Automobile Insurance Reparations Plans: An Analysis of Eight Existing Laws

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AUTOMOBILE INSURANCE REPARATIONS PLANS: AN ANALYSIS OF EIGHT EXISTING LAWS

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INTRODUCTION

It may be said, without fear of contradiction, that no subject relating to insurance and tort law has received as much attention during the last five years as automobile accident reparations. It has been the topic for a host of books, articles, debates, symposia, studies, investigations, and, to the dismay of those who have attempted to keep apace with the rapidly changing developments, plans for reform. Automobile accident reparations is to the insurance trade press what the war in Vietnam is to the popular press. Not an issue of the various insurance periodicals passes without news and views on new plans, critiques of plans by authors or backers of other plans, and legislative prognostications.

Although interest in automobile accident reparations reform has peaked in the last several years, proposals for change or modification of the present system are not new.1 However, the impetus for the current surge of interest in this subject can be traced directly to the work of two law professors—Robert Keeton, of Harvard, and Jeffrey O’Connell, of Illinois. Their book, Basic Protection for the Traffic Victim, not only contains an alleged indictment of the present system, but also contains a blueprint for reform of that

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system. Unlike other proposals which preceded their work, Keeton and O'Connell presented a sample statute which could be adopted for local use by any legislator with the smallest modicum of drafting ability.

Keeton and O'Connell arrived on the scene at what, for them, was a most propitious moment. Due to inflation and high accident rates, the cost of automobile accidents to insurers was increasing at a rapid pace. Unable to obtain the type of rate relief they believed necessary, auto insurers began to seek only the best risks, causing many vehicle owners to enter the substandard insurance market. These and other factors, when added to the large backlogs in a few of the nation's major metropolitan court systems, caused many persons to listen to the Keeton-O'Connell criticisms of the present tort-liability system—namely, that this system, as it relates to automobile accident reparations, is incomplete, inequitable, slow, wastefully expensive, impractical, unrealistic, and susceptible to fraud or exaggeration.

The Keeton-O'Connell plan would eliminate the tort-liability system for the majority of automobile accident cases and adopt a system under which accident victims would look to their own insurers for reimbursement of economic loss. The term “no-fault” insurance was born.

Certainly, the concept of having first party benefit provisions in an automobile insurance contract was nothing new. Collision, comprehensive, medical payments, and income disability coverages had been offered in auto policies for years, along with the typical liability coverages. However, Keeton and O'Connell proposed that the first party coverages for medical expenses and wage loss be

3. Id. at 298-339.
4. For an excellent analysis of the developments leading up to the so-called “crisis in car insurance,” see German, Investigation of the Automobile Accident Reparation System, 1969 PROCEEDINGS ABA SEC. OF INS., NEG. & COMP. LAW 346.
5. Id.
6. R. KEETON & J. O'CONNELL, supra note 2, at 273. Up to $10,000 of economic loss benefits would be available. There would be a “tort exemption” for the first $10,000 of covered economic loss and for the first $5,000 of general damages. Under their “tort exemption,” an insured vehicle owner or operator would not be liable for that amount of economic loss and general damages but would continue to be liable for damages in excess of those amounts.
broadened and that tort liability be abolished in all but a few instances.\(^7\)

The proposal for "no-fault" auto insurance caught fire. Although the Keeton-O'Connell plan did not obtain legislative approval, it spawned numerous other plans and proposals. Auto insurance reform changed from an academic to a political subject.

The proposals for automobile accident reparation reform which have been advanced to date can be roughly classified into three broad categories: "total self-insurance" plans, "partial self-insurance" plans, and "reform proposals."

The most drastic alternative available is the complete elimination of the tort-liability system and the adoption of a "total self-insurance," or first party, approach.\(^8\) Under such a system, each motorist would be compelled to purchase his own insurance as a prerequisite to driving. In addition to the named insured, guest passengers and pedestrians injured by the insured vehicle would be entitled to benefits. Benefits would be paid for lost wages and for medical, hospital, rehabilitation, and related expenses within specified limits. There would be no compensation for general damages.\(^9\)

Some plans would require the accident victim to exhaust benefits from collateral sources before they could seek compensation from their auto insurance.

The second alternative may be referred to as the "partial self-insurance" approach.\(^10\) This type of plan would compel one to purchase insurance for his own protection as part of an auto liability policy. The same persons would be covered by this type of insurance as would be covered under the "total self-insurance" system, and benefits would be paid for the same type of economic

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7. Only 0.5% of accident victims sustain economic loss in excess of $10,000. Although statistics are not available on payment size for general damages, it is known that only 5% of all claimants recover in excess of $5,000, 1.5% receive $10,000 or more, and only 0.3% receive in excess of $25,000. DEPARTMENT OF TRANSPORTATION REPORT, AUTOMOBILE PERSONAL INJURY CLAIMS vol. I, at 30, 49 (1970).


9. As generally used, the term "general damages" includes: physical pain and suffering; mental anguish; aggravation of a pre-existing disease; aggravation of a pre-existing physical condition; impairment of physical ability; impairment of mental ability; disfigurement; dismemberment; loss of bodily function; inconvenience and discomfort; fright and shock; humiliation, indignity, or insult; loss of enjoyment of life; loss of consortium (society and companionship); worry about future consequences of the injury; loss of earning capacity; temporary disability; partial permanent disability; and total permanent disability.

10. See, e.g., Florida, Illinois, and Massachusetts plans discussed infra.
loss. However, the amount of total loss covered by the first party insurance system would be smaller, and the injured person would still retain his right to seek tort recovery for losses not covered by his own first party insurance, other non-compensated economic loss, and general damages. Some of these proposals would exempt a tortfeasor from liability to the extent of first party benefits paid. Others would subrogate the insurer paying benefits, to the extent of payment, to the insured's cause of action against a tortfeasor. In most instances, these partial self-insurance plans place some limitation on the amount which may be recovered for general damages. Two different types of general damage limitations are customarily employed. The first, the "threshold" approach, denies compensation for general damages unless medical expenses exceed a fixed dollar amount or unless death or a serious injury results. The second type, the "formula" approach, limits the amount of compensation recoverable for general damages to a percentage of the claimant's medical expenses, unless death or a specified type of serious injury results.

The third alternative, contained in "reform proposals," is not to eliminate or restrict tort liability but, rather, to improve the present system by providing for changes in substantive and procedural law. These proposals also require, or mandate the availability of, certain types of insurance coverage. Some provide for compulsory liability insurance. Others require motorists to purchase, or insurers to offer, minimum first party insurance coverages.

As noted earlier, the subject of automobile accident reparations has now become a political issue. To date, seven states and Puerto Rico have adopted legislation geared at improving the automobile accident reparations system in their jurisdictions. The purpose of this article is to analyze the plans which, as of January, 1972, have become law. Interestingly, no state has as yet seen fit to employ the total self-insurance approach to automobile accident reparations. Florida, Illinois, Massachusetts, and Puerto Rico have adopted "partial self-insurance" plans. Delaware, Minnesota, Oregon, and South Dakota have adopted "reform proposals." In addition to

11. See, e.g., Florida and Massachusetts plans discussed infra.
12. See, e.g., Illinois plan discussed infra.
13. See, e.g., REPORT OF AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON AUTOMOBILE ACCIDENT REPARATIONS (1969); DEFENSE RESEARCH INSTITUTE SPECIAL REPORT, RESPONSIBLE REFORM—A PROGRAM TO IMPROVE THE LIABILITY REPARATION SYSTEM (1969).
discussing the elements of each plan, this article is intended to note the similarities and differences between the plans and the impact each will have on the tort liability system of the enacting jurisdiction.

I. DELAWARE

A. Required Insurance

The Delaware law was approved on May 27, 1971, and became effective January 1, 1972.14 It compels the owners of motor vehicles, which are required to be registered in the state,15 to purchase certain types of insurance coverage as a condition precedent to the operation of their vehicles in Delaware.16 Prior to 1972, only Massachusetts, New York, and North Carolina had compulsory automobile insurance laws.17 Although the Act compels the purchase of insurance, it is specific in providing that it does not require an insurer to insure any particular risk or limit the insurer's obligations under the Delaware Automobile Plan (assigned risk plan).18

Although the state now has compulsory automobile insurance, the Act, unlike others, does not set up elaborate systems to supervise compliance with its provisions.19 Rather, it is a form of self-certification compulsory insurance which will be enforced by detection through random spot checks or investigation following traffic law violation or accident involvement.20


15. Every motor vehicle, trailer, semi-trailer and pole trailer is required to be registered. Del. Code Ann. tit. 21, § 321 (1953). The term motor vehicle includes every device, other than a farm tractor, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and excepting electric trackless trolley coaches. Del. Code Ann. tit. 21, § 101 (1953).

16. Delaware Act, supra note 14, § 2118(a). Del. Laws 1972, ch. 353 (approved Feb. 8, 1972) amends § 2118(a)(2)B of the Delaware Act to allow the owner of a motorcycle to exclude coverage for first party economic loss benefits to persons riding on his vehicle for accidents occurring when it is not operated on a highway, and in any case of injury when no other vehicle is involved by actual collision or contact.


18. Delaware Act, supra note 14, § 2118(h).


20. Delaware Act, supra note 14, § 2118(j) provides for a fine of not less than $300 or more than $1,000 and imprisonment of not more than 6 months for noncompliance. The cost of administering a pre-registration certificate of compliance form of compulsory insurance has been estimated at 57.4¢ per registered vehicle. Department of Transportation Report, Motor Vehicle Crash Losses and Their Compensation in the United States 50 (1971).
Four different types of insurance coverage (one type providing liability coverage and the other three providing first party benefits) are mandated by the new Delaware law.

1. Liability Coverage

The Act compels the purchase of coverage for indemnity from legal liability arising out of the ownership, maintenance, or use of the insured vehicle to a limit, exclusive of interest or costs, of $25,000 or the limits of the state's Financial Responsibility Law, whichever is greater. Thus, the upward amendment of the state's FR limits will automatically increase the limits of compulsory liability coverage needed to comply with the Act.

The new law will, in all probability, result in more of the state's motorists carrying liability coverage. It has been estimated that before the Act became effective, less than eighty percent of the private passenger vehicles in the state were insured. However, the same study placed the number of insured vehicles in compulsory states such as New York and North Carolina at ninety-three and ninety-eight percent, respectively. This indicates that universal liability insurance coverage is difficult to achieve even when it is compelled by statute.

2. First Party Coverage

In addition to bodily injury and property damage liability coverage, the Delaware Act mandates the purchase of three types of first party coverages, which provide for payment of benefits without regard to the fault of the insured.

a. Bodily Injury Protection

The initial first party coverage mandated by the Act provides indemnity against certain types of economic losses which result from bodily injury arising out of a motor vehicle accident. In the words of the Act, what is to be provided is

compensation to injured persons for reasonable and necessary

22. Delaware Act, supra note 14, § 2118(a)(1).
24. Id. Statistics on Massachusetts were not available for the report.
expenses for medical, hospital, dental, surgical, medicine, x-ray, ambulance, or prosthetic services, professional nursing and funeral services, and for loss of earnings and reasonable and necessary extra expense for personal services which would have been performed by the injured person had he not been injured . . . incurred or medically ascertainable within 12 months of said accident.25

The Act requires minimum limits of $10,000 for any one person and $20,000 for all persons injured in any one accident.26 The maximum payment for funeral services is set at $2,000.27 Coverage is afforded to any person occupying the insured vehicle and to any other person injured in the accident, other than an occupant of another motor vehicle.28

Other than the dollar and time limits noted above and the use of qualifying words such as "reasonable and necessary," the Act itself places no limitations on the allocation or dollar amount of benefits which will be paid for economic loss of the types covered. However, it does provide that, subject to the approval of the state's Department of Insurance, the coverage may be written subject to certain deductibles, waiting periods, sub-limits, excess provisions, and similar reductions which will be applicable to the coverage as it applies to the named insured or members of his household.29 These limitations would only be applied at the election of the named insured.30 An examination of the policy endorsement providing this coverage which has been approved for use in Delaware indicates that only the use of a deductible has been incorporated by insurers, and the insured has the option of having the deductible apply only to himself or to both himself and members of his household.31

The Act also provides, again subject to Department of Insurance approval, that this coverage may be written subject to "the conditions and exclusions customary to the field of liability, casualty and property insurance" which are not inconsistent with the

25. Delaware Act, supra note 14, § 2118(a)(2).
26. Id.
27. Id.
28. Id. § 2118(a)(2)A.
29. Id. § 2118(a)(2)B.
30. Id.
31. Delaware Motorists Protection Act (Amendatory Endorsement) A956, GU8868 (Ed. 1-72) [hereinafter cited as Delaware Endorsement].
other provisions of the Act. The endorsement which has been approved for Delaware use provides that the insurance does not apply:

(a) while the motor vehicle is used as a public or livery conveyance unless such use is specifically declared and described in the policy;
(b) to any person who sustains bodily injury while occupying a motor vehicle located for use as a residence or premises;
(c) to bodily injury resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear material;
(d) to any person who sustains bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
(e) to any person who sustains bodily injury to the extent that benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;
(f) to any person while operating the insured motor vehicle without the express or implied consent of the named insured;
(g) to any person if such person's conduct contributed to his bodily injury under any of the following circumstances:
   (i) causing bodily injury to himself intentionally;
   (ii) convicted of driving while under the influence of alcohol or narcotic drugs; or
   (iii) while committing a felony.

Exclusions (g)(ii) and (g)(iii) may be supported by sound public policy considerations, but they do not appear to be "customary" when compared to the typical automobile medical payments endorsement now in use.

An examination of the Act and endorsement indicate that the first party coverage will be paid without regard to other forms of insurance or benefit plans, collateral to auto insurance, which the accident victim may have available. One possible exception lies in the area of loss of earnings. While no limitation on benefits for earning loss is found in the Act, other than the policy limits and one year limitation, the endorsement defines "loss of earnings" as:

Any amounts actually lost, net of taxes on income which would have applied by reason of inability to work and earn wages or salary or their equivalent that would otherwise have been earned

32. Delaware Act, supra note 14, § 2118(a)(2)B.
33. Delaware Endorsement, supra note 31.
in the normal course of an injured person's employment, but not other income. 35

The question here is whether using the term "actually lost" precludes recovery under the coverage if, for example, an injured workman's wages are continued as a gratuity or under a wage continuation program by his employer. Also, might it be said that a person did not actually lose income if he was paid benefits for income loss under a private income continuation policy he purchased? These questions are not answered by the endorsement and will doubtless be the subject of litigation. It should also be noted that the amount paid for loss of earnings will be "net of taxes." It is interesting to speculate whether the Internal Revenue Service, state, and other taxing authorities will consider the direct reimbursement for wage loss to be non-taxable or whether they will impose a tax liability even though insurers have already taken taxes into consideration in determining the amount of payment.

b. Non-Vehicular Property Damage

The second form of first party coverage mandated by the Delaware Act is intended to cover damage to property, other than vehicles, which is caused by motor vehicle accidents. In the words of the statute, to be provided is

compensation for damage to property, in or upon the motor vehicle, and other property damaged in an accident involving the motor vehicle, with minimum limits of $5,000 for any one accident. 36

The owner of the insured vehicle must be given the option to elect, in writing, to have this coverage written to exclude, in whole or in part:

i. Aircraft, watercraft, self-propelled mobile equipment, and any property in or upon any of the aforementioned.

ii. Any property in or upon the vehicle when the owner of said property is not occupying the vehicle. 37

At first blush, the intent behind this section of the Act seems clear. A coverage is intended under which a motorist's insurer would pay for the damage caused to any property by the accident

35. Delaware Endorsement, supra note 31.
36. Delaware Act, supra note 14, § 2118(a)(3).
37. Id. § 2118(a)(3)A(i), (ii).
other than damage to motor vehicles. Payment would be made without regard to the driver's fault, with the only limiting factor being the $5,000 policy limit. A situation which comes quickly to mind in which this coverage would apply involves a one-car accident wherein the errant motorist is unfortunate enough to hit and destroy a light pole. A reading of this section of the Act would leave one with the belief that the motorist's insurer would pay the owner of the pole for its damage. It would also appear from the Act that the insurer would also pay for damage to the property which might be contained in its insured's vehicle.

