



HISTORY AND DEVELOPMENT OF NO-FAULT IN MASSACHUSETTS

BODILY INJURY

As a system designed to compensate the victim of a motor vehicle accident for personal injuries, the old tort system fell far short of its expectations. Some injured parties received no compensation, while others received far less than their medical and economic costs. This was partially due to the role of fault in the system, the need for the injured person to prove that another was at fault and that he was legally free from fault.

The fault system was too cumbersome and slow, prompt payments of compensation for personal injuries occurred rarely, if ever, with delays of several years before final payment or a determination that no payment was due, especially in metropolitan areas. Also, it has been asserted that the crowded court dockets were in a large measure attributable to personal injury cases in general and to motor vehicle accident cases in particular, and in Massachusetts, motor vehicle tort cases constituted nearly 60% of all law entries before the principal trial court. Compounding the problem is the fact that jury trials take longer than other trials.

The point is that justice delayed is justice denied. An injured person needing money to pay his bills cannot wait, as can an insurance company, through the long period necessary to press and recover his claim, and he would be forced to settle for an inadequate amount in order to obtain immediate recovery. Under no-fault one would recover up to \$2,000 from his own insurance company regardless of fault.

1. Pinnick v. Cleary 271 N. E. 2nd 592 (1971)

A further criticism of the former system is the difficulty of actually proving negligence in court. Evidence given in motor vehicle accident cases usually consists of highly contradictory statements from the two sides, estimating such factors as time, speed, distance and visibility, which are offered months after the event by witnesses who were never very sure just what did occur and whose faulty memories are undermined by lapse of time, bias, conversation with others and by the influence of counsel. Furthermore, who, in retrospect from the fragments of evidence given by the participants or bystanders and those who arrived on the scene at a later time, is expert enough to reconstruct the fleeting scene with any assurance of its accuracy? Under no-fault, negligence would not have to be proven in most cases, thereby doing away with the difficult and often unreliable factor of determining fault.

Another objection to the old system is that it was in large part an unfair method of compensation for losses, that those with relatively slight injuries were being promptly and vastly overpaid (the so-called nuisance claims), while those who were seriously hurt were grossly underpaid, and then only after a long delay. The insurance companies, to avoid the expense and risks of litigation made generous settlements of small claims; but the person with a permanent disability, usually a wage earner for a family with a low income, was typically without resources to meet mounting expenses and would find himself in a pathetically inadequate bargaining position with the insurance company. The company's position, because of the very nature of the bargaining, grew correspondingly stronger with every delay and would often lead to a compromise which failed to adequately compensate the victim. This abuse is eliminated under the no-fault system since there will be no need to be concerned with bargaining positions as everyone is paid their damages under \$2,000 regardless of the strength of their position in regard to proving fault.

Furthermore, the old system was excessively expensive due to the role of fault. Contests over the intricate details of accidents and all the elaborate preparations that had to precede them wastefully increased the cost of administration of the system. In cases of relatively modest injury, the expense of the contest often exceeded the amount claimed as compensation. Inherent in the trial to determine fault was the expense of lawyers for both parties and an appropriate part of the total costs of maintaining courts that were largely dedicated to motor vehicle accident cases. All the expenses had to be borne by the insurance companies in determining fault which was ultimately reflected in increased premiums for the insured. Compulsory automobile insurance rates were expected to increase 30% for 1971. A total of approximately 37% reduction in the rates has been made possible because of the enactment of the modified no-fault legislation.

It has become apparent that it is both unfair and uneconomical for the law of torts to place so many of the risks of an industrial society on accident victims by forcing them to prove fault before allowing them to collect their damages. The proponents of no-fault have analogized that much of what has been found to be true for automobiles is also true for machines, that is, given their swift and lethal nature, they are bound to take a heavy toll of life and limb quite apart from any real fault on anyone's part. They assert that the awareness of how unfair it is to cast this predictable burden disproportionately on accident victims has been reflected in recent developments in the law of torts by changing the law of negligence to allow more and more claimants to recover by circumventing the previous strict standards of proving fault.

The most striking example of relieving the burden of proving fault has been in the area of workmen's compensation where the employer has been made liable for injuries to his employees irrespective of negligence or fault on anyone's part. The employee merely relinquishes his right to sue and collects whatever out-of-pocket losses he sustains from his employer regardless of fault.

A second example of this trend away from the fault system has been the statutes abrogating or modifying the defense of contributory negligence and inserting in its place the doctrine of comparative negligence. According to the doctrine of contributory negligence if one party is found to be even the slightest degree negligent then he is barred completely from recovery. To eliminate the harshness of this doctrine of fault, the theory of comparative negligence has been introduced in several states and became effective in Massachusetts on January 1, 1970. This doctrine would allow recovery to one even though he has been at fault in an automobile accident although reducing his amount of damages by his degree of fault. Another example of the court's realization of the difficulty of proving negligence has been in the area of manufacturer's liability where it became understood that a person injured by a product would have a difficult burden of proving the manufacturer's negligence. The courts established the doctrine of strict liability - a theory which eliminates the necessity of proving fault and which imposes liability on the manufacturer regardless of his fault or negligence.

