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No-Fault: The Road to Reform

T. Lawrence Jones*

The American Public deserves a better automobile insurance system than it has today—one that will be available to all people; one that will provide payments promptly and as expenses are incurred; one that will provide rehabilitation and a productive contribution to society; and, one that will have more reasonable costs, fairly allocated among the motoring public.

There is a great need therefore to strive for genuine no-fault automobile insurance reform—a measure designed to correct an often tragic waste of our nation's human, social and economic resources.

This conclusion by the members of the American Insurance Association, who write approximately 30 percent of the nation's auto insurance, was reached after a comprehensive study¹ of the failures of the existing system—as reflected by public criticism—and of what might be done to correct those failures.

Legal scholars have been pointing to these failures since the early 1930's.² But it has been in recent years that the failures of the existing fault system have become most evident.³ Now, after several objective and wide-ranging studies by educators, government agencies, professional groups and consumer representatives, the fault system stands condemned as a means of compensating people for their auto accident injuries.⁴ In the words of John A. Volpe, Secretary of

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1. AMERICAN INSURANCE ASSOCIATION, REPORT OF SPECIAL COMMITTEE TO STUDY AND EVALUATE THE KEETON-O'CONNELL BASIC PROTECTION PLAN AND AUTOMOBILE ACCIDENT REPARATIONS (1968).

2. See generally Hogan & Stubbs, *The Sociological and Legal Problem of the Uncompensated Motor Victim*, 11 ROCKY MT. L. REV. 12 (1938); Corstvet, *The Uncompensated Accident and Its Consequences*, 3 LAW & CONTEMP. PROB. 466 (1936).

3. See R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM chs. 1-3 (1965). See also L. GREEN, TRAFFIC VICTIMS: TORT LAW AND INSURANCE (1958); Morris & Paul, *The Financial Impact of Automobile Accidents*, 110 U. PA. L. REV. 913 (1962); A. EHRENZWEIG, "FULL AID" INSURANCE FOR THE TRAFFIC VICTIM: A VOLUNTARY COMPENSATION PLAN (1954).

4. See sources note 3 *supra*; see also N.Y. DEP'T OF INSURANCE, AUTOMOBILE INSURANCE . . . FOR WHOSE BENEFIT? [hereinafter cited as AUTOMOBILE INSURANCE]; *Needed: A Basic Reform of Automobile Liability Insurance*, 27 CONSUMER REP. 404 (1962); Calabresi, *The Decision for Accidents: An Approach to Nonfault Allocation of Costs*, 78 HARV. L. REV. 713 (1965).

Transportation:

[T]he existing system [of auto insurance] ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation and overburdens the courts and the legal system. Both on the record of its performance and on the logic of its operations, it does little if anything to minimize crash losses.⁵

Wasting our Legal Resources

Although the fault system fails society chiefly as a compensation system, it also fails society by consuming so much of our legal and judicial resources which are so badly needed in other areas of the law. Reform of the auto insurance system per se will not automatically result in reform of our judicial system. On the other hand, no program to reform the court systems can be successful or meaningful that does not have the removal of all auto accident cases from the civil courts as its first priority.

There are 15 million auto accidents a year that represent potential lawsuits.⁶ These potential cases hang over the court system and will keep the backlog at the level of four to seven years in urban areas regardless of any other steps for improvement that might be taken. Only the fact that a very lengthy delay can be expected in many areas keeps most of these potential cases from being filed. These potential cases will "absorb" whatever improvements might be achieved by other changes. That has been the record in Philadelphia, Chicago and any other place where serious efforts for improvement have been made.⁷

Evidence to this effect was presented in Congressional hearings earlier this year by Benjamin Mackoff, Administrative Director of the Circuit Court of Cook County, Illinois, who reported continuing long delays in the courts in spite of a series of "bold and innovative measures."⁸ Mr. Mackoff stated that

[d]espite the implementation of a variety of techniques to expedite litigation, the delay continues at an increased rate. Those courts that have kept pace with the steady rise of such filings (personal injury cases) have done so only at the expense of other vital areas of the law which then suffer from similar delays, or worse yet, "bargain basement justice."⁹

5. U.S. DEP'T OF TRANSPORTATION, MOTOR VEHICLE CRASH LOSSES AND THEIR COMPENSATION IN THE UNITED STATES 100 (1971) [hereinafter cited as MOTOR VEHICLE CRASH LOSSES].

