

CURRENT LEGISLATION

HOW FAULTLESS ARE THE NO-FAULT STATUTES?— A STATE SURVEY

The recent enactment of no-fault automobile insurance statutes in six states¹ reflects public dissatisfaction with the traditional system of tort recovery for personal injuries sustained in automobile accidents. Advocates of the no-fault concept maintain that a no-fault system of compensation will reduce or eliminate the inefficiencies² and inequities³ characteristic of the fault system. The intent underlying the no-fault concept is to provide adequate compensation for all victims of automobile accidents. Coverage is usually afforded to the policyholder, members of his family or household, guest passengers and pedestrians injured by the insured vehicle.⁴ The policyholder's insurer directly compensates the injured person, without determining who was at fault.⁵ No-fault thus changes the recovery system from one involving a third-party adversary proceeding between the injured person and the allegedly negligent party's insurance company to one assuring payment of first-party benefits by the insured's company to persons covered by the insured's policy. Proponents argue that the new system will reduce costs of the recovery procedure⁶ and that it will result in use of a greater

¹ Illinois—Ill. Ann. Stat. ch. 73, §§ 600-13 (Smith-Hurd Supp. 1971). Oregon—Ore. Laws & Resolutions ch. 523, §§ 1-12 (1971). Section 10 of this Act will amend Ore. Rev. Stat. § 731.418, and § 11 will amend Ore. Rev. Stat. § 743.786; §§ 2-9 will be added to §§ 743.786-.792. Florida—Fla. Sess. Laws ch. 252, §§ 1-14 (1971). Delaware—Del. Code Ann. tit. 21, § 2118 (Supp. 1971). Massachusetts—Mass. Gen. Laws Ann. ch. 90, §§ 34A, 34D, 34M, 34N; ch. 175, §§ 22E-22H (formerly 1970 Act & Resolves ch. 670, § 8), § 113B; ch. 231, § 6D (Supp. 1971). Puerto Rico—P.R. Laws Ann. tit. 9, §§ 2051-65 (Supp. 1970). South Dakota has also enacted a no-fault statute—S.D. Compiled Laws Ann. §§ 58-23-6 to -8 (1971). The South Dakota law requires that no-fault coverage be offered only as an optional supplement to the insured's regular motor vehicle liability insurance. It requires that the optional coverage include first-party benefits for the death, loss of earnings and medical expenses of both the insured and members of his household injured in an automobile accident. The South Dakota law places no restrictions on the right to sue and does not alter the traditional liability system. For this reason, the South Dakota statute will not be discussed in this comment.

² See R. Keeton & J. O'Connell, *Basic Protection for the Traffic Victim*, 343-51 (1965) [hereinafter cited as R. Keeton & J. O'Connell].

³ See Hofstadter & Pesner, *A National Compensation Plan for Automobile Accident Cases*, 22 *Record of N.Y.C.B.A.* 615, 617-18 (1967) [hereinafter cited as Hofstadter & Pesner]; Keeton, *Elimination of Fault Principle and Collateral Benefits: Keys to Basic Protection*, 3 *Trial No. 6*, at 15, 16 (1967) [hereinafter cited as Keeton]; Moynihan, *Are We Ready for a Drastic Change?*, 3 *Trial No. 6*, at 27, 28-29 (1967) [hereinafter cited as Moynihan].

⁴ R. Keeton & J. O'Connell, *supra* note 2, at 303, 388-91. This and the following general statements in the text concerning no-fault protection are based on the Basic Protection Act proposed by Professors Keeton and O'Connell.

⁵ *Id.* at 308.

⁶ *Id.* at 295-97. See Moynihan, *supra* note 3, at 28, for a discussion of the excessive administrative costs of the fault system; but see Smith, *Federal Automobile Insurance*, 38 *Ins. Coun. J.* 413, 416 (1971) [hereinafter cited as Smith].

proportion of the insured's premium dollar for compensatory benefits.⁷

As an incident of the assured payment of benefits, however, the injured party, in most cases, is deprived of the common law right to sue the person whose negligence may have caused the accident.⁸ The restriction of the right to sue in tort will purportedly reduce the number of automobile claims which presently overburden state and federal courts.⁹ It is further contended that, by restricting the right to sue for general damages,¹⁰ no-fault plans will curtail the excessive compensatory awards made by sympathetic juries, thereby indirectly decreasing the costs of insurance.¹¹ It is assumed that the reduction in costs will be passed on to the insurance consumer, in the form of lower premiums.

This comment presents a comparative analysis of the major provisions of recently enacted state no-fault statutes. These laws will be evaluated in terms of their potential for achieving the major objectives of no-fault insurance: (1) adequate compensation for all accident victims; (2) reduction in the number of automobile tort claims; and (3) reduction in premiums and the prompt payment of benefits.

I. ADEQUATE COMPENSATION

No-fault advocates contend that the present tort recovery system fails to compensate certain victims of automobile accidents¹² and that it either over- or undercompensates others.¹³ In many accidents it is difficult and expensive to determine which party was at fault. In some, it is clear that no one party alone was responsible for the injury.¹⁴ Often, an

⁷ Keeton, *supra* note 3, at 16-18. A New York State Insurance Department study estimated that of the automobile insurance premium dollar presently paid, 44% is paid in benefits to victims, 33% is used for overhead, and 23% is absorbed by the administrative costs involved in adjusting claims. N.Y.S. Ins. Dep't, A Report: Automobile Insurance . . . For Whose Benefit?, at 34-36 (1970). In contrast, 70% of the premium dollar for workmen's compensation is paid to the injured person, and 82% of the premium dollar for private life, health, and nonoccupational accident insurance is paid to the claimant. See Note, The Massachusetts "No-Fault" Automobile Insurance Law: An Analysis and Proposed Revision, 8 Harv. J. Legis. 455, 457-58 (1971).

⁸ R. Keeton & J. O'Connell, *supra* note 2, at 323-25.

⁹ Pinnick v. Cleary, — Mass. —, 271 N.E.2d 592, 602-04 (1971); R. Keeton & J. O'Connell, *supra* note 2, at 13-15; Keeton, *supra* note 3, at 16; Moynihan, *supra* note 3, at 30. But see Kemper, Keeton-O'Connell Plan: Reform or Regression? 3 Trial No. 6, at 20, 22 (1967); Smith, *supra* note 6, at 419; Spangenberg, At What Price . . . , 3 Trial No. 6, at 10, 11 (1970); cf. Pinnick v. Cleary, *supra* at 615-16 (Tauro, C.J. concurring).

¹⁰ R. Keeton & J. O'Connell, *supra* note 2, at 305, 324. For purposes of this comment the term "general damages" will refer to intangible or noneconomic losses such as pain, suffering and mental distress.

¹¹ N.Y.S. Ins. Dep't, A Report: Automobile Insurance . . . For Whose Benefit? at 108 (1970). But see Smith, *supra* note 6, at 416.

¹² W. Prosser & Y. Smith, Cases And Materials On Torts 721 (4th ed. 1967) [hereinafter cited as W. Prosser & Y. Smith]; see Moynihan, *supra* note 3, at 29-30 for a discussion of typical cases.

¹³ Hastings, Automobile Accident Reparations: No-Fault Plans and the Public Interest—Part II, 52 Chi. Bar Record 433, 437 (1971); Hofstadter & Pesner, *supra* note 3, at 618; Keeton, *supra* note 3, at 16; Moynihan, *supra* note 3, at 28-29.