This was based on the reasoning that proof of failure to use due care in a complicated manufacturing process is something which a plaintiff would have little knowledge. No-fault adherents stress the similarity in the difficulty of proving negligence, and would impose recovery on a no-fault basis to both parties involved in an accident. Thus, with a general breakdown of the strict adherence to the rule that one must prove fault to recover in a tort suit, it was felt by proponents of no-fault that the theory of eliminating or lessening the burden of proving fault should be applied to automobile insurance by providing for payments on a no-fault basis to any motorist or pedestrian injured by an insured's motor vehicle for up to \$2,000 for medical, hospital, funeral expenses and loss of wages.

COURT DECISION UPHOLDING NO-FAULT INSURANCE

The No-Fault Law (Chapter 670 of the Acts of 1970), abrogating the traditional common law necessity of proving fault for injuries under \$2,000 raised a serious question as to its constitutionality. The issue in dispute was whether the operation of the No-Fault Law deprived an injured person of his constitutional right to a full recovery in tort for losses suffered due to personal injury resulting from the negligence of another; specifically, does Chapter 670 of the Acts of 1970 violate the due process clause of the 14th Amendment of the U.S. Constitution? The Supreme Judicial Court of Massachusetts determined that No-Fault did not violate the due process clause, and thus declared it constitutional in the case of *Pinnick v. Cleary* 271 N.F. 2nd 592 (1971).

The court in determining whether a person is being deprived of due process under a given statute generally applies two tests:

1. Does the statute bear a reasonable relation to a permissible legislative objective?
2. Does the statute provide an adequate and reasonable substitute for pre-existing rights?

The court in analyzing the question as to whether the No-Fault Law did bear a relation to a legitimate legislative objective recognized that the objective of the statute was to cure the three basic inequities within the previous tort system; the clogging of the courts with motor vehicle tort cases, the staggering costs of automobile insurance and the inequities involved when claimants were compensated for their injuries. The court concluded that the No-Fault Law was indeed a "rational solution of these inefficiencies and inequities".

The court answered the question of whether the statute provided an adequate and reasonable substitute for pre-existing rights in the affirmative. The court stated that the practical effect of Chapter 670 was to afford citizens the security of prompt and certain recovery of a fixed amount of his out of pocket losses. The accident victim is entitled to immediate payment of his most pressing item of cost: medical expenses. In addition, he receives the major portion of his lost wages not covered by a wage continuation plan.

In return for the benefit, the injured motorist merely surrenders the possible minimal damages for pain and suffering recoverable in cases not marked by serious economic loss or objective indicia of grave injury; plus the outside chance for a generous settlement or a liberal award by a judge or jury which will allow him to reap a monetary windfall out of his misfortune. In addition, the accident victim loses his right to recover in tort to the extent that he is eligible for personal injury protection benefits (medical expenses and lost wages up to a limit of \$2,000), yet since he can recover the first \$2,000 under no-fault, he loses nothing by it.

Thus, the No-Fault Law, Chapter 670 of the Acts of 1970, withstood its most critical test. The Supreme Judicial Court found that the act was a valid exercise of legislative power and did not violate the due process laws of the Fourteenth Amendment of the United States Constitution.

OUTLINE OF CHAPTERS 670 and 744

NO-FAULT BODILY INJURY INSURANCE LAW

The following outline is a brief description of the No-Fault Bodily Injury law itself, as amended up to 1972. Questions and answers which go to the point of the law, and which will answer some of the more important questions concerning the statute will be found in Appendix A.

I. Payment is to be made on a no-fault basis to any motorist or pedestrian injured by an insured's motor vehicle up to \$2,000 for medical, hospital, funeral expenses and loss of wages. The injured party receives these payments from his own insurance company regardless of his fault or negligence in the accident. Chapter 313 of the Acts of 1972 amends this portion of the law by requiring insurance companies, upon notification of disability of the insured from a licensed physician, to commence medical payments or provide notice of non-payment and reasons within 10 days. In addition, in any case where payments due remain unpaid the insured has the right to commence court action against the company.

If the damages are in excess of \$2,000 then the injured party receives the first \$2,000 on a no-fault basis from his own insurance company and he will be able to collect the excess over \$2,000 from the other party's insurance company by suing him under the old tort system. For example, if the injured person's damages are \$5,000, he collects \$2,000 on a no-fault basis from his own insurance company. He, then must proceed against the other party or the other party insurance company for the remaining \$3,000. Whether or not he will be compensated for the remaining \$3,000 will depend on his negligence or freedom from negligence as all amounts over \$2,000 are determined under the present tort system.

Thus, it must be kept in mind that the compulsory system still remains in existence since one must purchase insurance to protect himself for all cases involving damages over \$2,000.

II. Payments for loss of wages, or for those persons not employed - loss by reason of diminution of earning power, is limited to the amount actually lost by reason of the accident.

A. This is further reduced by limiting a person's recovery for loss of wages to 75% of his wages and deducting from that amount any sum provided for under any wage continuation plan.

B. As an example, if one loses \$1,000 in lost wages he would receive 75% of that figure or \$750. But if he has a wage continuation plan that pays him \$500, this must be deducted from the \$750, and he receives \$250 from his insurance company.

Since an injured person might be able to recover his wage losses from another source at a later date which would sufficiently compensate him for his loss, he might then wish to reimburse his wage continuation plan so that he would not have any loss of standing in regard to benefits or time which he had accumulated under such a plan. Chapter 794 of the Acts of 1971 amends no-fault by allowing an injured person who receives benefits under a wage continuation plan to later reimburse the plan without loss of standing in the plan if he recovers from another source such as an income protection plan or as the result of a tort suit if his damages are to the extent necessary to institute a tort action.

