

# Catholic University Law Review

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Volume 21  
Issue 2 *Winter 1972*

Article 2

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1972

## Foreword

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### Recommended Citation

John A. Volpe, *Foreword*, 21 Cath. U. L. Rev. ix (1972).

Available at: <https://scholarship.law.edu/lawreview/vol21/iss2/2>

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## **FOREWORD**

### **John A. Volpe, Secretary of Transportation**

At 8:10 P.M. on August 13, 1970, the first no-fault motor vehicle act in the United States became law in the Commonwealth of Massachusetts. As a Massachusetts citizen and former Governor, it gives me special pride to hail this law as a fundamental break with the past, and the beginning of a new, more equitable, more efficient, and more humane system for treating the economic ills of the unfortunate victims of automobile accidents.

It is now history that the Department of Transportation Study of Automobile Insurance and Accident Compensation, commissioned by P.L. 90-313, and the judgment of the Administration found the insured fault system to be grossly inadequate, inefficient, and inequitable and one which should be speedily replaced by a first-party, no-fault insurance system. In keeping with its fundamental philosophy that public policy decisions should be made, and the functions of government performed, by governments as close to the people as possible, the Administration has recommended a Concurrent Resolution by which the Congress would express its strong sense that automobile accident reparation reform was vital to national interest and would call upon the States to move promptly toward adoption of compatible, first-party, no-fault insurance systems in keeping with the guiding principles contained in the Resolution. That Resolution would require the Secretary of Transportation to monitor State action and would authorize him to provide technical assistance to, and to interact with, the States in developing plans consistent with the principles. He would be authorized and directed to report progress and would be required to make a report at the end of not more than 25 months stating his "... views regarding the feasibility of attaining a satisfactory and compatible motor vehicle accident reparations system without further Federal legislation."

The Senate Subcommittee on Antitrust and Monopoly, chaired by Senator Hart, has conducted extensive hearings, not only with respect to automobile insurance and accident reparation but also to other kinds of insurance and insurance problems. In association with Senator Magnuson, Chairman of the

Senate Commerce Committee, he has authored a bill which would put an end to the tort liability insurance reparation system and substitute in its place a federal no-fault insurance system which would virtually eliminate the tort lawsuit.

Thus, as the matter now stands, the Senate Commerce Committee, the relevant House Commerce Subcommittee chaired by Congressman John E. Moss, the Senate Subcommittee on Antitrust and Monopoly, and the Department of Transportation's (DOT) Study have all apparently found the insured tort liability insurance reparation system to be woefully inadequate and grossly inefficient and have urged its substantial elimination. Thus, the division between the Administration's position, as represented by its proposed Concurrent Resolution, and that of Senators Magnuson and Hart as authors and sponsors of S. 945 lies in the method of implementing no-fault reparation reform—not in the basic concept!

It must be noted, however, that even were the basic principle of no-fault motor vehicle accident reparation to be universally accepted there would yet remain divisions of opinion on a number of important issues. For example, there has been much debate with respect to whether the first-party benefits under no-fault automobile insurance should be the primary coverage so as to render other insurance coverage or benefit sources, such as Blue Cross/Blue Shield, group health insurance, wage continuation plans, etc., only secondary, or excess coverage, or whether these other coverages or benefit sources should be made primary and the specialized automobile coverages only excess. Both sides of this issue have been argued persuasively.

Another issue which has been, and will continue to be, lively debated is whether heavier commercial vehicles should be accorded different treatment than private passenger cars so as to impose a heavier loss burden on them because of their propensity to cause more severe injury and loss in accidents with lighter private passenger automobiles. While some urge that no proper basis exists for a differential treatment of heavy vehicles under the no-fault regime, others argue that such differentiation between vehicles of different weights or other significant characteristics is imperative to preclude the owners of such vehicles from reaping an unconscionable financial windfall by adoption of a no-fault regime. In this connection, it must be noted that under a true no-fault insurance plan accident victims will receive benefits under their own cars' policies. Thus, the vast bulk of the losses in car/truck collisions will fall on the car-owning insureds because of the greater damage creating ability arising from the heaviness of commercial vehicles. Hence, it is argued the premiums on

passenger cars would, to some extent, subsidize the commercial vehicles. Also, it is argued that when the insurance of the commercial vehicle will have to respond only with respect to injury to its driver, which will be slight because of the truck's greater protective qualities and will almost certainly be covered by workmen's compensation in any event, no-fault reform will produce a much sharper reduction in commercial insurance rates than in private passenger rates.

There are no clear answers with respect to such questions and issues, simply because there have not been enough no-fault programs in existence sufficiently long to provide the experience needed for sound assessments. It is in areas such as these that only the experience gained through initiative and innovation, or trial and error, will furnish answers as to what is the optimum first-party, no-fault system. For this reason, among others, the DOT Study's Final Report urged that implementation of no-fault reparation reform should be left to the States, if at all possible, to the end that the States may attempt various first-party, no-fault approaches to the solution of such problems and the resolution of such issues.

The reader is indeed fortunate in having available to him the wealth of material on no-fault motor vehicle accident reparation and insurance contained in the pages which follow. The views and viewpoints presented, distilled from the knowledge, experience, and dedication to the public interest of each of the contributors, easily renders this symposium one of the most relevant and meaningful works of its kind in the annals of law review literature.