¹⁴ Pinnick v. Cleary, — Mass. —, 271 N.E.2d 592, 606 n.17; W. Prosser & Y. Smith,

accident is caused by a defective automobile,¹⁵ a road defect, hazardous weather conditions, or other conditions beyond the control of either driver. Frequently, the negligence of both drivers contributes to the accident. In most jurisdictions, if a plaintiff cannot establish the defendant's negligence as well as rebut the defense of contributory negligence, his recovery is barred,¹⁶ and the plaintiff obtains no relief unless he is able to collect under his own medical insurance coverage.¹⁷

Critics of the tort recovery system believe that the adversary nature of the traditional system often results in the overcompensation of small claims and the undercompensation of large claims.¹⁸ An insurance company will often settle small personal injury claims out of court, even "padded" ones,¹⁹ in order to minimize administrative costs and to avoid a larger award by a sympathetic jury.²⁰ Conversely, a company may prolong the recovery procedure for a large claim so that a victim with substantial medical expenses and wage losses will exhaust other sources of compensation and become anxious to settle out of court—usually for an amount which will not adequately compensate him for his losses.²¹

In an attempt to correct these inequities; the no-fault statutes have been designed to provide all accident victims with compensation for medical expenses, for expenses incurred in procuring essential services which the injured person would have performed for his household had he not been injured, and for loss of earnings. The statutes establish differing minimum amounts of no-fault coverage which an insurance company *must* offer to compensate for these losses. Five state statutes require payment of these benefits to all accident victims except certain persons whom the legislatures have precluded from receiving no-fault compensation because of their antisocial behavior: persons who *inten-*

supra note 12, at 721; Moynihan, supra note 3, at 28. But see Spangenberg, supra note 9, at 11.

¹⁵ Note, The Massachusetts "No-Fault" Automobile Insurance Law: An Analysis and Proposed Revision, supra note 7, at 458. See generally Sales, Automobile Design Sufficiency and Enhanced Injury: A New Concept for No-Fault Liability, 38 Ins. Coun. J. 388 (1971), for a discussion of the role that manufacturers of defective automobiles should play in compensating accident victims.

¹⁶ W. Prosser, The Law of Torts 423 (4th ed. 1971).

¹⁷ In an attempt to mitigate the harshness of the contributory negligence doctrine, fourteen states have enacted comparative negligence statutes. Similar legislation is pending in twenty-one states. See Smith, supra note 6, at 420. Under a comparative negligence statute, damages are awarded according to the percentage of fault attributed to each party; the contributory negligence of the plaintiff is no longer an absolute defense. W. Prosser, The Law of Torts, supra note 16, at 434-39.

¹⁸ Hastings, supra note 13, at 437; Hofstadter & Pesner, supra note 3, at 618; Keeton, supra note 3, at 16; Moynihan, supra note 3, at 28-29. For a discussion of the disadvantages of the adversary recovery procedure vis-à-vis no-fault's first-party recovery system, see Gillespie & MacKay, Florida's No-Fault Insurance Law, 45 Fla. B.J. 400, 402 (1971) and Moynihan, supra note 3, at 28.

¹⁹ Hastings, supra note 13, at 437; Keeton, supra note 3, at 16.

²⁰ Keeton, supra note 3, at 16.

²¹ Hastings, supra note 13, at 437.

tionally contribute to their injuries, operate a motor vehicle under the influence of narcotics or alcohol, or operate a motor vehicle while committing certain crimes or fleeing lawful apprehension.²²

The statutes, however, differ considerably in the limitations placed upon an accident victim's right to receive certain benefits. To prevent double recovery, these limitations prohibit an injured person from receiving no-fault benefits if he is entitled to receive compensation from a collateral source of insurance. Consequently, a prudent insurance purchaser with a collateral source will seek to avoid duplicate coverage, but he can do so only if the statute with a collateral source rule also provides for deductibles up to the amount of the minimum required no-fault coverage.²³ Absent such a provision, the purchaser will be forced to pay for no-fault coverage of doubtful practical value to him.

A. *Specific Compensation Plans*

1. *Puerto Rico*

The Puerto Rico no-fault statute was designed to establish a social insurance system which would compensate all persons injured on the roads of Puerto Rico, except those excluded for public policy reasons.²⁴ This system is mandatory and government-administered.²⁵ In comparison with the other no-fault statutes, the Puerto Rico law provides an accident victim with what appears to be the greatest amount of no-fault protection: unlimited medical benefits,²⁶ certain fixed benefits for dismemberment, disability, or death,²⁷ and weekly compensation, subject to a dollar ceiling and time limitation, for fifty percent of earnings lost.²⁸ The statute also provides \$500 for funeral expenses and establishes death benefits for the dependents of the victim.²⁹

The most prominent feature of the plan is that it places no limits

²² Ill. Ann. Stat. ch. 73 § 602(a) (Smith-Hurd Supp. 1971); Ore. Laws & Resolutions ch. 523, § 5(1) (1971); Fla. Sess. Laws ch. 252, § 7(2)(b) (1971); Mass. Gen. Laws Ann. ch. 90, § 34A (Supp. 1971); P.R. Laws Ann. tit. 9, § 2055(3) (Supp. 1970). While not expressly excluding members of the above mentioned categories, the Delaware statute provides that "[t]he coverage . . . may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance . . ." Del. Code Ann. tit. 21, § 2118(e) (Supp. 1971).

²³ See p. 939 *infra* for a discussion of the deductible provision in the Massachusetts no-fault statute.

²⁴ Address by Mr. Frank W. Fournier, Executive Director of Puerto Rico Accident Compensation Administration, at the National No-Fault Conference in Dallas, Texas, July 22-23, 1971.

²⁵ *Id.* at 5.

²⁶ P.R. Laws Ann. tit. 9, § 2054(5) (Supp. 1970).

²⁷ *Id.* § 2054(2)-(3).

²⁸ *Id.* § 2054(3)(a). Compensation for loss of earnings is provided by a weekly payment "equal to 50% of the injured's weekly salary at the time of the accident subject to a maximum of \$50 weekly for the first 52 weeks and 50% of his salary subject to a maximum of \$25 weekly for 52 subsequent weeks." *Id.*

²⁹ *Id.* § 2054(4).

on an eligible victim's benefits for medical expenses.³⁰ However, all benefits payable under no-fault are reduced by the extent to which the injured person is entitled to receive compensation from other insurance sources:³¹ unlike three of the other statutes,³² the Puerto Rico law has a collateral source rule which applies to all no-fault compensation and which is not limited to medical expenses or loss of earnings.³³ Puerto Rico's extensive no-fault coverage, then, is most beneficial for persons having no other source of compensation and is of less value to those who have a collateral source of personal injury insurance.

2. *Massachusetts*

The Massachusetts Personal Injury Protection Plan requires a minimum no-fault coverage of \$2,000 for (1) reasonable and necessary medical expenses incurred within two years of the accident; (2) loss of earnings up to a maximum of seventy-five percent of the injured's average weekly salary for the year preceding the accident; (3) amounts lost by reason of diminution of earning capacity of a person temporarily unemployed at the time of the accident; and (4) payments made to a person for performing essential services which would have been performed by the victim but for the accident.³⁴ Only loss of earnings benefits are subject to a collateral source limitation.³⁵ If the injured person has a wage continuation policy, the loss of earnings benefits payable under no-fault may not exceed an amount which, together with the wage continuation benefits, would provide seventy-five percent of the injured's weekly wages for the year preceding the accident.³⁶ The possible inequity that this rule may produce is limited by a further provision, unique among existing state statutes, which restores the unpaid no-fault benefits in case the injured person suffers a later injury, after depleting the collateral source.³⁷ Although the

³⁰ Id. § 2054(5).