It should also be borne in mind that under the present no fault law if a person must use wage continuation benefits as a result of an automobile accident and within a year's time he becomes ill or injured again and his wage continuation plan does not have sufficient funds to reimburse him for this illness or injury, the amount that was paid out from the plan for the automobile accident is then put back in his wage continuation fund by the automobile insurance company under the personal injury protection plan.

III. The following persons may be excluded by insurers from no-fault benefits.

A. Those under the influence of alcohol or narcotic drugs.

B. Those committing a felony or seeking to avoid lawful apprehension or arrest by a police officer while involved in a motor vehicle accident.

C. Operators of motor vehicles who possess the specific intent of causing injury or damage to themselves or others.

IV. An injured party may recover damages for pain and suffering arising out of an injury sustained in an automobile accident only if his reasonable and necessary medical expenses exceed \$500 unless the injury

A. Causes death

B. Consists in whole or in part of the loss of a body member

C. Consists in whole or in part of permanent and serious disfigurement

D. Results in loss of sight or hearing

E. Consists of a fracture

V. A motorist is offered five deductibles of \$100, \$250, \$500, \$1,000 or \$2,000 (the \$100 deductible was added by chapter 339 of the Acts of 1972), and if he does purchase a policy with a deductible and he is involved in an automobile accident, the amount of the deductible which he has selected will be deducted from his recovery. It is understood that one who purchases a policy with a deductible will be offered that policy at a lower rate than if he had purchased a policy without a deductible. This would permit a person with good hospital and medical insurance such as that provided by

Blue Cross/Blue Shield and other private companies to avoid unnecessary duplication in benefits and thus reduce costs.

VI. A victim may elect to sue but can recover only that amount over \$2,000 in damages and that amount over 75% of his wages, as it must be borne in mind that the wrongdoer is exempt in tort for the first \$2,000 of damages.

VII. An assigned claims plan is to be created to provide protection to a Massachusetts resident who, as a pedestrian is injured by an uninsured out of state car or by a hit and run driver. If the pedestrian or his family own a car, he will collect under his own insurance policy, but if this is not the case then he will collect from the assigned claims plan, the funds of which will be derived from insurance companies doing business in Massachusetts.

VIII. The law also provides for the introduction of a merit rating program for 1972 to be established by the Commissioner of Insurance. Surcharges are to be added to one's premium charges for convictions for moving violations by the policyholder or a member of his household. Discounts are to be applied when neither the policyholder nor any member of his household has been involved in an accident in which there has been more than \$200 damage. The maximum period to be used in determining surcharges and discounts is five years. The law specifies certain surcharges presumed to be reasonable: (1) for a conviction for driving under the influence of alcohol or drugs, 100%; (2) for speeding, 20%; (3) for all other moving violations, 10%. The discount for each full year without reportable accidents is 2%, therefore, the maximum discount one may earn is 10% - 5 years at 2%.

IX. A fifteen per cent reduction for the rates for 1971 for all lines of coverage, including compulsory bodily injury, extra bodily injury limits, property damage and physical damage, was provided for in the act. However, the Supreme Judicial Court held that only a fifteen per cent reduction for compulsory bodily injury was constitutional.

X. There is a provision in the law that when an insurance company offers a policy of compulsory insurance they must also offer extra bodily injury limits of \$15,000 and \$40,000, plus Property Protection (no-fault), medical coverage, guest coverage, and now under the no-fault property protection law, fire, theft, and comprehensive insurance, and also uninsured motorist coverage of limits of \$15,000 and \$40,000. There will no longer be a need for one to purchase split coverages - compulsory bodily injury insurance with one company and other lines of coverage with another company, which are often at higher rates. In addition, every motorist will be guaranteed the availability of any and all coverages which he desires to purchase. Previously, it was quite difficult for many motorists, particularly those in high risk areas, to be able to purchase fire, theft, and comprehensive insurance.

XI. One of the most significant aspects of this legislation is the automatic renewal reform as provided by Chapter 744 of the Acts of 1970 which was passed soon after the No-Fault Bodily Injury Act (Chapter 670 of the Acts of 1970) and was designed to amend Chapter 670 by guaranteeing the continued availability of automobile insurance supplied by private enterprise.

Chapter 744 provides for automatic renewal for the following:

A. Automatic renewal for those individuals 65 or over for all lines of motor vehicle coverage with the following exceptions:

Fraud in the application for insurance

Guilty finding for a moving violation

Suspension or revocation of license or registration for a period of more than 30 days.

Ineligibility for merit rating discounts due to accident involvement.

Convictions for driving under the influence of alcohol or unlawful drugs.

Non-payment of premium

A general reduction in the volume of automobile insurance by the insurer in the Commonwealth if the commissioner determines that this is not an attempt to circumvent the purposes of this section.

B. Any person who is entitled to the 2% reduction for the year 1972 and of a net discount of 4% for the year 1973, i.e., those who qualify under merit rating provisions, shall be automatically renewed by their insurance company except for those exceptions applicable to those 65 or over. This would then provide for automatic renewals for those safe drivers under the age of 65.

C. If an insurance company refuses to renew a policy for those persons under 65 who do not qualify under the merit rating plan for a reason other than one of the exceptions applicable to those 65 or over, then that company shall be required to accept at least one additional risk from the assigned risk plan.

D. In addition, no company shall refuse to issue a motor vehicle policy because of age, sex, race, occupation, or principal place of garaging of the vehicle. This change in the law is significant in that many motorists have been unable to purchase their needed insurance simply because they happen to live in a high risk area or their occupation is one which happens to be classified as a high risk occupation even though these motorists may have been very safe drivers.