When the endorsement which has been approved for use in Delaware is examined, however, the clarity of this section dims. The insurance provided does not apply:

(a) to damage to any property while the insured motor vehicle is being used as a public or livery conveyance unless such use is specifically declared and described in the policy;
(b) to damage to any property while the insured motor vehicle is located for use as a residence or premises;
(c) to damage to any property resulting from radioactive contamination;
(d) to damage to any property due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
(e) to damage to any property while the insured motor vehicle is used without the express or implied consent of the named insured;
(f) to damage to aircraft, watercraft, self-propelled mobile equipment and to any property in or upon any of the aforementioned;
(g) to damage to any property in or upon the insured motor vehicle;
(h) to damage to any property owned by, rented to or leased by the named insured or a member of his household. 38

The first five exclusions are fairly standard. The remaining exclusions cover types of property which, according to the Act, the insured may, at his option, elect to exclude. 39 A rider, provided for use with the endorsement, permits the insured to bring this property back under the coverage. 40 Thus, rather than electing to opt those

39. Note 37 supra.
40. Supplemental Damage to Property Coverage (Delaware) A957, GU8902 (Ed. 1-72).
types of property out of the coverage as provided by the Act, the insured must opt to have them covered. It may well be that these exclusions were authorized by the Delaware Department of Insurance in accordance with the provision of the Act permitting "customary" exclusions and conditions. However, exclusions (g) and (h) appear to be in direct conflict with the language of the section of the Act which mandates that the coverage be afforded for property "in or upon the [insured] motor vehicle," and with the provision of the Act which allows "customary" exclusions and conditions only if they are not "inconsistent with the requirements of" the Act itself:

An analysis of the extent of the coverage provided under this section of the Act is made even more difficult when a condition in the endorsement, which is applicable to the coverage, is examined:

This insurance does not apply if there is other valid and collectible property insurance covering a loss which would otherwise be covered by this insurance unless the owner or operator of the insured motor vehicle would be legally liable for such damage under applicable principles of tort law. The question of whether such owner or operator would be legally liable shall be resolved by arbitration.

One can readily recognize the ambiguity in the knotty language of this "other insurance" clause which may call for application of the "adhesion contract rule." However, a court which is called upon to apply that rule will be faced with at least three possible interpretations: (1) That there will be no coverage under the auto policy if the property is otherwise insured; but even if there is other insurance, the damaged property will be covered if the insured driver is legally at fault; (2) That there will be no coverage under the auto policy if the property is otherwise insured; but if the damaged property is not otherwise insured, it will not be covered under the auto policy if the insured driver is legally at fault; or (3) That there will be no coverage under the auto policy if the property is otherwise insured; but if the damaged property is not otherwise insured:

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41. Delaware Act, supra note 14, § 2118(e).
42. Id.
43. Delaware Endorsement, supra note 31.
44. See generally Patterson, The Interpretation and Construction of Contracts, 64 Colum. L. Rev. 833 (1964).
insured, it will not be covered unless the insured driver is legally at fault.

The first alternative construction would afford the broadest coverage. Owners of property other than motor vehicles would, subject to the exclusions and policy provisions previously noted, be additional insureds under the auto policy as far as first party property damage coverage is concerned. However, if the property were covered by other insurance and the insured driver were not at fault, there would be no coverage under the auto policy. It should be noted that the "other insurance" clause is written as an "escape" clause in an attempt to completely cut off coverage, rather than as an "excess" clause to make the auto policy's coverage excess over other valid and collectible insurance. In the context in which auto reparation laws are being enacted, it is logical to cover otherwise uninsured property under this first party property damage coverage. The owners of this property would be able to receive compensation for their loss quickly and without regard to fault. Looking at the Delaware Act as a whole, it also appears logical to exclude from this coverage owners of property otherwise insured. After all, they would be able to recover quickly and without regard to fault from their own property insurers. Those insurers would be able to pursue any subrogation rights they might have against auto liability insurers. What is not logical about the first alternative construction, however, is that it would allow owners of otherwise insured property to recover under the auto policy's first party property damage coverage in cases in which the insured driver is legally at fault. It would seem clear that if the insured driver's fault were obvious, his insurer would be likely to pay for the property damage under the compulsory liability coverage on the vehicle. If fault were disputed, the only advantage to the property owner in claiming benefits under the first party property damage coverage would be that fault would be determined through arbitration, rather than litigation. However, even there, before fault were determined, the property owner would probably have recovered from his own insurer. This would leave the arbitration dispute as a proceeding to determine his insurer's subrogation rights against the auto insurer.

The logic behind the second alternative construction is also subject to question. If it were to be applied, there would be no first

party property damage coverage for the owners of property otherwise insured in all cases. As noted before, this makes some sense. However, under this construction, there would also be no coverage if uninsured property were damaged and the insured driver were legally at fault. Thus, there would be coverage for damage to otherwise uninsured property if the driver were not at fault. The illogic of this construction lies in its practical application. If the auto insurer were to deny the property owner's claim under the first party property damage coverage because the insured driver was "at fault," this would clearly appear to be an admission that the loss should be paid under the driver's liability coverage. Thus, the property owner really could not lose regardless of what stand the insurer took on the claim. The result would be coverage for uninsured property under the auto policy (either liability or first party property damage coverage) in all cases. If this were the intent of the drafters of the endorsement, it would seem to have made more sense to cover uninsured property under the first party property damage coverage no matter how the loss was caused.

The final alternative construction affords the most limited coverage. Again, there would be no coverage for property that is otherwise insured in all cases. However, for uninsured property there would only be coverage if the damage were caused through the fault of the insured driver. Here again, the only benefit to the owner of the uninsured property would be that the fault of the driver might be determined through arbitration.

Neither of the three alternative constructions of the "other insurance" clause is a bargain as far as the owners of non-vehicular property are concerned. It may well be that the underwriters did not intend any of these constructions when the language was drafted. Clearly, the Act itself is very broad in the type of coverage it provides for damage to property other than motor vehicles. The legislative intent to give property owners a means to secure compensation for damage without regard to fault seems abundantly clear. Unfortunately, the policy language is not as clear. The net result may be the type of litigation over property damage claims that the Delaware legislature wished to avoid.

c. Collision Coverage

The final form of compulsory coverage mandated by the Act is collision coverage for the insured vehicle—no stranger to present
auto insurance policies. The Act provides that coverage must be provided for damage to the insured vehicle, including loss of its use, not to exceed the actual cash value of the vehicle at the time of loss. The sum of $10 per day, to a maximum of $300, is specified for loss of use. However, it may not be completely accurate to call this form of coverage "compulsory." The Act allows the vehicle owner to reject the coverage completely or limit the coverage by use of deductibles or exclusions approved by the Department of Insurance. Since this form of insurance coverage has been in use for some time, and since there is nothing in the Act which should affect its usual application, there are no provisions in the special endorsement approved for use in Delaware which pertain to this coverage.

B. Impact on Tort Liability

The impact of the Delaware Act on tort liability for personal injury or property damage is relatively modest.

1. Economic Loss

The Act prohibits those who are "eligible" for first party benefits under the Act (bodily injury protection and non-vehicular property damage) from pleading or proving damages for which first party benefits are "available" in a liability action against an alleged tortfeasor. The prohibition applies "without regard to any elective reductions in such coverage and whether or not such benefits are actually recoverable." The purpose of this provision is clear. Persons injured or suffering property damage (non-vehicular) as a result of an auto accident are to receive indemnity, but only once. Duplication of compensation is to be prevented. As to those economic losses not covered by the mandated first party insurance, or in excess of its coverage limits, tort recovery is preserved.

It should be noted, however, that this section of the Act may result in incomplete indemnity. As the quoted language above indicates, the prohibition applies regardless of whether an elective reduction of coverage is taken or the benefits are actually recoverable. Thus, if an insured elected to take the bodily injury protection coverage with a deductible applicable to himself and members of his household, the amount of the deductible would not be recovera-

46. Delaware Act, supra note 14, § 2118(a)(4).
47. Id. § 2118(a)(4)A.
49. Delaware Act, supra note 14, § 2118(g).
50. Id.
ble in a tort action. Likewise, if an insured chose to take the non-vehicular property damage coverage so that it would not apply to the contents of his vehicle, it would appear that he would be precluded from recovering for damage to the contents in an action against a tortfeasor.

Although the person recovering first party benefits is precluded from recovering again in a tort action, the Act does not provide immunity for tortfeasors. It specifically provides that an insurer paying benefits under any of the four compulsory coverages is subrogated to the rights, "including claims under any Workmen's Compensation law," of the person to whom benefits are paid. The insurer is subrogated to the extent of the benefits it paid. The ultimate burden for automobile accident losses will fall on the person responsible for the loss or his insurer. Therefore, although the Delaware Act creates a first party auto insurance system, loss allocation will still be determined by the principles of tort liability, where applicable.

2. Vehicular Property Damage

As noted previously, both property damage liability and collision coverage are mandated under the Act. The owner of a motor vehicle may, through the use of a deductible, eliminate all or a part of the collision coverage on his own vehicle. Insurers providing collision coverage are entitled to subrogation rights.

The Act does, however, attempt to remove motor vehicle property damage liability claims from the litigation process. It provides that a claim for damage to a motor vehicle, other than the insured vehicle, must be submitted to arbitration on request of the owner of the damaged vehicle. The arbitration procedure for motor vehicle damage claims is to be administered by the state's insurance commissioner with arbitrators selected from members of the Bar and insurance adjusters licensed to practice in the state.

3. General Damages

The Delaware Act does not restrict the right of motor vehicle accident victims to recover general damages in a tort action.

51. Id. § 2118(e).
52. Id. § 2118(e).
53. Id. § 2118(e)(3).
54. As to those elements of loss included in the term "general damages" see note 9 supra.
C. Summary

It can be seen that the course Delaware determined to follow to find a solution to some of the problems claimed to exist in operation of the present auto reparations system was to place a compulsory first party insurance system on top of a compulsory automobile liability insurance system. No limitations on the right to recover full indemnity for losses sustained in motor vehicle accidents is imposed on state residents. Those whose negligence or intentional conduct causes auto accidents are still held accountable for their actions. The theory of the law is that prompt payment of first party claims will reduce the irritants that currently exist in our system, promote settlements, reduce costs, and still hold the wrong-doer liable for any caused loss.

II. Florida

A. Required Insurance

Chapter 71-252 of the Florida Laws was approved on June 23, 1971, and became effective January 1, 1972.55 Like its counterpart in Delaware, the Florida Act compels owners of “motor vehicles” required to be registered in the state to purchase specific types of insurance coverage as a condition precedent to operation within the state. The term “motor vehicle,” as used in the Act, is defined as

a sedan, station wagon or jeep type vehicle not used as a public livery conveyance for passengers, and includes any other four-wheel motor vehicle used as a utility automobile and a pickup or panel truck which is not used primarily in the occupation, profession or business of the insured.56

The Florida Department of Insurance, by virtue of power given to it to implement the Act,57 has amplified the definition by regulation:

“Motor vehicle,” as referred to in Section 3(1) of Chapter 71-252, Laws of Florida means a 4 wheel self-propelled vehicle of a type required to be registered and licensed under Florida law, which is not used as a public or livery conveyance, and which is one of the following types:

(a) a private passenger vehicle, such as a sedan, station wagon or jeep-type vehicle,

56. Florida Act, supra note 55, § 3(1).
57. Id. § 12(1).
(b) a pick-up or panel truck not used primarily in the occupation, business or profession of the owner,
(c) a utility automobile designed for personal use, as a camper, a motor home, a vehicle for family recreational purposes, or a vehicle with chassis and body similar to that of a light panel truck but containing passenger seats rather than open cargo space, but a utility automobile does not include any such automobile used primarily
   (1) in the occupation, profession or business of the owner or
   (2) for the transportation of passengers, other than members of the insured’s family and incidental guests.

A “Motor Vehicle” does not include a vehicle owned by the State of Florida, any political subdivision or municipality thereof, or the Federal Government;

A “Motor Vehicle” described in subsections (b) or (c) of the above definition of “Motor Vehicle” which has been specifically insured for Personal Injury Protection Benefits on the representation of the named insured that the vehicle will not be driven for more than 50% of its total mileage during the policy period (1) in the occupation, profession or business of the insured or (2) for the transportation of passengers, other than members of the insured’s family and incidental guests, shall be deemed to be a motor vehicle to which security has been provided as required by this Act.\(^5^8\)

The policy endorsement authorized for use in the state follows the latter definition.\(^5^9\) It should be noted that the definition does not cover motorcycles, motorbikes, commercial trucks, taxis, buses, and other types of vehicles. Since the term “motor vehicle,” as used throughout the Florida Act, is governed by the definition, its use will have more importance as this discussion continues.

Recognizing Florida’s status as a recreation and vacation area, it is important to note that the insurance requirements of the Act also apply to “motor vehicles” of some non-residents of the state, which will be used in Florida:

Every non-resident owner or registrant of a motor vehicle which, whether operated or not, has been physically present within this state for more than ninety (90) days during the preceding three

\(^5^8\) Rules of the Florida Department of Insurance, R. 4-27.01 (Dec. 7, 1971) [hereinafter cited as Florida Dep’t Rules].

\(^5^9\) Florida Automobile Reparations Reform Act (Amendatory Endorsement) A946, GU8529 (Ed. 1-72) [hereinafter cited as Florida Endorsement].
hundred sixty-five (365) days, shall thereafter maintain security as defined by subsection (3) of this section in effect continuously throughout the period such motor vehicle remains within this state.\(^{60}\)

In dictating the types of insurance coverage which must be procured by owners of "motor vehicles," the Act provides that the provisions of the state's financial responsibility law,\(^{61}\) relating to the method of giving and maintaining proof of financial responsibility, shall apply to the filing and maintaining of proof of the security (insurance coverage) required by the Act.\(^{62}\) Security may be proved by the owner's showing that he has a policy of insurance in compliance with the Act's provisions, or "by any other method approved by the department of insurance as affording security equivalent to that afforded by a policy of insurance."\(^{63}\) Thus, the door for self-insurance is open.

As a result of the Act's tie-in to the supervisory provisions of the state's financial responsibility law, Florida, unlike Delaware, establishes a more elaborate mechanism to police the persons in the state whom the law affects.

The types of insurance coverage provided for in the Act will be considered separately.

1. Liability Coverage

Owners of "motor vehicles" affected by the Florida Act are compelled to carry basic bodily injury and property damage liability coverage with limits geared to the state's present financial responsibility law requirements\(^{64}\)—namely, coverage of $10,000 for bodily injury to one person, $20,000 for bodily injury to all persons from one accident, and $5,000 for all property damage from one accident.\(^{65}\) Statistics compiled before the Florida Act went into effect indicate that approximately seventy-six percent of the private passenger vehicles in the state were insured.\(^{66}\) That percentage should be increased but, as was noted previously, compulsory lia-

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\(^{60}\) Florida Act, supra note 55, § 4(2).
\(^{61}\) FLA. STAT. §§ 324.011-324.251 (1971).
\(^{62}\) Florida Act, supra note 55, § 5(1).
\(^{63}\) Id. § 4(3).
\(^{64}\) Id. § 4.
\(^{65}\) FLA. STAT. §§ 324.021(7), 324.051(2) (1971).
ility insurance laws have not resulted in universal insurance coverage.\textsuperscript{67}

The Florida Act does not contain any provisions which alter the liability section of the auto insurance policy. All "motor vehicles" covered by the Act will have to be insured with the type of $10,000/20,000/5,000 liability policy that was used in the state on a voluntary basis before the law came into operation.