³¹ Id. § 2054(1)(b)-(c). The only benefits that will not be deducted from the amount of no-fault compensation payable are those benefits received by the victim from his family or friends and those received from life insurance, social security, or an inheritance estate. Id. § 2054(1)(e).

³² Ill. Ann. Stat. ch. 73, § 600(e)(2) (Smith-Hurd Supp. 1971); Fla. Sess. Laws ch. 252, § 7(4) (1971); Mass. Gen. Laws Ann. ch. 90, § 34A (Supp. 1971).

³³ P.R. Laws Ann. tit. 9, § 2054(1)(b) (Supp. 1970).

³⁴ Mass. Gen. Laws Ann. ch. 90, § 34A (Supp. 1971). Persons entitled to receive workmen's compensation benefits, however, are precluded from receiving any no-fault payments. Id.

³⁵ Id.

³⁶ Thus under the Massachusetts plan the injured person receives loss of earnings benefits from his no-fault policy only if his collateral source benefits do not provide him with 75% of his average weekly wage for the preceding year. If his collateral source benefits do provide 75%, he will not be eligible for no-fault compensation for loss of earnings.

³⁷ Id. However, the statute imposes a time limitation: the subsequent injury or illness must occur within one year of the injured's receipt of the last no-fault benefit for the previous automobile accident. Id.

This Massachusetts restoration rule operates as follows: if an injured party has wage

collateral source rule affects only loss of earnings benefits, a further provision allowing optional deductibles up to the amount of minimum no-fault coverage³⁸ permits the insured to avoid duplicate coverage and to reduce overall insurance costs.

The Massachusetts plan also includes "other vehicle" coverage; which provides no-fault protection for policyholders and members of their households when they are injured within Massachusetts in or by an automobile not covered by no-fault insurance.³⁹ The statute also requires no-fault protection, through an assigned claims plan, for those Massachusetts residents who are not owners or registrants of an automobile, or members of an owner's or registrant's household, or those otherwise eligible to receive no-fault benefits under another person's policy.⁴⁰

3. *Florida*

The Florida Reparations Reform Act requires a minimum no-fault coverage of \$5,000 per person for (1) reasonable expenses for necessary medical services, (2) loss of earnings up to one hundred percent of any loss of gross income, (3) loss of earning capacity, (4) expenses for the procurement of essential household services which the victim would have performed had he not been injured, and (5) funeral expenses up to \$1,000.⁴¹ The statute provides for optional deductibles of \$250, \$500, and \$1,000.⁴² Florida has a limited collateral

losses due to a nonautomobile accident injury and is unable to recover from a wage continuation collateral source because it was depleted at the time of an earlier automobile accident, then he is eligible to receive no-fault benefits for the subsequent loss. The 75% no-fault limitation on loss of earnings benefits also applies to this subsequent reimbursement.

³⁸ *Id.* § 34M.

³⁹ *Id.* § 34A; Note, The Massachusetts "No-Fault" Automobile Insurance Law: An Analysis and Proposed Revision, *supra* note 7, at 467.

⁴⁰ Mass. Gen. Laws Ann. ch. 90, § 34N. Claims arising under this provision would be assigned to one of the insurance companies issuing automobile insurance in Massachusetts. *Id.*

In a recent decision by the Circuit Court of Cook County, Illinois, *Grace v. Howlett*, Ch. No. 71-4737 (Cir. Ct. Cook Co., decided Dec. 29, 1971), the Illinois no-fault statute was held violative of the equal protection clause of the Fourteenth Amendment in that it created arbitrary and discriminatory classifications of Illinois residents with respect to their right to receive no-fault compensation. The court reasoned that since Illinois is not a compulsory insurance state, some automobile owners do not insure their vehicles and would therefore not be entitled to receive no-fault benefits unless injured as pedestrians by an insured vehicle or as guest passengers in an insured vehicle. Persons who do not own an automobile, the court noted, would also be able to receive first-party benefits only under the above circumstances. Since 82.4% of low-income blacks in Illinois either do not own a car or own an uninsured automobile, the court held that the statute arbitrarily and discriminatorily denied them no-fault compensation. The decision of the lower court was affirmed by the Illinois Supreme Court on March 23, 1972. See — Ill. —, — N.E. 2d — (1972). The inclusion in the Illinois statute of an assigned claims plan similar to that in § 34N of the Massachusetts statute would presumably cure this constitutional defect.

⁴¹ Fla. Sess. Laws ch. 252, § 7(1) (1971).

⁴² *Id.* § 10.

source rule which applies only to workmen's compensation and which credits compensation benefits against no-fault payments to which the injured would otherwise be entitled.⁴³ With a minimum no-fault coverage of \$5,000 and a maximum deductible of \$1,000, a Florida insured may avoid only a fraction of the duplicate coverage to which he is subject if he has collateral personal injury insurance with \$5,000 coverage. Florida could eliminate the possibility of double recovery and duplicate coverage by applying the collateral source rule to all no-fault benefits and by offering optional deductibles up to the minimum amount of no-fault coverage.

4. *Oregon*

The Oregon no-fault law requires the payment of the following minimum no-fault benefits: (1) \$3,000 per person for reasonable and necessary medical expenses incurred within one year after the accident; (2) if the person is employed, eighty-five percent of the loss of earnings during the period from fourteen days after the accident to a time when the injured party is able to return to his usual occupation; and (3) if the injured is engaged in a nonremunerative occupation, all reasonable expenses incurred for essential services which the victim would have performed had he not been injured, until a time when he is reasonably able to perform these services.⁴⁴

The Oregon collateral source provision permits guest passengers and pedestrians to receive no-fault benefits in addition to collateral source benefits⁴⁵ while requiring the insured and members of his family to exhaust all collateral sources before receiving no-fault compensation.⁴⁶ The distinction might be justified by the argument that an insured who chooses to buy collateral insurance could take a deductible equal to the minimum amount of no-fault coverage⁴⁷ and so avoid duplication; a pedestrian or guest passenger, however, must secure personal injury insurance without assuming that he would be covered by an unknown driver's no-fault insurance. He does not have the option of selecting a no-fault deductible. This justification fails, however, since the Oregon statute allows an insurer to offer only a deductible of up to \$250.⁴⁸ Hence the statute appears to discriminate against the insured who must pay for benefits above \$250 which will not be given him if he has collateral insurance; while allowing guests and pedestrians to receive double recovery.

⁴³ *Id.* § 7(4). This is similar to the Massachusetts provision, Mass. Gen. Laws Ann. ch. 90 § 34A (Supp. 1971).

⁴⁴ Ore. Laws & Resolutions ch. 523 § 2(1)-(3) (1971).

⁴⁵ *Id.* § 4(2).

⁴⁶ *Id.* § 4(1).

⁴⁷ See, for example, Mass. Gen. Laws Ann. ch. 90 § 34M (Supp. 1971).