XII. To prevent insurance companies that in the past have written automobile insurance from refusing to write no-fault insurance, Chapter 744 provides that the commissioner of Insurance, may, after a public hearing, suspend a casualty company's license.

to issue any other form of insurance if they refuse to write no-fault automobile insurance. Certain other broad powers have been granted the Commissioner to guarantee that this plan will function smoothly. 1.6

NO-FAULT PROPERTY PROTECTION

CHAPTER 978 AND 1079 OF THE ACTS OF 1971

In 1971 the Legislature turned its attention toward the area of automobile property damage and collision insurance and applied the no-fault principle to it, which resulted in Chapter 978 and 1079 of the Acts of 1971. No other facet of insurance has caused such discontent and aggravation amongst the public as has property damage. In 1971 the Commissioner of Insurance estimated that of all the complaints received by his department covering all fields of insurance approximately 80 per cent of these complaints pertained to problems in the automobile property damage area.

To understand the problem under the old system of property damage it is again necessary to remember that it was based on fault. If A was involved in a motor vehicle accident with B and A incurred damage to his car he could only recover if B was at fault and A was free from fault. Experience under the fault system indicated that in many instances the company's response would be to deny the claim because their insured either did not report the accident or delayed for too long a period of time before reporting the accident. Other instances have shown companies offering inadequate amounts or even completely denying liability and refusing to pay any amount. All of these methods resulted in prolonged delays to the Massachusetts motorist. He was then left with the following alternatives.

1. Hire an attorney and be forced to pay legal fees out of the amount he recovered to repair his car and then only after considerable time had elapsed in awaiting court action.
2. Collect from his own collision policy if he had this coverage, yet having to deduct whatever deductible he had chosen from the amount he recovered which might be substantially less than the actual damage sustained to the vehicle. All of which amounted to a profession of negligence in the accident and risked non-renewal by the company and ineligibility for merit-rating discounts.
3. Accept an inadequate amount from the company and pay the remainder out of his own pocket if he was in fact offered any amount at all by the company.

Throughout these deliberations there were considerable delays which the motorist could not cope with if he needed his car repaired, before he could put it back on the road. Being a typical motorist, he would have to use his car daily which put him in a pathetically weak bargaining position with an insurance company that could wait forever and invest any money it had set aside in its loss reserve for that case.

In order to rectify these inequities in the former system, no-fault property protection legislation was developed which complements the existing landmark no-fault bodily injury law. Under Chapter 978, Property Protection Insurance is now compulsory in Massachusetts, and it is on a no-fault-basis. Formerly, a motorist would buy property damage insurance to protect himself in case he damaged another car and was at fault. This necessitated a motorist to purchase insurance that would cover him in case he collided with a new and expensive car (Cadillac). However, under the No-Fault Property Protection Law, a person buys insurance to protect his own car, and the rates are dependent on the type of car and its age. Now, a person with a 1964 Chevrolet buys insurance to cover that car and not the other person's car.

Basically, the No-Fault Property Protection law allows a motorist to select the type of coverage which will sufficiently protect his own vehicle in case of damage, grant him a tort exemption for damage he may cause to other vehicles, and provides compensation to repair his car within 15 days after submitting an itemized estimate.

Although property protection insurance is compulsory, it offers three options to a motorist which allows him to choose the coverage which best protects the type of car he drives. Basically, the plan can be best understood by analyzing the three options, all of which grant the motorist an exemption in tort for any damage he may be liable for.

OPTION I. ALL RISK COVERAGE

This option provides for the insurance company of the insured to pay for all direct or accidental damage to his motor vehicle regardless of his fault or negligence up to a limit equal to the actual cash value of the vehicle minus any deductible. This coverage is in essence that of a motorist who carried both property damage and collision coverage under the old system. It should be noted that this coverage is provided with a \$100 deductible common in many collision policies under the former system. There is also a provision allowing motorists to buy back \$50 of the deductible from the insurance company; and legislation has been filed in 1973 which would offer option I with no deductible. Motorists who will select this coverage will be those who formerly carried property damage and collision coverage - motorists with late model cars and more expensive vehicles who want to protect their investment.

OPTION II RESTRICTED COVERAGE

This option provides coverage whereby a motorist can recover for damage to his car from his own insurance company only under the following conditions:

- a. Cases where the motorist either is or would have been entitled to recover in tort against the other party. Thus, where the insured is able to demonstrate reasonable proof of negligence on the part of the other party, he can recover under this option.
- b. Cases where the motorist's vehicle is struck while lawfully parked.
- c. Cases where the motorist's vehicle is struck in the rear by another vehicle moving in the same direction.
- d. Cases where the other party is convicted of (1) operating under the influence of alcohol or narcotic drugs, (2) driving the wrong way on a one-way street, or (3) operating at an excessive rate of speed.

Those motorists who would select this coverage would probably be those who carried just property damage coverage under the old system and feel that their car is not worth protecting against all damage - just damage caused by another motorist. Thus those motorists with older cars would tend to select this option. Again this option is provided with a mandatory \$100 deductible with the \$50 buy-back provision, and legislation has been filed in 1973 which offers the option with no deductible.

