

# The Case Against Compulsory Automobile Insurance

C. D. McVAY\*

With the coming of the automobile, there arose a need for a type of insurance that would protect both the owner and operator from loss by reason of the legal liability arising out of the use of their cars. The automobile liability insurance policy was provided by the private insurance industry to meet this need. With the growth of automobile production and the almost universal use of motor vehicles, the private insurance industry has kept pace. Its policies have been broadened and liberalized. Its services are available everywhere and at all times. The standard automobile liability policy is one of the broadest policies sold by insurance companies. Back of this insurance there has been created and developed a vast and sound system of private insurance, equipped and organized to provide the insuring public with the protection which it requires. The automobile liability policy is not an accident policy. It is a contract between the company and the insured to insure him against loss by reason of his legal liability. It is entered into on a voluntary basis.

For over 25 years, state legislatures throughout the country have considered from time to time, the matter of monetary losses resulting from automobile accidents caused by persons who are not financially responsible. The Commonwealth of Massachusetts in 1925 enacted a Compulsory Automobile Liability Insurance Law. This law requires the owner of a motor vehicle to purchase bodily injury liability insurance before registering his car. Compulsory automobile liability insurance has been the subject of investigation and study by state legislatures and legislative commissions repeatedly throughout the years, but the system outside of Massachusetts has been consistently rejected. At the present time, an effort, backed by the state administration, is being made to have the legislature of the State of New York enact a Compulsory Automobile Liability Insurance Law.

In 1937, the State of New Hampshire enacted what has come to be known as a security type Financial Responsibility Law. Since then a similar type law has been enacted in forty-three other states and the Territory of Hawaii.<sup>1</sup> Ohio enacted such a law in

---

\* President, The Ohio Farmers' Companies, LeRoy, Ohio; President, Medina County Bar Association; Member of the Ohio Bar.

<sup>1</sup> Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Ne-

1951, effective March 1, 1953.<sup>2</sup> Under this law every motorist involved in an accident resulting in bodily injury or death, or in property damage exceeding \$100, must report the accident. The report is accompanied by a statement showing that the car is insured if such is the case. If the owner is not insured, the Registrar of Motor Vehicles causes an estimate to be made of the extent of the injury and damage and fixes an amount which the driver must deposit as security to satisfy any claim against him for which he is found to be liable. Then, if the motorist fails to make the deposit within ten days, his license and registration are suspended until he makes the deposit or settles all claims against him. While this type of law does not compel the purchase of insurance, it does have the effect of greatly increasing the number of insured cars. What is more important, it tends to promote safe driving and to take the irresponsible driver off the highway. Since this Ohio law went into effect on March 1, 1953, and during the first eleven months of administration, 6,342 licenses and registrations have been suspended because of convictions enumerated in the law. As a result of failure to deposit security, 4,778 driver's licenses and registrations have been suspended. Up to January 15, 1954, \$209,010.20 had been received by the state as security deposits.

This type of law puts the penalty and the obligation where it belongs—upon the reckless and irresponsible motorist. In New York state at the time of the enactment of the security type law only some 30 per cent of the cars were insured. Today after 10 years under the law it is said that 96 per cent plus of the motor vehicles registered in the state are covered by bodily injury and property damage liability insurance.<sup>3</sup> In 1952 under the New York law, 5,596 uninsured operators deposited security in the amount of \$1,133,790, covering accidents in which they were involved and in the same year 21,238 releases were filed by uninsured operators who had settled the claims against them.<sup>4</sup> The Pennsylvania law has brought about an increase in the percentage of insured motorists in that state from 45 per cent in 1949 to 89 per cent in 1953.

Compulsory automobile liability insurance will not reduce the number of careless, indifferent, and reckless drivers. On the contrary, the record would indicate that the system tends to make them more reckless and more lawless in the operation of their

---

vada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>2</sup> OHIO REV. CODE §§ 4509.01 to 4509.99, inclusive.

<sup>3</sup> 1952 SAFETY RESPONSIBILITY REPORT OF THE DEPARTMENT OF TAXATION AND FINANCE, BUREAU OF MOTOR VEHICLES.