6. NAT'L SAFETY COUNCIL, ACCIDENT FACTS 40 (1970).

7. See generally *Hearings on H.R. Con. Res. 241 Before the Subcomm. on Commerce and Finance of The House Comm. on Interstate and Foreign Commerce, on No-Fault Motor Vehicle Insurance*, 92d Cong., 1st Sess., pt. 1, at 142-47 (1971) [hereinafter cited as *1971 Hearings*].

8. *1971 Hearings*, supra note 7, at 143.

9. *Id.* at 146.

Increasingly, jurists, legal scholars, attorneys and journalists are identifying auto accident cases as the leading source of court congestion. As Chief Justice Warren Burger has stated:

[V]ery, very good arguments can be made and have been made for taking automobile and other personal injury cases out of the courts entirely, out of all courts, and disposing of them by other means I am just very sure that there must be a better way to dispose of automobile litigation than the cumbersome and inefficient and expensive processes of the adversary system.¹⁰

In October 1970, New Jersey Chief Justice Joseph Weintraub publicly advocated a system of no-fault auto insurance to help alleviate the jam of lawsuits which is clogging New Jersey courts.¹¹

A major study, citing criminal and civil matters that could be removed from the courts, said:

All these reforms would be overshadowed if the courts were relieved of their single greatest burden: the automobile. Along with pollution and death on the highway, the automobile brings us court congestion. Personal-injury cases flood the trial courts, and traffic cases flood the criminal courts.¹²

Speaking last November in Minnesota, Justice Alfred P. Murrah, successor to Mr. Justice Tom Clark as director of the Federal Judicial Center, said, "It is imperative that we find a better way, more expeditious and economical, of resolving disputes that arise from the use of our highways."¹³

The recent study performed for the Department of Transportation by the Federal Judicial Center shows that court costs of administering accident litigation reached an estimated 133 million dollars as a result of over 220,000 lawsuits in 1968 and that over half of those suits required more than two years to reach termination.¹⁴

Ninety percent of the plaintiffs received some compensation from the defense for their injuries. Half of the successful plaintiffs received 3,000 dollars or less with their lawyers being paid approximately 35.5 percent of the recoveries under contingent fee contracts. In addition, plaintiffs paid about 250 dollars in expenses. Defense lawyers received an average of 819 dollars per case, regardless of the verdict, plus the same amount in expenses as plaintiffs' lawyers.¹⁵

10. N.Y. Times, July 4, 1971, § 1, at 20, cols. 3-4.

11. The Record, Oct. 30, 1970, at 12, col. 1.

12. Main, *Only Radical Reform Can Save the Courts*, FORTUNE, Aug. 1970, at 114.

13. Address by Justice Alfred P. Murrah, National Conference on Automobile Insurance Reform, Nov. 23, 1970.

14. U.S. DEP'T OF TRANSPORTATION, AUTOMOBILE ACCIDENT LITIGATION 7 (1970).

15. *Id.*

The upshot of all this is that in 1968 as a result of auto accident cases that went to court, accident victims received about 700 million dollars in total net returns, while lawyers received about 600 million dollars in fees and another 100 million dollars in expense reimbursement.¹⁶ Adding the cost the public pays for court administration, it is apparent that the process of litigating auto accident cases costs more than the victims actually receive in settlement.