⁴⁸ *Id.*

5. *Delaware*

The Delaware law requires minimum no-fault personal injury protection of \$10,000 per person up to a maximum of \$20,000 per accident.⁴⁹ Benefits are paid for reasonable and necessary medical expenses, loss of earnings, the procurement of essential services which the injured would have performed,⁵⁰ and funeral expenses up to a limit of \$2,000 per person.⁵¹ The statute has no requirement that an injured party exhaust his collateral sources of insurance before receiving no-fault benefits. The possibility of double recovery is thus preserved.⁵² The statute provides that the insured may select personal injury deductibles applicable to himself and members of his household,⁵³ although it does not establish specific amounts for the optional deductibles. If insurers do offer deductibles equal to the minimum amount of no-fault coverage, the Delaware statute would appear to be an effective means of reducing duplicate coverage.

6. *Illinois*

The Illinois statute requires the following minimum no-fault protection: (1) \$2,000 per person for medical expenses incurred within one year of the accident; (2) eighty-five percent of the income lost as a result of total disability caused by the accident, subject to a limit of \$150 per week for fifty-two weeks per person; and (3) expenses for the procurement of essential services up to a limit of \$12 per day for 365 days per person injured.⁵⁴ The collateral source rule applies only to workmen's compensation benefits.⁵⁵ The statute is silent on the subject of deductibles. If it is assumed that this silence precludes deductibles,

⁴⁹ Del. Code Ann. tit. 21, § 2118(a)(2) (Supp. 1971).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The Delaware statute, however, provides that the insurance company will be subrogated to the rights of the injured party to the extent of the benefits paid to him. Included in these subrogation rights are the victim's workmen's compensation claims. Del. Code Ann. tit. 21 § 2118(f) (Supp. 1971). Apparently, then, an injured person would make one complete recovery from the no-fault insurer and would allow the insurer to pursue his workmen's compensation claim. If the company prevails in its claim, the ultimate loss will be borne by workmen's compensation.

Unlike the Massachusetts statute which prohibits a person entitled to workmen's compensation benefits from receiving any no-fault benefits, Mass. Gen. Laws Ann. ch. 90, § 34A (Supp. 1971), and unlike the Florida plan which requires that any workmen's compensation benefits received by the victim be credited against the no-fault benefits he would otherwise be entitled to receive, Fla. Sess. Laws ch. 252 § 7(4) (1971), the Delaware statute allows the injured party to make full recovery up to the limits of the no-fault coverage and so assures the victim prompt and expeditious recovery. Although this provision is not denominated a collateral source rule, it has the same effect with respect to workmen's compensation.

⁵³ Del. Code Ann. tit. 21 § 2118(a)(2)(B) (Supp. 1971).

⁵⁴ Ill. Stat. Ann. ch. 73, § 600(a)(1)-(3) (Smith-Hurd Supp. 1971).

⁵⁵ *Id.* § 600(e)(2).

the prudent driver who has collateral insurance will not be able to avoid duplicate coverage.⁵⁶

B. *Recommended Improvements*

Massachusetts, Oregon, and Florida—states that have relatively low limits on the minimum mandatory no-fault coverage—should consider raising these limits so that greater assured benefits would be available and so that more persons would be totally compensated for their specific losses without having to litigate. These objectives, however, must be balanced against the equally important goal of minimizing the costs of automobile insurance premiums. Considering the experimental nature of the initial no-fault plans, the \$10,000 minimum no-fault coverage required by the Delaware statute appears to be a reasonable compromise. Without raising premium costs excessively, this amount of protection would provide adequate benefits for most victims and would compensate for a substantial percentage of the specific damages incurred by seriously injured persons. Another improvement would be obtained by subjecting payments for the procurement of essential services to a percentage limitation similar to that placed on loss of earnings benefits by the Massachusetts, Oregon, and Illinois statutes; such limitations presumably discourage malingering and so reduce costs. Finally, states considering no-fault legislation should seriously examine the "other vehicle" coverage⁵⁷ and the assigned claims provision of the Massachusetts statute, a provision that assures no-fault compensation to all Massachusetts residents injured in that state in or by a vehicle not covered by no-fault insurance.⁵⁸

Collateral source provisions may decrease the costs of automobile insurance, but they do so by passing on to other types of insurance much of the cost of compensating victims of automobile accidents. Presumably, then, the cost of such insurance will increase. Accordingly, a statute having a collateral source rule should offer, as does the Massachusetts statute, an adequate deductible in order that an insured will not be required to pay for coverage the benefits of which he will not be entitled to receive.⁵⁹

II. REDUCTION IN AUTOMOBILE TORT CLAIMS: RESTRICTIONS ON THE RIGHT TO SUE

Proponents of the no-fault concept contend that the new system would eliminate many automobile tort cases which purportedly are overburdening the state and federal court systems. No-fault statutes attempt to accomplish this objective by restricting an injured party's

⁵⁶ This problem would be alleviated if deductibles up to the amount of minimum no-fault coverage were allowed.

⁵⁷ See p. 940, especially note 39 *supra*.

⁵⁸ See discussion of the *Grace* decision, note 40 *supra*.

⁵⁹ Even when a statute lacks a collateral source rule, it would seem advisable to provide a deductible large enough so that an insured may choose to avoid duplicate coverage, thereby reducing his overall insurance costs.

access to the court in several ways. First, an injured party may be precluded from maintaining a tort action for any specific loss damages⁶⁰ which he is entitled to recover as first-party benefits under no-fault coverage.⁶¹ A statute which provides for an unlimited or a significant amount of first-party benefits would substantially reduce the number of personal injury tort suits. Second, suits for general damages⁶² may be entirely forbidden or else they are permitted only in clearly specified situations where equity considerations outweigh the value of eliminating tort recovery for general damages. Statutes in the latter category either specify certain bodily injuries which entitle an injured person to sue for general damages,⁶³ or they adopt a threshold approach by making the right to sue for general damages depend upon the amount of specific damages.⁶⁴ Some statutes adopt both methods. By increasing the statutory threshold for general damage actions, a legislature may preclude more tort actions, thereby effecting a needed reduction in court congestion.

A. *Specific Restrictions on the Right to Sue*

1. *Puerto Rico*

Although the Puerto Rico statute provides for *unlimited* medical expense coverage and for numerous other benefits, it does not completely eliminate tort liability. An injured party may sue if his general damages for pain and suffering exceed \$1,000, or if his specific damages exceed \$2,000.⁶⁵ However, the incentive to sue is presumably diminished by a requirement that stipulated deductions be taken from any court judgment. This provision requires a \$1,000 deduction from a general damage judgment, and, from a specific damage award, either a \$2,000 deduction or a deduction equal to the amount of no-fault benefits received by the victim if that amount exceeds \$2,000.⁶⁶ It appears unlikely that a person would go to the expense and effort of suing for general damages unless his injury were substantial and he felt confident

⁶⁰ For purposes of this comment, specific loss damages refer to those damages involving actual economic loss. These do not include general damages for pain, suffering and mental distress.

⁶¹ Fla. Sess. Laws ch. 252 § 8(1) (1971); Mass. Gen. Laws Ann. ch. 90, § 34M (Supp. 1971); P.R. Laws Ann. tit. 9, § 2058 (1)-(2) (Supp. 1970).

⁶² See the definition of general damages, note 10 *supra*.