<sup>4</sup> *Ibid.*

automobiles. Compulsory insurance will not reach those who drive without a license and there are those who do. In Massachusetts, the law does not apply to property damage claims. It does not apply to injury or death to guest occupants. It applies only to accidents occurring on the public domain. It does not apply to motor vehicles registered in other states.

The report of the council of state governments at the 1950 Governor's Conference stated that, "Out-of-state drivers are responsible for 20 per cent or more of the accidents in some states." Reports in 1951 from 22 states indicated that 17 per cent of the drivers involved in fatal accidents were non-residents. Reports from 21 states showed that 10 per cent of the drivers in all accidents were non-residents. No system can operate directly on out-of-state drivers. Nineteen of the forty-four states, including Ohio, which have the security type laws include in their laws reciprocal provisions under which an uninsured motorist from State A who is involved in an accident in State B will have his license suspended by his home state until he complies with the laws of the state where the accident occurred.

Both under the Massachusetts plan and security type laws, plans are set up for the assignment of undesirable risks. A motorist who is unable to procure insurance directly from a company may apply to the Assigned Risk Bureau for insurance. If the bureau decides that he is entitled to a policy of liability insurance it will assign, to a company operating in the state, the writing of insurance on this risk. Under this system all of the companies share in the insurance on an equitable basis by a system of assignment.

Automobile insurance under the compulsory plan has become a political football. Rates are made by the state in Massachusetts. As a result of this and the entire system in that state, the insurance companies have been forced to be more selective in their acceptance of risks, thus forcing more and more motorists into the Assigned Risk Plan. According to the most recent experience available for Massachusetts, insurance companies have been paying out about \$1.84 for losses for each dollar of bodily injury premium collected for assigned risks.

Compulsory insurance will tend to retard and make futile efforts which are constantly going on to improve and broaden coverages in relation to medical payments and in relation to providing insurance on a voluntary basis to indemnify negligence-free motorists injured by financially irresponsible motorists.

The compulsory plan does not stop with the small percentage of motorists who are both uninsured and financially irresponsible. It embraces in its bureaucratic control all motorists in the state.

The compulsory system will provide compensation for loss only in those cases where the injured party is free from negligence himself and where the driver is legally liable and financially irresponsible. Thus, to satisfy this limited area, all of the state's motorists must be subjected to the compulsory system. The insurance industry is opposed to the compulsory system. The business has had a disastrous experience with compulsory insurance. Insurance companies feel a responsibility to the public to keep rates down by writing good risks and avoiding the criminally careless drivers. They refuse voluntarily to insure that small group of proven reckless, incompetent, and socially and financially irresponsible drivers who should not be licensed or permitted to drive an automobile. The insurance of these people increases accidents and imposes an added burden of cost on everybody.

Many people have the idea that under compulsory automobile insurance every person injured in an automobile accident will be paid. This is not true. Under compulsory automobile liability insurance, as well as under voluntary insurance, the common law of negligence applies and those injured by their own fault are not compensated.

A few advocate abrogation of the common law liability system and propose the substitution therefore, of a compensation plan for automobile accidents similar to workmen's compensation. Motorists would be required to give up their present right of action and be compelled to provide compensation to be paid to persons injured regardless of fault. It is one thing to require of a motorist as a condition of his license to drive an automobile that he be responsible financially for injuries and damages for which he may be legally liable. It is quite another matter to require him to maintain insurance for injuries for which he is in no way responsible.

Workmen's compensation applies to a selected group of people in an employer-employee relationship. Workmen's compensation applies to earning wages. Automobile compensation would have to apply also to children, housewives, unemployed, self-employed, and retired people, to those with high earning capacity and to those with no earned income.

Here again there is the problem of the non-resident motorist. How does he fit in to such a program? What happens to an Ohio motorist traveling in any one of our other states or in Canada or Mexico where his common law liability will still follow him unless this compensation system is to follow his car wherever it goes? But even if it does, the injured person in such foreign jurisdiction would not be bound by such a law. Do we fasten on the motorist the necessity of carrying liability insurance as well as the compensation insurance?