2. Personal Injury Protection

In addition to liability coverage, the Act requires the owners of "motor vehicles" to carry a form of first party coverage against certain economic losses associated with automobile accidents. This form of coverage is designated as "Personal Injury Protection" (PIP).\textsuperscript{68}

\textit{a. Benefits Provided}

The PIP insurance provides up to $5,000 of coverage per person without regard to fault, for the following economic losses associated with an accident:

(a) Medical benefits: all reasonable expenses for necessary medical, surgical, x-ray, dental and rehabilitative services, including prosthetic devices, necessary ambulance, hospital and nursing services. Such benefits shall include also, necessary remedial treatment and services recognized and permitted under the laws of the state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with his religious beliefs.

(b) Disability benefits: one hundred per cent (100\%) of any loss of gross income and loss of earning capacity per individual, unless such benefits are deemed not includable in gross income for federal income tax purposes, in which event such benefits shall be limited to eighty-five per cent (85\%), from inability to work proximately caused by the injury sustained by the injured person, plus all expenses reasonably incurred in obtaining from others ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed without income for the benefit of his household. All disability benefits payable under this provision shall be paid not less than every two weeks.

(c) Funeral, burial or cremation benefits: funeral, burial or cremation expenses in an amount not to exceed one thousand dollars ($1,000) per individual.\textsuperscript{69}

\textsuperscript{67} See note 24 and accompanying text \textit{supra}.

\textsuperscript{68} Florida Act, \textit{supra} note 55, § 7.

\textsuperscript{69} Id.
The terms "gross income" and "loss of earning capacity" are not defined in the Act. However, the department of insurance has issued a regulation providing definitions:

As used in Section 7(1)(b),
(1) Determination of "gross income," as to employed persons, shall be established in the same manner as "average weekly wage" under Section 440.14, Florida Statutes.70
(2) The phrase "loss of earning capacity" is interpreted to mean loss of income which the injured person may reasonably show would have been earned except for the injury.71

It is interesting to note that the Florida Act contains a hedge as to whether income loss benefits will be reduced for tax purposes. If the payments are not subject to tax, benefits will be reduced by fifteen percent. If they are subject to taxation, the full amount of the loss will be paid. The Act, however, does not allow a person to reduce the amount of the deduction by establishing that his tax liability is lower than fifteen percent. It would be a fair estimate that the great majority of individual taxpayers do not have a total federal tax liability equal to fifteen percent of their income.72

With one exception, benefits payable under the PIP coverage are to be paid regardless of any other collateral insurance or other benefits received by the insured as a result of the accident. The Act provides that PIP benefits are primary, except that benefits received under any workmen's compensation law are to be credited against benefits provided by PIP.73

b. Persons Covered

The Act, in its general provisions describing the PIP coverage of an insured "motor vehicle," provides that it will protect the named insured, relatives residing in the same household, persons operating the insured "motor vehicle," passengers in such "motor vehicle," and other persons struck by such "motor vehicle" and suffering bodily injury while not an occupant of a "motor vehicle" or motorcycle.74 However, other provisions of the Act refine or restrict this broad coverage to such an extent that it is necessary

70. This section of the Florida Statutes sets forth the manner in which "average weekly wages" are determined in workmen's compensation cases.
71. Florida Dep't Rules, supra note 58, R. 4-27.15.
73. Florida Act, supra note 55, § 7(4).
74. Id. § 7(1).
to examine the application to each class of potential PIP claimants. It is clear that the intent of the Florida legislature was to have PIP coverage follow the person, rather than the vehicle, where possible. That is, an injured person will look to his own insurer for benefits, rather than look to the insurer of the vehicle he occupied or the insurer of the vehicle that struck him.

1) Named Insured

The Act provides that when the named insured sustains accidental bodily injury in a Florida accident, while occupying a "motor vehicle" or while not an occupant of a "motor vehicle" or motorcycle, he is to seek PIP benefits from his own insurer. Therefore, even if a named insured were to sustain injury in an auto accident while the occupant of an insured "motor vehicle" owned by someone else, he would seek benefits from his own insurer. However, if a named insured, owning more than one "motor vehicle" required to be insured under the Act, sustained injury while in one of the "motor vehicles" which was not insured, he would not be entitled to PIP benefits even if another "motor vehicle" he owned were properly insured. But if, for example, a person owned two "motor vehicles," which were required to be insured, but only one was, and the named insured were injured in an accident while an occupant of a "motor vehicle" owned by a third person, there appears to be nothing in the Act which would prevent the named insured from recovering PIP benefits from the carrier which covered his insured "motor vehicle."

Because the Act gives the named insured coverage under his own policy when bodily injury is sustained "while not an occupant of a motor vehicle or motorcycle," and because the Act's definition of "motor vehicle" is restrictive, it appears that PIP coverage would be afforded to the named insured while he is a pedestrian, riding a bicycle, or occupying any other vehicle, such as a bus or taxi, not coming under the Act's definition of "motor vehicle."

Although this may be the literal interpretation of the Act, the state's insurance department narrowed the coverage:

"While not an occupant of a motor vehicle or motorcycle" means while a pedestrian or while not the occupant of (a) a motor vehicle or (b) a motorcycle or any other type of self-propelled vehicle for which security under the Act is not required.  

75.  Id. § 7(4)(d)1.
76.  Id. § 7(2)(a).
77.  Florida Dep't Rules, supra note 58, R. 4-27.05(1) (emphasis added).
The net effect of these provisions, as to a named insured injured in an accident in Florida, is to afford him PIP coverage from his own insurer: (a) when he is occupying his own insured "motor vehicle;" (b) when he is occupying a "motor vehicle" he does not own, whether it is legally insured or not; (c) when he is a pedestrian; and (d) when he is in any status other than an occupant of a motorcycle or self-propelled vehicle (e.g., on a bicycle, in a pushcart, etc.).

The PIP insurance also provides coverage for the named insured in certain accident situations outside of Florida. Coverage is extended to him in other states of the United States, its territories or possessions, or in Canada, but only if the accident occurs while the named insured is occupying his insured "motor vehicle."

2) Resident Relatives

The same type, source, and restrictions of coverage for PIP benefits applied to the named insured also apply to relatives residing in the same household as the named insured. However, to be covered by the named insured's policy, they must also be domiciled in the named insured's household at the time of the accident and may not, themselves, own a "motor vehicle" required to be insured under the Act. Thus, domiciled, resident relatives of the named insured who do not themselves own "motor vehicles" required to be insured under the Act will look to the insurer of the named insured for PIP benefits. His coverage is their coverage, and the restrictions on his recovery are also their restrictions.

3) Other Occupants or Operators

The PIP coverage of an insured "motor vehicle" is also afforded to its operators and occupants who are not the named insured or his resident relatives. Operators, if the operation is with permission, and other occupants who fall within this class have the PIP coverage of the insured "motor vehicle" unless they, themselves, are owners of "motor vehicles" required to be insured by the Act or are entitled to PIP benefits from the insurer of the owner of such a "motor vehicle." The latter group would be the "resident relative" class. Therefore, all occupants of an insured "motor vehicle," other than the owners of "motor vehicles" required to be insured and resident relatives of named insureds, would be entitled

78. Florida Act, supra note 55, § 7(4)(d)2.
79. Id. § 7(4)(d)3.
80. Id. § 7(2)(a).
81. Id. § 7(4)(d)4.
to claim PIP benefits from the insurer of the "motor vehicle" in which they are occupants. This class would include nonresidents of Florida and the so-called "career pedestrian," who does not own a vehicle or belong to a family that does.

4) Nonoccupants

The resident of Florida who does not own a "motor vehicle" and is not the resident of a household having a "motor vehicle" owner may recover PIP benefits from the insurer of an insured "motor vehicle" in other situations. If such a person is injured "while not an occupant of a motor vehicle or motorcycle" he may recover PIP benefits from the insurer of the "motor vehicle" which, by physical contact with him, caused his injury. The same restrictions imposed upon the term "not an occupant of a motor vehicle" by the state's insurance department with respect to the named insured also apply to this feature of the coverage. Such persons are covered, therefore, while they are pedestrians or in any status other than occupants of a motorcycle or self-propelled vehicle.

c. Persons Excluded

Only the persons noted above, in the above-noted situations, will be entitled to PIP coverage for automobile accidents. In addition, the Act allows an insurer to exclude from coverage any person who intentionally causes injury to himself, or who is "convicted of driving while under the influence of alcohol or narcotic drugs to the extent that his driving faculties are impaired," or who is injured "while committing a felony"—when such conduct contributes to his injury.

Like the Delaware Act, the Florida Act excludes more classes of persons from first party coverage than do medical payments endorsements previously in use.

d. Permissible Deductibles

One further limiting factor of the PIP coverage needs to be noted. The Act provides that a named insured may, as to himself or as to resident relatives and himself, have the PIP coverage written subject to a per person deductible of $250, $500, or $1,000.
e. Owner's Obligation

The owner of a "motor vehicle" required to be insured under the Act will be precluded from recovering PIP benefits if that vehicle is uninsured and he sustains injury while an occupant. Further, the Act also imposes an obligation upon an uninsured Florida "motor vehicle" owner.

An owner of a motor vehicle with respect to which security is required by this act who fails to have such security in effect at the time of an accident shall . . . be personally liable for the payment of benefits under Section 7. With respect to such benefits, such an owner shall have all the rights and obligations of an insurer under this act. 7

Therefore, the owner of a "motor vehicle" which is not insured, in violation of the provisions of the Act, would have an obligation to pay PIP benefits to those who could have recovered them from his insurer had he been insured.

3. Vehicle Collision Coverage

The third form of coverage set forth in the Florida Act relates to damage to "motor vehicles." The coverage is not compulsory. However, owners of "motor vehicles" are given three options with respect to insurance protection for their own vehicles. 8

The first option open to the owner of a "motor vehicle" in Florida is to have no first party coverage (collision coverage) for property damage to his own vehicle. 9 His only recourse, in case his vehicle is damaged in a collision, would be to assume the loss himself or pursue a tort remedy. The impact of the Act on such a person's right to seek tort compensation for property damage will be explored subsequently.

The second option open to the owner of a "motor vehicle" in Florida is to buy what the Act calls "full coverage." This is a form of collision coverage which will pay for property damage to the insured "motor vehicle," without regard to fault, caused by accident within the United States, its territories or possessions, or within Canada. 10 This is the type of collision coverage which is being written today. The Act allows insurers to use the types of terms and conditions, including deductibles, that are presently used

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7. *Id.* § 4(4).
8. *Id.* § 9(1). See note 95 and accompanying text infra.
9. *Id.*
10. *Id.* § 9(2)(a).
with collision coverage. The coverage will be for actual cash value of the insured vehicle and will also provide for a reimbursement for a rental vehicle used while the insured vehicle is being repaired.

The third option open to the owner of a "motor vehicle" in Florida is to buy what the Act calls "basic coverage." This is a more restrictive form of collision coverage which allows a "motor vehicle" owner to recover for property damage from his own insurer only if it is caused by the fault of another resulting from contact between the insured vehicle and another "motor vehicle" required to be insured under the Act. As with the "full coverage," the "basic coverage" would provide for indemnity at actual cash value, would have a rental vehicle provision, and would be subject to the terms, conditions, and deductibles common to typical collision coverage. Unless he could recover in tort, the vehicle owner who elected to take this third option would be a self-insurer as to property damage to his vehicle which is not covered by the limited collision insurance.

B. Impact on Tort Liability

In addition to the insurance requirements, the Florida Act has a significant impact upon tort liability for automobile accidents which occur in the state.

1. Vehicular Property Damage

The Act provides that owners, registrants, operators, and occupants of insured "motor vehicles," as well as persons or organizations legally responsible for their acts or omissions, are exempt from tort liability for damage to other Florida "motor vehicles." This section of the Act provides, however, that the tort exemption will not apply with respect to damage to a parked "vehicle." In addition, the tort exemption will not apply if a person is using or operating a "motor vehicle" without permission, express or implied, or if the proximate cause of the accident was the willful or wanton misconduct of the person claiming the exemption.

Because the exemption is limited, tort liability still exists where damage has been caused by (1) an uninsured Florida "motor vehi-

91. Id. § 9(3).
92. Florida Endorsement, supra note 59.
93. Florida Act, supra note 55, § 9(2)(b).
94. Notes 92 and 93 supra.
95. Florida Act, supra note 55, § 9(4).
cle," (2) any parked "vehicle," (3) the non-permitted use of an insured Florida "motor vehicle," or (4) willful or wanton misconduct associated with the operation or use of an insured Florida "motor vehicle." In addition, tort liability still exists where damage is caused by or to (1) a Florida "vehicle" not included in the definition of "motor vehicle," or (2) an out-of-state "vehicle" (including those coming within the Florida definition of "motor vehicle") unless its presence in the state for more than ninety days required the owner to obtain the insurance coverage mandated by the Act.  

The Act provides that, notwithstanding the general language of the tort exemption, it will not apply in those cases in which damages to the other "motor vehicle" exceed $550. The rules of tort liability will continue to be applied where the damage to the other "motor vehicle" exceeds $550. Therefore, in those cases, the owner of the "motor vehicle," or its insurer if payment under collision coverage was made, will be able to seek a tort recovery against the person legally responsible for the damage. If the insurer pursues the action, the amount of the insured's deductible may also be recovered.  

The application of this exception presents some interesting possibilities. If, for example, the operator of an insured Florida "motor vehicle" were to run a stop light and strike two other "motor vehicles," causing $550 in damage to one and $550.01 to the other, the results would be different. The owner of the "motor vehicle" with one cent more damage could sue the stop sign violator and recover his full $550.01. The owner of the other "motor vehicle," because his damage did not exceed $550, would only be able to look to his own insurer for payment and would be out the amount of his deductible. If he had no insurer, he would have to bear the full loss. 

Collision insurers generally work with repair shops to keep the cost of auto repair as low as possible. This provision in the Florida law presents an obvious temptation to increase the cost of repair in those cases in which the damage nears $550. When the repair cost can be pushed over that threshold, it may be shifted from the collision insurer to a liability insurer. In those cases in which the tort exemption does not apply because the $550 threshold is ex-

96. See note 60 and accompanying text supra.  
97. Florida Act, supra note 55, § 9(5).  
98. Id.
ceeded, inter-company arbitration is provided by the Act if a collision insurer and liability insurer cannot agree as to liability or damages.  

2. General Damages

The Act also places a restriction on an injured person's right to recover damages for "pain, suffering, mental anguish and inconvenience" because of bodily injury, sickness, or disease which results from a motor vehicle accident in Florida. The question that arises is whether the courts will narrowly construe the language quoted above so that the limitation will be held to be inapplicable to cases in which damages are claimed for non-economic loss other than pain, suffering, mental anguish and inconvenience.

The restriction provided by the Act only applies to actions brought against the owner, registrant, operator, or occupant of a motor vehicle insured in compliance with the Act, as well as persons or organizations legally responsible for their acts or omissions. In cases against such persons, a plaintiff will be barred from recovering damages for "pain, suffering, mental anguish, and inconvenience" unless medical, hospital, and related expenses exceed one thousand dollars ($1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death.