OPTION III NO COVERAGE FOR OWN CAR

Under this option the motorist is not entitled to recover damages for his own vehicle even if he is free from fault and the other party is negligent, so that the election of this option bars all claims for loss or damage to his vehicle which he might otherwise have had. He does, however, retain his tort exemption up to \$5,000 so that he is exempt from any liability for property damage which he might cause: i.e., out of state cars, and any other personal or real property that he may hit such as a telephone pole or a building. On the surface it might appear that the motorist who selects this option does not have adequate coverage but it should be borne in mind that this option is the lowest in cost of all three options and might be advantageous for a motorist with an older and inexpensive automobile who would not have any large repair bills if his car were damaged particularly in light of the fact that property protection insurance is only paid up to the limit of the actual cash value of the vehicle.

SERVICE FEATURE

The main intent of this legislation is to provide better service through the 15 day service feature of the plan. As was previously mentioned, the greatest problem facing the Massachusetts motorist is that of recovering the amount owed to him - within a period of time to allow the motorist to use this compensation to repair his vehicle so that he can have his car back on the road without lengthy delays.

Thus, payments under option I, the All Risk Coverage, are to be made within fifteen days after receipt by the insurance company of proof of insurance, accident and the amount of the loss or damage claimed. In order to prevent the insurance company from delaying making payment or denying liability, a penalty provision has been inserted into the law which would allow a motorist who has not been compensated within this fifteen day period to commence an action of contract in court and recover double the amount of damages claimed if the court determines that the insurer was unreasonable in refusing to pay the claim. This is the key to the no-fault property protection concept, for if the legislation is to be successful, motorists must be compensated for their losses within this amount of time in order to put their car back on the road and not leave it deteriorating for any length of time awaiting a decision by the insurance company.

There would seem to be a great deal of misunderstanding as to Option II. Many have asked: "if the property protection plan is no-fault, why is it necessary to prove that the other party was at fault in order to recover under Option II?"

The plan is still no-fault; the insured will still recover from his own insurance company and does not have to file a claim against the other party's insurance company, as was done in the past. Since the plan is compulsory and the limit to which a person may recover is the book value of his car, the options are designed to give the motorist three choices which would best fit his needs. Obviously, since the coverage is different, the rates will vary with the coverage a person would buy. It was felt by the drafters of the legislation that basing Option II on the showing of fault was the logical median between the All Risk Coverage of Option I, and the No-Coverage Tort Exemption of Option III.

In determining what option he should take, the motorist should take into consideration the premium he would have to pay plus the deductible he is taking, either \$50 or \$100, and then compare that figure to the book value of his car. If that figure comes close to the book value of his car, then he should seriously consider taking a lower option.

RESULT OF NO-FAULT BODILY INJURY INSURANCE

PRIVATE PASSENGER VEHICLES

I. The state wide rates on compulsory no-fault bodily injury have decreased approximately 37% since the inception of no-fault in 1971. In some communities the decrease has been even greater, for example, the average rate decrease for Boston has been 48%. This result is surprisingly greater than most people had expected. Indeed, it is interesting to note that according to figures supplied by the Department of Insurance, had it not been for no-fault the rates for 1972 would have been approximately 70-80% higher than the 1970 pre-no-fault rates.

Since there is no longer any need to prove fault in an accident, where the injury to the motorist, passenger or pedestrian is less than \$2,000 for medical, hospital, funeral expenses and loss of wages; and also recovery for pain and suffering has been denied for under \$500 the reduction of this costly litigation has resulted in a cost savings to the premium-payer.

Secondly, the amount of claims filed has decreased tremendously, especially in the higher territories. When no-fault was passed, it was expected that it would effectively eliminate nuisance claims, and it has, especially in those areas that experienced an inordinately high number of them.

Upon the enactment of no-fault, the Legislature provided for a 15% decrease on all motor vehicle insurance rates: for 1971; however the Supreme Judicial Court ruled that unconstitutional and decreed that the Legislature could only cut rates -15% for the compulsory bodily injury insurance, to which the no-fault law pertained. As a result, all motorists enjoyed a 15% decrease in their compulsory bodily injury premiums in 1971, regardless of what territory they garaged their car.

The rates for 1971 were further reduced 25.9% in 1972 as a result of Chapter 977 of the Acts of 1971, the so called "Rebate Act", which required the insurance

companies to grant a partial rebate of the 1971 rates, which was upheld by the courts. This resulted from the unexpected success of no-fault in 1971. It was discovered that the claim frequency for 1971 had decreased significantly and the total loss and expenses of the companies was overestimated, resulting in an unfair profit or windfall of \$35,030,143. The fair profit which the companies were entitled to was \$1,339,377 or 1% of their earned premiums. As a result of the Rebate Law, the insurance companies were required to return this unfair profit to the consuming motorist which was 25.9% of the premium paid on compulsory bodily injury insurance for 1971. Thus, the total savings in 1971 was approximately 37%.

In 1972 the rates were further reduced by 27.6%, resulting in a total rate reduction under no-fault of 38.5% state wide.

In 1973 the Insurance Department was able to use the actual experience of the first year of no-fault, 1971. The experience was based on a pure premium basis (premium loss and expenses). It was found that the experience on the state-wide level warranted a 2.5% increase in the rates, which suggests a leveling of the rates. When the over-all state rate level factor and experience factor was applied to the experience of the fifteen territories, it was discovered that in 1971 the pure loss cost increased in the lower territories (7 through 15), while it decreased in the higher territories (1 through 6).

