

PANEL DISCUSSION  
AUTOMOBILE COMPENSATION PLANS

HISTORICAL REVIEW—PAUL W. SIMONEAU

In developing this historical review of alternatives to our present system of determining compensation for the accident victim, I have wanted to avoid too much involvement with the details of proposed plans. While I will point out the highlights of some of the proposals, this will be done to show the evolution which has taken place from the original ideas to the current approaches. Since this review is concerned only with alternatives to the present system based on negligence at common law, it does not include a review of the various proposals, some of which have been adopted, intended more fully to provide the accident victim with security against loss under the liability system; here I am referring to compulsory liability insurance, financial responsibility laws, uninsured motorist coverage, etc.—these will not be taken up.

Now taking a look back we see that after the adoption of workmen's compensation laws in many states between 1910 and 1915 it was inevitable that there would follow some agitation for similar legislation to provide compensation for victims of automobile accidents just as the workmen's compensation laws provided compensation for victims of industrial accidents. It appears that the first serious proposal to adopt the compensation approach outside the industrial area was in 1916. Ballantine\* proposed using the compensation approach to settle claims arising out of railroad accidents—not automobile accidents in this instance, but the proposal was significant even so because here was the beginning of the early thinking and ideas of using workmen's compensation techniques on non-industrial accidents; and before the end of the decade several ideas and proposals were set forth for handling automobile accidents by the compensation method. Nothing came of these attempts and it seems that interest subsided until 1929 when Columbia University appointed a committee to study the problem of compensating the victims of automobile accidents. What prompted this study? The answer to this question is much the same as we have continued to hear over the years in criticism of the negligence system. It was asserted that the negligence system was unworkable in the face of the mounting toll of automobile accidents; that there were delays in the courts and consequently delays in the victims' receiving a much

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\* Ballantine, Arthur A., "A Compensation Plan for Accident Victims," *Harvard Law Review*, 1916.

needed settlement; that there were inequities in the settlements, often resulting from the pressures brought about by delay; that attorneys' fees constituted a large percentage of the judgment amount; and that the system was expensive. In one sense the problems of recovery were more acute then than they are today because at that time a much lower percentage of automobiles were insured, and no insurance often meant no recovery, even when negligence could be determined and a judgment was rendered against the defendant. In its report of findings, the Columbia University Committee argued against the use of fault in determining liability since it was very often impossible to determine negligence in an incident which occurs as swiftly as an automobile accident.

As an alternative, to meet the defects of the existing system and to make it reasonably certain that all persons with appreciable injuries would receive some compensation, the Committee proposed a plan which was analogous to workmen's compensation plans. The analogy with workmen's compensation ran to the elimination of the principle of fault, the requiring of insurance, and the providing for a statutory scale of benefits payable on a periodic basis. The Committee believed the analogy could be drawn because accidents were inevitable whether in industry or in the operation of automobiles, and just as the cost of industrial accidents is borne by industry, the cost of automobile accidents should be borne by the persons for whose benefit the automobiles are operated. It believed that because of the failure of the common law system to measure up to a fair estimate of social necessity a compensation plan was called for. The drafters of the Columbia Plan expected that under their plan the amount of compensation would bear a fair and constant relation to the amount of loss sustained; that the compensation would be obtained at small expense; and that the courts would be relieved of a mass of litigation. The proposed benefits, which were patterned after the benefits of the Massachusetts and New York workmen's compensation plans, included full payment for medical care regardless of the duration of illness, no compensation for the first week of disability, and benefits which were keyed to weekly wages in a manner comparable to workmen's compensation. For business and professional persons profits would take the place of wages in the calculations.

The Columbia Plan was opposed by insurance companies and bar associations because of its shortcomings, but perhaps also because the time had just not arrived to actually replace the common law system with an automobile compensation plan approach. The plan's shortcomings have been cited as follows: It would not compensate for injury or death

of the operator of the automobile unless the injury was caused by another automobile; compensation for property damage was not provided; no compensation was provided for injuries that would not incapacitate for more than one week; and though the scale of benefits might have been regarded as adequate for workmen's compensation, they were regarded as inadequate to meet the economic needs of automobile accident victims, who made up a different cross section of economic levels from that of persons engaged in industrial employment and falling under workmen's compensation laws. There was widespread interest in the Columbia Plan—it was even discussed in the legislatures of some states—but it did not receive the support it needed for adoption.

Following this period of interest there was very little activity until about the mid-1950s. A noted exception to this is the Saskatchewan Plan which was adopted in 1946; because that plan is a separate topic on our agenda, I will pass over it but in passing will say that the Columbia Plan was its forerunner and consequently it resembled the workmen's compensation approach.

Some of the thoughts and proposals which began to emerge in the mid-1950s and have continued to emerge to the present time represent in my view a new breed. There has been a departure from the early ideas of adopting the workmen's compensation approach for automobile accidents as was suggested by the Columbia Plan. True, some similarities exist—liability without fault, periodic payments as losses are incurred—but essentially the new proposals are not strictly a la workmen's compensation.

Representative of the sort of plan which has emerged recently is Green's\* loss insurance plan of 1958. This plan would include compulsory insurance to cover damage to persons and property caused by collision, fire, theft or any other hazard arising out of the use of an automobile; losses would be compensated without regard to fault, such compensation to be based on common law damages in lieu of scheduled benefits periodically paid; the plan would completely replace the tort action for automobile injuries; it would not provide for any special administrative board, and claims would be referred to a judge after an informal hearing; since there would be no question of fault, and damages for pain and suffering would not be a factor, the function of the jury would be essentially eliminated.

There have been other proposals, similar in some respects and different in others, but we need not go into them. Suffice it to say that we

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\* Green, Leon, *Traffic Victims—Tort Law and Insurance*, Northwestern University Press, 1958.

are today in the midst of a revival of interest to develop and adopt an alternative method of compensating for loss due to automobile accidents; and what initially 50 years ago began as an idea to adopt workmen's compensation approaches for automobile accidents, has evolved over the years until it might be regarded today as an extension of the concept present in medical payments or physical damage insurance coverages which provide recovery of loss without regard to fault.

#### THE SASKATCHEWAN PLAN—ALAN C. CURRY

An understanding of the Saskatchewan Plan is greatly facilitated by a brief review of the history of the origin and development of the Plan itself.

Quite a few years ago in Saskatchewan an agrarian movement resulted in the formation of a group called the Cooperative Commonwealth Federation (called the CCF). In 1932 the CCF united with certain labor groups, which supported socialistic principles, to form a new political party and adopted the CCF designation. This revised CCF political party gained the balance of power politically in 1944. One of the principles to which this party subscribed was that the government belonged in the insurance business. In fact, the party felt government should control the essential elements of transportation, power, communications, and finance, including insurance. In 1944, therefore, it set about instituting these principles by acquiring control of many enterprises.

One of the first acts of this new government was to establish a committee to study the problem of compensation for victims of automobile accidents. At the time this committee was appointed Saskatchewan had a limited form of financial responsibility law which was similar to the commonly called "one bite" laws. This statute did little to encourage motorists to be insured, because only 10% to 12% were covered by any form of auto liability insurance.

After nearly two years of study the committee issued a report in which was set forth a number of conclusions and recommendations for action. Among them were the following:

1. Financial responsibility laws and liability insurance have not proved adequate because they have not tended to remove unqualified drivers from the highways, nor reduce the social waste that accompanies automobile accidents.
2. The theory that the right to compensation or indemnity must be dependent upon the present concept of liability, i.e., the rule of