Further, this litigation seriously hampers the legal process. It was estimated to occupy 17 percent of the court systems' total judge trial time.¹⁷ In addition, it must be remembered that of all the cases filed, 87 percent were terminated before coming to trial and only seven percent reached final verdict and judgment.¹⁸ Thus, there is far greater use of the available court system's resources than judge's trial time would indicate. In commenting upon the lengthy pre-trial court proceedings in auto accident cases, the court, in *Pinnick v. Cleary*,¹⁹ stated:

The time of the court consumed in this preliminary war of nerves between counsel, or between claimant and insurer, is almost impossible to estimate, but probably far exceeds that spent in the trial of the small percentage of all entries which must be tried.²⁰

The Massachusetts court also pointed out that court systems in other nations "have managed to solve the problem of the superabundance of motor vehicle tort claims in one way or another," but that it remains "a cancer to be rooted out in American courts."²¹

"Cancer" is an apt term, because motor vehicle injury claims also affect the health of our court and judicial systems and the quality of justice and service they render. In lamenting this fact, Cook County Circuit Court Administrative Director Mackoff states:

. . . [T]he court is being used merely as a forum for the claims adjusting bargaining process. The judge becomes an umpire between two parties who do not really seek a determination of the legal matters involved. The court, sacrificing its traditional function of deciding actual disputes, simply oversees the haggling between lawyers of whether or how much to pay to whom.²²

Judges, scholars and many others are increasingly distressed by growing disrespect for the courts and the law. As one scholar puts it:

16. *Id.* at 40.

17. *Id.* at 7.

18. *Id.* at 8.

19. ___Mass.___, 271 N.E. 2d 592 (1971).

20. *Id.* at 603.

21. *Id.* at 604.

22. 1971 Hearings, *supra* note 7, at 147.

An undesirable by-product of this wastefulness is that it encourages exaggeration of injuries suffered, and even fraud and perjury, in order to ensure that the amount which actually reaches the victim is large enough to compensate him for his real losses.²³

This is one of the outgrowths of the need to determine legal “negligence,” which Dean William Prosser describes as “a wobbly and uncertain standard based upon the supposed mental processes of a hypothetical and non-existent reasonable man.”²⁴ Dean Prosser states that, “the extent to which it has damaged the courts and the legal profession by bringing the law and its administration into public disrepute can only be guessed.”²⁵

Historical Development of the Two Cancers

How did all this all come about? Basically, because no group of public policy makers ever sat down to devise a rational approach to the need for widespread compensation for auto crash victims. Society allowed a system to develop which attempts to allocate and distribute loss on the basis of concepts of causation. In addition, the American judicial system must bear great responsibility for making three fundamental decisions over the years that have led to the two cancers that we find in the present system.

Choosing the Legal Theory

The first fundamental decision concerned the choice of legal theory under which the costs of an auto crash were to be transferred from one person to another. At the time of the early auto cases—around the turn of the 20th Century—the courts had several options.

First, the courts could have said that a person who drives an automobile “assumes the risks” arising from that activity and, hence, cannot recover his losses from anyone else. That was one of the oldest legal theories available.²⁶ Perhaps if the courts had the opportunity to start all over again, this is what they would do. This would be successful, because the insurance industry could provide sound, direct benefits that would cover any combination of risks the policyholder wants to insure against. It is the purpose of this paper to make the plea for just such a system.

The second option open to the courts was to say that the auto is a “dangerous

23. MOTOR VEHICLE CRASH LOSSES, *supra* note 5, at 78-79.

24. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 85, at 580 (3d ed. 1964).

25. *Id.*

26. See generally *Cruden v. Fentham*, 2 Esp. 685, 170 Eng. Rep. 496 (1799); *Howey v. Fisher*, 122 Mich. 43, 80 N.W. 1004 (1899); *Pomeroy v. Westfield*, 154 Mass. 462, 28 N.E. 899 (1891); *Miner v. Conn. Riv. R. R.*, 153 Mass. 398, 26 N.E. 994 (1891).

instrumentality” and that anyone who owned or used one had to assume the liability for all losses resulting from its ownership or use. This theory of strict or absolute liability was the second oldest legal theory available to the courts, and was adopted from the beginning by several countries.²⁷ The strict liability theory could be the basis of a sound auto accident reparations system, but it would not be so efficient, flexible and serviceable as a system under which a policyholder covers his own risks, rather than the risks of some unknown third party.

