CONSIDERATION 1 ☐

CABINET ISSUE MEMO 7 DISCUSSION 2 ☐

DECISION 3 ☒

TO: Governor Ronald Reagan

FROM: Business & Transportation Agency DATE: May 8, 1972

SIGNED BY: D. R. Champion
Secretary for Business & Transportation

CONTROL NO.: BT 72-17

For Press Briefing ONLY

SUBJECT: "No-Fault accident legislation" under consideration by the Legislature.

ISSUE: Should the Governor announce a position and initial criteria for "Approved No-Fault" legislation to the Authors of all bills now pending consideration, and authorize the Departments of Consumer Affairs, Motor Vehicles and Insurance to support and implement appropriate legislation?

CONCLUSION: Yes! Through announcing an approved concept embodying the best features of all bills, and through bipartisan co-authorship, acceptable "no-fault" legislation will be achieved.

Through immediate public announcement of the Administration's criteria, and by asking all the Authors, Republican and Democrat, to jointly work out the details and incorporate proposed amendments to meet these criteria, a pattern of No-Fault legislation that truly meets the needs of the consumer can be a reality.

FACTS & DISCUSSION:

- After detailed examinations by Departments of Consumer Affairs, Motor Vehicles, Insurance and the Legislative Section of the Governor's Office, amendments, modifications and utilization of all the best features are available for consideration at this proposed conference.
- Bipartisan authorship will receive immediate consideration toward favorable legislation.
- All no-fault bills are in hearings the second week of May necessitating this immediate conference of Authors and the Governor.

SUPPLEMENTAL INFORMATION

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No-Fault Automobile
Accident Reparations Refor

After presentation from Commissioner Barger on "modified No-Fault insurance coverage plan", Cabinet and the Governor approved the concept for the State of California. It was stipulated that the Administration's approved legislation should provide:

- First-party coverage no less than $5,000, and
- A minimum threshold of $1,000, and
- Provisions eliminating duplication of benefits in individual and group accident and health benefits, and
- Abolition of right to sue for first-party benefits if $1,000 threshold is satisfied, and
- A system of comparative negligence rather than contributory negligence, and
- The concept of fault should be preserved to provide for subrogation.

Working toward evaluation of existing no-fault proposed legislation, a task force consisting of: Chambers, Livingston, Kehoe, Barger, Cozens and staffs have met several times with the charge to determine which proposed legislation conforms to the concept and criteria set forth in the Cabinet Issue.

CONCLUSION of this group is that the Song (SB 40) proposed legislation (as amended through April 13) provided the best and most conforming vehicle from which to recommend this Administration's position and amendments. All of these proposed amendments are clarifying in nature. These details are available in the Planning and Policy Section of the Governor's Office.

Charted comparison of existing features and proposed amendments is attached.

Categories	Present Automobile Liability Insurance	SB 10, Song (select no-fault committee)	AB 123, Fenton (author)	SB 26, Negedly (Fireman's Fund)	SB 384, Moscone (State Bar)	SB 132, Bradley (author)	PROPOSED RECOMMENDATIONS FOR SB 40, SONG	fault
Basic First-Person Benefits	Optional: Medical payments, uninsured motorist, collision, comp., etc.	Mandatory $5,000 policy, to cover medical, wages, funeral, survivors other, per person, per accident.	Mandatory $10,000 policy to cover medical, wages, funeral, survivors, other, per person, per accident.	Mandatory unlimited policy to cover medical, wages, funeral, survivors other, per person, per accident.	Policy for $2,000 plus 80% of excess to $50,000, per person, per accident, for medical. Other benefits.	Mandatory $2,000 policy to cover medical, 60% wages, funeral, survivors other. $5,000 for pedestrian, occupants	Retain $5,000 policy with benefits as stated in bill, but allow 85% of income from wages up to $750 per month.	Mandatory policy of any amount to cover medical, etc per person, per accident
Compulsory plan or not	Required showing after accident	Noncompulsory	Compulsory	Compulsory	Compulsory	Noncompulsory	Leave system noncompulsory, with changes in assigned claims plan	Not specified
Not Eligible for First-person benefits	Not Applicable	Uninsured owner and spouse, nonresident, Driver intentionally causing accident	Uninsured owner, nonresident, Driver maliciously causing accident, committing felony, steals car.	Commits felony, under influence of liquor/drugs, Driver intentionally causing accident	Uninsured owner, nonresident, Driver maliciously causing accident committing felony, stealing car	No specifications	Add provisions barring recovery to those who steal car, or are under influence of liquor/ drugs, etc.	Not specified.
How Benefits Are Paid	Optional, depending on contract	Monthly; 10% interest if overdue. Secondary to workmen's comp., SSS.	Monthly; 7% interest if overdue. Secondary to workmen's comp., SSS.	Monthly. Primary to all other plans.	Monthly, 10% interest if overdue. Secondary to workmen's comp., SSS.	No specifications. Primary to all plans	Retain provisions as stated in the bill, with possible addition of specific bar to double recovery, including Kaiser-type service plans.	Monthly. Secondary to workmen's comp. SSS.
Limitations on Tort	None	Medical must exceed $1000 to sue for General Damages.	Medical, except x-rays must exceed $1000 to sue for General Damages	Medical must exceed $1500 to sue for General Damages.	Medical, except x-rays over $100, must exceed $500 to sue for General Damages	Medical, except x-rays must exceed $1000 to sue for General Damages	Retain tort limitations as they are in the bill.	No tort action permitted.
Subrogation and Intercompany Arbitration	Optional depending on contract	Permitted when commercial vehicle involved, or medical exceeds tort threshold	Yes, without limitation	No subrogation permitted	Yes. Insurers must organize binding plan by 9/1/73.	Specified when uninsured motorist involved as at-fault.	Amend the bill to permit subrogation and intercompany arbitration in all situations.	No subrogation permitted.
Assigned Claims	No provision	Fee paid to DMV by uninsured; benefits when injured by uninsured.	Program run by insurers, monitored by Commissioner	Program run by insurers, monitored by Commissioner	Program run by insurers, monitored by Commissioner	No provision except for mandatory uninsured motorist coverage.	Fee is still to be collected by DMV, but plan administered by insurers, supervised by Commissioner. Insurers may not obtain profit through plan.	Not specified.
Other Provisions	Not Applicable	Comparative Negligence, Insured may obtain more first-party coverage.	Insurer may provide insurance for General Damages (first party)	Mandatory no-fault property damage ($5000), Insured may take deductibles. Commissioner sets maximum rates.	Commissioner to study and recommend on mandatory liability and property damage insurance.	Comparative Negligence, Insured may obtain more first-party coverage, with deductibles.	Amend sections relating to increased first-party coverage to make simple and uniform ($5,000 increments for aggregate, up to $50,000, and $100 increments up to $2,000 for wage loss.	Insured may sue own company to obtain General Damages.

