Approved 2-19-87
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Rep. Bill Bryant at
Chairperson

3:30 XX a.m./p.m. on February 18, 1987 in room 531-N of the Capitol.

All members were present except:

Rep. Cribbs, excused
Rep. Littlejohn, excused

Committee staff present:

Chris Courtwright, Research Department
Bill Edds, Revisor's Office
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Homer Cowan, The Western Insurance Company
David Litwin, KCCI/Ks. Coalition for Tort Reform
Mark Bennett, American Insurance Association
Dick Scott, State Farm Insurance
Glenn Cogswell, Alliance of American Insurers
Bill Mitchell, Alliance Insurance Co.

The meeting was called to order by Vice Chairman Bryant.

The first conferee was Mr. Homer Cowan, The Western Insurance Company. He presented testimony in support of HB 2147 based on the concept that every injured person should receive something but that--because of the rise in medical costs--the no-fault mechanism has broken down. (Att. 1.)

He said that no-fault is a better delivery system than the court system, that it is a "people" bill. He said the general damages section is a device of the future, regardless of what Kansas does, as it makes sense to pay an injured party for inconvenience. They have paid many nuisance cases they didn't owe; this bill will automatically set the payment to provide benefits for first-party people to receive benefits that were not there before. He supports a verbal rather than monetary threshold as a means to reduce fraud.

The benefit couldn't stand by itself and be successful; in order to create the premium dollars to fund the benefit, everyone must participate. He estimates that without no-fault, current premiums would be 8 to 15% higher than they are now based on the increase in medical costs and wages. Premiums probably won't go up with the higher benefits; 70 cents per dollar is still available for claims payment. It will go to the injured rather than partly to the tort system.

Mr. David Litwin, KCCI, testified in support of HB 2147, believing that the bill contains equitable trade offs to keep smaller cases out of court and provide fair compensation for less serious injuries. (Att. 2.) He said they support the no-fault concept and are not bogged down with the specific figures.

Mr. Mark Bennett, American Insurance Association, said that they favor HB 2147 entirely. They have supported the no-fault concept since its inception and assisted the attorney general to determine its constitutionality. They recognize it as a compromise bill with much give and take.

Mr. Bennett stated that it is the most consumer-oriented legislation that he has ever seen introduced. As benefits were to quickly cover the basic costs of being injured, they must be increased now that costs have increased. Premiums could be increased to offset the increased benefits or threshold can be raised, as the bill proposes. He said that 214 KS 587 figured in favor of constitutionality regarding covering pain and suffering.

Mr. Dick Scott, State Farm Insurance, said that he endorsed the comments of the other conferees and endorsed the bill. State Farm, as the state's largest insurer, feels that the interest of its policyholders will best be served with the passage of HB 2147.

Mr. Glenn Cogswell, Alliance of American Insurers, stated that they endorse the bill.

Mr. Bill Mitchell, Alliance Insurance Company, spoke about the new concept of general damages. The insurance companies didn't originate the idea; rather it arose in the Legislature--known as the Knopp amendment. They endorse the idea as many people have single car accidents and have no one to sue--from 10-15% of all claims per their survey. They think the policyholder will benefit and that premiums will stay in line.

Per Mr. Dick Brock: Kansas auto rates are in the bottom 40 statewide. He doesn't know where we stood before no-fault. Also, that same year, the Legislature mandated a change from conciliatory to comparative negligence and repealed the guest statute.

Written testimony was distributed from Farmers Insurance Group in support of HB 2147 as needed for an effective No-Fault system. (Att. 3.)

Also distributed was written testimony of James Rhine, Professional Insurance Agents of Kansas, which stated that HB 2147 represents the best efforts of the Kansas Insurance Department to develop a package of improvements to the Kansas Automobile Injury Reparations Act. (Att. 4.)

The meeting was adjourned at 4:35 p.m.

Date: 2-18-87

GUEST REGISTER

HOUSE
COMMITTEE ON INSURANCE

NAME	ORGANIZATION	ADDRESS	PHONE
Homer Cowan	The Western Ins Co's	Ft Scott 316	223-1100
William L Mitchell	Alliance	Hutchinson	316-665-5211
David Ross		Shawnee, K.	422-7290
Mark Burnett	Am Ins Assoc	Topeka	2354077
Michael E Wilber	The Alliance Ins Co's	McPher	241-2200
Dick Brock	Ins Dept	Topeka	
Steve Ostrueger	State Farm	K.C.	4696260
Ron Todd	Ins. Dept.	Topeka	—
Ron Smith	Ks Bar Assoc	Topeka	234-5696
[illegible]	KCCI	"	357-6321
Dick Scott	State Farm	O.P. K	

POSITION MEMORANDUM

OF

THE WESTERN CASUALTY AND SURETY COMPANY

THE WESTERN FIRE INSURANCE COMPANY

THE WESTERN INDEMNITY COMPANY, INC.