The third choice available to the courts, of course, was the tort liability or negligence system. Its objectives were in conflict with the objectives of a true auto accident reparations system. It was the newest and least tried of the legal theories available²⁸ and, from the vantage of 20-20 hindsight, it was the worst possible choice from the standpoint of being the basis for an accident reparations system.

Surely, the results of this choice could not have been foreseen by the judiciary whose decisions were based in part on the trends and tempo of the times and in part out of the limitation of the function of the courts. That is precisely one reason why we should not be afraid to assess how times and tempos and public needs have changed—and how a system developed to shift accident costs in the days of a handful of horseless carriages has long ago broken down under the weight of numbers of unplanned meetings between powerful mechanical monsters. The fact remains that selection of the negligence system was an error and that the need to determine fault for a crash is one of the two cancers in the present auto accident reparations system.

Attorney's Fees and the Emergence of 'Pain and Suffering'

The second and third errors of the American courts are related. One resulted from an effort to compensate for the other. Together they gave rise to the second of the two cancers. The second error of the courts was to hold that a claimant in tort could not recover reasonable attorney's fees as a part of his damages. This was an error peculiar to the American courts. Although they shared the same legal history and traditions, their judicial brethren in England and Canada did not make the same mistake.²⁹

The American courts mistakenly assumed that the recovery of reasonable

27. See Deak, *Automobile Accidents: A Comparative Study of the Law of Liability in Europe*, 79 U. PA. L. REV. 271 (1931).

28. U.S. DEP'T OF TRANSPORTATION, *THE ORIGIN AND DEVELOPMENT OF THE NEGLIGENCE ACTION* 36 (1970).

29. For a study pointing out that contingent fee arrangements are generally regarded as improper elsewhere see P. MACKINNON, *CONTINGENT FEES FOR LEGAL SERVICES* (1964).

attorney's fees made necessary by a tort action would encourage litigation. Again the facilities and capacity for extensive, independent research were not available and another error was committed. The result of this second error was the contingent fee arrangement. It was inevitable that if the claimant was not going to recover his necessary attorney's fees, he would have to pay for them. If the claimant did not have money to risk, he would have to give up part of the recovery to which he would be entitled. Thus, the resulting system further defeated the objectives and purposes of an auto accident reparation system.

To compensate for this second error the American courts began to recognize recoveries in dollars in addition to those representing loss arising from the accident. These were recoveries for intangible items such as "pain and suffering" which themselves could not be measured in dollars because they were not recognized for purposes of replacing dollars or providing reparations as a result of the accident. There are scholars who believe that this trend developed at least in part to provide additional dollars from which the claimant could pay his attorney's fees without impairing his basic economic reparations. They hold this belief because the courts departed so much from the early rules about damages that would be recognized and awarded by the courts.

The AIA Approach

Together, then, these two errors spawned recoveries for indefinite damages—often billed as "pain and suffering" whether or not pain and suffering truly were present—the second cancer in the existing reparations system. The two cancers have infected and weakened the entire auto accident reparations system. From our Association's studies it became apparent that if we were to rectify public complaint that the existing system is incomplete, inequitable, slow and expensive, we would have to cut out those cancers from the system. Accordingly, three years ago our Association proposed a system under which everyone injured in an auto accident would be reimbursed by his own insurance company for his economic losses—swiftly, fairly and without the need to determine how the crash was caused.³⁰

Our plan provides for payment of all of a policyholder's medical and hospital expenses, including the costs of rehabilitation programs, without any policy limits. We also would pay for the policyholder's present and future wage loss, out-of-pocket expenses and costs of replacement services up to \$750 per month

30. For the latest draft of the plan see AMERICAN INSURANCE ASSOCIATION, PERSONAL AND PROPERTY PROTECTION MOTOR VEHICLE INSURANCE ACT (Draft No. 10, Aug. 10, 1970) [unpublished draft in AIA's New York office].

as part of the basic, compulsory plan. Payments for indefinite damages as such would be excluded from the basic plan.