Those receiving free medical and surgical care, and those whose relatives or household members perform nursing services without charge, are allowed to prove the reasonable cost of those services for the purpose of the threshold.

It should be noted that this limitation on the right to recover general damages applies to all motor vehicle-accident plaintiffs bringing suit in Florida, but it only applies if they seek damages for items generally considered as "general damages" or non-economic loss.

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99. Id.
100. Id. § 8(2).
101. See note 9 supra for items generally considered as "general damages" or non-economic loss.
102. Such expenses are to be of the type covered by the Act's provisions for first party "medical benefits." Florida Act, supra note 55, § 7(1)(a).
103. Id. § 8(2).
104. Id.
from the owner, registrant, operator, or occupant of an insured "motor vehicle" or an individual or organization responsible for the acts or omissions of such an individual. Thus, the limitation would not apply in a suit against one of those persons if the "motor vehicle" were not legally insured. Likewise, it would not apply in an action against the operator of a non-Florida "motor vehicle" or any other type of vehicle, or in a personal injury action not involving ownership, operation, maintenance, or use of a "motor vehicle."

In those cases in which the general damage limitation does apply, its effect will be to completely bar recovery for specified types of general damages for plaintiffs who do not incur expenses of over $1,000 in medical specials or suffer one of the specific types of injury noted in the section of the Act quoted above. They will recover nothing for the "pain, suffering, mental anguish and inconvenience" they were forced to undergo, even if they can successfully establish liability and the extent of their damages. Persons who do exceed the $1,000 threshold or sustain one of the specified injuries will be entitled, should they establish fault, to a complete recovery for their general damages.

The impact of this general damage threshold upon Florida litigants can be demonstrated by statistics. These show that nearly ninety percent of auto accident victims sustain economic loss, other than property damage, of $1,000 or less. That includes medical expenses, wage loss, and other economic losses. Thus, the Florida $1,000 medical expense threshold will affect more than ninety percent of the persons to whom it may be applied. The same study shows that only nine percent of accident victims sustained "fractures" (but not all fracture cases are taken out of the Florida threshold's application) and that approximately 7.6 percent of all accident victims had the other types of serious injuries which the Florida Act exempts from the application of the threshold. Since these statistics do not separate out the number of serious injury cases with less than $1,000 in economic loss or the number of fracture cases which also involve other serious injuries, it can only be estimated that over ninety percent of Florida litigants will be adversely affected by the general damage limitation.

An accident victim in Florida will be subject to the "luck of the draw" in his ability to recover general damages. If he is injured by any vehicle other than an insured "motor vehicle," he will be able to seek full recovery for general damages. If he is injured by an insured "motor vehicle," his ability to recover general damages will depend on the amount of his medical expenses or the seriousness of his injury. Depending on his luck, or lack thereof, he will be entitled to full compensation for general damages or none at all.

3. Other Economic Loss

One final limitation is placed on the ability to recover in tort. As to other economic loss, such as medical expenses, wage loss, and the like, the Act provides that every owner, registrant, operator, or occupant of an insured "motor vehicle," as well as persons or organizations legally responsible for their acts or omissions, are exempt from tort liability for economic losses sustained by accident victims to the extent those losses are paid, or would have been paid but for a permissible deductible or exclusion, under the first party coverage mandated by the Act. This exclusion will not apply if the injured person is entitled to maintain an action for pain, suffering, mental anguish, and inconvenience under the limitations previously noted.

This tort exemption applies only to protect those persons who would otherwise have been subject to tort liability as respects the ownership, operation, maintenance or use of a "motor vehicle" insured in accordance with the provisions of the Act. By the process of elimination, the exemption does not apply to protect those whose tort liability flows from an accident caused by a "motor vehicle" uninsured in violation of the Act, a vehicle not coming under the definition of "motor vehicle," and all out-of-state vehicles not required to be insured under the Act.

The exemption is granted only to the extent that PIP benefits are paid or, but for a permissible exclusion or deductible, would be payable. The tort exemption provision would not impair the right of recovery for economic loss of persons, such as non-residents of Florida, who, because of their status, would not be entitled to PIP benefits.

It should be noted that a person who recovers PIP benefits, or

\[\text{108. Florida Act, supra note 55, § 8(1).}\]
\[\text{109. Id.}\]
would but for a deductible or exclusion, may still bring a tort action against the operator of a "motor vehicle" insured under the Act to recover for economic loss in excess of that covered by the Act. The upper limit of this tort exemption for economic loss is $5,000 per injured plaintiff. However, no matter what amount of PIP benefits are paid or would be payable, the tort exemption for economic loss does not apply if the injured person is entitled to maintain an action for pain, suffering, mental anguish, or inconvenience (medical specials of more than $1,000 or one of the specified types of injury).

Although a tort action for economic loss is allowed in limited situations for a person who has received PIP benefits, the Act seeks to avoid duplicate compensation by providing that the insurer paying the PIP benefits is entitled to reimbursement out of the tort recovery to the extent that the tort recovery, less an adjustment for attorney fees and collection costs, reflects duplicate compensation.\(^{110}\) If the tort action precedes PIP recovery, the PIP benefits are to be reduced accordingly, less the same adjustment for fees and costs.\(^{111}\)

C. Summary

The Florida Act is complex in its restrictions as to who may be entitled to first party benefits and also as to who will be entitled to tort exemptions and the extent of those exemptions. Arbitrary tests are applied to select those accident victims in Florida who will be entitled to compensation for general damages. The complexities of the Act are such that it will be difficult for the average motorist in the state to understand them. In the final analysis, the exact interpretation of the Act will be the task of the state's courts. Whether the courts of Florida interpret the complex and interrelated provisions of the Act in the manner in which the legislature and insurance department intended, or otherwise, remains to be seen.

III. ILLINOIS

A. Required Insurance

Article 35 of the Illinois Insurance Code was approved on September 2, 1971, and became effective January 1, 1972.\(^{112}\) Unlike the

\(^{110}\) Id. § 7(3).

\(^{111}\) Id.

Delaware and Florida Acts, the Illinois law does not provide for compulsory automobile insurance. An Illinois resident may still own and operate a vehicle that is completely uninsured. However, the Illinois Act does mandate coverages for all insured vehicles of certain types. Thus, if an Illinois resident determined to procure liability insurance for his vehicle, and it is the type of vehicle covered by the Act, the liability policy he buys will carry with it the types of coverage mandated by the Act. Only first party coverage for economic loss, other than property damage, is mandated by the Illinois Act. Therefore, it differs from Delaware and Florida in that it is not compulsory and does not mandate liability and property damage coverages.

1. Vehicles Covered

The Illinois Act is explicit in defining the types of motor vehicles which, when insured, must have the required first party insurance coverage:

On and after the effective date of this article every policy delivered or issued for delivery in this State insuring against loss resulting from liability imposed by law for accidental bodily injury or death suffered by any person arising out of the ownership, maintenance or use of any private passenger automobile registered or principally garaged in this State and insuring 5 or less private passenger automobiles, must provide coverage. . . .

The Act further defines the term “private passenger automobile” as

a sedan, station wagon or jeep-type automobile not used as a public livery conveyance for passengers, nor rented to others, and includes any other 4 wheel motor vehicle used as a utility automobile, pickup truck, sedan delivery truck or panel truck with a load capacity of 1,500 pounds or less which is not used primarily in the occupation, profession or business of the insured.

Taxicabs, rental cars, commercial vehicles, trucks, motorcycles, buses, farm-type vehicles, private passenger vehicles insured in groups of five or more, and vehicles falling within the definition but used primarily in the business, profession, or occupation of an

113. Illinois Act, supra note 112, § 600(a).
114. Id. § 600(c).
115. The Illinois Director of Insurance is given the power by § 612 of the Illinois Act to promulgate all rules, regulations and definitions necessary to implement the Act. Rule 35.01 [hereinafter cited as Illinois Dep’t Rule], issued on September 16, 1971, provides, in
insured will not be required to carry the type of first party insurance specified in the Act even though insured against liability.

2. Mandatory First Party Benefits

Policies issued on vehicles covered by the Act are required to provide first party benefits, which will be paid without regard to fault on the following basis:

(1) Medical, Hospital and Funeral Benefits: Payment of all reasonable and necessary expenses arising from the accident for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services and incurred within one year from the date thereof, subject to a limit of $2,000 per person.

(2) Income Continuation Benefits: Payment of 85% of the income, including but not limited to salary, wages, tips, commissions, fees or other earnings, lost by an income or wage-earner as a result of total disability arising from the accident, subject to a limit of $150 per week for 52 weeks per person.

(3) Loss of Services Benefits: Where the person injured in the accident was not an income or wage producer at the time of the accident, payments of benefits must be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household subject to a limit of $12 per day for 365 days per person injured.\textsuperscript{116}

The term "income" as used in subsection (2) above has been defined by regulations issued by the Illinois Department of Insurance to mean gross income before deduction for taxes, social security, or other voluntary or involuntary employer's payroll withholdings.\textsuperscript{117} The same regulations define "total disability" as an inability of the injured person to engage in his ordinary occupation and "income or wage-earner" as including an individual who is usually and normally gainfully employed in a continuous full-time or permanent occupation. These definitions have been incorporated into the policy endorsement authorized for use in Illinois.\textsuperscript{118}

\textsuperscript{116} Illinois Act, \textit{supra} note 112, § 600(a)(1)-(3).

\textsuperscript{117} Illinois Dep't Rule, \textit{supra} note 115, §§ 4, 14.

\textsuperscript{118} Id. §§ 14, 15. The form of the Illinois Endorsement for both mandatory and optional coverages is set forth in these sections of the Dep't Rules [hereinafter cited as Illinois Endorsement].
The mandatory first party coverage of the Illinois Act is afforded to several classes of persons. The named insured and members of his family residing in his household are covered when injured in "any" motor vehicle accident.\textsuperscript{119} The use of the word "any," and the fact that limitations are prescribed for other classes of insureds, indicates that named insureds and their resident relatives are to be afforded benefits as a result of all motor vehicle accident injuries, no matter where they occur in the United States, its territories, possessions, or in Canada.\textsuperscript{120} Occupants of the insured motor vehicle, whether guest passengers or permissive users, who do not fall into the first two classes as respects that vehicle, are also given coverage for first party benefits for motor vehicle-accident injuries occurring in the United States, its territories, possessions, or in Canada.\textsuperscript{121} Their occupancy of the insured vehicle is the key to their recovery of benefits. Finally, pedestrians, struck by the insured vehicle in an accident occurring in Illinois, are also afforded the first party coverage mandated by the Act.\textsuperscript{122} Illinois Insurance Department regulations define "pedestrian" as any person injured through being struck by a motor vehicle while not an occupant of a motor vehicle.\textsuperscript{123} The term "motor vehicle" is defined by both Insurance Department regulation and the Illinois endorsement as

\begin{itemize}
  \item a land motor vehicle or trailer other than (1) a farm type tractor or other equipment designed for use principally off public roads, while not upon public roads, (2) a vehicle operated on rails or crawler-treads, or (3) a vehicle while located for use as a residence or premises.\textsuperscript{124}
\end{itemize}

The Illinois mandatory first party coverage is designed to follow the insured vehicle. This is to be distinguished from the coverage mandated by the Florida Act which, whenever possible, follows the person.

3. Optional Benefits

In addition to the first party benefits mandated by the Act, each named insured must be offered coverage which, upon depletion of

\textsuperscript{119} Illinois Act, \textit{supra} note 112, § 600(a).
\textsuperscript{120} \textit{Id}.
\textsuperscript{121} \textit{Id}.
\textsuperscript{122} \textit{Id}.
\textsuperscript{123} Illinois Dep't Rule, \textit{supra} note 115, § 4.
\textsuperscript{124} Note 118 \textit{supra}. 
the mandatory first party benefits, extends additional benefits to a minimum total aggregate limit of not less than $50,000 per person and $100,000 per accident. The optional coverage may be rejected by the named insured but, if accepted, applies only to the named insured and members of his family residing in his household. Within the coverage limits, benefits would be payable for:

(1) Medical, Hospital and Funeral Benefits: Payment of reasonable and necessary expenses arising from the accident for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services. However, the benefits payable for funeral services may not exceed $2,000 per person.

(2) Income Continuation Benefits: Payment of 85% of the income, including but not limited to salary, wages, tips, commissions, fees or other earnings, lost by an income or wage-earner as a result of a disability to engage in their ordinary occupation arising from the accident, subject to a limit of $150 per week for a period of 260 weeks per person. The insurer providing disability payments may require as a condition for receiving such benefits that the injured person furnish such insurer reasonable medical proof of their inability to work.

(3) Loss of Services Benefits: Where the person injured in the accident was not an income or wage producer at the time of the accident, payments of benefits shall be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household subject to a limit of $12 per day for 260 weeks per person injured.

(4) Survivor’s Benefits: In the event the injured person dies within one year of the date of the accident, a survivor’s benefit equal to 85% of the average weekly income the deceased earned during the 52 week period preceding the accident, subject to a limit of $150 per week for a period of 260 weeks, shall be paid to a surviving spouse dependent upon the deceased for income, or, in the event there is no surviving spouse, to the surviving children dependent upon the deceased for income. Payments to a dependent surviving spouse may be terminated in the event such surviving spouse dies leaving no surviving dependent children or remarries. Payments to a dependent child may be terminated in the event the child attains majority, marries or becomes otherwise emancipated or dies.125

The optional first party coverage is excess insurance, coming

125. Illinois Act, supra note 112, § 600(b)(1)-(4).
into operation when benefits under the mandatory coverage have been exhausted.

4. Limitations on Recovery

The Act, and the regulations approved by the Illinois Insurance Department place certain restrictions and limitations on recovery of both the mandatory and optional coverage benefits. Unless noted otherwise in the discussion which follows, the restrictions and limitations apply to both coverages.

a. Single Recovery of Benefits

The Act is designed to have the insurance coverage for first party benefits follow the insured vehicle. Thus, it provides that an injured person must look to the insurer of the vehicle in which he was an occupant, or the vehicle which struck him if he was a pedestrian, for benefits. If a person is injured while an occupant of, or as a pedestrian struck by, an uninsured vehicle he may, if he is, himself, a named insured or resident relative of a named insured, look to his own insurer for benefits. The word "uninsured" refers to a vehicle not carrying the mandatory first party coverage of the Act. However, if that vehicle is insured with some other form of medical payments or income disability coverage, the injured person's recovery against his own insurer will be reduced by the benefits he received from the vehicle's insurer. For example, if Brown were an Illinois resident with an auto policy on his private passenger car which provided the type of benefits set forth in the Act, and if he were injured while a guest passenger in a car owned by Smith, a Wisconsin resident who had a standard automobile liability policy that provided $1,000 of medical payments coverage, the first $1,000 of Brown's medical and hospital expenses would come from Smith's insurer. Any expenses above that amount, up to an additional $1,000, would come from Brown's own insurer. The Act specifically provides that one person may not recover benefits prescribed by the Act from more than one company or policy on either a duplicative or supplemental basis.

126. Id. § 600(d).
127. Id. § 600(d)(1).
128. Id.
129. Id.
130. Id. § 600(d)(2).
b. Collateral Sources

With the exception of provisions against duplicative recovery under more than one auto policy, the Act provides that benefits are to be paid without regard to collateral sources available to the injured person, with the exception that:

(1) Such benefits do not apply to any direct or indirect loss or interest of, or for services or benefits provided or furnished by, the United States of America or any of its agencies coincident to a contract of employment or of military enlistment, duty or service.

