fact, but again no substantial number of cases was uncovered to support the contention.

In his Paragraph I under the heading **THE NEED**, Mr. Marx states, "There have been countless hundreds of millions of injuries since Henry Ford's automobile revolutionized modern travel." Well! It is safe to say that no more than 225,000,000 separate individuals have lived in the continental United States during the past fifty years.¹

He states that in Ohio alone, there were 70,000 personal injuries resulting from automobile accidents in 1953. There were 2,030 deaths and 65,000 injuries. In Ohio, there are approximately 3,200,000 motor vehicles. It is therefore apparent that not more than 2 per cent of these automobiles were involved in accidents

¹ Vital statistics, p. 305, population of Continental United States, pp. 258 and 261. **THE WORLD ALMANAC FOR 1954** published by the New York World Telegram.

during the past year. It is apparent from Mr. Marx' paper that most of the persons injured in these accidents were compensated. At another place in his paper, he states that a fund of \$39,130,000 would provide compensation for each injury and death arising out of automobile accidents on the same basis as Workmen's Compensation now paid in the states of Ohio and Illinois. He further states that the liability insurance companies paid out in this same period to liability claimants, the sum of \$24,505,363, but that this figure does not include losses incurred and pending under existing liability claims. Thus, he completely proves that there is no justification for the statement that the liability system "leaves an overwhelming sum of uncompensated damages" and completely refutes the claim that a vast social and economic problem exists as a result of automobile accidents.

The automobile liability insurance business has been built up over long years. It represents the accumulation of a vast reservoir of capital to meet the needs of 60,000,000 automobile owners and drivers for liability insurance protection. It has been constantly broadening and improving its service. It employs thousands of trained underwriters, agents, claims representatives, lawyers, statisticians, accountants and other employees. The system has contributed widely and effectively in the promotion of safety. It is a system that tends, under present laws, to drive the reckless and irresponsible driver from the highway. Mr. Marx would do away with it and substitute instead, a system of compensation that would relieve automobile drivers from any real responsibility, and which would provide inadequate compensation in serious cases or result in costs so high as to be a prohibitive burden on the average motorist.

He proposes compulsory compensation insurance as a substitute for the present system of liability insurance, but states in Item VII that, "The writer feels that the personal injury suit should be abolished with a possible exception in cases dealing with willful, wanton, or criminal misconduct." Of course, it is obvious that if such an exception were made, responsible people would still have to continue to protect themselves against claims of willful, wanton misconduct.

The philosophy of this proposed idea is that persons injured in automobile accidents or the dependents of those killed, should be compensated regardless of fault on the part of the driver or injured person; otherwise they become a charge on society; that because of the number injured and uncompensated, a social problem exists which can no longer go unsolved; and that the responsible person must be compelled by law to provide a fund for those who have not provided for themselves. Those who have provided accident insurance for themselves and financial responsibility in

the event an accident should be the result of their fault, must be compelled by law to provide financial protection for those who are injured as a result of their own negligence and who have also failed to provide accident insurance for themselves. There is nothing to prevent a man from purchasing accident insurance for his own financial protection, but if he does not see fit to do so, the Marx Plan would compel others to provide this protection for him. Otherwise, he might become a burden on society and the aggregate of such cases creates a social problem which should be borne by all motorists because the persons who have become a burden on society were made so, by being injured in an automobile accident.

Another reason given in support of the idea is that the present liability system should be abandoned because any person who obtains a judgment against another on account of injuries arising out of an automobile accident which cannot be satisfied has been denied justice. If this is true, it would seem to follow that justice is denied in all cases where a judgment cannot be satisfied in any case arising out of personal tort, breach of contract, or other action resulting in financial loss.

Judge Marx cites the crowded court dockets in the cities of New York and Chicago as evidence of the delay in the disposition of automobile liability cases. Of course, no such condition exists in the state of Ohio. It is conceded that the New York situation is unique. Presiding Justice David W. Peck of the Appellate Division, First Department of the State of New York, in an address delivered at the annual dinner of the New York City Lawyer's Association on December 10, 1953, discussed this question. After stating that 12 per cent of all personal injury claims for the entire United States arise in the City of New York and that 36 per cent of all the personal injury law suits in the United States are filed in that city, he had the following to say about court congestion:

"The net result in figures for the Supreme Court of New York County is that we have cut the backlog of cases awaiting trial in more than half; the intake of new cases has likewise been cut in half and dispositions exceed intake so that the delay between the time of institution of the action and trial is gradually but definitely being reduced. And now even in the field of personal injury litigation, the only field in which there is any delay at all, prompt trials can be had for the asking by waiving and trying the cases before a judge without a jury. Thus, the only delay which exists anymore is the jury trial of personal injury actions wherein the plaintiff's lawyer insists upon a jury. Delay exists only in those cases where for one reason or another a plaintiff's lawyer prefers a jury trial to a prompt trial."