The AIA program would provide both a complete exemption from tort liability in any state enacting the plan, and appropriate liability coverage for policyholders should they encounter a lawsuit in a state that has not enacted the plan. However, it also would preserve common law procedures, including the right to jury trial, for litigation of disputed claims. These would be issues between the policyholder and his own insurance company, and would no longer involve the somewhat remote insurance company of a third party.

No-Fault: A National Objective

Early in 1970, further evidence of the imperative need for complete reform of the auto insurance system was presented by the New York State Insurance Department in a thorough, well-documented indictment of the existing system that also proposed a complete, no-fault reparations system.³¹

Then, beginning in March of 1970 the U.S. Department of Transportation [DOT] released 23 reports representing the most exhaustive body of evidence ever developed on the need for fundamental change in the way people are compensated for their auto crash losses. From that analysis the DOT and the Nixon Administration concluded that the States should begin promptly to shift to a first-party, no-fault compensation system for auto accident victims. The Administration prepared a Congressional Resolution outlining in these terms the national goals or principles toward which the States should be moving.³² The following are the major provisions of that Resolution:

- A system in which every motorist would be required to carry insurance protecting himself, his family and other uninsured people who may be injured by him for all economic losses they incur up to specified amounts. Benefits would be paid by the policyholder's own insurance company.
- Basic benefits should be payable to all accident victims without regard to fault, excluding those who willfully injure themselves.
- The ultimate system should provide full coverage for all medical benefits, with a relatively small deductible but with a very high mandatory limit. Medical rehabilitation expenses would be included.
- Coverage should include a relatively high percentage of the injured's earned income. A monthly benefit ceiling of perhaps \$1,000 for three years is cited as an example of effective income replacement.

31. AUTOMOBILE INSURANCE, *supra* note 4.

32. 1971 Hearings, *supra* note 7, at 308.

- The system also should cover the cost of necessary replacement of services for the unemployed, such as housewives.
- In the ultimate system coverage of damage to property, including the insured auto, might be required, but with fairly high deductibles permissible.
- The function of the reparations system should be to afford adequate compensation to the accident victim at minimum cost. Benefits from all sources should be coordinated and auto insurance should be the primary benefit source whenever feasible.
- Rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system.
- No recovery for any loss covered by the first-party, no-fault coverages should be permitted in any private action for damages. The adversary process thereby would be eliminated for the mass of accidents.
- The right to sue might be continued for intangible losses when a person suffers permanent impairment or loss of function or permanent disfigurement, or if medical expenses excluding hospital exceed a rather high dollar threshold.

Thus, according to Secretary Volpe, the Administration has decided on an extensive no-fault auto insurance system as the needed national policy. At the same time, the Administration said that reform should be reasonably uniform, with room for experimentation and comparison, and that it should be accomplished by individual action of the States.

No-Fault: What "Rights" Are Really Affected?

The judiciary can expect to hear many allegations that no-fault auto insurance systems remove rights of injured people to claim certain damages. The trial bar actually compares "damages collected" with the "right to 'claim' damages,"³³ as if they were one in the same—as if the existing system fully compensated all injured people for tangible and intangible losses past, present and future.

It is apparent that this is simply not true. First, if it were true, the public hardly would be so dissatisfied with and so anxious to change the existing system.³⁴ Second, we know from several objective studies that anywhere from one-quarter to one-third of the people injured in auto accidents receive nothing from the auto liability insurance system.³⁵ Third, we know that those who

33. Ansley, *No-Fault: The Wrong Approach*, THE ATLANTA LAWYER, Oct. 1971.

34. See generally U.S. DEP'T OF TRANSPORTATION, PUBLIC ATTITUDES TOWARD AUTO INSURANCE (1970).

35. See U.S. DEP'T OF TRANSPORTATION, ECONOMIC CONSEQUENCES OF AUTOMOBILE ACCIDENT INJURIES (1970); U.S. DEP'T OF TRANSPORTATION, AUTOMOBILE PERSONAL INJURY CLAIMS (1970).