NO FAULT

Many states are now considering adopting some form of the so-called "no-fault" car insurance system, wherein, for modest claims resulting from an auto accident, your own insurance company pays you, no matter who is at fault.

There are so many pros and cons on this subject that TER feels its readers will want to know the facts for themselves.

Massachusetts, which, according to its own Secretary of Public Safety, has the worst drivers in the nation and more lawyers per capita than any other state, was the first state to adopt the no-fault plan. Accordingly, TER has asked the Boston Globe's crack State House reporter, Ken Campbell, who has covered the no-fault story since its inception, to write a special article for you.

Campbell, 32, is a Yale graduate, and has worked previously for the Washington Star and in London for United Press International. He has been with the Boston Evening Globe since 1968.

By KENNETH D. CAMPBELL

BOSTON, Mass.—"The new no-fault plan has worked better than anyone ever expected."

That assessment by Massachusetts Insurance Comr. John G. Ryan is widely supported by Massachusetts' 2.5 million motorists after one year's experience under the limited no-fault system of bodily injury insurance. So successful is it that the Legislature voted overwhelmingly last Fall to go to no-fault system for property damage and collision insurance. The second no-fault system began Jan. 1, 1972.

Insurance rates, regulated and set by the state, dropped 15 per cent upon the introduction of bodily injury no-fault in January, 1971. They dropped another 27.6 percent as of January, 1972 —42 percent!

A systematic pattern of exaggerated if not fraudulent claims against insurance companies appears to have been significantly curbed by the law. Under the old system, the companies' poor administration and slow payment of property damage and collision claims encouraged the filing of small nuisance suits for personal injury. The suit usually was followed by a quick settlement of the property damage or collision claim, plus a little extra for the personal injury claim. One-third of the payment was customarily deducted for the lawyer.

Injuries, Accidents "Decrease"

What has happened in one year of no-fault?

—The number of personal injuries reported to the Registry of Motor Vehicles has dropped about 39 percent even though the number of accidents reported has dropped only about 10 percent. The number of reported injuries dropped about 58,000 and there were 16,000 fewer reportable accidents involving injury or a minimum of $200 damage.

—Premiums for bodily injury insurance have dropped 42 percent instead of being increased by 30 percent, as had been predicted for the 1971 rates before the passage of no-fault.

—The number of bodily injury insurance claims has dropped by 13,000—48 per cent—in the first nine months of 1971, the latest available statistics.

—The average cost of a paid claim has dropped from $419 to $165, a cut of 61 percent in those first nine months.

—The money paid out in claims by insurance companies has dropped $9 million or 80 percent in the first nine months, from $11.3 million in January-September 1970 to $2.3 million in the same period in 1971.

—The minimum cost of compulsory bodily injury insurance ($5,000-$10,000) and $5,000 property damage insurance (compulsory beginning this year) has dropped from $117 plus $67.00 in 1970 in central Boston to $74.00 and $21.00 in 1972, a drop from $184.00 to $95.00.

—Overall, the drop in no-fault premiums has meant a cut of 10 percent for most motorists, Ryan estimates.

$35 Million Rebate Asked

—Insurance Comr. Ryan has ordered the companies to rebate $35 million in excess premiums paid in 1971, an average rebate of 27.6 percent. The companies are challenging this in court on the legal basis that it is after-the-fact rate setting.