Judge Marx would apply the principle of workmen's compensa-

tion insurance to the automobile problem. The two problems are basically different. Workmen's compensation applies to a group of people in an employer-employee relationship, working in a limited area, over which the employer has absolute control. In a large sense, they are working in a common enterprise where they have a common interest to reduce and, if possible, eliminate accidents, and where because of the relationship, it became the policy of the state to take the matter of compensation out of the field of litigation between the employer and his employee. It is a charge on the industry, a part of the cost of the industry's operations, and which is ultimately borne by the consuming public. The system applies to persons earning wages and is inherent in the contract of employment.

Mr. Marx has pointed with satisfaction to the example of compulsory compensation in Saskatchewan and has suggested that, if no better compensation plan can be worked out for Ohio, the Saskatchewan Plan will do. It would be well to analyze carefully the details of the Plan, its so-called "success" in Saskatchewan, and the probable results if Ohio were to adopt the same plan.²

The most important feature of Saskatchewan compulsory insurance is accident compensation, regardless of fault. The most striking thing about the compensation schedule is that the benefits are so low as to make it very questionable that they afford any permanent help to the victim.

Inasmuch as the Saskatchewan benefit schedule is so low, Mr. Marx would have us use the Saskatchewan plan, but with the schedule of benefits provided by Ohio workmen's compensation. A detailed comparison cannot be made in these pages, but it is accurate to say that the Ohio Compensation Law provides from two to four times the benefits that the Saskatchewan Plan sets up. This, Mr. Marx believes can be done with a premium of roughly \$19, which is less than the present Saskatchewan premium! For the sake of comparison, let us transplant the Saskatchewan picture to Ohio.

First of all, to have an equal area, we would have to take the states of Illinois, Indiana, Ohio, Pennsylvania, Kentucky, West Virginia, and part of Maryland. The population, a little under 900,000, would be comparable if we scattered the residents of Cleveland throughout the vast area. Springfield or Lakewood, Ohio, could serve as capital of the state, for each has a population about the same as the largest city in Saskatchewan — Regina — population 71,000. There would be one other city of 50,000 and six more rang-

² Saskatchewan compulsory, sold only by the Saskatchewan Government Insurance Office, gives accident compensation, \$10,000/\$20,000 bodily injury, \$2,000 property damage with a \$200 deductible and \$200 deductible fire, theft, and collision.

ing from 6,000 to 24,000, but Chicago, Cleveland, Philadelphia, and all the other great metropolitan areas would have to be eliminated.

The number of vehicles traveling in this vast, thinly-populated area would be approximately 125,000 to 150,000 and perhaps 25 or 30 per cent of them would be at least 20 years old. They would travel on 9,000 or 10,000 miles of roads. The climate would be such that only 42 per cent of the roads would be open all winter — the others being impassable up to five months during the year.

But we are dealing with Ohio as it is. We have seven times the population living in 1/6 the amount of space, and we have many metropolitan areas. We have 20 to 25 times as many vehicles, most of them new and late models with increased horsepower and speed. There are many more miles of highways. They are constructed for speed and most of them are open 365 days out of the year.

With this comparison, and keeping in mind the fact that Mr. Marx wants to increase the Saskatchewan benefits by two to four times, it would seem obvious to all but the most wishful thinkers that the cost to private industry or to a State Fund (and eventually to the individual motorist) would be far greater than the cost of insurance today and a real financial burden for the average automobile owner.³

Lest the reader misunderstand concerning the Saskatchewan picture, it should be pointed out that the Saskatchewan public, press, and even certain of the government servants directly concerned with the compulsory insurance fund are far from convinced that the plan is good for Saskatchewan. In 1949, the state of North Dakota investigated the Saskatchewan Plan thoroughly, and, in the course of its inquiry, the North Dakota Committee talked informally with residents of Saskatchewan, government servants, garage repairmen, and others. It reported that the general public was not completely sold on the idea and that even some members of the Socialistic CCF party which introduced the Plan concede that they may have gone too far. They apparently realize that government always has great difficulty in managing competently, a business of this nature.⁴

Many Saskatchewan motorists apparently feel the need of ad-

³This picture is not brightened when we consider the fact that, under the Marx Plan even the drunk who runs into a tree is to be compensated, along with all others who injure themselves wholly or partially through their own negligence.

