

CAVEAT EMPTOR: AUTO INSURANCE: COMPULSION VS. RESPONSIBILITY

GENERALLY SPEAKING, businessmen would welcome federal or state laws which would require the consumer public to purchase the goods or services they offer for sale. However, the creation of captive customers is a Utopian dream which is not sought by the American insurance industry.

The National Association of Independent Insurers, an organization composed of more than 300 of the nation's carriers of automobile passenger insurance, is vehement in its objection to the concept of compulsory automobile liability insurance. Their avowed objective is repeal of these laws in states which have enacted such legislation, and defeat of proposed legislation in states not now having compulsory insurance laws.

To enable our readers to be more fully informed on the subject, we offer both sides of the issue.

Most states have enacted financial responsibility laws, laws which state motorists must prove financial responsibility before they are issued licenses to drive a car. This is a refinement of the earlier financial responsibility laws which operated on the principle that a motorist must, *after* being involved in an accident for which he is found liable, be able to prove that he can meet a judgment, or forfeit his right to a driver's license.

In 1927, Massachusetts became the first state to put more teeth into the financial responsibility laws. It was found that under the prior law, while a motorist could lose his license because he could not pay for damages he caused, victims of the accident had no redress and suffered great financial loss when involved in an accident with an impoverished motorist.

Enactment of the law provided that automobiles could not be registered and receive license plates unless proof of insurance was presented. Some 30 years later a second state, New York, adopted a similar law. A year later North Carolina became the third state to do so.

Theoretically, this restriction would drive the uninsured motorist from the nation's highways if the compulsory laws were made uniform and applicable to all 50 states. Perhaps that is the greatest fault in the compulsory law, in that it does not apply to motorists driving on state highways (in covered states) with valid licenses issued in states which do not require compulsory insurance coverage.

Advocates of compulsory insurance

maintain that protection afforded the non-guilty party in an accident is far superior to protection afforded by the usual financial responsibility laws.

Opponents of the law object to *compulsion* as being an interference by government in a person's rights. Court attacks have been made on the question of the constitutionality under state laws of the compulsory features. However, the laws have been upheld on the basis that police power of the state "extends to all the great public needs."

Another attack is based upon the premise that all drivers, good and bad alike, are compelled to pay for insurance coverage. However valid this argument is, the fact does remain that the best drivers can make mistakes and get into accidents. An accident could conceivably lead to financial ruin—loss of home, loss of car, loss of business and personal possessions—if a judgment has to be met and no insurance protection is carried.

In the book *General Insurance* (Magee & Bickelhaupt) examples of accidents causing unusual monetary loss are cited. One driver hit a bridge and set it afire, resulting in his being held liable for \$50,000 in damages; another skidded into a gasoline pump and a water hydrant and caused \$100,000 in damages.

Standing on one's rights is one thing, but it is small solace to the motorist who decides he doesn't want to be covered by liability and property damage and has a six figure judgment rendered against him.

Compulsory automobile liability insurance is supposed to protect the responsible motorist who carries insurance against the actions of the irresponsible driver who is not insured. A compulsory law, however, offers no protection from the following operators on our highways who are involved in accidents: (a) An uninsured out-of-state driver, (b) an unapprehended hit-and-run driver, (c) an uninsured driver of a stolen car, (d) an uninsured motorist who keeps on driving after his license has been suspended or who operates a motor vehicle despite canceled registration of lapsed insurance, (e) a newly arrived uninsured resident whose car still is registered in another state, (f) an uninsured motorist who hits a car being driven in other than its home state, (g) the insurance "dodger" who cancels his insurance or intentionally lets his insurance lapse after obtaining registration for his car, and (h) drivers of farm vehicles and road-

building equipment used on highways.

New York, a state with compulsory insurance, is a case in point. Because it is a tourist attraction, hundreds of thousands of out-of-state motor vehicles use its highways. No protection is afforded registered New York drivers who are involved in accidents with visitors who are not insured.

Persons in the insurance accident claim field state there is a sharp jump in claims whenever compulsory insurance is put into effect. In New York the claim frequency rose 23% in the first year under compulsory law, in North Carolina there was a 35% increase in the first two years following the passage of the law. Why? Reasons given are that persons are more likely to file even trivial claims, file unjustified claims, or make a personal injury claim out of every accident, if they know the other driver does carry insurance.

Because accident frequency and claim frequency have a direct bearing on insurance rates, the strange paradox is that motorists in the three states with compulsory insurance are paying high rates. Automobile owners in New York and Massachusetts pay the highest liability insurance premiums in the country—more than twice as much as the national average for non-compulsory states. Rates in North Carolina have risen almost 40% in the past five years.

Opponents of compulsory laws argue that the cost of administering the programs is staggering. They note that in New York State it takes more than 1000 employees to handle the program, keeping track of lapsed policies, mailing notices, directing police to confiscate license plates, etc., but if the plan does work, if compulsory insurance is the answer, it would seem the cost would just be another cost of good government. Price tags cannot be put on the essential governmental functions.

NEITHER THE compulsory laws nor the financial responsibility laws do much to decrease the accident rate, which is a fundamental and much needed goal. Better enforcement of existing motor vehicle and safety laws is essential, and tackles the problem at its root. The increasing and unnecessary losses on the highways should not be condoned under any of the current or proposed solutions to the automobile accident victim problem.