—Information on court case backlogs is still sketchy, but the Suffolk County Superior Court in Boston reports that the average number of motor vehicle suits begun there has dropped about 15 percent since the beginning of no-fault insurance in January 1971, even though those statistics include cases that may be as much as two years old.

The good news is tempered by the overall increase in the costs of repairing cars and people, which forced substantial increases in 1970 and 1971 in property damage and collision insurance costs.

A new no-fault property damage law, which took effect on Jan. 1, 1972, however, has resulted in rate cuts for about nine-tenths of the motorists.

However, it would constitute a loss for persons of very low income, whose taxes may amount only to the 5.2 percent taken out of paychecks for Social Security taxes.

The final figures on the first year of no-fault bodily injury insurance in Massachusetts won't be available until sometime in March or April, when Ryan intends to hold a further hearing to determine how much of a rebate is due motorists for 1971.

He is basing his legal right to do this on the grounds that the 1972 rates are being set on a two year basis, 1971 and 1972. Whether the courts will allow this concept is by no means certain, but Ryan—a lawyer who formerly was the highly-respected legislative lobbyist for the independent insurance agents—thinks it's worth a try.

Ryan, in an interview, said he expected eventually that claims would go up by about 20 percent over the 1970 level once people learned how much coverage was provided under no-fault bodily injury. "All those people who hit trees and lampposts now can recover from their own insurance companies. They couldn't sue anybody before."

Ryan is sufficiently convinced of this to have set the 1972 bodily injury rates on the basis of anticipating 20 percent more claims. If this proves not to be true, there could be some further savings in premiums to Massachusetts motorists on bodily injury insurance.

Savings from Cutting Fraud

However, insurance experts believe the savings in 1972 will cover all the fraud of former times, and that after 1972, insurance rates will continue to edge upward with inflation. The accident-free motorist, accustomed to premium increases as regularly as inflation, is happy about the general downward trend so far of no-fault premium charges.

But there is considerable confusion and resentment over the whole concept of no-fault: that it is your company, regardless of who is at fault, which has to pay for your injuries.

An opinion poll of 502 Massachusetts no-fault accident victims—a poll which the American Trial Lawyers Assn. headquartered in Boston at first admitted and then denied sponsoring—found that 62 percent of 502 accident victims felt the no-fault system was unfair. The poll, by the Opinion Research Corp., of Princeton, N. J. (a rival of the Gallup organization), described an accident in which another car going in the opposite direction "crosses into your lane and crashes into your car and you are injured."

Sixty-two percent said "unfair" when asked whether they thought it was fair or unfair that under Massachusetts law, "ordinarily neither the other driver nor his insurance company would have to pay for any of your losses" up to a maximum of $2,000. Of the 502 persons surveyed, however, 34 percent didn't file a claim under the new system; 28 percent had had claims paid and were satisfied (thereby making 62% who had been satisfied or hadn't filed a claim); 25 percent filed but had not yet settled on cases that were four to 11 months old; 11 percent had settled and were not satisfied; and two percent had settled but were uncertain whether they were satisfied.

Court Upholds It

The Massachusetts Supreme Judicial Court decided last June 30 that the law was fair and constitutional because it exchanged one right for another. It ruled that it was within the legislative power to make such a law in the general interest because of the social problems arising out of delayed claims payment and the clogging of the courts. The Massachusetts law is quite different from the Illinois no-fault law which was declared unconstitutional there.

Lawyers who specialized in insurance cases and formerly collected a standard one-third of the jury award or insurance company settlement have continued to oppose the law in statements, partly because of legal principles and partly because of self-interest.

The Massachusetts "Personal Injury Protection" law is really a limited no-fault system, barring suits for "pain and suffering" except in some instances, and requiring you to claim against your own insurance company.

When passed, it was anticipated that the law would bar law suits in about 80 percent of the accidents. No firm figures are yet available on what portion of the 1971 accidents were insured by the under $2,000 no-fault portion of Massachusetts' compulsory $5,000 per person, $10,000 per accident bodily injury insurance. Insurance premiums

are set by the state; there is no price competition on required insurance.

$2,000 No-Fault Limit

Under the law, a person is prohibited from suing unless 1. His medical bills are over $500; or 2. His wage losses and medical bills are over $2,000; or 3. If the injury caused a broken bone, or loss of a limb or sight or hearing, or disfiguration, or death.

The reason it passed was that in 1970, Massachusetts bodily injury insurance premiums were among the highest in the nation even though they had been frozen by the Legislature for three years. The jump in rates was threatening to be 30 percent. Many claimants for property damage found they had to file a personal injury suit before they could collect on the property damage claim. Auto insurance reform was an urgent political issue.

The mandatory 15 percent cut in premiums made the 1970 legal reform politically palatable. The public, the insurance companies, the politicians, and some lawyers—everyone but the trial lawyers association—seemed to want to end the old auto insurance system.