What will be the required limits of the policy in such compen-

sation insurance? Will all death claims have the same value? Under such a system will all claims be settled by agreement within the policy limits or will there be a schedule of benefits for partial disability, total disability, partial permanent disability and permanent total disability? What agency will make the claim awards? Will there be an appeal to the courts from such findings?

If more than one person is injured in the same accident, how will the insurance be apportioned within the policy limits? Will there be a schedule of limits and amounts covering medical and hospital expenses and surgery? What about the whole problem of loss of earnings?

Will all of these things be provided for in a state law which will define and prescribe and set out the conditions, rights and privileges provided?

There is no man living that could even imagine what the cost would be under such a system. Experience would indicate that the cost of such a system would either be prohibitive or in serious cases, grossly inadequate in benefits.

The theory is that the present common law system does not meet a great social and economic problem. The fact of the matter is that under the present system only a very small percentage of insured automobiles are involved in accidents in any one year. Of those that are involved in perhaps 90 per cent of the cases, the claims result only in relatively small amounts of injury and damage. Of those where the injuries are serious, or where death results, financial responsibility exists in most cases. A social problem from an economic or monetary standpoint can only be said to exist in those few cases where the injured party either dies as the result of the accident, or is so injured as to be permanently or partially disabled and where economic status cannot be restored by rehabilitation and where, because of his financial status, he will become a burden on society and where the driver causing the accident is financially irresponsible. It is impossible to determine with any assurance the nature and number of such cases. No one could say whether private enterprise could undertake the job of providing insurance for such a compensation system until a complete understanding was had as to just what the plan would require in all of its intricate detail.

The advocates of the compensation plan affirm that they are not advocating a state fund, yet, there are those both in Massachusetts and the state of New York who desire not only compulsory insurance, but a state compensation fund.

This whole question of compulsion raises the entire question of the validity of private enterprise. When considering the question of economic loss and social problem which some people feel is

created by automobile accidents, why not consider this loss from accidents in other phases of our social and economic life. While accidental death in the homes of Ohio greatly exceeded the death totals from automobile accidents in Ohio for the years 1943 to 1952 in the case of persons 65 years and over, accidental deaths for all ages for this period of time were greater in the homes of Ohio than from automobile accidents.<sup>5</sup> If we are going to set out on a program of compensation for loss from accident there is no logic or justification based on the social, economic theory in not including any and all forms of accidental injury and death.

If we are going to do away with the common law and require every motorist to carry insurance to compensate the other fellow, why would it not be much simpler and less expensive to require him by law to carry an accident policy to compensate himself? And, why not require every householder to do the same? Everyone can do so now voluntarily and many do.

The fact is that so far as compensation for automobile accidents is concerned, the present voluntary insurance system and the present security type responsibility law are the best answer to the automobile accident problem yet devised from the standpoint of balancing the burden so far as the entire citizenry of the state is concerned.

The insurance industry does not claim any right to operate in any field contrary to the public interest; but compulsory automobile insurance, whether liability or compensation, must inevitably and inexorably lead politically to the invasion of the field by the state.

The basic problem is not solved by any system of monetary compensation to those injured in automobile accidents. The basic problem is the toll of injury and death on the highways of the state. We will not meet this problem by any system of compensation. The only practical, workable, inexpensive, quick solution is accident prevention. This is a job for government. An aroused public interest and indignation that would insist upon and support the rigid enforcement of speed and traffic laws, and strict driver licensing is the only real answer to the automobile accident problem. One has no inherent right to drive an automobile. It is a privilege that is granted by the state. The unfit, the criminally careless, the wilful violator, should be prevented from driving an automobile and not simply turned loose with an insurance policy to pay for the damage he causes. An organized, determined, constant and relentless enforcement by police officials upheld by the Courts can solve this basic and serious problem. If this were

---

<sup>5</sup> OHIO ACCIDENT FACTS—1952. Compiled by the research division of the Ohio State Safety Council.

done, and it could be, the insurance problem would be of little importance. Insurance rates would come tumbling down. What is more important, our highways would be made safe for everyone.