(2) Such benefits must be reduced or eliminated if the injured person is entitled to benefits under any workmen's compensation act of any state or the Federal Government.131

Therefore, a person could recover under any other private or public accident and health insurance plan, wage continuation plan, and the like, and still recover for the same losses under the auto coverage mandated by the Act.

c. Permissible Exclusions

Recovery under the first party insurance coverage is further limited by exclusions spelled out in the Act. It provides that an insurer may exclude benefits to any injured person covered under a policy when that person's conduct contributed to his injury in any of the following ways:

(1) intentionally causing injury to himself;
(2) while under the influence of intoxicating liquor or narcotic drugs;
(3) operating a motor vehicle without a license or after suspension or revocation of a license;
(4) operating a motor vehicle upon a bet or wager or in a race;
(5) while seeking to elude lawful apprehension or arrest by a police officer;
(6) while operating or riding in a vehicle known to him to be stolen;
(7) while in the commission of a felony.132

The same section of the Act states that a company may employ such other exclusions approved by the Director of Insurance. All

131. Id. § 600(e)(1)-(2).
132. Id. § 602(a).
seven exclusions of the Act were adopted for use in the state\textsuperscript{133} and five additional exclusions were added and made applicable:

(8) to the named insured or any relative while occupying any automobile owned by the named insured or furnished for the named insured’s regular use and not insured for automobile bodily injury liability;

(9) to a relative while occupying any automobile owned by such relative or furnished for the relative’s regular use and not insured for automobile bodily injury liability;

(10) to any direct or indirect loss or interest of, or for services or benefits provided or furnished by, the United States of America or any of its agencies coincident to a contract of employment or of military enlistment, duty or service;

(11) to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;

(12) to any person who sustains bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.\textsuperscript{134}

Insurance Department regulations provide that an insurer may delete any one or more of the twelve exclusions with the exception of the one noted as (10) above.\textsuperscript{135}

\section*{B. Impact on Tort Liability}

In addition to its first party insurance requirements, the Act has a fairly substantial impact upon automobile tort liability claims.

\subsection*{1. Economic Loss}

The Act provides that any person who has received or is entitled to receive the first party benefits which it prescribes may not recover again for the economic loss those benefits cover in a tort action in any court in the state of Illinois.\textsuperscript{136} In such an action, the benefits under the Act must be disclosed and must be deducted from any recovery. Those persons who have not received, and are not entitled to receive, first party benefits may still seek a tort

\begin{flushleft}
\textsuperscript{133} Illinois Endorsement, \textit{supra} note 118.
\textsuperscript{134} \textit{Id.}
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} Illinois Act, \textit{supra} note 112, § 604.
\end{flushleft}
recovery for the economic loss sustained as the result of an auto accident. Persons who have received benefits or are entitled to receive them may still pursue a tort remedy for the economic loss which is not covered by the first party insurance. The Act allows an insurer to deduct first party benefits paid from the recovery an injured person receives through uninsured motorist coverage.¹³⁷

Although an injured person may not recover in tort for economic loss covered by his first party insurance, tortfeasors are not exempt from tort liability for those damages. The Act provides that an insurer paying benefits is subrogated, to the extent of payment, to the injured person's right of action against an alleged tortfeasor.¹³⁸ An insurer making first party payments is, by virtue of the Act, entitled to direct reimbursement from the insurer of the tortfeasor.¹³⁹ If the insurers do not agree as to liability for reimbursement, binding intercompany arbitration must be employed.¹⁴⁰

It should be noted again that the prohibition against a tort recovery for economic loss after a first party insurance recovery is limited to actions brought in courts in Illinois. However, because of the subrogation provision, the Illinois Legislature's intent to avoid multiple recovery for the same loss is given extraterritorial effect. It must be recognized, though, that courts in some jurisdictions have voided subrogation provisions as they apply to medical payments coverage on the theory that their use would amount to splitting a cause of action for personal injury.¹⁴¹ Illinois insurers and the state's Insurance Department have foreseen this potential problem in out-of-state application of their subrogation clause and have also included a "Trust Agreement" provision in the approved Illinois endorsement.¹⁴²

2. General Damages

Like the Florida law, the Illinois Act places restrictions on the right to recover general damages for pain, suffering, and the like. However, as distinguished from the Florida Act’s "threshold" approach to general damage recoveries, the Illinois Act employs a

¹³⁷ Id. § 606.
¹³⁸ Id. § 605(a).
¹³⁹ Id. § 605(b).
¹⁴⁰ Id. § 605(b)(2)-(3).
¹⁴² Illinois Endorsement, supra note 118.
"formula." General damages may not exceed fifty percent of medical expenses up to $500 and one hundred percent of those expenses over that amount, except in certain, specified cases:

(a) In any action in tort brought as a result of bodily injury, sickness, disease or death caused by accident and arising out of the operation, ownership, maintenance or use of a motor vehicle within this State, such damages as may be recoverable for pain, suffering, mental anguish and inconvenience may not exceed the total of a sum equal to 50 per cent of the reasonable medical treatment expenses of the claimant if and to the extent that the total of such reasonable expenses is $500 or less, and a sum equal to the amount of such reasonable expenses if any, in excess of $500.

(b) For the purpose of this Section medical treatment expenses mean the reasonable and necessary value of services rendered for medical, surgical, x-ray, dental, prosthetic, ambulance, hospital, professional nursing and funeral services. The term "medical treatment expenses" also shall mean expenses for any nonmedical remedial treatment and care rendered in accordance with a recognized religious method of healing.

(c) The limitations prescribed in paragraph (a) of this Section do not apply in cases of death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement.

(d) The court on its own motion or the motion of either party shall designate an impartial medical panel of not more than three licensed physicians, to examine the claimant and testify on the issue of the reasonable value of medical treatment services, or any other issue hereunder to which such expert medical testimony would be relevant.\textsuperscript{143}

It is important to note, as it was with Florida, that the general damage limitation applies only to damages recoverable for "pain, suffering, mental anguish, and inconvenience." It becomes important to consider whether these four terms are broad enough to encompass all items classified under the generic term "general damages."\textsuperscript{144}

The limitation on general damage recoveries is much broader in its application than the Act's insurance requirements. All tort litigation involving the operation, ownership, maintenance, or use of a motor vehicle within the state is covered. Thus, an action

\textsuperscript{143} Illinois Act, \textit{supra} note 112, § 608.

\textsuperscript{144} See note 9 \textit{supra} for items generally classified as "general damages."
involving vehicles not required to carry the Act’s first party insurance would be governed by this rule. Because of the use of the limiting words “operation, ownership, maintenance or use,” it does not appear that a products liability suit against an auto manufacturer would be covered. The wording of subsection (a) seems to give the limitation extraterritorial effect, since it does not confine itself to actions brought in courts in Illinois, but only to Illinois accidents. It would appear that the general damage limitation could be applied to Illinois motor vehicle accident cases that may find their way into the courts of other states. Whether state courts outside of Illinois will abide by that intention presents a conflict of laws question outside the scope of this article.

The application of the Illinois formula for general damages should be carefully considered. First, it is important to note that it in no way affects the burden upon the plaintiff in a personal injury case to establish the defendant’s liability. Contributory negligence on the part of an Illinois plaintiff is still a complete bar to recovery. 145 Second, the formula places a ceiling on the maximum amount a plaintiff may recover in those cases in which it will be applied. A court or jury may still determine that reasonable damages for “pain, suffering, mental anguish and inconvenience” should be less than the sum arrived at through use of the formula.

How the formula will be applied can best be shown through the use of an example. If a person were injured in a motor vehicle accident in Illinois and incurred medical treatment expenses of $1,000, the most he would be able to recover for the specified general damages, absent the type of injuries described in subsection (c), would be $750. A jury could award him less, or nothing if he failed to prove his case. He could not recover more. The $750 amount is arrived at by taking fifty percent of the first $500 of his medical treatment expenses ($250) and one hundred percent of the balance ($500).

Quite clearly, tying general damages to medical treatment expenses provides larger recoveries to those who use higher priced medical personnel and facilities. Since charges for the same type of medical and hospital services vary in different parts of a state, or even in different sections of the same community, compensation under the formula for the same type of injury will also vary. The size of the general damage recovery will, therefore, not always have

a relationship to the actual pain, suffering, mental anguish, and inconvenience experienced by a claimant.

The formula limitation will not be applied in cases involving death, dismemberment, permanent total or permanent partial disability, and permanent serious disfigurement. With the exception of "death," these are not precise terms. Litigation involving the question of whether a claimant sustained one of those injuries is inevitable. In cases in which the formula will not be applied, the court or jury will be free, subject to the rule of reasonableness, to fix any amount as the plaintiff's general damages.

It is possible to make an estimate of the number of automobile accident cases which will be affected by the Illinois formula. In a given year, 0.2 percent of auto accident victims suffered permanent total disability; 4 percent sustained permanent partial disability; 2.5 percent sustained "permanent disfigurement," and 1 percent died. Since not all of DOT's permanent disfigurements may be considered "permanent serious" disfigurements under the Illinois Act, and assuming that DOT's category of "permanent partial disability" would include those who would be dismembered under the Illinois Act, it may be estimated that over 92 percent of Illinois motor vehicle accident victims would be subject to the general damage formula. Conversely, less than 8 percent of Illinois motor vehicle accident victims will not be limited by the Act's general damage formula.

3. Small Claim Arbitration

Another significant feature of the Illinois Act is its requirement that the supreme court of the state establish a system of arbitration for actions which arise out of the operation, ownership, maintenance, or use of a motor vehicle. This system is to be employed in those cases in which the amount in controversy, exclusive of interest and costs, "may" not exceed $3,000. The arbitration procedure is to be established in all counties of the state with populations of 200,000 or more. The court may establish such a procedure in all other counties. Some of the rules for the arbitration procedure, including the right to a trial de novo in court, are set forth in the

147. Id. vol. I, at 19.
Act, but the supreme court has the right to establish other regulations by rule.\textsuperscript{149}

Because of the limitations placed on the amount which may be recovered for general damages and because losses compensated under the Act's first party insurance plan may not be recovered again in a tort action, the arbitration program should significantly reduce the number of automobile accident cases which reach the courts of the counties in which it will be applied.

\section*{C. Other Provisions}

Four other provisions of the Act are worthy of brief note. First, all motor vehicle liability insurance policies issued or renewed in the state after the effective date of the Act must provide uninsured motorist coverage.\textsuperscript{150} Second, evidence as to advance payments made by a liability insurer to an injured auto accident victim may not be introduced in a tort action as an admission of liability, but the amount of the advance must be deducted from any final settlement of judgment recovered by the injured person.\textsuperscript{151} Third, persons making a liability claim as the result of an auto accident must submit to a medical examination by a physician selected by the defendant or his insurer and cooperate in furnishing medical reports and information necessary for the defendant or insurer to evaluate the claim.\textsuperscript{152} Last, severe penalties are established for those who make false or fraudulent automobile accident claims or knowingly assist in the making of such claims.\textsuperscript{153} Each of these provisions is directed at specific problems which have arisen in the operation of the present automobile accident reparation system.

\section*{D. Constitutionality of the Plan}

The constitutionality of the Illinois Act, particularly those sections which establish the mandatory first party insurance system and the limitation on general damages,\textsuperscript{154} has been attacked in a taxpayers suit.\textsuperscript{155} The action was brought in the Circuit Court for

\begin{footnotesize}
149. Id. § 609(c)-(g).
150. Id. § 601.
151. Id. § 607.
152. Id. § 611.
153. Id. § 610.
154. Id. §§ 600, 608.
\end{footnotesize}
Cook County to restrain state officials from taking any action, including the expenditure of state funds, to implement the Act.

The plaintiff claimed that the Act was discriminatory, particularly against low income and minority groups, and violated the "due process" and "equal protection" clauses of both the federal and state constitutions. In support of his claim, he presented evidence to show that certain classes of Illinois accident victims would not be entitled to the Act's first party benefits. These would include those who do not own private passenger vehicles or belong to families which own them. He also showed the great variance in medical and hospital charges in the state, and in cities within the state, claiming that two persons could suffer the same injuries but receive unequal amounts of general damages based solely on who treated them and where the medical treatment was received.

The circuit court, two days before the plan was to go into effect, agreed with the plaintiff's contentions and held the Act unconstitutional. It issued an order which barred state officials from putting the Act into effect. The ruling, quite understandably, caused considerable consternation to the state officials and Illinois insurers. The insurers were especially disturbed because of the fact that they had geared up for operation under the plan as of January 1, 1972. The circuit court's decision has been appealed to the Illinois Supreme Court and, pending that appeal,* a justice of the court has ruled that insurers may begin operations under the plan.156 He did, however, refuse to lift the ban against implementation by state officials. A prompt decision is expected on the appeal which was argued on January 28, 1972. It has been claimed that, regardless of the outcome in the Illinois Supreme Court, the case will be taken to the United States Supreme Court.157

The lower court ruling and the subsequent ruling by the supreme court justice leave the operation of the Illinois Act in a state of suspended animation. Insurers are free to pay first party claims and settle liability claims pending the outcome of the appeal. However, it is questionable whether many liability claims will be settled,

* Since the completion of this article, the Illinois Supreme Court has affirmed the chancery court decision in Grace v. Howlett. According to the March 24, 1972, issue of the Wall Street Journal, the court made its ruling in a 5-2 decision, the written opinion to be published at a later date.


157. Id.
especially if insurers attempt to bring the general damage limitation into the settlement negotiations. The pending appeal should, however, have no impact on the settlement of claims involving serious injuries not covered by the general damage formula.

E. Summary

The Illinois Act presents a limited automobile-accident compensation plan. It preserves tort liability, but places limitations on the amount of damages which may be recovered in certain cases. Its intent is to avoid multiple compensation for the same element of economic loss. Innocent accident victims are not barred from recovering general damages but, for the majority of them, the amount of compensation is restricted. The Act has no impact on tort liability for property damage.

IV. MASSACHUSETTS

A. Required Insurance

Chapter 670 of the Massachusetts Laws of 1970 became effective January 1, 1971. It was enacted as an amendment to the compulsory motor vehicle insurance law in effect since 1927. Massachusetts vehicle owners are now required to purchase several specific types of automobile insurance coverage as a prerequisite to the operation of their vehicles.

1. Liability Coverage

Prior to the effective date of the 1970 law, Massachusetts motorists were compelled to carry $5,000/10,000 of bodily injury liability insurance coverage on their vehicles. However, by virtue of Chapter 978 of the Massachusetts Laws of 1971, effective January 1, 1972, state vehicle owners must now also carry a minimum of $5,000 of property damage liability insurance. The compulsory liability minimum limits for motor vehicle insurance in the state are now set at $5,000/10,000/5,000.


160. Massachusetts Act, supra note 158, § 34D provides alternatives, such as self-insurance, in lieu of procuring a liability policy.

161. Id. § 34A.

162. Chapter 978 added § 34-0 to ch. 90 of the Massachusetts General Laws [and, hence, is hereinafter included in the citation Massachusetts Act].
2. First Party Coverage

The most significant insurance features of the 1970 and 1971 laws relate to first party coverage.

a. Personal Injury Protection

All motor vehicle liability policies issued in the state must now provide "Personal Injury Protection" (PIP). This is a form of first party insurance designed to provide compensation for wage loss and for medical, hospital, and other related economic loss associated with a motor vehicle accident.

1) Benefits Provided

The Act mandates a minimum PIP coverage of $2,000 per person for the following economic loss incurred within two years from the date of the accident:

[N]ecessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services, and in the case of persons employed or self-employed at the time of an accident of any amounts actually lost by reason of inability to work and earn wages or salary or their equivalent, but not other income, that would otherwise have been earned in the normal course of an injured person's employment, and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household, and in the case of persons not employed or self-employed at the time of an accident of any loss by reason of diminution of earning power and for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household. . . .