A year later, Massachusetts passed a second no-fault plan for collision and property damage insurance almost without opposition because of the success of the first no-fault law and the provision that payments in many cases would have to be made within 15 days of submission of a claim. It promised modest savings for 2 to 4 year old cars, and vast savings for old cars. The House chairman of the insurance committee, Rep. Edward J. Dever, said that bodily injury no-fault had deprived motorists of the bodily injury lawsuit weapon to compel settlement of old property damage claims, even if the claimed injury was fraudulent or exaggerated.

The most controversial portion of the 1971 bodily injury law was the provision that persons could claim—up to the $2,000 total loss limit—only 75 percent of their lost wages.

This section was enacted on the basis that Social Security and income taxes eat up 25 percent of most people's wages anyway, so that 75 percent tax-free payments did not constitute any loss.

250,000 Possible Rates

The principal problem with no-fault property damage insurance was the public's understandable failure to grasp what was involved in an insurance system that has no less than 250,000 possible premiums covering the three possible types of car repair and property damage insurance

The Massachusetts insurance system is broken down into 12 classes of drivers, 70 percent of which fall into the class 10 category of motorists who commute less than 10 miles to work and have no drivers under 26 years old in their family.

There are seven categories and four age-groupings of cars, based on the actual cash value of everything from a Corvair over five years old to a brand new Cadillac or Mercedes. There are 93 collision rating territories based on the accident experience of the cars garaged there. There are four different combinations of collision coverage and deductibles ($50 or $100), and two different further combinations of the collision coverage with the property damage.

In addition, there are 12 classes of drivers and 15 property damage territories involved in the residual "Option 3" coverage for property damage.

Final no-fault property damage-collision rates, after determination that they met the wage-price guidelines, were issued Jan. 28.

For the average motorist, Ryan said, the total premium for all compulsory auto insurance was about 10 percent less than he paid in 1971. Since the bodily injury portion dropped an average of 27.6 percent, there was an increase averaging 3.5% to 11% in property damage and collision. But the increase there was less than it would have been under the old system for 90 percent of the motorists, Ryan said. For the 10% facing increases, the top range of the hike for late-model Cadillacs and similar cars was limited to 20%.

For a typical motorist living in Boston, his compulsory insurance cost could range from $95 to $502. The difference depended on the value of his car and how much insurance he felt he ought to buy.

One of the principal complaints about no-fault property damage was answered by Ryan after four weeks of complaints by motorists having to pay for the first $50 or $100 damage even if it was no fault of their own—their car was hit while it was legally parked and they were sitting inside their house at the dinner table.

After negotiating with the companies, Ryan issued rates providing full coverage without a deductible in such instances. The cost adds $5 to $15 in Boston, the highest rated territory.

Can Prevent Suits

No-fault property damage insurance has three basic options. All three bar you from suing or being sued.

Option 3 is the minimal compulsory coverage, costing about 30 percent of the would-be property damage rate—that is, the rate that would be changed in 1972 under a fault system. It provides no coverage for your own car, but bars others from suing you. It provides $5,000 property damage liability insurance if you are sued by someone not covered by no-fault—an out of state motorist or a self-insured vehicle, such as buses or rapid transit vehicles. Ryan, who has Option 2 collision insurance on his 1965 Plymouth, recommends Option 3 be considered by the 53% of the state's drivers whose cars are 5 years old or older.

Option 2 provides limited collision coverage and guarantees payment within 15 days of submission of claims in cases where 1. Your car is hit, while legally parked, by a car whose owner can be identified; 2. Your car is hit in the rear end by an identifiable car; 3. Your car is hit in a collision in which the other driver subsequently is convicted of (a) operating under the influence of alcohol or drugs; (b) driving the wrong way on a one-way street; (c) speeding. In other collision cases, Option 2 introduces the concept of comparative negligence. In a two-car collision at an intersection for example, if the insurance companies (not the courts) determine you are 50 percent at fault and the other driver is 50 percent at fault, each insurance company pays policy holders 50 percent less than the claim. The Option 2 premium is the rate for Option 3 plus 35 percent of what the 1972 collision rate would be under a fault system.

The Option 1, full collision coverage, premium is the rate for Option 3 plus 135 percent of what the 1972 collision rate would be under a fault system. Option 1, like the old-style collision, is the only coverage that protects against hit-and-run drivers smashing into your car.

Companies Must Pay

The "no deductible" property damage coverage is available—for $5 to $15 extra—only under Option 1 or Option 2. It requires the companies pay the full cost of damage to your car in cases where you clearly are not at fault. It specifically limits those cases to the Option 2 circumstances of being hit while you are legally parked, or in the rear-end, or by a driver who is convicted later of speeding, driving while under the influence of alcohol or drugs, or driving the wrong way on a one-way street. The motorist still has to have a deductible ($50 or $100) for the other collision coverage.

For the motorist living in the middle-class Boston residential area of Dorchester Lower Mills, this is the way the rates looked for standard Chevvies, Fords, Plymouths, Dodges, Pontiacs, Mercurys, Buick Skylarks.

(Not included are high performance Buicks, Mercurys, Oldsmobiles, Pontiacs, and Thunderbirds, Cadillacs, Imperials, Corvettes, Lincolns and Mercedes-Benz, nor Ford Pinto and discontinued small cars, nor the small Chevvies, Fords, Plymouths, Dodges, American Motors, Mercurys, Datsuns, Toyotas, and VW sedans.)