⁶³ Fla. Sess. Laws ch. 252, § 8(2) (1971). This section preserves the right to sue for general damages when the injured party incurs permanent disfigurement, a fracture to a weight-bearing bone, a fracture with certain stipulated complications, loss of a body member, permanent injury, permanent loss of a bodily function, or death. The Massachusetts provision, Mass. Gen. Laws Ann. ch. 231, § 6D (Supp. 1970), preserves the right to sue for pain and suffering when the injury causes a permanent and serious disfigurement, a fracture, loss of a body member, loss of sight or hearing, or death.

⁶⁴ Fla. Sess. Laws ch. 252 § 8(2) (1971); Mass. Gen. Laws Ann. ch. 231, § 6D (Supp. 1971); P.R. Laws Ann. tit. 9, § 2058(2) (Supp. 1970).

⁶⁵ P.R. Laws Ann. tit. 9 § 2058(2)(a)-(b) (Supp. 1970); Address by Mr. Frank W. Fournier, *supra* note 24, at 6.

⁶⁶ P.R. Laws Ann. tit. 9, § 2058(3)(a)-(c) (Supp. 1970).

of proving pain and suffering damages considerably in excess of the mandatory \$1,000 deduction. In this respect then, the Puerto Rico statute serves to discourage nuisance suits for pain and suffering and consequently should serve to relieve court congestion.

2. *Massachusetts and Florida*

The Massachusetts and Florida statutes theoretically are similar in the restrictions that they place on the right to sue. The Massachusetts statute provides for a minimum no-fault coverage of \$2,000; with a corresponding tort liability exemption.⁶⁷ However, the Massachusetts plan allows suits for pain and suffering if special damages exceed a \$500 threshold in medical expenses, or in cases of specified serious injuries or death.⁶⁸ The Florida statute is more restrictive. It exempts tort liability up to the \$5,000 limit of first-party no-fault benefits.⁶⁹ It also adopts a threshold approach by permitting tort actions for general damages only when medical expenses exceed \$1,000,⁷⁰ or when the victim dies or incurs specified injuries.⁷¹ The higher thresholds required by the Florida plan should reduce the number of tort suits brought to trial and the number of overcompensatory pain and suffering awards, a reduction that should in turn lower insurance costs. Finally, the lower Massachusetts threshold of \$500 in medical expenses could easily be reached by visiting expensive doctors or hospitals. While the same argument may be made against the Florida threshold, it is obviously more difficult to "boost" medical expenses to \$1,000 than to \$500.

The effectiveness of the Florida statute in reducing court congestion, however, is still unnecessarily limited. The statute allows an insurance company to maintain a tort action against an allegedly negligent party if it has paid no-fault benefits to a victim who is entitled to sue such party and who fails to do so within one year after the last payment of no-fault benefits.⁷² A provision requiring Florida insurers to submit such claims to intra-industry arbitration would remove these insurers' suits from the courts while simultaneously preserving the insurance companies' right to reimbursement. Under such an arbitration requirement, insurers would be allowed to bring to court only claims against parties not covered by a Florida no-fault policy.

The Massachusetts statute includes a provision which allows insurers to be subrogated to the rights of the insured, to the extent that they pay no-fault benefits to him.⁷³ The insurers can sue an allegedly negligent party who is not exempt from tort liability, that is, an uninsured or out-of-state motorist. If the allegedly negligent party is

⁶⁷ Mass. Gen. Laws Ann. ch. 90, § 34M (Supp. 1971).

⁶⁸ Id. at ch. 231, § 6D. For a list of the specified injuries, see note 62 *supra*.

⁶⁹ Fla. Sess. Laws ch. 252, § 8(1) (1971).

⁷⁰ Id. § 8(2).

⁷¹ Id. For a list of the specified injuries, see note 62, *supra*.

⁷² Fla. Sess. Laws ch. 252 § 7(3)(d) (1971). The insurer's recovery is limited to the amount of benefits it has paid to the injured party. Id.

⁷³ Mass. Gen. Laws Ann. ch. 90, § 34M (Supp. 1971).

exempted from tort liability because he is covered by a Massachusetts no-fault policy, the insurers are required to submit claims against such persons to intra-industry arbitration.⁷⁴ In arbitration, the insurer whose insured would be liable in tort but for his exemption is required to reimburse the other insurer to the extent of the no-fault payments made to the victim.⁷⁵ The arbitration requirement thus keeps many of the insurers' claims out of the courts.

3. *Illinois*

Although the Illinois statute provides for payment of first-party benefits up to a limit of \$9,800,⁷⁶ it allows an injured person to sue for all losses not recoverable as no-fault benefits, including pain and suffering.⁷⁷ However, the Illinois plan has a provision; unique among the state statutes, which restricts the amount that may be awarded in a suit for pain and suffering. It limits a general damages award to a sum equal to fifty percent of the injured's medical expenses under \$500 plus one hundred percent of any medical expenses over \$500.⁷⁸ By such limitations the statute discourages minor suits for pain and suffering⁷⁹ while allowing a person with substantial specific losses to recover general damages up to an amount equal to his medical expenses minus \$250 (fifty percent of the first \$500 in medical expenses).

The Illinois plan has another unique provision regarding tort claims. It requires mandatory arbitration for all automobile accident claims of \$3,000 or less⁸⁰ for minor injuries or property damage. Ac-

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Ill. Ann. Stat. ch. 73, § 600(a)(1)-(3) (Smith-Hurd Supp. 1971). Under the minimum required no-fault coverage, if the injured party was employed at the time of the accident, the maximum benefits available to him would be \$9,800—\$2,000 for medical expenses and \$7,800 (\$150 per week for 52 weeks) for loss of earnings benefits. If the victim was not a wage-earner, the maximum amount payable would be \$2,000 for medical expenses and \$4,380 (\$12 per day for 365 days) for the procurement of essential services. *Id.*

⁷⁷ *Id.* § 604; Vaccarello, Improved Automobile Reparations—An Answer to "Total No-Fault," 59 Ill. B.J. 801, 812 (1971).

⁷⁸ Ill. Ann. Stat. ch. 73, § 608(a) (Smith-Hurd Supp. 1971). This section was noted by the court in *Grace*, supra note 40; for the discriminatory effect it would have on residents of low-income areas. The court determined that by making the amount of general damages recoverable depend upon the amount of medical expenses incurred, this provision would discriminate against injured persons living in low-income areas, since they would incur lower hospital and doctor expenses than persons with a similar injury living in areas with a higher standard of living. Consequently, the court found that this section denied equal protection, in violation of the Fourteenth Amendment.

The statute, however, makes an exception to the § 608(a) limitations on pain and suffering awards. It provides that in cases of "death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement" there are to be no restrictions on the amount of general damages. *Id.* § 608(c).

⁷⁹ The court in *Grace*, supra note 40, found that the restrictions on general damages made it inexpedient to maintain a court action in over 90% of the automobile accident cases in Illinois. Thus restrictions on pain and suffering damage awards would apparently have a substantial effect on reducing court congestion.

⁸⁰ Ill. Ann. Stat. ch. 73, § 609. The Illinois Department of Insurance modeled the

cess to the court is allowed only on appeal from the arbitration decision.⁸¹ This provision will undoubtedly help to reduce the number of automobile tort suits.