⁴See 1950 REPORT ON AUTOMOBILE LIABILITY INSURANCE by Legislative Research Committee of North Dakota, p. 43 *et seq.* Note also on pages 41 and 42 that the report states that there appeared, inevitably, political pressures upon the insurance fund to give favorable loss settlement treatment to some fortunates with friends in high places.

ditional insurance protection, not only for the elimination of the deductible feature of the property damage, fire, theft, and collision coverages, but also to raise their bodily injury and property damage limits. Here and only here are private carriers allowed to compete with the government. Apparently the competition has been effective, for private insurers have written increasing amounts in Saskatchewan each year since compulsory insurance was adopted.

In 1953 the rates for Saskatchewan compulsory insurance were increased by percentages ranging up to 100 per cent and early in 1954 another increase of up to 50 per cent was superimposed! At that time the deductible for the fire, theft, collision and property damage coverages was increased from \$100 to \$200. Despite this, and despite the fact that the fund furnishes meager benefits for a population of less than 1,000,000 people, it was reported to have a deficit of \$1,600,000 as of April 1, 1953!⁵

With the various raises in premium a typical Saskatchewan motorist pays \$20 for his compulsory insurance.⁶ On Friday, March 5, 1954, the Regina, Saskatchewan, Leader-Post printed an editorial analyzing the Fund and comparing the rates paid in Saskatchewan with those in neighboring Manitoba, which has private insurance, a financial responsibility law, an impounding law, and an unsatisfied judgment fund. The conclusions reached were that private industry in Manitoba was giving as much or more for the premium dollar, despite the fact that the Saskatchewan Fund has a monopoly on insurance and pays practically nothing for acquisition cost.⁷

There are important constitutional questions involved in the proposal of Mr. Marx. It is one thing to require of a motorist as a condition precedent to his right to drive, that he be financially responsible for accidents that arise as a result of his wrongful use of his automobile. It may seriously be questioned whether the state has the authority to require him to provide insurance for the victims of automobile accidents for which he is not responsible, legally, or morally.

The careful motorist is to have his common law defenses taken away from him and is to be asked to underwrite compensation for the careless and irresponsible. He is to be liable without fault to the driver who comes through a stop sign and hits him, as well as to the driver whom he injures through his own negligence.

⁵ THE NATIONAL UNDERWRITER, Number 8, p. 1.

⁶ This is an average premium for a car five or six years old. The cost for late model cars is, of course, higher.

⁷ The Saskatchewan Fund pays 10 cents per policy to the person issuing the driver's license. See NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE REPORT, *supra* note 4 p. 29.

Under the Ohio workmen's compensation system, the employer, in return for contributing to a compensation fund, is relieved of common law employer's liability, and instead of unlimited liability pays according to a fixed and limited schedule. Under the Saskatchewan Plan, and under the Marx Plan as modified,⁸ the careful motorist must not only underwrite the careless motorist or pedestrian, but also has exposure for common law negligence for willful or wanton misconduct, with unlimited liability. Since the constitutionality of workmen's compensation was partially justified on an exchange of benefits theory⁹ the careful motorist would have a very persuasive argument that an automobile compensation fund deprives him of his property without due process of law.¹⁰

Plans of this nature lead inevitably to participation by the state. Private industry would, of course, attempt to do the job thrust upon it. Despite a dangerous relaxation of underwriting practices and despite as comprehensive an assigned risk plan as could be devised, private industry would find it necessary to refuse insurance to some reckless and irresponsible drivers, thus raising a hue and cry for state participation. If a state agency controlled and set the rates, the Massachusetts experience shows that private carriers would have to operate at a loss or cease writing. In either case, the state would enter the field and have the choice of operating at a deficit, charging excessive rates, or reducing the benefits in order to remain solvent. It was necessary to amend the Constitution of Ohio to authorize the state to write workmen's compensation.