Bodily Injury Option
($50 deductible collision, no deductible property damage)

A 1972 car—$74 & $295
($247 with $100 deductible collision)
A 1970-71 car—$74 & $238
($201 with $100 deductible collision)
A 1968-69 car—$74 & $213
($181 with $100 deductible collision)
A 1967 or earlier car—$74 & $189
($162 with $100 deductible collision)

Option 2 coverages for those cars ranged from $68 to $78, meaning a motorist could have some collision protection and property damage without suit for a total of about $150 (the bodily injury premium of $74 plus the option two premium).

For Massachusetts, a state with reportedly the most lawyers per person and with drivers that the State Secretary of Public Safety describes as the worst in the nation, no-fault has taken some of the pain and suffering out of auto insurance.

The current "fault" insurance policy reimbursing accident victims has the following difficulties:

1) Slow payment. The average victim has to wait more than a year for a liability insurance payment.

2) Unpaid victims. A report in the area of insurance found that the fault insurance system denies compensation to many victims. One out of every four people involved in an automobile accident collects absolutely nothing from the system.

3) Overpayment of small claims. DOT has made a study indicating that three out of four claimants with economic losses under $200 got more than double their economic loss through the fault system.

4) Underpayment of large claims. Victims with large medical costs and wage losses have been found not to recover from the fault insurance system the full amount of their losses.

5) Waste. Over half of the money paid into the system goes to overhead expenses and the already cited misallocations. Specifically, 56¢ of each premium dollar is kept by the insurance companies, insurance agents, insurance adjusters, plaintiff, lawyers and defense lawyers who operate the system. Of the 44¢ that go to victims as a class, 21½¢ go for other than economic loss, typically in overpayment of small claims. Another 8¢ go to pay over again economic losses that have already been compensated from other insurance sources, such as health insurance. That leaves only 14½¢ out of the premium dollar to pay for the net economic losses of the victims of automobile accidents.

6) Duplication of other insurance. The defects in the present system are fundamental and the key to real improvement is fundamental change. The essence of the fundamental change should relate to changing: 1) the discarding of case-by-case determinations of legal fault as the prerequisite to payment; 2) the replacement of vague and indeterminate measures of damages with clear and objective measures of compensation; and 3) the elimination of the conflict of purpose between accident law and accident liability insurance.

The opponents of no-fault insurance state that drunk drivers and negligent drivers will not be made responsible. But this does not have to be the case as such drivers would be:

> Subject to disfigurement, disability, and death if involved in an accident;
>
> Subject to disgrace and pangs of conscience if morally wrong in causing theaccident;
>
> Subject to fines and jail terms for traffic violations;
>
> and Rated as a bad risk and charged more for auto insurance after traffic convictions or accidents.

An additional criticism to no-fault insurance is that it will eliminate tort liability, but persons guilty of wrongful conduct can be made accountable under the penal code.

A Solution to the Auto Insurance Mess

The American consumer is restive and there are many good reasons why.

One of the reasons can be traced to what has been required, and not required, of private business by government regulatory bodies.

For too long a time, government regulation of business concerned itself with form and not substance, with rules, and not with results. It is part of a spotted past in which regulators zealously demanded that the business adhere to a prescribed manner of doing things without asking what was really being accomplished. In the insurance business, who really cared whether a certain adjuster was agreeing to pay claimants too little or too much? As long as the adjuster filled out all the forms properly, the regulator seldom asked questions.

That is changing. Last fall, when Governor Rockefeller asked the New York Insurance Department to study the present system of compensating victims of automobile accidents and to make recommendations for improvement, we saw our job as one which should break from what had been the traditional regulatory approach. We decided to measure what auto insurance was delivering and not delivering, against the standards which society should have for so important an institution. In other words, we wanted to see the results produced by auto insurance and, if necessary, to find ways to improve these results.

Now that study has been completed, and it recommends fundamental changes. Our report is entitled "Automobile Insurance . . . For Whose Benefit?", and it was submitted to the Governor on February 12, 1970. The report was endorsed strongly by the Governor. The report and implementing legislation are now subjects of legislative hearings being held in different cities in New York State.

FAILURES OF THE PRESENT SYSTEM

The report examines the nature of the present system of handling the costs of automobile accidents and reviews its results. The two main constituents of the present system are, first, the common law of liability for negligence or fault, and, second, liability insurance. Hence we have called the present system the fault insurance system. What did we conclude about the results of the fault insurance system?

(1) *Slow Payment.* The Insurance Department's report finds the present system to be slow in paying causes financial hardship and impedes rehabilitation. The average victim has to wait more than a year for a liability insurance payment — forty times as long as it benefits to automobile accident victims, a slowness that takes him to collect on accident and health insurance. The victim who has to sue encounters court delays up to five years in the urban and suburban counties of this State. The human situation is even worse than these statistics indicate, for the more serious the victim's loss the longer the delay.