The high rates for the lower territories in 1973 reflect their experience under No-Fault. What happened was the rates of the lower territories were reduced too much in 1971 and 1972. In 1973, the pure premium loss, as based on the 1971 No-Fault experience, did not go down enough to justify a rate decrease. As a result, the rates were increased in these territories to reflect their actual experience in 1971 under no-fault.

II. What does the future have in store for no-fault bodily injury in Massachusetts? It would seem that rates will continue to level off to a point which will show a differentiation based on true claim frequency, minus the so-called nuisance claims. Indeed, the consolidation of the fifteen territories into six rating territories (Chart A) exemplifies this result.

Also, the data from 1971 suggests the possibility of the creation of a new class for over 65 drivers. There is evidence to show that these drivers may have better experience than younger drivers. If the statistics gathered in 1973 show that to be so, the Commissioner of Insurance has indicated that drivers over 65 can expect lower rates in future years.

Chapter 451 of the Acts of 1972 has created a new class for drivers who have wage continuation plans. It was felt by the drafters of this legislation that it would be unfair for those motorists who have a wage continuation plan to pay the same rates for compulsory no-fault bodily injury insurance, since they must deduct from their loss of wages any payment they would get under their own wage continuation plan. A flat \$1.00 discount is being given to people with a wage continuation plan so that statistical data on their losses can be separately collected in 1973 for the possible reduction in rates starting in 1974.

III. The following rate comparison charts on compulsory bodily injury insurance should better illustrate the results of no-fault insurance in Massachusetts.

Chart A compares the true experience of no-fault within the territories of the Commonwealth. Prior to 1973 there were fifteen rating territories for the state, and a city or town was placed in a territory based on its claim frequency. However, in 1973, due to the leveling of the rates, the fifteen were consolidated into six rating territories.

Chart B shows the rates for six cities and towns. Only the rates of Boston and Hyannis represent the true results of no-fault. Both of these communities remained in the same territory, and the effects of no-fault were constant. For Boston, in Territory 1, the rates have decreased dramatically from 1970. For Hyannis the rates have decreased from 1970 - 1972, but in 1973, as a result of being in Territory 15 it experienced an increase in rates due to their experience under no-fault.

The remaining four cities (Worcester, Springfield, Lowell and Fall River) represent large urban areas which have enjoyed a decrease in rates, but not to the extent that they should have, since they have moved to higher territories due to an increase in their claims frequency, which has offset the great savings they would have realized had they remained in the same territory.

RESULTS OF NO-FAULT PROPERTY PROTECTION

No-Fault advocates predicted savings across the state for approximately 85-90 per cent of the Massachusetts motorist for two reasons; first, motorists would be able to buy insurance up to the book value of their own car rather than the value on the vehicle they might damage; second, the new system would decrease the number and costs of nuisance claims. Today, after two years of no-fault property protection, statistical rate comparisons show that those advocates were somewhat correct in their estimates. Hopefully, after examination of the following sampling of rate comparisons, a better understanding of the results can be achieved.

In regard to Option I coverage, it was predicted that in the most expensive territory - Boston - 81% of the motorists would pay less for Option I than they would pay for property damage and collision coverage in 1971. It should be remembered that approximately 53% of the motorists drive cars four years old or older, and these people will be the ones who substantially benefit under the plan. Today, two years under the system, the predicted reductions have become evident by dollar and cent savings. (See Chart C.)

In regard to Option II coverage, the same estimates apply, 85-90% of the motorist would pay less for Option II coverage than they would for property damage in 1971. The coverage provides a tort exemption plus the ability to recover damages if the other party is negligent and identifiable. Today, the no-fault system of savings has become a reality by reducing rates for this coverage in most cases. (See Chart C.)

In regard to Option III it was predicted motorists would be paying between \$60.50 and \$14.00 for an exemption from tort for any damage for which they might be liable. Today, that range has been lowered considerably. (See Chart C.)

In conclusion, before making any decision as to the results of no-fault in the area of property protection as a whole, it is important to remember certain determinables. Any rates which may not have decreased as predicted can only be explained by the skyrocketing costs of auto repairs within the past two years and the sudden jump of some cities to higher priced territories due to increased claims frequency.

PROPERTY PROTECTION PLAN

1. Class 10 - Non business use, no young driver, commute less than 10 miles.

Class 42 - Male under 25, owner or principal operator with driver training.

2. A symbol 4 vehicle is an average priced car (\$3,201 - \$4,000) such as American Motors Ambassador and Rebels. Buick Skylarks and Sportswagons, Chevrolet Camaros, Chevelles, Biscaynes, Bel Airs, Impalas, Caprices, most Dodges, Fords, etc. Charges for Comprehensive and Collision increase for higher priced cars and are less expensive for lower priced cars.

3. For comparative purposes rates shown are for a 1972 model car in 1972 and a 1973 model in 1973. Premium would decrease by age of car.

4. Rates shown for 1973 models include 10% reduction because of improved bumpers.

5. All rates used are for \$100 deductible, with no waiver of deductible costs.

6. Property Damage chart does not include comprehensive (fire and theft) charges. 34

APPENDIX A

QUESTIONS AND ANSWERS ON THE NO-FAULT BODILY INJURY PLAN CHAPTER 670 ACTS OF 1970

Q. Does the enactment into law of this no-fault bodily injury act mean that compulsory insurance no longer exists?

A. No, compulsory insurance still exists, with the only change being that the first \$2,000 of damage is collected on a no-fault basis. All amounts over \$2,000 will be collected on the basis of fault so that the necessity for making compulsory insurance mandatory still exists in order to assure adequate compensation for injured motorists.