Mr. Marx objects to the argument that the plan is socialistic or will lead to state socialism. In Massachusetts in 1930, a compulsory compensation fund was proposed and almost adopted. Only a strong opinion of the supreme court of that state to the effect that such a law would be unconstitutional, prevented this from happening. The court had several grounds for its decision, the most important being that the state fund would eventually become a monopoly, forcing competitive insurance out of the motor vehicle field, and depriving individuals of the freedom to choose as to their insurance. The court specifically held that the broad police

⁸ See Item VII of Judge Marx' article in which he proposes to retain liability for wilful and wanton misconduct.

⁹ *Mountain Timber Co. v. State of Washington*, 243 U.S. 219 (1917). The court states "it is evident that the employer's exemption from liability to private action is an essential part of the legislative scheme and the quid pro quo for the burdens imposed upon him." See also *New York Central v. White*, 243 U.S. 188 (1917).

¹⁰ Consider also that whereas the employer has a continuing opportunity to improve his safety record and thereby lower his premium, the average motorist has little, if any, opportunity to do so.

power of the state was not sufficient justification for the creation of this monopoly.¹¹ This opinion is so strong and well-reasoned that one wonders whether an amendment, curing the constitutionality as to Ohio, would be sufficient in regard to the due process clause of the XIV Amendment to our Federal Constitution.

The Saskatchewan Plan was promulgated by a political party known as the CCF. The description of the North Dakota Commission states:

"The present insurance program in Saskatchewan was not initiated until the CCF (Co-Operative Commonwealth Federation) gained the balance of power politically in 1944. The CCF started as an agrarian movement, which, in 1932, united with labor groups supporting Socialist principles, into a new political party which retained the CCF designation. Without attempting to enumerate all the principles to which this party subscribes, the Committee was told by one of its leaders that it includes the view that the Government should own and control the principal elements of transportation, power, communication and finance, including insurance. There is no apparent allergy to making a profit on any Government enterprise but a strong conviction that any such profit should be used by the Government to further, and support its activities."¹²

In addition, the 1947 Report of the Saskatchewan Government Insurance Office, states concerning compulsory insurance:

"It is a sound socialistic principle that when the state creates a compulsory market the state itself should undertake to supply the market."

The Marx Plan would raise squarely the issue of just how much socialism is permitted under our state and federal constitutions.

The prohibitive cost of the plan in Ohio should be further considered. In the study made by the Legislative Research Committee of North Dakota, a professional actuary made a detailed analysis of the Saskatchewan Plan and attempted to project it to the highway and motor vehicle picture in North Dakota. His conclusion was that the minimum compulsory package would cost almost twice as much in North Dakota as in Saskatchewan, if operated by a state fund with little or no acquisition cost. If private industry were given the job and allowed the usual loading for acquisition and other costs of administration, the rates would be

¹¹ In re Opinion of the Justices, 271 Mass. 582, 171 N.E. 294 (1930). The court also pointed out that some of the expenses to support the fund were to come from the general tax fund of the state, another conclusive constitutional objection.

¹² NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE REPORT, *supra*, note 4 p. 23.

from two to three times those of Saskatchewan.¹³ This conclusion came from a professional actuary, not from figures showing that Illinois pays \$559 for workmen's compensation auto accidents, multiplied and divided by other "assumed" figures.

If North Dakota would have to double or triple the Saskatchewan rates, what would Ohio have to do to provide protection for its billions of car-miles traveled, its numerous metropolitan areas with daily traffic and accident exposure never seen in either Saskatchewan or North Dakota, its miles of hilly, curving, yet heavily-traveled rural highways? Consider further that the Saskatchewan Law provides that its compulsory bodily injury insurance shall be excess over other insurance which the insured may have taken out with a private carrier. It is estimated that this feature alone saves the Fund from \$25,000 to \$400,000 per year.¹⁴ Also, the very small cost of acquisition, 10 cents per license issued,¹⁵ should make for a substantial saving, but the attempt to provide compensation for all apparently has eaten up this and other savings. Finally, it should be pointed out again that Mr. Marx proposes to use the Ohio Workmen's Compensation table of benefits and thus to furnish benefits several times those in Saskatchewan. No one can say with assurance, but based on the factors mentioned herein, the writer would estimate that the cost of Mr. Marx' plan, whether underwritten by private industry, the state, or both, would be two or three times that of the present day insurance policy, and perhaps closer to five or six times that cost.