4. *Oregon and Delaware*

The Oregon and Delaware no-fault statutes appear to place the fewest restrictions on the right to sue. Although the Oregon statute provides for first-party benefits, it places no restrictions on the injured party's right to sue for either specific or general damages. Presumably, however, a victim who receives prompt payment of no-fault benefits will be satisfied with that compensation and will not undertake judicial action against an allegedly negligent party. In Oregon, as in Massachusetts, if both parties involved in the accident are insured by companies authorized to provide no-fault insurance in that state, the insurer whose insured is or would be held legally liable must reimburse the other insurer for the first-party benefits it has paid.⁸² If there is a disputed claim, the insurers are required to submit the claim to arbitration.⁸³ By preventing insurance companies from suing the allegedly negligent party or his insurer, the mandatory arbitration requirement should help to reduce court congestion.

Although the Delaware statute places a high ceiling on no-fault arbitration requirement in the Illinois no-fault law on a similar requirement adopted by the Municipal Court of Philadelphia pursuant to Pa. Stat. Ann. tit. 5, § 30 (Supp. 1971). The success of the Philadelphia program was noted in a report by the Illinois Department of Insurance, which indicated:

On February 17, 1958, the Municipal Court of Philadelphia installed mandatory arbitration for all cases in which the amount in controversy was under \$2,000 (last year [1970] the limit was raised to \$3,000). Prior to 1958, a backlog of cases had built up, causing trial delays of 24 to 30 months. From 1958 through 1967, this system of arbitration resulted in the disposition of more than 60,000 cases while the waiting period for a regular trial was reduced to three months. By 1968, the delay was reduced so significantly that it became possible to obtain a trial in 30 days.

Ill. Dep't of Ins., A Report: Auto Reparations in Illinois—The Illinois Plan, 26 (1971). The continued success of the Philadelphia program is evidenced by a recent change allowing arbitration, on a voluntary basis, for claims between \$3,000 and \$10,000. Smith, *supra* note 6, at 419. Parties involved in the arbitration cases appear to be satisfied with this procedure; the results from concluded cases indicate that after arbitration fewer than five percent of the cases were appealed and only a small percentage of those were actually tried. Ill. Dep't of Ins., *supra* at 27. The constitutionality of the Philadelphia arbitration program was upheld by the Pennsylvania Supreme Court in *Application of Smith*, 381 Pa. 223, 112 A.2d 625 (1955). The court stated that certain minimum due process safeguards had been guaranteed and that the availability of an appeal permitted reasonable conditions to be imposed on a litigant's right to a jury trial. *Id.* at 230-33, 112 A.2d at 629-31.

⁸¹ Ill. Ann. Stat. ch. 73, § 609(g)(1)-(5) (Smith-Hurd Supp. 1971).

⁸² Ore. Laws & Resolutions ch. 523, § 7(1) (1971).

⁸³ *Id.* If a victim injured by a person not covered by an Oregon no-fault policy brings a tort action against such a person, the insurer is entitled to reimbursement from the proceeds of any settlement or judgment the injured party receives. If the injured party does not sue on his own initiative, he may be required by the insurer to bring an action against the alleged tortfeasor in order to recover the amount of benefits paid by the insurer to the injured party. These provisions apply to general health and personal injury insurance companies as well as to no-fault insurers. *Id.* § 8(1)-(4).

benefits, those generous provisions may not effectively reduce court claims. There are no express restrictions on suits for pain and suffering, and an injured person is allowed to sue for any specific damages which he did not receive from the no-fault coverage.⁸⁴ Presumably, however, he will be content with the no-fault compensation and will not bother to sue unless his injuries are substantial and his chances of being awarded a substantial pain and suffering recovery are good. Moreover, the Delaware statute provides that an insurer will be subrogated to the rights of a person receiving first-party benefits to the extent of the benefits it has provided.⁸⁵ To enforce its subrogation rights, an insurer is allowed to maintain an action for damages against the alleged tortfeasor.⁸⁶ Although the statute requires arbitration by insurers of certain property damage claims,⁸⁷ it does not provide for arbitration of personal injury claims. If insurers do not voluntarily submit personal injury claims to arbitration, the number of tort claims being brought to court in Delaware will not be lessened substantially. An arbitration requirement could easily remedy this disadvantageous aspect of the statute.

B. *Recommended Restrictions on the Right to Sue*

It is clear that a high level of minimum no-fault coverage and a correspondingly high level of tort liability exemption would preclude most tort suits for specific damages. Greater restrictions on the right to sue for general damages would reduce the costs of liability insurance by eliminating the possibility of excessive pain and suffering awards. Pursuit of these objectives, however, must be balanced by the consideration that a person who genuinely suffers substantial pain and mental anguish ought to be compensated for his suffering. It is submitted that a statutory stipulation of certain serious injuries which, if incurred, would allow a victim to sue for general damages would best accommodate these competing considerations. A \$1,000 medical expense threshold on other suits for pain and suffering, similar to that imposed by Florida, appears to be an appropriate restriction on suits for general damages. In addition, the right of insurers to sue for specific damages should be restricted by a mandatory intra-industry arbitration requirement.

III. CONSUMER BENEFITS

A. *Reduced Premiums*

The no-fault concept is in many respects consumer-oriented. One benefit offered to all policyholders by several of the existing statutes

⁸⁴ The injured party cannot recover damages for no-fault benefits which he would have received had he not chosen a deductible. Del. Code Ann. tit. 21, § 2118(g) (Supp. 1971).

⁸⁵ Id. § 2118(f).

⁸⁶ Id. § 2118(g).

⁸⁷ Id. § 2118(i). If the owner of a damaged vehicle other than that of the insured requests arbitration of a property damage claim, the insurance company must comply.

is a required reduction in automobile insurance premiums. Puerto Rico, Massachusetts and Florida have taken substantial steps to reduce insurance costs. Puerto Rico has sought to accomplish this objective by having the government rather than private insurance companies administer the no-fault system.⁸⁸ The statute provides that the "cost of this insurance shall be distributed among all the motor vehicle owners through an annual contribution to be paid at the time of registering the vehicle."⁸⁹ The original no-fault act had set the annual contribution at \$35.⁹⁰ A subsequent amendment in 1969 reduced this cost to \$17.50 per vehicle.⁹¹

In Massachusetts the no-fault statute had provided for a mandatory fifteen percent reduction in premiums for personal injury no-fault protection as well as for all other types of motor vehicle insurance.⁹² However, the insurance companies in Massachusetts challenged the mandated premium reductions for property damage insurance, which was to remain on a fault liability basis. In *Aetna Casualty and Surety Co. v. Commissioner of Insurance*,⁹³ the Supreme Judicial Court held that the premium reductions in property damage liability insurance were confiscatory and therefore unconstitutional.⁹⁴ The court found that if the reductions were allowed, the insurance companies would collect less in premiums than they would have to pay out as compensation for property damage losses and as overhead expenses. The court based its decision on the insurance companies' estimate that in 1971 the frequency of accidents and the companies' operational expenses for property damage insurance would remain the same as in 1969, but that the average cost of property damage claims would increase by 7.2 percent per year from 1969 to 1971.⁹⁵ Subsequently, in *Employers Commercial Union Insurance Co. v. Commissioner of Insurance*,⁹⁶ the Massachusetts Supreme Judicial Court held that the required premium reductions for fire, theft, and collision insurance were also confiscatory and therefore unconstitutional.