recover do so not so much on the basis of actual loss or need for compensation, as on their or their lawyer's ability to negotiate, bargain, dramatize, persuade or threaten.³⁶ Fourth, in the instance of those who are seriously injured in an auto crash, we know that 55 out of every 100 get no compensation whatever from the auto liability insurance system.³⁷ Fifth, we know that the 45 of every 100 seriously injured victims who do recover something receive on the average less than half of their actual losses from all insurance sources combined—and only one-sixth of their total economic loss from auto liability insurance.³⁸ Sixth, we know that only three out of ten seriously injured victims who suffer \$10,000 of economic loss as a result of an auto crash and who recover anything from auto liability insurance receive *more than half* of their actual economic losses. We also know that only one out of ten of such victims actually gets anything more than his actual economic losses.³⁹ Seventh, we know that the average loss, including future earnings, for someone permanently disabled through an auto crash is 78,000 dollars, and that under the existing system the average recovery is 12,556 dollars.⁴⁰

In the light of all this, how can it be claimed that the existing system compensates fully for injuries sustained? Is it now sophistry to equate "damages collected" with the "right to 'claim'?" In this case, two birds in the bush are worth more than one in hand. Today, a person has the "right to claim" any and all tangible and intangible losses, but those "rights" do not materialize into the actual collection of damages as is implied. Such a misleading argument ill serves the reputation of a professional status group.

In alleging that a complete no-fault plan removes some of a motorist's rights, the trial bar should make clear that it is only the ability to *claim* damages for intangible losses that is being removed, not the right to *collect* those damages. The fact is that nine out of ten seriously injured auto victims do *not* collect them. Out of fairness and intellectual honesty, we think that the trial bar also should point out that in exchange for the right to claim intangible losses, every motorist is being guaranteed prompt payment of his economic losses, a right he does not have today. In addition, under our proposed no-fault plan, every policyholder would retain the right to sue his own company if there is a dispute over benefits to be paid.

Otherwise, there are several other "rights" which the public should be very happy to see disappear from the existing lawsuit system of auto insurance: the

36. See MOTOR VEHICLE CRASH LOSSES, *supra* note 5, at 41-46.

37. U.S. DEP'T OF TRANSPORTATION, ECONOMIC CONSEQUENCES OF AUTOMOBILE ACCIDENT INJURIES 3 (1970).

38. *Id.*

39. *Id.* at 41.

40. U.S. DEP'T OF TRANSPORTATION, AUTOMOBILE PERSONAL INJURY CLAIMS 53 (1970).

right to go without compensation until the other party's insurance company decides if the claim is valid; the right to wait an average of 16 months for a court case to be settled; the right to pay far higher insurance premiums than necessary and to receive far less in benefits than people should; the right of innocent family members in a vehicle to go uncompensated for their injuries should the driver be held legally liable for a crash; the right of the seriously injured to do without necessary rehabilitation; the right to move to cheaper housing, to go without adequate care for injuries, to borrow money to pay bills, and the right to a lower standard of living. These "rights" are wrongs in the existing system that must be remedied, and under no-fault they will be.

There is one other "right" of the existing system that will disappear that some of the public may not be happy about, but its disappearance is essential if any reparations system is to operate fairly and efficiently. That is the "right" to make a profit on minor injuries at the expense of fellow motorists, and it is from here that the dollars will come to pay all injured people according to their loss and need.

The State Reform Laws—Failing to Meet our National Objective

What has happened so far since the Nixon Administration set forth genuine no-fault auto insurance reform as a national objective? The harsh truth is that none of the reform laws enacted so far complies with all of the guiding principles established by the DOT and the Nixon Administration. The Florida law⁴¹ comes closest, in providing compulsory no-fault compensation of up to 5,000 dollars for each injured party and in prohibiting suits for pain and suffering unless there is the serious, permanent injury cited by the DOT or unless medical expenses exceed 1,000 dollars. The Florida law also is the only one that applies to damage to autos, providing a no-fault system up to 550 dollars.