The only justification for such a program in a society based on the principles of private enterprise and individual responsibility is that there has been a complete breakdown of the system in meeting a great and compelling social need. The overwhelming majority of the American people are now protected by life insurance in substantial amounts. There is workmen's compensation. Millions of Americans are now carrying accident insurance for their own protection. It is apparent that most persons injured in au-

¹³ NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE REPORT, *supra*, note 4 p. 57. The committee, after careful consideration, flatly rejected the Saskatchewan Plan. The same conclusion was reached by the New York City Bar Association. See: *Financially Irresponsible Motorists*, Committee on Insurance Law, Association of the Bar of the City of New York, INSURANCE LAW JOURNAL, Number 361, p. 66 (Feb. 1953).

¹⁴ NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE REPORT, *supra*, note 4 p. 31.

¹⁵ The insured is issued no policy whatsoever, and knows little about his protection unless he has studied the fund law. Thus, many insureds settle for much less than they are entitled to. It has been charged that some government adjusters are somewhat sharp in dealing with their insureds. NORTH DAKOTA LEGISLATIVE RESEARCH COMMITTEE REPORT, *supra*, note 4, pp. 40 and 41.

tomobile accidents in Ohio are receiving compensation under the system of voluntary liability insurance. A resolution of the Federal Trade Commission adopted December 15, 1953, states "That today, 91,500,000 people in the United States have some form of hospital expense protection; 73,000,000 some form of surgical protection, and nearly 36,000,000 some form of medical expense protection." The people and the insurance industry are meeting in their own way and voluntarily, the problem of their own protection.

If there is a social problem it is not confined to automobile accidents. Mr. Marx calls this the "bathtub" argument. He says, "A fall in a bathtub is an isolated event — it is not a social problem." The fact remains that while there were 2,030 people killed on our highways in 1953, there were 1,780 deaths in the home. While there were 65,000 people injured in automobile accidents in Ohio in 1953, more than 250,000 were injured in the home.¹⁶

While people generally are conscious of the injury and death from automobile accidents, it is apparent that death and injury in the home and in other places present a much greater social and economic problem than that created by the automobile.

Mr. Marx states that, "The traffic accident is an inevitable result and a by-product of motor-minded American progress;" but accidents do not have to be inevitable and something can be done about it as has been demonstrated over and over again. In Jacksonville, Florida, a traffic engineer spent \$255 changing a dangerous intersection. As a result, accidents and injuries were reduced by 75 per cent. Safety programs and aroused public interest and law enforcement can bring about amazing improvements. Saratoga Springs, New York, a city of 16,000 population reduced traffic deaths from 12 to 2 in one year. Shaker Heights, Ohio reduced injuries by almost two-thirds and eliminated deaths entirely in less than four years. Belmont, Massachusetts, with a population of 30,000 went 2,687 consecutive days without a traffic death, while Evanston, Illinois, population almost 100,000 had a similar record from July 12, 1951 to March 29, 1953. St. Joseph, Missouri, has had a program for twenty years, during which time it has reduced deaths by 75 per cent and during this twenty-year period no child has been killed going to or from school. In great cities like Detroit and Los Angeles, deaths have been cut almost in half.

¹⁶ Source: OHIO STATE SAFETY COUNCIL STATISTICS FOR OHIO, 1953. The nationwide rates are comparable. The National Safety Council reports that in 1953 there were 96,000 deaths, 38,000 on our highways, 16,500 public non-motor vehicle, 29,000 in the home, and 15,000 occupational. Of the 9,600,000 non-fatal injuries, 1,350,000 took place on the highways, 2,050,000 were public non-motor vehicle, 2,000,000 were occupational, and 4,300,000 were classified as home injuries. THE WORLD ALMANAC FOR 1954, p. 306.

The same result is possible of accomplishment on the roads and highways outside municipalities. A short stretch of heavily traveled highway was the scene of some 25 to 30 accidents per month early in 1946. Many of these accidents resulted in fatalities. The Ohio State Highway Patrol was requested to give concentrated attention to this area. The road was much more heavily patrolled, warnings were given and arrests made. The number of accidents immediately dropped 80 per cent and deaths stopped for a period of eight or nine months, until two persons were killed while driving a stolen vehicle. In 1953, the number of accidents was between 80 and 90 per cent below the average for early 1946 and there were only eight personal injuries and one fatality for the entire year of 1953.

We shall never be able to completely eliminate accidents on the highways, in industry, in the home, and elsewhere, but they can be reduced and held to a minimum through programs of safety engineering, education, and law enforcement. This is the only real solution to the social, economic, and financial loss that follows as a result of injury and death by accident.