(2) *Unpaid Victims.* The report finds that the fault insurance system denies compensation to many victims. One out of every four people injured in an automobile accident collects absolutely nothing from the system.

The reason is that the law of negligence, which governs the right to recover liability insurance benefits, requires the victim to prove that someone else was exclusively at fault. This means the victim cannot get paid unless he can prove someone else was to blame. Even then, the victim gets nothing if he himself was, to the slightest degree, negligent or at fault.

This rule of the fault insurance system — that payment turns on proving someone else exclusively at fault — has large consequences, not only for the one in four who is left out entirely, but also for everyone who has to deal with the fault insurance system. So let's look at that rule for a minute.

FAULTS OF THE FAULT SYSTEM

Of the major lines of personal insurance, auto liability is the only one that makes you prove some stranger was exclusively at fault before you can collect from the insurance company. There is no such gauntlet to run in life insurance, health insurance, fire insurance, theft insurance or even in automobile collision or comprehensive insurance. Imagine how strange it would seem if the rules of the fault insurance system were extended to other types of insurance.

When you are ill you want your health insurance to pay your medical bills without requiring you to prove that your illness was caused by someone who carelessly sneezed on you on the bus. Nor would you tolerate a health insurer which sought to duck payment by claiming you would not have gotten sick if, right after the sneeze, you had run home and gone right to bed.

(3) *Overpayment of Small Claims.* The Insurance Department's report finds that the present fault insurance system pays the claimant with a small loss far more than the accident cost him. We are not alone in this finding. Preliminary data from the U.S. Depart-

THE AUTHOR

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ment of Transportation's extensive, current study of claim files shows that three out of every four New York claimants with economic losses under $200 got paid more than double their economic loss through the fault insurance system.

The overpayment of these small claims, while called "pain and suffering" by lawyers and insurance men, typically bears no relationship to actual pain or actual suffering. It has a simpler explanation. The standard of liability and the measure of damages in automobile liability cases are vague and uncertain, leaving wide latitude for bargaining between the victim or his lawyer and the insurance adjuster. Only one percent of claims is decided by a court; the rest are bargained. To an insurance company the typical small claim has a nuisance value. The claim is overpaid to get rid of it.

GETTING LESS FOR MORE (4) *Underpayment ..of Large Claims.* The Insurance Department report finds that the present system deals far less generously with the seriously injured victim. When you cut through the rhetoric of the defenders of the present system, a rhetoric heavy with solicitude for the seriously injured, you confront the shocking fact that victims with large medical costs and wage losses do not recover from the fault insurance system even the full amount of their medical costs and wage losses.

These findings also have been confirmed by others. The most recent, as well as the most dramatic and best documented, finding as to the underpayment of the seriously injured is in the voluminous national survey of serious injury cases released this spring by the U.S. Department of Transportation. That survey found that the seriously injured traffic accident victim or his survivors were compensated, from all sources, for less than half of their actual economic loss; and that auto liability insurance contributed less than one-third of the reparations that were made — or one-sixth of the economic losses of seriously injured victims.

The reason for the underpayment of large claims is simple and is the corollary of the reason why the present system pays too much on small claims. The typical large claim is underpaid because the seriously injured victim cannot wait for his money and can be bought out cheaply.

(5) *Waste.* As if the failings already mentioned were not enough to discredit the present fault insurance system, the Insurance Department report goes on to trace what the system does with the consumer's premium dollar.

HIGH, HIGH OVERHEAD Over half of the money paid into the system goes to the overhead expenses of the system. And a very large proportion of what gets through the machinery is, as I just discussed, misallocated, with too much going to small claims and too little going to large claims.

Specifically, the report finds that 56 cents of each premium dollar are kept by the insurance companies, insurance agents, insurance adjusters, plaintiff's lawyers and defense lawyers who operate the system. Of the 44 cents that go to victims as a class, 21½ cents go for other than economic loss, typically in overpayment of small claims. Another 8 cents go to pay over again economic losses that have already been compensated from another insurance source such as health insurance. That leaves only 14½ cents out of the premium dollar to pay for the net economic losses of the victims of automobile accidents.

That kind of waste might be tolerable — indeed the facts have been known and tolerated for a long time — if auto insurance were cheap. Once it was cheap. But no longer.

Nationally, consumers now pay a yearly auto insurance bill of close to $12 billion. Today the average cost of the auto insurance which New York law compels every car owner to buy is $125 per car per year. Today the typical car owner, who rightly decides that he has to buy more insurance than the law requires if he is to protect himself, pays $250 per car per year for automobile insurance.

With the price of auto insurance high and rising, waste and inefficiency in the auto insurance system are less tolerable. The Insurance Department report predicts that the waste and inefficiency of the fault insurance system would be enough to doom the present system someday even if there were nothing else wrong with it.

(6) *Duplication of Other Insurance.* The Insurance Department report finds that the premiums which consumers pay into the fault insurance system often go to pay duplicate benefits.

A BAD BUY IN BENEFITS Many auto accident victims are entitled to payments from such sources as health insurance and income continuation plans. But under the fault insurance system, these other benefits are disregarded in setting the amount of a liability insurance award.