Judicial decisions have thus negated the Massachusetts statute's obligatory reduction in premiums for those types of motor vehicle insurance not altered by the no-fault statute. However, the insurance

⁸⁸ The Puerto Rico plan eliminates several administrative expenses in that it does not require underwriting, the issuance of policies, billing, or the collection of premiums. Address by Mr. Frank W. Fournier, Executive Director of Puerto Rico Accident Compensation Administration, at the National No-Fault Conference in Dallas, Texas, July 22-23, 1971.

⁸⁹ P.R. Laws Ann. tit. 9 § 2064(1) (Supp. 1970).

⁹⁰ Act of June 26, 1968, No. 138 § 14.

⁹¹ P.R. Laws Ann. tit. 9, § 2064(2) (Supp. 1970).

⁹² Act of Aug. 13, 1970, ch. 670 § 6, Mass. Acts & Resolves Adv. Sh. 633.

⁹³ — Mass. —, 263 N.E.2d 698 (1970).

⁹⁴ Id. at —, 263 N.E.2d at 704.

⁹⁵ Id. at —, 263 N.E.2d at 700. If the mandated 15% reduction in property damage rates were allowed, the companies together would incur an underwriting loss of \$34,699,100 for 1971. Id.

⁹⁶ Equity No. 69,826 (Mass. Sup. Jud. Ct., Suffolk County, 1970).

industry did not challenge the mandated premium reduction for the personal injury protection; which was substantially altered by the no-fault statute. Presumably, no challenge was made because the average cost of personal injury claims, unlike the cost of property damage claims, was expected to decrease. This decrease was expected to result from a reduction in both compensation for pain and suffering and in the administrative and legal costs of handling personal injury claims under the no-fault plan. If these expectancies are not borne out by April, 1972, when authoritative reports on 1971 accident claims will be available, the insurance companies could request rate increases in order to meet their higher-than-anticipated costs. Preliminary reports indicate, however, that the insurance companies' costs are substantially lower under no-fault than they were under the tort liability system.⁹⁷

In addition to its provision requiring rate reductions for all policyholders, the Massachusetts statute requires that the Commissioner of Insurance establish "reasonable discounts"⁹⁸ for a policyholder when neither he nor any member of his household has been involved in a reportable accident during the past year.⁹⁹ A reasonable discount is statutorily presumed to be two percent for each year without a reportable accident.¹⁰⁰ These discounts would appear to be an effective means of encouraging safe driving as well as a decided benefit for certain safe motorists.¹⁰¹ Although the annual discount percentage is small, the discounts are cumulative,¹⁰² so that a policyholder who maintains an accident-free record for a considerable number of years would be entitled to substantially reduced insurance premiums.

The Massachusetts no-fault statute also affords certain policy-

⁹⁷ Insurance costs for personal injury coverage were reduced by 42% after one year under the Massachusetts no-fault plan. Apparently this was due to a reduction in both the number and the amount of personal injury claims. The number of personal injury claims decreased by approximately 48% during the first 9 months of 1971, and the average cost of these claims dropped by 61% in the same time period. *Boston Globe*, Feb. 6, 1972, at 32, col. 2.

⁹⁸ Mass. Gen. Laws Ann. ch. 175, § 113B (Supp. 1971).

⁹⁹ Id. The statute also requires the Commissioner to set higher rates for those persons convicted of a moving motor vehicle violation. *Id.*

¹⁰⁰ Id. The Massachusetts no-fault statute also presumes that "reasonable surcharges" for drivers shall be (1) 100% for each conviction of driving under the influence of liquor or narcotic or hallucinogenic drugs; (2) 20% for each speeding conviction; and (3) 10% for each conviction for any other moving violation. *Id.* Through private insurance companies the law here applies a civil penalty to a criminal act as a means of deterring motor vehicle violations. While it imposes a 100% surcharge for major criminal infractions, it grants only an annual 2% reward for accident-free drivers.

¹⁰¹ However, a provision offering premium reductions under a no-fault system may be inequitable in that policyholders who are not necessarily unsafe or poor drivers but are merely unfortunate enough to be involved in an accident are denied discounts. A provision awarding substantially lower premiums to accident-free drivers may have a negative effect on the practical value of a no-fault policy to the individual insured. Recognizing that he would forfeit a premium reduction to which he would otherwise have been entitled, a policyholder involved in an accident would perhaps hesitate to submit a claim for injuries he has sustained.

¹⁰² *Id.*

holders the assurance of automatic policy renewal.¹⁰³ The motor vehicle insurance policy of a person sixty-five years or older must be renewed unless the insured (1) has been fraudulent in applying for the insurance; (2) has been found guilty of a moving motor vehicle violation; (3) has had his driver's license or registration revoked or suspended for more than thirty days; (4) has become ineligible for discounts because of accident involvement; (5) has failed to pay his premiums; or (6) has been convicted of operating a motor vehicle under the influence of liquor or narcotics.¹⁰⁴ If an insurer legally refuses to renew the policy of a person sixty-five or older, it must give the insured thirty days' notice of such refusal and the reasons therefor.¹⁰⁵ If an insurer refuses to renew the policy of a person *under* sixty-five for any reason other than those for which it can refuse renewal to persons sixty-five or older, the company must accept one additional assigned risk for each refusal.¹⁰⁶ Persons who have been accident-free for two consecutive years, and who have thereby earned a four-percent discount in their premiums, are afforded the most protection. An insurer may refuse to renew such a person's policy only in the case of fraud or nonpayment of premiums.¹⁰⁷

The Florida statute requires that the 1972 rates for all required coverage, that is, no-fault coverage plus the present financial responsibility coverage, be reduced by at least fifteen percent of the total premiums for the prior financial responsibility coverage.¹⁰⁸ Thus, if a policyholder had liability coverage greater than that required by the financial responsibility law, the reduction would not apply to the portion of his premium attributable to the excess coverage.¹⁰⁹ In addition, the cost of adding no-fault protection to the required financial responsibility coverage will negate at least part of the savings from the fifteen percent reduction.¹¹⁰ Unlike the Massachusetts statute, the Florida no-fault law expressly recognizes the possibility that mandated premium reductions may result in inadequate rates and may eventually lead to the insolvency of the insurance companies.¹¹¹ An insurer

¹⁰³ The statute provides that no insurer may fail to issue or renew any motor vehicle policy on the basis of age, sex, race, occupation or place of garaging the vehicle. Mass. Gen. Laws Ann. ch. 175 § 22E (Supp. 1971). This provision guarantees automobile insurance to residents of areas experiencing high accident rates.

¹⁰⁴ Mass. Gen. Laws Ann. ch. 175, § 22E (Supp. 1971).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* § 22G.

¹⁰⁷ *Id.* § 22F.

¹⁰⁸ Fla. Sess. Laws ch. 252 § 12(2)(a) (1971). It appears that not every policyholder is guaranteed a 15% reduction in premiums. Rather, the statute merely requires every insurer to lower its rates so that the net effect is an overall 15% reduction in premiums. Gillespie & MacKay, Florida's No-Fault Insurance Law, 45 Fla. B.J. 400, 401-02.

¹⁰⁹ Biddle, No-Fault Just No So, Orlando Sentinel, Nov. 14, 1971, at 10-D, col. 3.

¹¹⁰ *Id.* For example, if the premium cost for the basic financial responsibility coverage were \$100, the 15% reduction would bring the premium cost down to \$85. However, the cost of the no-fault coverage must be added to the \$85, thus negating at least part of the required 15% reduction.