Q. Will one need to purchase any more or any less insurance than he presently has?

A. One should continue to purchase the insurance under which he is now covered since the injured party collects only the first \$2,000 on a no-fault basis. For amounts over that figure he may proceed in tort against the other party. This necessitates the purchasing of sufficient insurance to protect oneself from suits in tort for damages over \$2,000, so that as a result, the responsible motorist will continue to purchase that amount of extra limits insurance which he feels is necessary to adequately protect himself.

Q. How does this new law affect any payments one may receive in the form of a wage continuation plan or any medical hospital insurance benefits such as Blue Cross?

A. In regard to wages, during the time that one is out of work due to injuries resulting from an automobile accident, he is entitled to 75% of his lost wages on a no-fault basis. From this amount there must be deducted whatever the employee receives in the form of a wage continuation plan, such as workmen's compensation. If one is entitled to accident and health benefits, such as provided by Blue Cross, then the injured party may collect his medical expenses both from his automobile insurance company and his accident and health insurance company. To avoid duplication in payments, a person who has such medical protection coverage may desire to purchase a deductible policy at a lower cost, knowing that he will be adequately protected by his other forms of insurance.

Q. At what point can an injured party sue?

A. One may institute legal action (1) for those medical, hospital, funeral expenses, and loss of wages over \$2,000. (2) for damages for pain and suffering if they are over \$500 in medical bills or if the injury:

a. causes death

b. consists in whole or in part of the loss of a body member.

c. consists in whole or in part of a permanent and serious disfigurement

d. results in loss of sight or hearing

e. causes a fracture

(3) for the amount of one's lost wages which exceed that which he recovers on a no-fault basis, i.e. that amount in excess of 75% of his wages. For example, if one were out of work for 10 weeks with a salary of \$100 a week, he would receive \$750 under the personal injury protection coverage (75% of \$1,000). He would then have the right to proceed in tort to recover the remaining \$250 of his wage loss.

Q. What happens to the Massachusetts motorist who is hit by an out-of-state car?

A. The Massachusetts driver would still collect his first \$2,000 damages on a no-fault basis from his own insurance company. He would then still have the right to sue in tort for any excess in damages over \$2,000. In essence then, there is no distinction between a Massachusetts motorist being injured by an out-of-state motorist or by a Massachusetts motorist as pertains to personal injury protection as he still collects the first \$2,000 in damages from his own company.

Q. What are the rights and liabilities of a Massachusetts motorist who is involved in an out-of-state accident?

A. If the Massachusetts motorist is injured in an automobile accident outside the state, he would have the option of collecting on his personal injury protection coverage from his own insurance company for up to \$2,000 on the no-fault basis, or he could elect to sue the out-of-state driver in tort. If he does elect the option of suing the out-of-state driver, payment of the no-fault personal injury protection benefits would be withheld pending final determination of that suit. If the Massachusetts driver is involved in an out-of-state accident and is sued, he would not have the tort exemption of the no-fault personal injury protection but would still be able to have liability coverage if he purchased extra-territorial as he does now.

Q. Is it true that even a drunk driver collects on a no-fault basis under this plan?

A. No, the law specifically states that an insurance company may exclude a person from personal injury benefits if his conduct contributed to his injury due to the fact that he was under the influence of alcohol or narcotic drugs.

Q. How does one qualify for the merit-rating discount provided for under this plan?

A. One qualifies for the 2% merit-rating discount by not being involved in an accident where there is more than \$200 damage, i.e. an accident which must be reported. The period for determining whether one qualifies began on September 1, 1970. The discount is cumulative up to a five year period so if one is accident free for five years he receives 10% reduction in his compulsory rates. Surcharges on the other hand will be applied when a motorist has been convicted of a moving violation.

Q. Will all motorists be automatically renewed under this new law?

A. If one is over 65 then he is automatically renewed except for seven conditions which are outlined in the description of the bill. If one is under 65 and he earns a merit rating discount for two years he is automatically renewed. If he is not eligible for the merit rating discount, then refusal to renew by an insurance company is permitted for any of the seven reasons applicable to those over 65 without penalty. If a company refuses to renew such a person for any other reason, however, it is required to accept an additional assigned risk for each such refusal.

Q. Will it be easier now for one to purchase all the coverages that he needs?

A. Yes, one of the provisions of this new law is that each motorist who purchases compulsory insurance must be offered \$15,000/ \$40,000 extra bodily injury limits, (to-fault property damage coverages, guest coverage and fire, theft, comprehensive and uninsured motorist coverage.) Previously a company did not have to offer fire, theft and comprehensive coverage and in addition these coverages were merely available if the insured asked for them. Now the initiative is on the company to make a mandatory offer of these coverages to each motorist it sells compulsory insurance.

APPENDIX B

NO-FAULT PROPERTY PROTECTION PLAN

CHAPTER 978 OF 1971

QUESTIONS AND ANSWERS

Q. Can a motorist change his option?

A. Yes, new provisions to the law provide the opportunity for motorists to choose the option on their policy at any time. Those who feel their option does not provide the coverage they need are under no obligation to continue that option.

Q. What action can a motorist take if not reimbursed for damages within 15 days?

A. If not reimbursed for damages due and payable within 15 days, the insured has the right to commence court action for those damages. If decided by the court that the amount of the claim was due and reasonable, it is possible that the insured could collect double the amount of the original claims.