The future will undoubtedly bring additional action by states in attempting to achieve better solutions.

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The compulsory law, having been adopted in only three states is either not popular or the victim of intensive lobbying by the NAI. Compulsory laws have been defeated in several states and the current trend seems to be in the direction of strengthening the financial responsibility laws.

Alternatives to the compulsory programs are assigned risk plans, unsatisfied judgment funds, and uninsured motorists coverage.

One of the objections raised by insurance carriers to compulsory automobile liability insurance is that they don't want to insure all risks. They don't want the careless driver, the accident-prone driver, the consistent violator of traffic laws. Yet, this attitude negates the ordinary liability and property damage insurance which protects motorists who become involved in an accident with the uninsured.

Because of the reluctance to accept any and all risks, all states have passed laws to set up *assigned risk pools* for motorists legally entitled to coverage. Basically the plan is the same throughout the country. A motorist who cannot secure insurance coverage after diligent search can apply to the assigned risk pool and his risk, along with others, will be parceled out to a company writing automobile insurance within the state.

A formula, based on insurance written within the state, is used to equitably assign the poor risk applications among the insurance carriers.

A higher rate is charged for the insurance obtained through the assigned risk pool and the limits of coverage are sharply curtailed.

North Dakota, New Jersey and Maryland have adopted legislation for the establishment of *unsatisfied judgment funds*. An innocent victim of an automobile accident, who is otherwise unable to collect for damages rightfully due him, can receive payment from the state administered fund.

FINANCING THIS type of fund is usually met by the levy of a charge against license applicants who do not carry insurance and a surcharge against insurance companies writing policies within the state.

In many instances the uninsured motorist finds the penalty fee (i.e., from \$3 to \$15 per year in New Jersey) is an attractive saving over the cost of adequate insurance coverage. But, the fact that the state does have an unsatisfied judgment fund does not relieve the uninsured from legal actions and loss of savings and personal property.

At best this is a poor substitute and actually should cover only victims of hit-and-run or injuries to pedestrians.

Perhaps the best answer to the problem of uninsured motorists is for insured motorists to add riders to existing policies (mandatory in some states) for *uninsured motorists endorsement*. As the name implies, financial protection is granted to those who come into contact with the uninsured motorist.

Here is an actual case history taken from the files of an insurance company. The scene was a quiet, controlled intersection in a small California community. It was mid-day. A young woman driver, with her mother and sister as passengers, proceeded through the intersection after halting for a stop sign. A 20-year-old youth, driving an uninsured older car and accompanied by two buddies, ran an opposing stop sign at 50 miles per hour and rocketed into the woman's vehicle with a sickening crash.

The mother was dead on arrival at the hospital. The sister received severe lacerations on the face, five displaced fractures of the pelvic bones, fracture of one rib and a mild concussion. She was disabled for four months. The woman driver sustained a laceration of the forehead, fracture of the sacrum, fracture of the pelvis, fracture of the hip and a severe sprain of the ankle. She was disabled for two and one-half months.

The youth pleaded guilty to a manslaughter charge. He carried no insurance and he did not have any material possessions.

Funeral expenses for the mother amounted to \$1100. Medical expenses for the sister totaled \$1500. The woman driver incurred medical expenses of \$765 and a wage loss of \$700. The family faced economic chaos as well as heartbreak.

Fortunately, the woman driver had uninsured motorist coverage, which in California costs about \$4 per year. The insurance company paid damages of \$8500 to the mother's estate, \$4000 to the sister and \$6000 to the driver.

These same claims would have been

paid under the uninsured motorist endorsement had the offending motorist been an unapprehended hit-and-run driver, an uninsured driver of a stolen car or any other type of uninsured operator.

INSURANCE APPLIES whether or not the injury caused by the uninsured motorist results from occupancy of an automobile. A family is, therefore, protected with insurance against accidents caused by uninsured motorists which occur when any member of the family household occupies an automobile, operates a bicycle, or is a pedestrian. In addition to covering members of the family, the insurance also includes protection for guests of the family injured while riding in the family car or in any other automobile while operated by the named insured or spouse.

Actually, what in effect is being done is to insure the non-offending insured motorist so that he will collect (to the extent of the limits of his coverage) what he would have collected from the uninsured driver. There are several exclusions generally applicable to this type of coverage. A motorist cannot collect if he is entitled to file a claim under the Workmen's Compensation Act of his state; a deduction is made for any partial collection effected by suing the uninsured motorist; and he may not collect beyond the stated limits of coverage, even if other uninsured motorists coverage may apply when an insured is using a non-owned automobile.

In effect, the insured motorist who pays for the uninsured motorists endorsement is paying for two coverages. He is protecting himself financially against doing damage to others, and he is paying for all of those motorists who refuse to secure adequate protection.

However, the cost of uninsured motorist protection is very small, ranging from a low of \$1 per year (in New York for out-of-state accidents, \$3 for in-state accidents) to a high of \$9 per year in Tennessee.

Uninsured motorist insurance has the same objective as fire insurance, which to an extent protects the policyholder against the negligence of his neighbor in starting a fire; or accident and health insurance, which to an extent protects the policyholder against the negligence of others in spreading communicable diseases.

Taxpayers and citizens support police departments and the courts which provide protection against the criminal acts of other persons and paying for automobile insurance is no different. Through one means or another, we have to protect ourselves against the actions of irresponsible motorists.

—Joseph Arkin

