

We understand also that Temple University, through the Ford Foundation, studied this system and plans to issue a report in August, 1966.

FAMILY COMPENSATION COVERAGE- ROBERT W. GRIFFITH*

Introduction

Proposals for the substitution of automobile compensation plans for automobile tort liability principles have been suggested periodically dating back to the Columbia University study in the early 1930s. The various studies and proposals have arisen primarily from the academic fraternity although there has been a sprinkling of generalized suggestions arising from judicial circles. Within the insurance industry, it can be reasoned that the development of the medical payments coverage, as well as death and disability written in connection with the automobile policy, represents a direct recognition of the need to provide a means for compensation for auto injuries regardless of fault. The uninsured motorist coverage, although designed for other reasons, also acts to provide a means of recovery for auto accident injuries not previously covered.

The Family Compensation coverage was developed by the Nationwide Insurance Companies and activated in Maryland and Delaware in 1956. Although the coverage was primarily designed to provide benefits to the policyholder, members of his family, and guests in his car, it did contain the unusual provision that the same schedule of benefits was available to third party pedestrians and occupants of third party cars without regard to fault. This third party aspect of the coverage was developed in recognition of the trend in automobile liability insurance toward third party claim settlements in which the negligence concept seemed to play less and less an important role in the final settlement. In the courts, in the state legislatures, and in company practices, it appeared that auto liability insurance was regarded increasingly as protection to the public rather than to the policyholder. Auto liability seemed to be evolving more and more into a social type of coverage.

At the same time, defects in the negligence system were causing auto insurers more and more concern. Faulty administration cropped up in three areas:

1. Excessive verdicts in otherwise meritorious cases.

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2. The build up of non-existent or minor injuries into claims which resulted in settlements or verdicts ranging from \$250 to \$1,500.
3. Congested court dockets and the time lag in getting cases to trial

Under the social interpretation of the present system and in recognition of its defects, the Family Compensation coverage was written so that third party claimants could be offered a reasonable settlement under a schedule of benefits without regard to the fault of the parties involved. It seemed a reasonable expectation that the coverage would speed up the settlement of the smaller bodily injury claims and further that such settlements would be equitable and would avoid undue investigation expenses. Lest there be a misunderstanding, let us make crystal clear that the third party aspect of the coverage was not automobile compensation per se, but rather was an offer to the injured claimant for certain recovery under a schedule of benefits without regard for fault in lieu of any claim under tort liability that he might otherwise have. The coverage was intended to *supplement* the negligence system in order to *improve* its administration. It was *not* designed to supplant the negligence system.

Family Compensation Coverage Provisions

Irrespective of liability, any person injured or killed in any accident arising out of the ownership, maintenance, or use of the described automobile is entitled to benefits payable under the coverage. This includes all occupants of the insured car, pedestrians, cyclists and all occupants of the claimant car. A third party claimant is offered the alternative of receiving immediate payment in accordance with the coverage benefits or of pursuing his claim on the basis of negligence. The coverage is a broad one in that it provides death benefits and disability income payments in addition to medical payments.

Third parties are excluded from coverage if the accident was caused by the gross negligence of such persons or was caused by such persons while under the influence of alcohol or narcotics. As to persons other than the insured and occupants of the described automobile, payments under the compensation schedule are reduced by the amount of other insurance payments for which such persons are eligible. In other words, if such persons are adequately compensated by other insurance in any form, it is not our intent by means of this coverage to allow duplicate compensation.

Here is the schedule of coverages:

1. Payment up to \$2,000 for all reasonable expenses for medical, dental, surgical treatment, ambulance, hospital, professional nurses,

- and prosthetic devices, incurred within one year following the accident.
2. Indemnity in the event of an injury requiring continuous house confinement within 180 days of the accident at the rate of \$2.50 per day for persons under 18 years of age and \$5 per day for persons over 18.
 3. The death benefit is \$2,000 for persons under 18 and \$5,000 above that age.

How Does the Coverage Work in Actual Practice?

When an accident is reported, a third party claim is always assigned to a field claimsman. The coverage is explained to the claimant, and he is given a form which explains his right to make an election either to take compensation according to the schedule of benefits or to pursue his claim at law. He has up to three months in which to make his decision. In the majority of cases, a decision is made promptly either to accept compensation or to reject it.