The Massachusetts law⁴² operates in a similar fashion, but provides no-fault compensation up to only 2,000 dollars and has a threshold of only 500 dollars for suits for intangible losses.

The Illinois law⁴³ fails to meet the Administration standards in several important respects. For one thing, it does not require people to buy auto insurance in the first place. For another, it does not prohibit damage suits against another motorist at any time. For a third, it allows insurance companies to seek reimbursement from each other for benefits paid to their policyholders, and this will require all the fault-finding procedures which add so much unnecessary cost to

41. Ch. 71-252, [1971] Fla. Laws 993.

42. Ch. 670, [1970] Mass. Acts 578.

43. P.A. 77-1430, [1971] Ill. Pub. Acts 2213.

the existing system. While the Illinois law does not meet the DOT recommendation for limitation on suits for pain and suffering, it does have the virtue of limiting payments for pain and suffering by formula. Otherwise, the Illinois law merely states that all insurance policies sold after January 1, 1972, must include certain medical and wage loss reimbursement by the policyholder's own insurance company.

As for the other bills, Delaware⁴⁴ does not meet the DOT criteria because it in no way restricts suits for damages, either for economic losses or for pain and suffering. The law simply compels people to buy medical payments and wage loss coverage from their own insurance company, in addition to standard liability insurance. To that extent, the Delaware law is an attempt to see that all motorists will receive compensation for their injuries. However, it removes none of the reliance on the adversary process as DOT has suggested and is likely to prove more expensive for motorists, rather than less expensive.

Oregon,⁴⁵ like Illinois, provides that all auto insurance policies sold after January 1 must include medical and wage loss reimbursement coverages. However, the law does not require motorists to purchase any insurance at all. It also fails to meet DOT criteria in that there is no change in the existing fault system through elimination of damage suits or reduced use of the adversary system. Oregon simply tacks on any overlay of first-party benefits for those who choose to buy insurance at all. Such a manner "does nothing to correct the inequities and faults of the present law."⁴⁶

As for the South Dakota law,⁴⁷ it simply is misleading to call it no-fault in any way, shape or form. All the law says is that insurance companies must *offer* medical expense and wage loss reimbursement coverages to their policyholders. People need not accept the coverages any more than they have to buy insurance at all. Therefore, South Dakota fails to meet *any* of the criteria for reform set forth by the DOT. This is true of a similar provision enacted in Minnesota last year.⁴⁸

Conclusion

Our Association prefers to believe that the state plans that simply provide an overlay of medical and wage loss benefits without altering the existing fault system indicate an attempt to provide coverage in some way for all auto acci-

44. Ch. 98 [1971] Del. Laws 55.

45. CCH [1971] Oregon New Laws, at 653.

46. Address by T. Lawrence Jones, Imported Car Dealers Conference, National Automobile Dealers Association, October 12, 1971.

47. S.D. COMPILED LAWS ANN. § 58-23-5 to 8 (Supp. 1971).

48. Laws of Minn. 1969, ch. 713, at 1272.

dent victims, even though an inefficient, expensive and cumbersome way of doing so has been chosen. We hope that those states are not deluding themselves into thinking that they have passed a meaningful reform measure.

Everyone should be aware of the serious challenges facing the judiciary and judicial administration today. There is little doubt that the nation's judicial-legal talent and energy, the resources of the courts and the nation's tax dollars could be better utilized, especially when it comes to playing the dreary, time-consuming auto accident settlement game called, "who's at fault?".

There is little doubt that society simply will not provide enough new judges and new courtrooms to clear up the problems of congestion and delay. The only road open is the road of reform and the chief reform that must take place is to remove auto accident cases from the adversary system.

The judiciary now has the opportunity to take a leadership role in cleaning up the terrible problems that confront it and at the same time in providing the public with a true auto accident reparations system. They should be urged to act upon this challenge—quickly and decisively—before both the court system and the existing auto liability insurance system collapse from their own weight and expense.