In a state like New York, where health insurance and wage loss insurance are very widespread and auto insurance is universal, the result is that a lot of people are paying duplicate premiums to support duplicate benefits. But duplicate benefits are a bad buy, because every dollar in auto insurance benefits costs $2.25 in premiums.

If a person wants to pay twice, he should be free to do so. But why should his own government compel him? No one is saying it is not nice to get double benefits. The point here is that it isn't free. Premiums are not so low, nor people so rich, that the law should make anyone pay more than once for protection.

(7) *Traffic Safety.* Last year the automobile killed 56,000 Americans. That is more American deaths in one year than in the Vietnam war since its beginning. Last year the automobile injured 4.6 million other Americans. That is four times the number of Americans wounded in all of World War II.

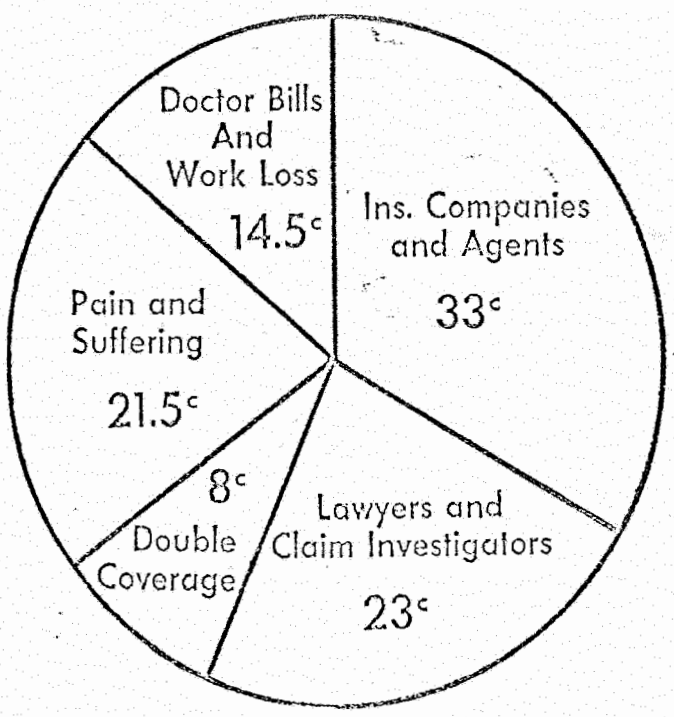
Against that gory background, some defenders of the fault insurance system still insist that the present system somehow deters unsafe driving. That is nonsense. The Insurance Department's report points out that under the present system the standard of legal fault is vague; determinations of fault are made long after the event; the extent of liability is in no way proportional to the degree of carelessness; the liability is not just of the driver but of the vehicle owner whether or not he was driving; and, most important, the liability is insured against.

Automobile liability insurance is compulsory in this State. The wrongdoer, assuming there is one in an accident and his fault can be proved, does not pay. The insurance company pays. Through premiums, we all pay.

What is the cause of all the defects that have been mentioned? What kind of change is necessary to get at those defects?

WHY PRESENT SYSTEM FAILS The Insurance Department reports traces the operating defects in the present system to the system's most fundamental principles and to an irreconcilable conflict between those principles.

THE INSURANCE PREMIUM DOLLAR



The present fault insurance system is based on the common law of negligence or fault. The law holds that a person who has suffered a loss can recover damages from another person only if he can prove that that other person was exclusively at fault and can further prove that the faulty act was the cause of the loss.

The legal rules, which antedate the invention of the automobile, were not designed to compensate accident victims. They were designed to make wrongdoers pay for what they did.

The purpose of the legal rules has been undercut by the development of liability insurance, which every car registered or driven in this State has to carry. Liability insurance is designed to do nothing more than reimburse wrongdoers for what they might have to pay for negligently causing damage to another. If the law of negligence is designed to make sure wrongdoers pay, liability insurance is designed to make sure wrongdoers never pay. In this conflict, liability insurance has prevailed. It has rescued the wrongdoer. It assures that any cost which the law would shift to a wrongdoer shall be immediately lifted from him.

But if liability insurance has undercut the law of negligence as far as it concerns making wrongdoers pay, the law of negligence has prevailed in determining which victims shall be paid. The law of negligence lets the victim collect from the insurance company only if the victim can prove that the insured was exclusively at fault.

It is no wonder that such a system fails both the accident victim and the insurance consumer, and it is of the utmost significance that the failures of the present system are traceable to its most fundamental principles.

A NEED FOR BASIC CHANGE Over the years, New York and other states have repeatedly tried to patch up one or another of the defects in the fault insurance system without challenging its fundamentals. An important finding of the Insurance Department's report is that such steps will not in the future yield useful results. After analyzing such palliatives as small claim arbitration and comparative negligence, the report concludes that "further attempts to modernize the fault insurance system by tinkering with it, while leaving its essentials intact, are sure to be expensive and self-defeating."