Benefits are payable to a PIP insured, without regard to fault, for those expenses which result from bodily injury, sickness, or disease (including death resulting therefrom) caused by accident and not suffered intentionally, while he is in or upon, or while entering into

163. Massachusetts Act, supra note 158, § 34A.
164. Id.
or alighting from, or being struck as a pedestrian by, the insured motor vehicle.\textsuperscript{165}

There is a limitation on wage or salary reimbursement. The maximum amount which may be recovered from PIP may not exceed seventy-five percent of the injured person's average weekly wage or salary, or its equivalent, for the year immediately preceding the accident.\textsuperscript{166} If a person is entitled to benefits under a wage continuation program independent of the PIP coverage, the independent wage continuation benefits and PIP benefits combined may not exceed the seventy-five percent limit.\textsuperscript{167} The Act refers to "any" program for wage continuation, whether or not wholly employer financed. However, if PIP benefits are reduced because an injured person has an independent wage continuation program, and, as a result, the injured person is unable to recover from the independent program for a subsequent illness or injury, PIP benefits equal to the amount of the initial reduction will be provided to the person for the subsequent illness or injury if it occurs within one year of the time the last PIP benefit was paid.\textsuperscript{168} Therefore, if a workman had accumulated three days of "sick pay" prior to an accident and was not entitled to PIP wage loss benefits because his employer paid his wages during the three days he lost after the auto accident, he would be entitled to PIP benefits if, six months later, he missed three days of work because of the flu.

2) Persons Covered

The Act provides that the PIP benefits are to be paid to the named insured, members of his household, authorized operators or occupants of the insured's vehicle, and any pedestrian struck by the insured vehicle.\textsuperscript{169} Named insureds and members of their households are also granted PIP benefits, under the named insured's policy, if they are injured while in, upon, entering into, or alighting from, or by being struck as a pedestrian by, a vehicle which does not have PIP coverage.\textsuperscript{170}

There are no territorial limitations; thus, all persons listed in the Act deriving coverage from the insured vehicle, including pedestrians, would be entitled to PIP benefits, provided the accident

\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{170} Id.
occurred in the United States, its territories or possessions, or in Canada.\footnote{171}

However, a person who is entitled to benefits under the Massachusetts Workmen's Compensation Act as a result of a motor vehicle accident is \textit{not} entitled to PIP benefits.\footnote{172} In addition to this exclusion, the Act also provides that insurers \textit{may} exclude a person from PIP benefits if his conduct contributed to his injury in that he was "operating a motor vehicle in the commonwealth:"

\begin{itemize}
\item[(1)] while under the influence of alcohol or a narcotic drug as defined in section one hundred and ninety-seven of chapter ninety-four;
\item[(2)] while committing a felony or seeking to avoid lawful apprehension or arrest by a police officer; or
\item[(3)] with the specific intent of causing injury or damage to himself or others.\footnote{173}
\end{itemize}

3) Assigned Claims

The Act also establishes an assigned claims plan which will afford PIP benefits to Massachusetts residents who have no insurer from which to claim benefits. Under the plan, a Massachusetts resident, injured in the state, who is not the owner or registrant of a motor vehicle and does not belong to the household of such a person, may seek benefits from the assigned claims plan if no PIP benefits are otherwise available.\footnote{174} For example, if a Massachusetts resident who lives alone and does not own a motor vehicle is injured in a Massachusetts accident by a vehicle from another state, or by an uninsured Massachusetts vehicle, he may look to the assigned claims plan for PIP benefits. The Act provides that insurers providing PIP coverage in the state must organize and operate the plan. The claim of a person looking to the plan for benefits will be assigned to one of those insurers, and the person making the claim has the same rights and obligations as if the insurer to which he is assigned had actually written PIP insurance to cover him. Persons entitled to workmen's compensation benefits and those not denied

\footnotesize{171. The Massachusetts Act, \textit{supra} note 158, does not circumscribe territorial limits for the compulsory coverages; these are found in the policy endorsements. \textit{See}, \textit{e.g.}, Liberty Mut. Ins. Co., Massachusetts Combination Motor Vehicle Policy, General Condition 2, at 32.}

\footnotesize{172. Massachusetts Act, \textit{supra} note 158, § 34A.}

\footnotesize{173. \textit{Id.} § 34A(1)-(3).}

\footnotesize{174. \textit{Id.} § 34N.}
benefits because of the exclusions noted above are not entitled to claim benefits under the assigned claims plan.\textsuperscript{175}

4) Permissible Deductibles

The Act allows the named insured to elect to take the PIP coverage subject to deductibles applicable to himself, or to himself and members of his household.\textsuperscript{176} The deductible amounts authorized by this section of the Act are $250, $550, $1,000 or $2,000. Thus, an insured can partially or completely exclude himself and his household members from coverage, but he cannot avoid having the coverage for other occupants or permissive users of his vehicle and for pedestrians.

b. Vehicular Property Damage

The provisions of Chapter 978 of the Massachusetts Laws of 1971 also established requirements for coverage for damage to the insured's own vehicle.\textsuperscript{177} Like the Florida law, the Massachusetts Act gives the vehicle owner three options with respect to that coverage.

Under the first option, the vehicle owner may buy a form of first party insurance which, subject to a $100 deductible, pays for damage to his vehicle, up to its actual cash value, caused by accidental collision or upset. Benefits are payable without regard to fault.\textsuperscript{178}

Under the second option, coverage similar to that provided under the first option, again with a $100 deductible, may be obtained, but recovery from one's own insurer is predicated on the insured's ability to demonstrate that the damage to his vehicle was caused by fault-related conduct on the part of the operator of another motor vehicle.\textsuperscript{179} The types of conduct which will permit recovery are:

(a) Cases in which the insured except for the exemption from liability granted by this section would have been entitled to recover in tort for such loss or damage against another identified person also insured by a policy of property protection insurance;

(b) Cases in which the insured is entitled to recover in tort for such loss or damage against another identified person who is not exempt from liability under the provisions of this section; the

\textsuperscript{175} Id.
\textsuperscript{176} Id. § 34M.
\textsuperscript{177} Massachusetts Act, supra notes 158 & 162, § 34-O.
\textsuperscript{178} Id. § 34-O(1).
insured, in such a case, shall take all steps necessary to preserve
the insurer's right of subrogation;

(c) Cases in which the loss or damage is incurred by the
insured vehicle while the vehicle is lawfully parked and the loss
or damage is the result of impact with another vehicle owned by
another identified person;

(d) Cases in which the insured vehicle is struck in the rear by
another vehicle owned by another identified person moving in the
same direction;

(e) Cases in which the operator of the vehicle causing loss or
damage to the insured vehicle is, as a result of his operation at
the time the loss or damage was incurred, convicted of either
operating under the influence of alcohol or a narcotic drug as
defined in section one hundred and ninety-seven of chapter ninety-
four, or of driving the wrong way on a one-way street or of
operating at an excessive rate of speed as defined in section seven-
teen of chapter ninety, or of any similar violation of the law of
any other state in which the loss or damage is sustained. No
coverage is created under this clause, however, if the operator of
the insured vehicle is himself convicted of any such violations as
a result of his operation at the time said loss or damage was
incurred.\textsuperscript{180}

As to elements (c), (d) and (e), an insured will be able to recover
from his own insurer regardless of whether he would have been able
to recover in tort in an action against the other driver.\textsuperscript{181}

Under the third option, the vehicle owner will have no first
party coverage for property damage to his own vehicle.\textsuperscript{182}

Insurers must also offer a $50 deductible to insureds who take
the first or second option.\textsuperscript{183}

\textbf{B. Impact on Tort Liability}

In addition to the insurance requirements, the new amendments
make a significant impact on tort liability for motor vehicle acci-
dents.

\textsuperscript{179} Id. § 34-O(2).
\textsuperscript{180} Id. § 34-O(2)(a)-(e).
\textsuperscript{181} Id.
\textsuperscript{182} Id. § 34-O(3).
\textsuperscript{183} Id. Fire, theft, and comprehensive coverages may be written as part of any policy
providing first party property damage coverage or separately as authorized by the insurance
commissioner.
1. Vehicular Property Damage

Since provisions of Chapter 978 of the Massachusetts Laws of 1971 with respect to coverage for damage to the insured vehicle were just analyzed, the impact of this Act on tort liability for vehicular property damage should be considered first. It provides:

Every owner, authorized operator or other person legally responsible for the operation of any vehicle to which this section applies, regardless of the coverage option or deductible option elected by the policyholder, shall be exempt from all liability every property protection insurance policyholder and his insurer might otherwise have been entitled to claim, by subrogation or otherwise, for accidental loss of or damage to any vehicle to which this section applies. This exemption from liability shall not affect tort rights and subrogation rights therein against persons not so exempted.\textsuperscript{184}

What this provision means is that Massachusetts motorists who are covered by the required compulsory insurance are exempt from tort liability for damage caused to the vehicles of other Massachusetts vehicle owners. The exemption does not apply to damage to property other than motor vehicles or to damage to non-Massachusetts vehicles. The $5,000 of compulsory property-damage liability insurance would be available in those cases.

While insured Massachusetts motorists are given a tort exemption, some insurers do not receive its benefit. The Act provides that an insurer of a private passenger vehicle which pays first party property damage benefits under the first or second option noted above is entitled to exercise subrogation rights against the insurer of a vehicle not in the private passenger class whose owner or operator would, but for the tort exemption, have been liable for the damage.\textsuperscript{185}

The net result of the tort exemption for vehicular property damage is that insured Massachusetts vehicle owners and operators and insurers of “private passenger vehicles” will be exempt from tort liability for damage to Massachusetts vehicles. Insurers of vehicles not falling in the “private passenger” class will assume their insureds’ tort liability to reimburse insurers of Massachusetts “private passenger vehicles” covered by the first or second optional

\textsuperscript{184}. \textit{Id.}

\textsuperscript{185}. \textit{Id.} The state’s insurance commissioner is to define which vehicles are “private passenger vehicles.” Intercompany arbitration is called for in this section if insurers do not agree as to liability.
property damage coverage. Tort liability for property damage for all other persons and in all other situations would be unaffected.

The tort exemption makes Massachusetts vehicle owners self-insurers in certain circumstances. When two Massachusetts private passenger vehicles collide, their insured owners will personally absorb the amount of the deductible which they have on their first party property damage coverage. A Massachusetts motorist who takes the second optional coverage will be a self-insurer for his total loss in all cases in which the collision does not fall within one of the fault-related classes noted above. A Massachusetts motorist who chooses to have no first party property damage coverage on his own vehicle (option 3) absorbs all property damage loss caused through his own fault or by another insured Massachusetts motorist.

2. General Damages

Chapter 670 of the Massachusetts Laws of 1970 also created Section 6D of Chapter 231 of the Massachusetts General Laws. It provides that in any tort action brought as a result of bodily injury, sickness, or disease arising out of the ownership, operation, maintenance, or use of a motor vehicle within the state, damages for “pain and suffering, including mental suffering” may be recovered only if the expenses for certain types of medical, hospital, and related services exceed $500 or if certain types of injuries are sustained.

[A] plaintiff may recover damages for pain and suffering, including mental suffering associated with such injury, sickness or disease, only if the reasonable and necessary expenses incurred in treating such injury, sickness or disease for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral expenses are determined to be in excess of five hundred dollars unless such injury, sickness or disease (1) causes death, or (2) consists in whole or in part of loss of a body member, or (3) consists in whole or in part of permanent and serious disfigurement, or (4) results in such loss of sight or hearing as it described in paragraphs (a), (b), (c), (d), (e), (f) and (g) of section thirty-six of chapter one hundred and fifty-two or (5) consists of a fracture. 186

The Massachusetts Act provides for an approach to general dam-

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ages like that of Florida, but with one-half of Florida's threshold amount. Again, we must ask whether the term, "pain and suffering, including mental suffering," will be considered broad enough to include all elements falling within the broader term, "general damages." 187

It should be noted, as it was with previous state laws, that the general damage limitation applies only in typical motor vehicle accident cases. The use of the words "ownership, operation, maintenance or use" does not allow its application to automobile products liability litigation, for example.

According to Department of Transportation statistics, approximately seventy-nine percent of auto accident victims suffer an economic loss of $500 or less. 188 This means that over eighty percent of Massachusetts auto accident victims would be subject to the medical expenses threshold of $500 and that less than seventeen percent of all auto accident victims would be exempt from operation of the threshold because of their type of injury. 189 Therefore, since Massachusetts, like Florida, applies a threshold to general damages, a substantial number of motor vehicle accident victims will be denied compensation for the "pain and suffering, including mental suffering" inflicted upon them. The threshold works to exempt tortfeasors from this liability. Since the application of the threshold is not limited to cases involving Massachusetts insureds, its application would be broader than the Florida threshold.

3. Other Economic Loss

The Massachusetts Act also establishes a tort exemption with regard to other economic loss sustained by certain accident victims. It provides, with respect to accidents occurring in the state, that an injured accident victim will be barred from recovering in tort for damages covered by PIP benefits or which would have been covered but for a permissible deductible.

Every owner, registrant, operator or occupant of a motor vehicle to which personal injury protection benefits apply who would otherwise be liable in tort, and any person or organization legally responsible for his acts or omissions, is hereby made exempt from tort liability for damages because of bodily injury,

187. See note 9 supra for items classified as "general damages."
189. Id. at 19-20.
sickness, disease or death arising out of the ownership, operation, maintenance or use of such motor vehicle to the extent that the injured party is, or would be had he or someone for him not purchased a deductible authorized by this section, entitled to recover under those provisions of a motor vehicle liability policy or bond that provide personal injury protection benefits or from the insurer assigned. No such exemption from tort liability shall apply in the case of an accident occurring outside the commonwealth.\textsuperscript{190}

Two features of this tort exemption should be noted. First, it protects only those who are insured in accordance with the Act. Therefore, those who own or operate a Massachusetts vehicle in violation of the compulsory insurance law and those who are out-of-state drivers are not protected by the exemption. Second, the exemption is granted only to the extent to which PIP benefits are paid or, but for a deductible, would have been paid. Therefore, the exemption does not apply to claims for economic loss not covered, such as the uncompensated twenty-five percent of wage loss, or losses over $2,000, or claims by persons not entitled to PIP benefits. Nothing in the Act applies the exemption to an action brought by a person who, being in one of the three enumerated classes, insurers may exclude from the protection of PIP benefits (e.g., intoxicated drivers, fleeing felons, etc.).

This tort exemption applies to Massachusetts insureds, but not their insurers. The Act provides that an insurer paying PIP benefits is entitled to reimbursement, to the extent of payment, for claim processing costs and the like, from the insurer of the person who, but for the tort exemption, would have been liable for the damages for which PIP benefits were paid.\textsuperscript{191} If the insurers fail to agree, the dispute is to be submitted to arbitration.\textsuperscript{192} Thus, while a tortfeasor may be personally exempt from tort liability for some of the economic loss he caused to another, the loss will be charged to his insurer and will ultimately be reflected in his insurance premium. The same section of the Act grants subrogation rights to insurers paying PIP benefits to be applied in those cases in which PIP benefits are paid and no tort exemption is imposed upon their insured's right to recover damage for economic loss from a tortfeasor.

