

criticism of the paper itself, but for my enlightenment further details or research regarding the cost of Inverse Liability would have been interesting. I suppose I am ultra-conscious of this aspect because of the wide divergence of views which have been expressed in estimating the cost of the Basic Protection plan. It is difficult for me to be as optimistic as the author that the arrival of a figure for resolving a claim under the Inverse Liability policy will result in an amicable settlement in a vast majority of cases.

From a purely personal viewpoint, I have some reservation as to the total or partial abandonment of our present liability system. First, I wonder if the adoption of the compensation without fault concept would have an adverse effect on fatalities and accident frequencies because of the tendencies toward more negligent driving habits by automobile operators? I am disturbed also about the inequity of distributing the costs under the compensation without fault plans. It appears that the more prudent and responsible insureds will be assessed higher premiums to subsidize the more negligent drivers who should pay the higher premiums.

On behalf of the Society, I would like to thank Mr. Murray for his fine paper and commend him for sharing his idea with us. On an issue of such great public importance, I hope other members of the Society will be stimulated and encouraged to also share their thoughts or comments with us. It occurs to me that only by pooling and sharing the ideas of several individuals will we be able to arrive at a feasible modification of the traditional tort liability system and one that is acceptable to society.

DISCUSSION BY JACK MOSELEY

Any paper, article, or discussion on the problems attending automobile liability insurance today deserves and generally gets a fair share of attention. Mr. Murray's paper on Inverse Liability Automobile Accident Insurance is one that deserves a lot of attention.

Mr. Murray begins by discussing some of the difficulties involved in recovering damages under the existing tort law. He then discusses several of the short-comings inherent in the compensation without fault system in use in Saskatchewan, Canada; supplementary accident benefits proposed in Ontario, Canada; and the Basic Protection Plan proposed by Professors Keeton and O'Connell. Notable among these short-comings are: (1) the forfeiture of certain legal rights, (2) inadequacy of automobile benefits in the event of serious injury, (3) the probable failure to actually reduce the cost of automobile insurance, and (4) the necessity of substantial and rudimentary changes in statutes as regards the latter two proposals.

Mr. Murray has proposed a most interesting alternative to the three mentioned plans. Particularly appealing is the promise of a limit of coverage sufficient to cover the most serious of injuries, and the fact that statutory changes would not be necessary. It can readily be seen that both of these conditions are distinct advantages over the other plans. In addition, Inverse Liability incorporates the more desirable features such as first party claim settlement, more timely reimbursement for economic loss, the removal of fault as a consideration, and an even more effective elimination of legal actions.

However, I cannot give Mr. Murray an unqualified vote of confidence. By his own admission Inverse Liability would be most effective in answering automobile insurance problems only if it were made mandatory. Mandatory insurance has always been a hard nut to crack and probably will continue that way. Mr. Murray further admits that as a voluntary coverage Inverse Liability "only provides an effective solution to the current problem to the extent that it would be purchased by the motoring public." I believe these two conditions would seriously hamper ready acceptance by the industry. In addition, should the cost estimate as set forth in the paper be reasonably accurate, the public would likely not be enticed to purchase Inverse Liability as a supplementary coverage.

There is one element contained in Inverse Liability, in fact in all compensation without fault type plans, which I believe requires discussion here. All such plans propose that every person injured in an automobile accident, even the grossly negligent operator, be reimbursed for economic loss. Such proposals constitute an implied criticism of the present system, a criticism which is not justifiable. Every operator of an automobile has a personal responsibility to cover his own economic loss in those instances where his negligence causes an accident, just as he would cover his economic loss in the event of illness. Lack of recovery in these instances should not be levied as a fault of the present system. In fact, the shifting of these losses into the automobile insurance area simply compounds the already impossible problem of price.

Perhaps my most serious reservation stems not from any basic disagreement with Mr. Murray's proposals, but rather from a doubt that the problems of automobile insurance have been sufficiently well defined at this point in time to allow ready access to the most appropriate solution. For example, it has been my impression that the most frequently heard complaint from the public and regulatory authorities is that the cost of automobile insurance is simply too high and is continuing to rise too fast. The

high cost coupled with large numbers of cancellations, which are generally a function of price, have been the catalysts precipitating the many investigations that have taken place or are taking place currently. Claim settlement problems have not been a predominant factor in the call for such investigations.

Accordingly, I believe that any solution which the industry might settle on must attack the problem of cost at the outset. It may well be that the insurance industry is unable to materially affect the cost of automobile insurance without substantial changes in driver licensing practices and in law enforcement practices. However, this, if fact, must be made abundantly clear to the authorities in order that all concerned may work together effectively.

Thus, using cost reduction as the measure of success of Inverse Liability, I must conclude that it falls short of the objective. In all fairness to Mr. Murray, he did not suggest that the total cost of automobile insurance would be reduced. Rather he offers Inverse Liability as a form of complete accident protection for the insured, to cover the myriad of instances where recovery for personal injury damages are unavailable. While this is an admirable goal, the cost considerations seem to me to be more imperative.

In conclusion, I congratulate Mr. Murray on the ingenuity of his idea and suggest that Inverse Liability, in my opinion, is a better choice than any of the other plans yet proffered to deal with the social problems of automobile liability insurance. I further suggest that the insurance industry would be well advised to study Mr. Murray's proposal quite carefully even though the question of cost cannot be ignored.

AUTHOR'S REVIEW OF DISCUSSIONS

I welcome the opportunity to thank reviewers Jack Moseley and Jerry Hillhouse for their comments on the subject of Inverse Liability.

They have pointed out two important areas where further research is indicated. The most important of these is the question of cost and I certainly hope some of the members will respond to Jerry Hillhouse's challenge in this respect. I have suggested the affinity of Inverse Liability to third party bodily injury, and since bodily injury claims are separated from property damage claims in the United States it should be possible for you to produce more accurate estimates of average cost than we can in Canada, where bodily injury and property damage are indivisible.

In my estimate of \$60 for \$100,000 coverage in Ontario I did not take