If compensation is accepted, a release is obtained in consideration of payments according to the schedule. Payments are made for medical expenses as the bills are presented. The daily benefit for injury requiring continuous house confinement is paid every thirty days by the field claimsman.

On claims involving insureds who do not have a third party action against anyone entitled to protection under the named insured's bodily injury liability coverage, a release is taken which runs only to the company. Payments are then made to the insured in accordance with the schedule of benefits. Such insureds are also free to pursue their rights at law against a third party.

In those states where a "covenant not to sue" is recognized, this type of release will be taken from passengers in our insured's car to preserve their rights against a third party. Generally, these states do not have contribution among joint tortfeasors. If the state does not recognize a covenant not to sue and does have contribution among joint tortfeasors, a joint tortfeasor agreement and release will be taken.

Evaluation of Family Compensation

The policyholder response to this coverage has been excellent, as evidenced by the fact that almost half of the policyholders carry this coverage where it is offered—some 770,000 as of year end 1965. The greater

benefits which are provided for the policyholder, members of his family, and occupants of his car are the reasons why he has found the coverage desirable. The coverage cost to the policyholder is about \$7.00 each six months. Since the medical payments benefits are included in the coverage, and since our medical payments premium for \$2,000 limits is generally \$4.00, the net additional cost to the policyholder is about \$3.00 each six months in most states. This premium provides him with the death and confinement benefits in addition to medical payments. It also finances the third party coverage for injured parties who are not occupants of the insured car. The pure premium for this third party coverage is only about 50 cents for six months. On the basis of increased protection to the policyholder alone, there appears to be a definite market for the coverage at the price charged.

From a study of 43,800 claims paid in 1963 and 1964, we have a record of the number and amount of claims by type of payee. In our opinion, these points are significant:

1. As expected, the policyholder, members of his household, and passengers in his car received the major portion of the Family Compensation benefits (80 percent of the dollar payments).
2. There were 18,500 third party claims (paid to persons other than occupants of the insured car) distributed as follows:

Number of payments — 15 percent of claimants accepted the Family Compensation settlement while 85 percent settled under bodily injury.

Dollars of payments — 5 percent of the dollar payments went to the Family Compensation claimants and 95 percent was paid under bodily injury claims.

This data indicates that Family Compensation coverage could make a solid contribution toward reducing the problem of the uncompensated accident victim. For example, Nationwide paid \$1.2 million under the coverage during 1963 and 1964 to 2,900 third party claimants not in the insured vehicle and who had no other insurance protection for injury and death. Most of these payments were made to third persons who were at fault and who would therefore not have a remedy based on legal liability.

At the same time that this coverage was being developed, the industry chose to move forward with the uninsured motorist coverage as the

answer to the uncompensated accident victim. While several other companies have expressed interest in the third party feature of the Family Compensation coverage, the fact is that they have not placed the coverage into actual operation. Our company recognized that, if the coverage was to be successful, there would have to be industry support and participation. For this reason, the decision was made in 1965 to discontinue the experimental third party aspect of the coverage pending further developments. The coverage in its present form provides even broader protection to the policyholder and members of his family and is still called Family Compensation.

Our experimentation with the coverage indicates rather clearly that this form of third party protection does not serve effectively as an alternative to bodily injury Liability. We found that third party claimants have generally chosen to pursue their claim based on liability against the policyholder whenever there is a reasonable chance of recovery. Therefore, the coverage has not worked to clear up cases of questionable liability nor to reduce the number of court cases. Neither has it served to counteract the buildup of such third party claims, nor has it helped with the problem of administrative costs inherent in the adversary system of legal liability.

Summary

After ten years experience with this coverage, we have concluded that it has been highly successful from the standpoint of first party coverage. It is marketable at relatively low cost and it fills a definite insurance need of the motoring public. Although the third party aspect of the coverage did not accomplish some of the objectives we had hoped for, it is still a fact that it did operate to provide economic assistance to a segment of the public who were injured in auto accidents and who had no other means of recovery for their economic loss. We have little doubt that the problem of the uncompensated accident victim is still a problem that the insurance industry must face. The third party feature of the Family Compensation coverage is, we believe, a realistic and acceptable method of help to close a gap if the industry as a whole would participate. It remains a fact that continuance of a voluntary, private enterprise system of automobile insurance is more likely should we demonstrate the courage, the ingenuity, and the initiative to reduce the magnitude of the uncompensated accident victim problem.