\textsuperscript{190} Massachusetts Act, \textit{supra} note 158, § 34M.
\textsuperscript{191} Id.
\textsuperscript{192} Id.
C. Constitutionality of the Plan

The constitutionality of the Massachusetts Act was attacked in *Pinnick v. Cleary*,¹⁹³ which, unlike the Illinois action, involved a claim by an individual accident victim, who contended that his constitutional rights had been violated by the application of the Act's provision. The amendments relative to property damage coverages were not before the court since they were enacted subsequent to its decision.¹⁹⁴ The Supreme Judicial Court of Massachusetts upheld the constitutionality of the Act as it existed at that time. It found that the legislative restrictions and limitations imposed upon tort recovery were valid. However, the *Pinnick* decision is as important for the issues the court did not decide as it is for the decided issues. The plaintiff in *Pinnick* raised some of the same arguments as to “due process” and “equal protection” violations as were raised in the Illinois case.¹⁹⁵ The court met these arguments by finding either that the plaintiff did not come forward with evidence to support the argument¹⁹⁶ or that the issue was not raised by the facts.¹⁹⁷ Looking at both this case and the case in Illinois, it must be said that a full test of the constitutionality of auto reparation plans which limit tort recovery has still to be made.

D. Summary

The Massachusetts Act presents a partial self-insurance system which, but for dollar amounts and other language differences, was emulated in Florida. Tort exemptions against liability for economic loss are established for the state's motorists. Massachusetts accident victims are denied compensation for some of the losses caused by reckless or careless drivers. Statistics indicate that fewer accident victims are recovering than under the old tort system and that the average claim payment is lower.¹⁹⁸ However, although the cost

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¹⁹⁴. Note 162 *supra*.
¹⁹⁶. As to the threshold's discrimination against the poor because of differences in medical care costs, see — Mass. at 271 N.E.2d at 611. The court also intimated that the plaintiff did not have standing to make this argument.
¹⁹⁷. As to some persons' not being entitled to the plan's benefits, see — Mass. at 271 N.E.2d at 609.
of certain coverages in the auto policy has been reduced, the cost of others has increased. The net result has not produced a saving in the total auto premium for the average state resident.\footnote{199. \textit{Id.} The class 10 operator (best rating) in Boston paid $523.57 for full coverage (liability, uninsured motorist, collision, comprehensive, etc.) in 1970. In 1972 he pays $590. The cost of coverage related to bodily injury has gone down, while property damage coverage rates have risen.}

\section*{V. Minnesota}

\subsection*{A. Required Insurance}

Sections 72A.1492-72A.1495 were added to the Minnesota Statutes by Chapter 713 of the Minnesota Laws of 1969, effective January 1, 1970; and Section 72A.1494(d) was added by Chapter 581 of the Laws of 1971, effective January 1, 1972.\footnote{200. Minn. Laws 1969, ch. 713, and Minn. Laws 1971, ch. 581 [hereinafter cited together as Minnesota Act], creating §§ 72A.1492-72A.1495 of the Minnesota Statutes.} Although their provisions are important to motorists in the state, their approach is certainly different than that of the laws in Delaware, Florida, Illinois, and Massachusetts. While the laws enacted in the other states compel, or at least mandate, the purchase of certain insurance coverage, the effect of the Minnesota law is to broaden the first party coverage which must be offered to an insured.

The new statutes have no impact on liability insurance coverage and in no way modify tort liability for damages resulting from motor vehicle accidents. The thrust of the Minnesota Act is to seek a solution to the automobile accident reparations problem by a program which makes expanded first party coverages available to an insured. The Minnesota legislature has chosen the path of reform, rather than untested innovations.

The Minnesota Act provides that no automobile liability policy or motor vehicle liability policy shall be renewed, issued, or delivered in the state with respect to any automobile registered or principally garaged in the state unless certain coverages are made available to the named insured therein or supplemental thereto.\footnote{201. Minnesota Act, \textit{supra} note 200, § 72A.1493.} It defines "automobile" to include four-wheeled passenger motor vehicles designed for use on public roads, including trailers designed for use with such motor vehicles, but excludes motorcycles with or without sidecars.\footnote{202. \textit{Id.} § 72A.1492(2).} The named insured is given the option "to accept in writing" all or any one or more of the coverages.\footnote{203. \textit{Id.} § 72A.1493.}
The term "named insured" is defined as any person or persons named in the policy declarations.\textsuperscript{204} Four different coverages must be made available.

1. Death Benefits

The first coverage to be offered must provide a minimum of $10,000 to be paid upon the death of the named insured, provided such death occurs within ninety days of a motor vehicle accident.\textsuperscript{205} Further, the benefit will be paid only if the death results directly, "independent of all other causes," from bodily injury, "other than sickness or disease or death resulting therefrom," caused by accident.\textsuperscript{206} The named insured must be occupying an automobile, or entering or alighting therefrom, or be struck by a motor vehicle as a pedestrian, for the coverage to apply.\textsuperscript{207}

Since the word "automobile" is used in relation to occupying, entering, and alighting, and the term "motor vehicle" is used with reference to the named insured's status as a pedestrian, it would appear, for example, that the named insured's death after an accident in which he occupied a commercial truck would not be covered, whereas he would be covered if he were killed by a like truck while crossing a street as a pedestrian.

2. Income Disability Benefits

The second optional coverage for named insureds provides indemnity of at least $60 per week for a period of fifty-two consecutive weeks when the named insured is prevented from performing the "usual duties of his regular occupation."\textsuperscript{208} Again, benefits are conditioned upon injuries and disability accidentally sustained while the named insured was occupying, entering, or alighting from an "automobile" or when struck by a "motor vehicle" while a pedestrian.\textsuperscript{209} If the named insured is a housewife or not gainfully employed, either the amount or duration of payment, or both, may be reduced fifty percent.\textsuperscript{210}

\begin{footnotes}
\item 204. Id. § 72A.1492(3).
\item 205. Id. § 72A.1494(a).
\item 206. Id.
\item 207. Id.
\item 208. Id. § 72A.1494(b).
\item 209. Id.
\item 210. Id.
\end{footnotes}
3. Medical Expense Benefits

The third optional coverage is broader than the first two in that, in addition to the named insured, benefits are provided to any other "insured." 211 The word "insured" is defined to include persons other than the named insured who are in or upon, entering into, or alighting from, the automobile insured and described in the policy with the express or implied permission of the named insured or the person operating the automobile with the express or implied consent of the named insured, and also means members of the household of the named insured and a pedestrian struck by the insured vehicle. 212

The coverage provides an aggregate amount of at least $2,000 for each insured person for medical expenses incurred within two years from the date of the accident by reason of bodily injuries arising out of the use of the automobile described in the policy. 213 The Act defines "medical expenses" as

expenses for necessary medical, hospital surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, professional nursing and funeral expenses. 214

The coverage for medical expenses is limited in that the named insured and members of his household are not covered if injured while occupying another's person's vehicle or if struck as pedestrians and no similar insurance coverage is available.

4. Underinsured Motorist Coverage

The final option, offered as of January 1, 1972, allows the named insured to modify his uninsured motorist coverage so that its coverage limits will be extended, in an amount he selects, up to the limits of his own bodily injury liability coverage. 215 This option protects against both uninsured and underinsured motorists.

The operation of this type of coverage can best be explained through the use of an example. If a named insured carried $50,000/100,000 bodily injury liability coverage and extended his uninsured motorist coverage to the same limits, his own insurer would pay him the difference between the amount he collected as

211. Id. § 72A.1494(g).
212. Id. § 72A.1492(4).
213. Id. § 72A.1494(c).
214. Id. § 72A.1492(5).
215. Id. § 72A.1494(d).
damages from a tortfeasor and his own $50,000 uninsured motorist limit. If the named insured were able to recover the $15,000 liability limit of the tortfeasor's policy, but the judgment against the tortfeasor was for $40,000, the named insured's own insurer would pay him $25,000. If the tortfeasor were uninsured, as that term is now construed, the full $50,000 of the uninsured motorist coverage would be available. In either event, the Act provides that, upon and to the extent of payment, the named insured subrogates his insurer to his claim against a tortfeasor.  

B. Summary

The provisions of the Minnesota Act are quite uncomplicated. All coverages, other than that for uninsured motorist protection, are not dependent upon fault. The insured is given the right to determine for himself the extent of the first party coverage he wishes to obtain. He gives up none of his potential tort remedies in the bargain. The endorsements used in the state to provide the coverages specified in the Act are illustrative of the lack of complexity since they are developed as amendments to coverages which existed before the Act came into operation.

VI. Oregon

A. Required Insurance

Chapter 523 of the Oregon Laws of 1971 became effective January 1, 1972. It is similar to the Illinois Act in that it mandates coverages which must be made a part of certain motor vehicle liability policies issued in the state. It is also like the Illinois Act in that the mandated coverages relate to first party benefits for economic loss, other than property damage, arising out of a motor vehicle accident.

1. Vehicles Covered

The Oregon Act provides that every motor vehicle liability policy issued for delivery in the state, insuring any private passenger motor vehicle other than a motorcycle, shall carry the required

216. Id.
The Act revised the definition of "motor vehicle" in the Oregon Statutes to mean "every self-propelled device in, upon or by which any person or property is or may be transported or drawn upon a public highway," but not including:

(a) Devices used exclusively upon stationary rails or tracks;
(b) Motor busses, motor trucks or taxicabs as defined in ORS 481.030, 481.035 and 481.050, when the insured has employees who operate such busses, trucks or taxicabs and such employees are covered by any workmen's compensation law, disability benefits law or any similar law; or
(c) Farm-type tractors or self-propelled equipment designed for use principally off public highways.

Not all motor vehicles are covered and, even as to those that are, owners may still choose to operate in the state without any form of insurance coverage.

2. Persons Covered

The first party coverage mandated by the Oregon Act is to be afforded by the vehicle's insurer to several classes of persons. The named insured and members of his family residing in the same household are covered when injured "in a motor vehicle accident." The Oregon endorsement clarifies the fact that the coverage is extended to such persons while they are the occupants of an automobile or are pedestrians struck by an automobile in the United States, its territories or possessions, or in Canada. Guest passengers injured while occupying the insured motor vehicle are to be afforded coverage. The endorsement extends coverage to both occupants and permissive users of the insured vehicle. Finally, pedestrians struck by the insured vehicle are afforded first party coverage. The Act gives insurers the right to exclude persons injured outside of Oregon, other than the named insured and his resident relatives, from first party benefits. The Oregon en-

221. Oregon Act, supra note 218, § 11.
222. Id. § 2.
223. Automobile Personal Injury Protection Endorsement—Oregon, A958, GU8905 (Ed. 1-72) [hereinafter cited as Oregon Endorsement].
224. Oregon Act, supra note 218, § 2.
225. Oregon Endorsement, supra note 223.
227. Id. § 5(2).
endorsement shows that insurers have only done so in relation to income continuation benefits.\(^{228}\)

3. Limitations on Recovery

Insurers may offer deductibles applicable to the named insured and his family members up to the amount of $250.\(^{229}\) Benefits for persons in those classes may be reduced or eliminated if benefits are similarly provided under another motor vehicle liability policy or if such a person is entitled to receive workmen's compensation benefits or similar medical or disability benefits under the laws of any state or the United States.\(^{230}\) Benefits payable to guest passengers and pedestrians may be made in excess of any other collateral benefits the injured person is entitled to receive.\(^{231}\) Finally, the insurers may exclude a person from benefits if he intentionally causes injury to himself or if that person is participating in any prearranged or organized racing or speed contest.\(^{232}\) An examination of the Oregon endorsement indicates that, in general, insurers have adopted these restrictions and exclusions and have also added other exclusions common to this form of coverage.\(^{233}\)

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228. Oregon Endorsement, supra note 223.
229. Oregon Act, supra note 218, § 3(2)(a).
230. Id. § 4(1).
231. Id. § 4(2).
232. Id. § 5(1).
233. Oregon Endorsement, supra note 223, provides:
This insurance does not apply:
(a) to or on behalf of any person
   (1) who intentionally causes injury to himself; or
   (2) who is injured while participating in any prearranged or organized racing
   or speed contest or in practice or preparation for any such contest;
(b) to income continuation benefits to or on behalf of any person who sustains bodily injury in an accident which occurs outside the State of Oregon, but this exclusion does not apply (1) to the named insured or a relative, or (2) to any other person while occupying the insured automobile as a guest passenger or while using the insured automobile with the permission of the named insured;
(c) to bodily injury due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
(d) to bodily injury resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear material;
(e) to the named insured or any relative while occupying any automobile owned by the named insured or furnished for the named insured's regular use and not insured for automobile personal injury protection;
(f) to a relative while occupying any automobile owned by such relative or furnished for the relative's regular use and not insured for automobile personal injury protection;
(g) with respect to any injured person who is not the named insured or a relative, to the extent that amounts are paid or payable to or on behalf of such injured person
4. Benefits Provided

Under the Oregon Act, an insured person is entitled to receive compensation for all reasonable and necessary expenses for medical, hospital, dental, surgical, and prosthetic services incurred within one year after the date of the accident to the limit of $3000 per person. 234

If an injured person is usually engaged in a remunerative occupation, he is to receive seventy percent of the loss of income from work during the period commencing fourteen days after the date of the accident. 235 These benefits need not exceed $500 per month or be paid for longer than fifty-two weeks, or up to the time the injured person is able to return to his usual occupation, whichever is shorter. 236 "Income" is defined to include, but not limited to, salary, wages, tips, commissions, professional fees, and profits from an individually owned business or farm. 237

The Act also provides benefits to a person not usually engaged in a remunerative occupation for reasonably incurred essential services in lieu of those that the injured person would have performed without income had he not been injured. 238 The fourteen-day waiting period applies here also. 239 The benefits need not exceed $12 per day for fifty-two weeks, or such time as the injured person can return to performing the essential services, whichever is shorter. 240 The Act specifically provides that an insurer may provide more "favorable" benefits than those it requires. 241

Benefits are to be paid without regard to fault and without regard to any potential tort claim that the injured person may have because of the accident. 242 Disputes between insurer and insured as to the amount of benefits are to be decided by arbitration, but the Act does not spell out arbitration rules or procedures. 243

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234. Oregon Act, supra note 218, § 2(1).
235. Id. § 2(2).
236. Id. § 3(2)(a).
237. Id. § 2(4).
238. Id. § 2(3). They would apply, for example, when a housewife is disabled and a housekeeper must be hired for the period of disability.
239. Id.
240. Id. § 3(2)(b).
241. Id. § 6.
242. Id. § 3(3)(4).
243. Id. § 3(5).
B. Impact on Tort Liability

The Oregon Act contains no provisions which exempt tortfeasors from liability for economic loss or general damages resulting from motor vehicle accidents. However, the Act does contain provisions which shift the ultimate cost of the first party benefits to the tortfeasors. It does this and also avoids duplicate compensation for the same loss by providing that motor vehicle liability insurers must reimburse insurers providing the first party benefits, and also "health insurer(s) and health care service contractor(s)," for benefits they have paid to motor vehicle accident victims for damages for which the liability carriers' insureds would be held legally liable. This provision applies to liability insurers authorized to issue policies in Oregon and only if the contract of the insurer or contractor providing benefits also provides for such reimbursement. If the first party-benefit payor and liability carrier cannot agree as to liability or amount of reimbursement, arbitration is to be employed. In those cases in which a person receiving first party benefits is injured by a person who is not insured by a liability insurer authorized to write in Oregon, the insurer or contractor providing the benefits is entitled to reimbursement from any recovery obtained by the person receiving benefits from the tortfeasor. A "Trust Agreement" procedure is established to assure such reimbursement.

The Oregon Act, therefore, adds something new to the auto reparations picture. It provides a method for shifting the ultimate cost of auto first party benefits and non-auto benefits to the person legally responsible for causing the loss.