The defects in the present system are indeed fundamental. The key to real improvement is fundamental change. The essence of sound, fundamental change has to be (1) the discarding of case-by-case determinations of legal fault as the prerequisite to payment, (2) the relacement of vague and indeterminate measures of damages with clear and objective measures of compensation, and (3) the elimination of the conflict of

purpose between accident law and accident liability insurance.

A proposal for fundamental change would abolish negligence law claims and lawsuits based on the operation of motor vehicles in this State. It would require that every vehicle owner carry insurance to protect the occupants of his vehicle and pedestrians hit by his vehicle. Insurance benefits would be payable without requiring the claimant to prove that anyone else was at fault. The compulsory insurance would pay full compensation to all victims for net economic loss resulting from personal injury, such as medical expenses and income loss, or resulting from damage to property other than automobiles.

The proposed compulsory insurance would pay considerably more in cases of serious injury than does the present one. It would pay faster, with less haggling, and its benefits would be paid periodically rather than in a lump sum — all qualities that would help the victim get the money and the care he needs when he needs them.

It is useful to note that while the proposed compulsory insurance would provide generous benefits, it would compensate only for economic loss and only for that economic loss not already compensated by some other, more efficient kind of insurance. The reason is simple. We are talking about compulsory insurance, about the coverage that everyone is required by law to pay premiums for. In our judgment, government should exercise that kind of compulsion on its citizens with restraint.

INSURANCE FOR YOURSELF Of course, the Legislature would always be free to change the level or types of benefits provided by the proposed compulsory insurance. For the proposal would set up an insurance system that would be amenable to rational decisions by the makers of public policy as to the best balance of costs and benefits. The changes from fault law to compensation, from vagueness to precision in measures of awards, from insurance for strangers to insurance for yourself, from waste to efficiency, from complexity to simplicity — all are basic to real reform. But, the level of benefits and the consequent level of premiums within a reformed system are not basic, and would be proper subjects of continuing legislative review.

For example, while we have recommended that a reformed system provide unlimited compensation for net economic loss, the Legislature might reasonably decide to set limits on that compensation in order to hold down premiums for the compulsory insurance. In the other direction, while we have recommended that compulsory insurance under a reformed system cover only net economic loss, the Legislature might reasonably decide it was worth the extra premiums to include, in the compulsory coverage, benefits for certain objective though non-economic consequences of an accident, such as dismemberment or loss of function.

While I have confined this discussion to compulsory insurance, it is useful to keep in mind that consumers would remain free to buy additional coverage if they wished. Four out of every five people injured in an automobile are members of the car owner's family. Under the proposal, the car owner would be buying insurance largely to protect himself, his family and his car. He would be in the best position to decide what he needed and what he could afford and he could afford more under our proposal thon he can under the present system.

PREMIUMS WOULD COST LESS The proposal would reduce premiums substantially, both as to compulsory coverages and as to the combination of compulsory and optional coverages which the typical motorist might be expected to buy. The consumer would see less of his premium dollar eaten up by the operating expenses of the system. He would see a fairer share of his premium dollar going to pay for net economic loss — 57 cents as against 14½ cents today.

The Insurance Department's actuaries estimate that the proposed compulsory insurance should cost the average consumer about 56 percent less than compulsory automobile insurance costs him today. For the typical driver who buys additional coverage today on an optional basis, comparable coverage under the proposal should cost 33 percent less.

The proposed change in auto insurance would have no effect on the rates charged for health insurance, disability income insurance or any other coverage which would be primary to auto insurance. Those insurances pay auto accident victims today and they would continue to do so under our proposal. The difference is that our proposal would eliminate duplicate payments, which is one reason it would bring auto insurance premiums down.

Our report also discussed highway safety. It found that the fault insurance system protects careless drivers better than accident victims. It does not and cannot deter unsafe driving or otherwise promote highway safety. By contrast, the proposal would reinforce highway safety efforts in several ways. It would permit the accident compensation system to yield undistorted data for use in systematic approaches to highway safety. It would impose special cost burdens on drunken driving and would give commercial vehicle owners an economic incentive to improve driving conditions for, and to promote safe driving by, their employees.

ENCOURAGING A SAFER CAR The proposal should also advance traffic safety by enabling insurance premiums to vary as among makes

and models of car, according to each car's ability to protect occupants and to resist damage. Insurance premiums could then, for the first time, be used to encourage car makers to make safer cars. That can only be done if the car owner is insuring his own car, rather than insuring some car he will run into and whose make and model obviously cannot be foreseen. It is ironic that when the State's largest auto insurer, a vigorous opponent of reforms such as we propose, recently announced a premium discount for sturdier automobiles, the insurer proposed the discount only on collision insurance — a first-party, no-fault coverage that would be the main insurance for vehicle damage under our proposal.

Predictably, our proposal has met fierce resistance. Some people have an immense interest in seeing to it that the fault insurance system — the system we have today — is what we have tomorrow. Let them defend it for as long as they can. But they cannot defend it forever.

Tottering institutions out of touch with the needs of the people they profess to serve, however formidable and entrenched, eventually fall. Special interest can obstruct change for a time. But change will come. Eventually change always comes. Here at least we have all had ample warning and a chance to influence what is bound to happen.

—RICHARD STEWART