Q. Can the insured buy back his deductible?

A. Yes, at the present time the law allows the insured to buy-back \$50 of the \$100 deductible at a minimal cost. New legislation for 1973 proposes that the insured should have the right to buy-back the total \$100 deductible.

Q. Can I collect for damages under option III if I am completely free from fault?

A. No, under this option the motorist is not entitled to recover damages even if he is not at fault. But, it should be remembered that under this option the insured pays the lower premiums and still retains his tort exemption.

Q. How much less will a motorist be paying under the no-fault system?

A. It depends on the option chosen by the insured. Option I will provide the insured less of a savings than under the other two options. According to figures supplied by the Department of Insurance, 85-90 per cent of the Massachusetts motorists will be paying less in premiums under this no-fault system.

Q. Under option III why am I compelled to pay for a coverage which does not provide me with any protection for my own car?

A. Although you do not have the protection for any damage done to your own car, you are protected against suit for any damage you might cause.

APPENDIX C

GLOSSARY OF INSURANCE TERMS FOUND IN THE NEW NO-FAULT INSURANCE LAW

Assigned Claims Plan - That plan which allows each person suffering loss because of an injury arising out of the ownership, maintenance, or use of a motor vehicle to obtain personal injury protection through an assigned claims bureau - organized, maintained, and financed by companies writing personal injury protection insurance where the person is injured by an uninsured motorist or by a hit and run driver.

Collision Insurance - Automobile insurance against loss or damages to the insured automobile resulting from collision with another object. Benefits are payable without reference to any fault.

Comparative Negligence - A doctrine of tort law under which the negligence of the parties is compared and the damages of the injured party is apportioned in relation to the relative fault of the parties.

Compulsory Insurance - Insurance required by law which in Massachusetts is \$5,000/\$10,000 - \$5,000 per person - \$10,000 per accident.

Contributory Negligence - Conduct on the part of the plaintiff contributing as a legal cause to the harm that he has suffered which will defeat his suit for damages in a jurisdiction which has a contributory negligence statute. Damage - Harm. Usually the term is applied to bodily injury, harm to property, economic loss arising from bodily injury or harm to property. Sometimes the term is used in a sense that includes pain and suffering.

Damages - A sum awarded as compensation for harm suffered.

Deductible Clause - A clause in an insurance contract providing that the insurer will pay only that amount of any loss that is in excess of a specified amount.

Fault, legal - The quality of conduct by reason of which it is adjudged substandard and some adverse legal consequence is imposed. Legal fault includes both intentional wrongdoing and negligence, which is unreasonably risky conduct. Conduct is unreasonably risky if the reasonably prudent man would not engage in it.

Guest coverage - Automobile liability insurance provisions applying to an insured's tort liability to a guest passenger in the insured vehicle.

Injury caused or suffered intentionally - An injury is caused intentionally by a person if an act or omission by him causing the injury is intended by him to cause to

any person, including himself, any harm or damage. Insured - A person protected under an insurance contract.

Insurer - The party to the insurance contract who promises to pay losses or render services.

Liability - An obligation enforceable at law. A driver, for instance, is subject to liability for damage caused by his negligence.

Liability insurance, bodily injury - Insurance against loss due to claims because of bodily injury to other persons.

Liability insurance, property damage - Insurance against loss due to claims for damages because of injury to others property.

Medical payments coverage - An agreement by an insurer to pay, subject to a limit, medical, surgical, hospital, and funeral expenses regardless of the liability of the insured.

Negligence - Unreasonably risky conduct - conduct which the reasonably prudent man would not engage in.

No-Fault Bodily Injury - Coverage which extends benefits to every person who suffers from accidental injury arising out of the ownership, maintenance or use of a motor vehicle regardless of fault. The coverage under the Massachusetts plan is subject to limits of \$2,000 for injury to one person in one accident. The coverage calls for prompt payments reimbursing economic loss and does not, except for certain situations, compensate for pain and suffering.

Pain and Suffering - Disagreeable mental or emotional experience involving mental anguish or suffering and inconvenience.

Tort - A civil wrong or injury committed upon the person or property of another, for example, harming another by an act of negligence in driving an automobile.

Tort exemption - An immunity or freedom from tort liability. Under this no-fault plan there would be a tort exemption for up to \$2,000 of damages.

Uninsured motorists coverage - Insurance coverage that protects a named insured and other specified person, such as members of his household, against loss from inability to collect a valid claim or judgement against an uninsured motorist.

Work Loss - (1) Loss of income from work that the injured person would have performed had he not been injured, and (2) expenses reasonably incurred in obtaining 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.

Workmen's compensation acts - Legislation providing for compensation of injured employees for injuries sustained in the course of employment regardless of their own fault or the lack of fault on the part of their employer.

Wage Continuation Plan - any plan or program which, either through one's employer, union, or insurance contract, provides the injured person with his wages or some portion of his wages while he is out of work due to injury or sickness.

Property Protection Insurance - Compulsory coverage which provides the insured a choice between three options. Option I; All Risks Coverage protecting the insured against liabilities out of negligence, and entitling him to recover for damages in all cases regardless of fault. Option II., Restricted Coverage protecting the insured for damages in cases where the other party can be identified, and Option III; No Coverage, providing only tort-exemption for himself without protection for damage to his own car.

Actual Cash Value The value of the car minus any depreciation.

2 Center Plaza, Suite 420 Boston Massachusetts 02108 Tel. 617.720.4411 Fax 617.723.5370 Email info@murraylawoffice.com
site by [cybershore](#)