¹¹¹ Fla. Sess. Laws ch. 252, § 12(2)(a) (1971).

so jeopardized may file with the Commissioner of Insurance a request for higher rates, accompanied by evidence that the rates required by the no-fault act are inadequate.¹¹² Because the Florida no-fault statute provides this administrative remedy to an insurer who maintains that the mandated rates may be too low to cover his compensation costs and operational expenses, it seems improbable that Florida insurers will challenge the required reductions.

B. *Prompt Payment*

Another major objective of no-fault is to assure prompt payment of benefits by the insurance company to those injured persons included under the no-fault coverage. Although the Delaware, Oregon and Puerto Rico statutes are silent on the subject, the other plans have various provisions to assure prompt payment. The Massachusetts statute provides that personal injury benefits are "due and payable as loss accrues . . . but an insurer may agree to a lump sum discharging all future liability for such benefits on its own behalf and on behalf of the insured."¹¹³ If the payments are not made within thirty days; the unpaid person has the right to bring an action in contract against the insurer for the amount of the unpaid benefits.¹¹⁴

The Florida no-fault statute also requires that payments be made within thirty days after written notice to the company, unless the company has reasonable proof that it is not responsible for the payment of the benefits.¹¹⁵ If an injured person chooses at a particular time to make a claim for only part of his total loss, the thirty-day requirement applies to that partial claim as well as to any subsequent partial claims.¹¹⁶ The Florida statute also provides that "all overdue payments shall bear simple interest at the rate of ten percent . . . per annum."¹¹⁷ By providing a substantial financial penalty for delays in payment, the statute exerts pressure on the insurance companies to pay the benefits promptly. Moreover, it appears that the insurer is not relieved of its responsibility to make prompt payment if the victim brings an action against an allegedly negligent party.¹¹⁸

The Illinois statute requires that benefits be paid every thirty days even though the expenses incurred may continue over a greater

¹¹² *Id.* Otherwise an insurer may not increase the rates for the mandatory coverage before Jan. 1, 1973. *Id.*

¹¹³ Mass. Gen. Laws Ann. ch. 90, § 34M (Supp. 1971).

¹¹⁴ *Id.* The strength of the prompt payment requirement is diminished, however, by an allowance afforded the insurance company when the injured person brings a tort action for injuries sustained in an accident outside Massachusetts. In such a situation, the duty of the insurer to make payment as losses accrue is suspended until a settlement is made or a final judgment is awarded. *Id.*

¹¹⁵ Fla. Sess. Laws ch. 252, § 7(4)(b) (1971).

¹¹⁶ *Id.* Insurers are required to pay disability benefits to entitled victims at least every two weeks. *Id.* § 7(1)(b).

¹¹⁷ *Id.* § 7(4)(c).

¹¹⁸ *Id.* § 7(3)(a). This section does not allow insurers to suspend payment of benefits when the injured party brings a tort action.

period of time.¹¹⁹ If an insurer fails to meet the requirement of prompt payment, the injured person may bring an action in contract to recover the unpaid benefits.¹²⁰ The Illinois statute gives the injured party leverage against a delinquent insurance company by requiring a treble damage award if the company willfully refused to make the required payment on time.¹²¹ In addition, the Illinois plan specifically provides that "the existence of a potential cause of action in tort by the recipient of the benefits . . . does not obviate the company's obligation to promptly pay such benefits."¹²² Thus the injured person is assured of compensation for his losses while he awaits the outcome of any judicial action he may pursue.¹²³

The Illinois statute also has a unique provision which may have a substantial impact on all automobile insurance claims in the state. The statute provides that in any action against an alleged tortfeasor, the defendant's insurance company *may* offer or make advance payments to the injured plaintiff.¹²⁴ In order to further encourage advance payments, the statute stipulates that in any judicial proceeding "any evidence of or concerning . . . advance payment[s] is not admissible in evidence or may not be construed as an admission of liability . . ."¹²⁵ In drafting this section, the Illinois Department of Insurance contemplated that the advance payments provision would encourage insurance companies to make both property damage and bodily injury advance payments.¹²⁶ When a party is not ready to settle or to present a final claim for bodily injuries sustained in the same accident, the property damage advance payments are quite helpful. The advance payment provision for bodily injury would allow a seriously injured person to procure rehabilitative treatment when he most needs it, rather than forcing him to wait for the outcome of a tort suit. Furthermore, victims receiving advance payments will not be forced to exhaust their personal savings or to incur debts while awaiting a final judgment.

CONCLUSION

Perhaps the most formidable obstacle to the enactment of no-fault statutes has been the traditional legal principle that an individual should pay for the injurious consequences of his own negligence. In contrast, the no-fault plans reflect the notion that the motoring public

¹¹⁹ Ill. Stat. Ann. ch. 73 § 603(b) (Smith-Hurd Supp. 1971).

¹²⁰ *Id.* If the victim prevails in the court action, the insurer must pay the insured party's reasonable attorney's fees. *Id.*

¹²¹ *Id.*

¹²² *Id.* § 603(a). If the victim prevails in the tort action, he must reimburse the insurer for those no-fault benefits paid by the insurer.

¹²³ This approach appears to be preferred over that of the Massachusetts statute, which suspends payment until the outcome of litigation arising from an accident outside Massachusetts is finally determined.

¹²⁴ *Id.* § 607(a).

¹²⁵ Ill. Stat. Ann. ch. 73 § 607(e) (Smith-Hurd Supp. 1971).

¹²⁶ Ill. Dep't of Ins., *supra* note 79, at 22.

as a whole rather than the individual motorist should pay for the injuries caused through the use of motor vehicles.¹²⁷ Now that several states have adopted the no-fault concept,¹²⁸ the future of no-fault will depend on the success that the statutes will have in correcting the failures and inequities of the tort recovery system.

While no single existing state no-fault statute provides a panacea for the problems associated with automobile accident reparations; several have provisions which could achieve some of the major no-fault objectives. Unfortunately, the effectiveness of these provisions is often undermined by other provisions which may directly counteract the reformatory impact of the strong provisions or which merely fail to have any positive effect themselves in achieving no-fault goals. Such contrasts in the statutes reflect a series of compromises reached by the insurance industry, bar associations, and consumer groups, compromises resulting from the state legislative process, which subjects members of legislatures to strong pressures from lobbyists for these interest groups.¹²⁹ As more state legislatures consider enacting no-fault plans, it would be wise for them to recognize the weaknesses in the existing statutes and to make future no-fault legislation more than a series of compromises.

EDITH N. DINNEEN

¹²⁷ Hofstadter & Pesner, A National Compensation Plan for Automobile Accident Cases, 22 Record of N.Y.C.B.A. 615, 616, 619 (1967). The rationale behind this view appears to be that the automobile claim should be differentiated from the generic tort since the former arises from a societal problem while the latter is primarily an interpersonal controversy. This distinction is borne out by the special legislative treatment given the automobile since its inception. *Id.* at 616.

¹²⁸ In addition, indications are that at least 30 states will consider no-fault legislation during 1972. *Boston Globe*, Feb. 13, 1972, at 53, col. 2.

¹²⁹ Dukakis, Legislators Look at Proposed Changes, 1967 Ill. L.F. 582, 587-90. For example, legislators are often unfamiliar with the complex problems of insurance law and must therefore rely on the apparent expertise of the insurance committees, which are usually affiliated with the insurance industry. *Id.* at 586-87.