C. Summary

The Oregon Act may be classified as a reform proposal with a program intended to provide prompt payment to victims of automobile accidents without limiting damages or tort liability.

VII. Puerto Rico

A. Required Insurance

Puerto Rico Act No. 138 was approved June 26, 1968, and

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244. Id. § 7(1).
245. Id.
246. Id. Findings and awards in such arbitration proceedings are not admissible in any action at law or suit in equity by virtue of § 7(2) of the Act.
247. Id. § 8.
became operative January 1, 1970. The Act establishes a governmental agency, the Automobile Accident Compensation Administration (AACA), to operate the program outside of the private insurance system. The cost of the first party system established by the Act is spread among all motor vehicle owners in Puerto Rico, each being assessed $35 per year in addition to the fee paid when registering a vehicle. Motor vehicle owners in Puerto Rico are not compelled to purchase any other form of automobile insurance as a condition precedent to operating a motor vehicle in the commonwealth. Liability insurance and other first party coverages for the vehicle are available on a voluntary basis from the private market.

1. First Party Coverage

The AACA first party benefits are made available to victims of motor vehicle accidents in Puerto Rico without regard to fault. Every natural person who suffers bodily injury, sickness, or death resulting therefrom, as a consequence of the maintenance or use of a motor vehicle is covered. The term "maintenance and use" covers loading and unloading, but excludes the business of repairing, servicing, and maintaining a vehicle conducted in a business area. The term "motor vehicle" is given a broad definition to include all vehicles designed to operate on public highways, other than those operated by muscular power.

2. AACA Benefits

The AACA plan provides a series of different benefits, which are available to motor vehicle-accident victims. However, the Act provides that all collateral insurance and benefits available to the victim are to be deducted in determining the amount of benefits due from AACA. This will not include benefits from family support, inheritances, life insurance, and Social Security.

a. Medical Expenses

The AACA is required to pay all expenses for medical and hospital services, convalescent homes, rehabilitation, and medicines

250. Id. § 14.
251. Id. § 3.
252. Id.
253. Id. § 2.5.
254. Id. § 4.1(d)(e).
required by the condition of the accident victim. This feature of the plan is much broader than any of those in the plans previously discussed. However, the services which the AACA will cover must be provided by a doctor, hospital, or other institution which has a service contract with AACA, except in the case of emergency treatment or in other cases in which the treatment is authorized by AACA. In those instances, AACA will reimburse the care provider at the rate it pays for such services to hospitals and physicians under contract.

b. Income Disability

If within twenty days of the accident the victim is disabled by his injuries, AACA will pay a benefit equal to fifty percent of his salary to a maximum of $50 a week for the first fifty-two weeks of disability, and fifty percent of his salary to a maximum of $25 a week for the fifty-two subsequent weeks. The benefits may not be paid during the first fifteen days following the date on which disability begins. Compensation is based on the salary of the injured person at the time of the accident or, if he was not employed, his average weekly salary during the six months in which he last worked preceding the accident. To receive payment, the victim must have held a compensated employment during six of the twelve months preceding the accident. The disability sustained must be of such a nature as to impair the victim from engaging in any employment or occupation for which he is fit through education, experience, or training. A housewife, whose main occupation, either independently or as a result of "her civil status," is to administer, maintain, and control a home and who is not engaged in compensated regular employment outside of her residence is not entitled to income disability benefits from AACA.

c. Dismemberment Benefits

AACA will also pay benefits, based on a fixed schedule, to persons who sustain an injury resulting in dismemberment. The

255. Id. § 4.5.
256. Id.
257. Id.
258. Id. § 4.3.
259. Id. § 4.3(c).
260. Id. § 4.3(e).
261. Id. § 4.3(b).
262. Id.
263. Id. § 4.3(a).
dismemberment must occur within ninety days of the date of the accident, unless the time is extended by AACA. The amount of payment for dismemberment varies depending upon its nature. It ranges from $5,000 for the loss of both feet at or above the ankle to $2,500 for total loss of sight in one eye. If more than one of the types of dismemberment covered are suffered, the maximum recoverable is $5,000.

d. Death Benefits

The Act also provides that AACA is to pay benefits if a motor vehicle accident victim's injuries result in his death. The sum of $500 will be paid for funeral expenses. In addition, benefits are paid to the dependents of the deceased on a schedule based on their relationship to the deceased. For example, a "primary dependent," such as a husband or wife, is entitled to $5,000, whereas children, depending on their ages, receive from $2,500 to $1,000. The maximum amount of death benefits paid may not exceed $10,000.

Payments for dismemberment, noted above, will be deducted from the death benefits paid. However, income disability benefits, paid to the date of death, will not be deducted.

These are the basic features of the AACA first party system. The Act is 20 pages long, and the nature of this article makes it impossible to make a more in-depth analysis of all its rules, regulations, and schedules applying to the computation and payment of benefits.

B. Impact on Tort Liability

In addition to its "insurance" features, the Act has an impact on tort liability for motor vehicle accident damages within the commonwealth. It provides:

Any person responsible, through a negligent act of his own, for damages or injuries for which benefits are provided herein, shall

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264. Id. § 4.2.
265. Id. § 4.2(e).
266. Id. §§ 4.2, 4.4.
267. Id. § 4.4.
268. Id.
269. Id.
270. Id.
271. Id. § 4.2(e).
272. Id. § 4.2(d).
be exempt from the principle of liability on the basis of negligence. \(^{273}\)

The exemption is not to apply in cases in which the loss recoverable by the victim because of his injuries exceeds:

(a) the amount of $1000 for physical and mental suffering including pain, humiliation, and similar damages, and of
(b) the sum of $2000 by reason of other damages or losses not included in (a). \(^{274}\)

The exemption of (b) is further qualified in the Act by its provision that the amount of the exemption should be equal to $2,000 or the amount of benefits paid by AACA, if greater than $2,000. \(^{275}\)

The use of the words "through a negligent act of his own," indicates that vicarious liability is not covered by the exemption. In addition, the $2,000 exemption would also appear, because of the general wording of the Act, to cover property damage.

In our discussion of other state plans, reference has been made to the "threshold" or "formula" approach to general damages. Puerto Rico employs an "exemption" approach. Persons injured in motor vehicle accidents may pursue a tort claim for general damages. However, the first $1,000 of their recovery is, in effect, deducted to give the tortfeasor an exemption. The use of the words "physical and mental suffering including pain, humiliation and similar damage" appear to create a broader general damage limitation than that present in Florida, Illinois or Massachusetts. \(^{276}\)

The Act grants to the AACA the right of reimbursement, to the extent of payment, against a person who intentionally caused the accident for which benefits were paid, or against a person who caused the accident while under the influence of alcohol or narcotics, while driving without a "legal permit" to do so, while committing a criminal act (other than a traffic violation), or while participating in an automobile race or speed test. \(^{277}\)

\textit{C. Summary}

The approach taken by Puerto Rico with regard to compensation for economic loss resulting from motor vehicle accidents is

\(^{273}\) Id. § 8.2.
\(^{274}\) Id. §§ 8.2(a)-(b).
\(^{275}\) Id. § 8.3(c).
\(^{276}\) See note 9 supra for examples of "general damages."
\(^{277}\) Puerto Rico Act, supra note 248, § 6. Persons falling into those categories are not entitled to the Act's benefits, but their dependents are not affected. Id. § 5.3.
novel in comparison to plans employed in other jurisdictions under the United States flag. The Puerto Rico Act cannot be examined in a vacuum. The need for some type of plan is demonstrated by the fact that, prior to the Act's effective date, sixty-five to eighty-five percent of the motor vehicles in Puerto Rico were uninsured.\(^{278}\) It was estimated that close to ninety percent of Puerto Rico accident victims received no compensation. This was due both the low incidence of liability insurance coverage and the fact that economic conditions there were such that most residents of the commonwealth had no collateral insurance and benefit plans.\(^{279}\) The AACA approach in Puerto Rico must, therefore, be viewed as having been necessitated by the peculiar conditions existing on that island.\(^{280}\)

VIII. South Dakota

Chapter 270 of the South Dakota Laws of 1971 was enacted to become effective January 1, 1972.\(^{281}\) The discussion of the South Dakota Act need not be extensive since, in addition to sharing a common border with Minnesota, the South Dakota Legislature enacted almost an exact duplicate of the Minnesota Act discussed in a previous section of this article.

There are two significant differences between the Acts, however. First, a South Dakota insured must be offered the coverages in the Act, subject to his rejection in writing.\(^{282}\) As noted previously, a Minnesota insured must accept the coverages in writing. The second difference is that the South Dakota Act does not provide for underinsured motorist coverage.

In all other respects, the South Dakota Act tracks that of Minnesota.

\(^{279}\) Id.
\(^{280}\) Reports indicate that AACA is working well in Puerto Rico, with administrative expenses averaging 10.9% of revenues. A government-sponsored accident prevention program is helping to reduce the number of accidents. Since a government agency operates the plan, its interest in reducing accident tolls is obvious. For fiscal year 1970-71, AACA collected $18.4 million in "premiums." From January 1, 1970, to June 30, 1971, $11 million was paid or reserved for benefits. Remarks of Frank W. Fournier, Executive Director of AACA, delivered at the National No-Fault Conference, Dallas, Texas, June 22-23, 1971. In Saskatchewan, Canada, another government-operated plan does not appear to be working as well as private insurance plans in other Canadian provinces. Remarks of Edward B. Rust, President, State Farm Mut. Auto. Ins. Co., at meeting of CPCU, Denver, Colorado, Nov. 5, 1971.
\(^{281}\) S.D. Laws 1971, ch. 270 [hereinafter cited as South Dakota Act].
\(^{282}\) South Dakota Act, supra note 281, § 2.
The foregoing Acts illustrate how different jurisdictions have reacted to the problems which are claimed to exist in the operation of the present automobile reparations system. Although the provisions of the Acts differ, it can be seen that each is directed at the same objective—improving the process by which motor vehicle-accident victims receive compensation for their damages. It cannot be claimed that any or all of the Acts present a perfect solution. Problems are bound to arise in their operation and interpretation. Litigation from automobile accidents will not be eliminated, although the nature of the suits may be different than the typical auto case of today.

Up to the present time, plans have been enacted in Puerto Rico and seven states. It seems clear that additional legislation will be forthcoming in 1972 and 1973. A brief analysis of what may develop should be undertaken.

A. State Action (Wisconsin)

Wisconsin can serve as an example of the situation which exists in other states during the 1972 legislative sessions. At the present time, pending in the legislature are seven different bills which have a bearing on automobile accident reparations:

1. Assembly Bill No. 373 is a modified form of the Massachusetts Act.

2. Assembly Bill No. 888 is unlike any of the Acts discussed in this article. It would completely eliminate tort liability for motor vehicle accident damages and substitute a first party insurance program in its place. It is patterned after the American Insurance Association Plan.

3. Assembly Bill No. 950, which has a counterpart in the Senate designated as Senate Bill No. 565, provides for the type of first party benefits established under the Oregon Act, but makes first party coverage optional with the insured, as do the Minnesota and South Dakota Acts. It also contains provisions for compulsory automobile liability insurance and other rules, similar to those in the Illinois plan, which seek to improve the litigation process.

4. Assembly Bill No. 1040 is a modified version of the Illinois Act.

5. Assembly Bill No. 1448 is a hybrid. It would eliminate most of the present tort liability system in favor of a first party insurance mechanism, but retain tort liability for general damages,
subject to a $1,500 threshold similar to that in Florida and Massachusetts.

(6) Senate Bill No. 842 would, in all but a limited number of cases, eliminate tort liability for property damage to motor vehicles. This bill has no insurance features, and its passage would mean that vehicle owners would have to resort to existing first party property damage coverages for protection.

(7) Assembly Bill No. 1571 is a modified version of an Act now being drafted by a special committee of the National Conference of Commissioners on Uniform State Laws. It provides for an almost complete system of first party benefits for economic loss coupled with a tort exemption. It also has a $1,500 threshold combined with a $5,000 exemption from general damages.

This thumbnail sketch of the 1972 auto reparation legislation in Wisconsin is illustrative of the mix of different bills which find their way into most state legislatures. As is shown in the discussion of the Acts which have become law, all states will not react in the same way. Some states, including Wisconsin, will take no action on auto reparations during 1972.

With the massive number of plans and proposals for auto reparation reform that have been offered to date, state legislatures will be placed in the same position as children observing the goods in a candy store—everything looks pretty good, but they want to be sure that they select what is best. The complexities of the various plans and proposals and their interrelation with other state laws make a wise choice difficult. Each plan has its strengths and weaknesses. There is no way of predicting the type of plan that any one state may enact.

B. Federal Involvement

The possibility of state action in the area of auto reparation reform is further clouded by the possibility of federal intervention in this area. The Department of Transportation (DOT) concluded its two-year, $2 million study of automobile accident reparations with the issuance of its report and recommendations in March, 1971. In general, DOT, speaking for the Administration, has come out in favor of the state-by-state improvement of the auto reparation system on a step-by-step basis so as to allow for experi-

283. Note 285 infra.
284. DEPARTMENT OF TRANSPORTATION REPORT, MOTOR VEHICLE CRASH LOSSES AND THEIR COMPENSATION IN THE UNITED STATES (1971).
mentation and evaluation as the process progresses. DOT favors the ultimate evolution of a plan which would replace tort liability for all economic loss with a first party system, retaining general damages under the tort system but making them subject to a high threshold which would apply to all but the very serious injury cases. DOT has entered into a contract with a special committee of the National Conference of Commissioners on Uniform State Laws (NCCUSL) to develop a model bill. The draft of the "Uniform Motor Vehicle Accident Reparations Act" (UMVARA), on which the committee is presently working, provides for an almost total first party system.385 Evidently, the committee members believe that DOT should be given what it wants as an ultimate without the intermediate evaluation and experimentation over a period of time. The final draft that the committee approves must be submitted to the full body of NCCUSL for approval before it is promulgated as its work product. The draft which comes out of the NCCUSL meeting in August, 1972, may in no way resemble the work of its special committee. Whether DOT will promote one of the committee’s preliminary drafts for state action remains to be seen. Meanwhile legislators in some states, such as Wisconsin, have introduced or are considering the introduction of one or more of the preliminary drafts.

There are those in our nation’s capital who do not favor a state-by-state approach to automobile accident reparations reform. Senators Warren Magnuson (D. Wash.) and Philip Hart (D. Mich.) have introduced legislation which contains federal auto insurance requirements.286 Under their bill, all motorists in the United States would be required to purchase first party coverage for economic loss, and tort liability would be all but completely eliminated. The Hart-Magnuson bill still relies upon private insurance to provide the required coverages, but the coverages provided by the private sector must conform to the requirements of the bill. Similar legislation has been introduced in the House.287 It has been suggested that

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286. Uniform Motor Vehicle Insurance Act, S. 945, 92d Cong., 1st Sess. (1971). The Senate Commerce Committee is also considering a staff revision of the bill designated as “Committee Print One of S. 943.”

Senator Magnuson will exert his considerable influence to gain passage of his bill during the 1972 session of Congress. There is also speculation that other auto reparation legislation may be introduced in Congress, including a so-called "compromise" bill which would establish federal auto insurance "standards" for state enactment.

Whether the enactment of auto reparation legislation in more states will forestall congressional action remains to be seen. However, the possibility that this might be the case is being held out to state legislators as a good reason why they should take action.

The automobile reparation picture in the United States has changed and will continue to change. Much of the change will result from legislation which drastically curtails the tort system; other change will result from reforms both in the insurance mechanism and its operation and in the substantive and procedural law of torts. Hopefully, by experimentation and evaluation, programs in the public interest will be developed.