ALL OF

FORT SCOTT, KANSAS

SUBJECT: No-Fault

BACKGROUND: The "No-Fault" concept at its inception was not advocated by the insurance industry. It was brought about as various studies were concerned with the amount of the insurance dollar being retained by the legal system and the delay of payments to injured people while "legal liability" was being argued in the courts.

Passage of some type of "No-Fault" law was enacted by many states because of pressure at the national level for a "NATIONAL NO-FAULT" law that would have placed the insurance industry regulation at the Federal level rather than state level. (See Reference No. 1)

CONCEPT: Over-simplified, "No-Fault" created, by statute, first party benefits. In most states these benefits were coupled with compulsory insurance requirements. No-Fault prescribed that your own insurance policy would pay immediately without regard to who was "legally

House Insurance Committee
Feb. 18, 1987
Att. 1

liable."Without considering constitutional problems, the "trade off" involved curtailing the "right to sue." This "trade off" was the key to keeping insurance costs as low as possible. (See Reference No. 2)

THE TRIAL BAR:

The No-Fault concept probably impacted the plaintiff bar more than anyone. The whole idea of No-Fault was to make more of the insurance dollar reach the injured person. Since contingent legal fees charged by the plaintiff bar run from 35-50% of total recovery, No-Fault perceived that the injured party would receive 70% of the insurance dollar. This same insurance dollar subject to a contingent fee of 50% results in the injured party receiving 35% of the insurance dollar.

CONTINGENT FEES:

In order to promote "everyone's access" to the courts, the law has historically recognized the "contingent fee" concept. Because some people could not afford to hire an attorney, they were indeed denied their right of access. There was the injustice of persons escaping legal responsibility because of the injured parties economic inability to hire an attorney. Thus, the contingent fee arrangement. Very simply this type of contract states "...If I don't recover damages for you ... I will not charge you for my services." To compensate the attorney who, in some cases failed to obtain a recovery, the law allowed "contingent fees" to be whatever was agreeable to the attorney and to the client. It became acceptable then to charge 50% of the recovery. Today, a general fee arrangement is -- 30% if suit is not necessary; 35% if suit is necessary; and 50% if the case must be tried.

In the beginning, the plaintiff attorney had to contend with insolvent defendants, and although damages were awarded, they were

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uncollectable. Most jury awards were very conservative.

With the advent of compulsory automobile insurance, there were very few insolvent defendants, and with statutes raising the required limits of liability, jury awards began to go up. With juries now assuming that "there is insurance," awards are quite common in the hundreds of thousand dollars and a verdict in excess of a million dollars is not uncommon. A 50% contingent fee contract had now become very lucrative. A recent Wichita case resulted in a two million dollar fee for one lawsuit!

FIRST PARTY

BENEFITS:

The first party benefit, that is for your own insurance policy to pay you without regard to "legal liability," has always been available on the market. Not a lot of people purchased it, therefore, the cost was higher than the same benefits being purchased on a compulsory basis. With compulsory insurance, such as "No-Fault" contemplates, the cost is reduced if the concept really works. The question today is whether the concept is working. (See Reference No. 3)

THE TRADE OFF:

To find the money to offer the first party coverage (Personal Injury Protection Coverage or PIP) without increasing the overall automobile premium, some device had to be found to reduce either the number of claims, or the cost of claims. These two components are the basis for insurance cost to increase or decrease. The "No-Fault" concept was supposed to take a certain number of claims out of the courts. Since the defense of lawsuits is nearly as expensive as contingent fees, the savings resulting from the expectations of not having to defend as many lawsuits, would pay the premium for first party benefits for everyone! Remember -- in the "legal liability"

arena, injured persons did not always win their lawsuits. Some lost and received nothing. No-Fault contemplates every injured person receives something. Therefore, the trade-off was to furnish the benefits without increase in premium to everyone, in exchange for a few who did not sustain a "serious injury," to give up their right to sue. (See Reference No. 4)

THE FORMULA:

No one really knew the exact formula to use; no one really knew how many lawsuits you would have to cut out of the system to pay for the PIP benefits. The most popular formula was to base the concept on the amount of medical bills incurred. It seemed logical. The less the medical bills, the less serious the injury. No one wanted to take away rights of the person with a serious injury. The PIP benefits would reasonably compensate the person with the "minor injury." Therefore, most states (including Kansas) adopted this formula.

THE THRESHOLD:

The medical bills became the threshold. Below this "magic number" a person could not sue. Above this "magic number," a person could sue! However, many states also built in other thresholds. Kansas, for example, allows a lawsuit for a fracture. Thus, a finger that has a broken bone crosses the threshold, even if medical bills only total $10.00. (See Reference No. 5)

FAULTY NO-FAULT:

The rise in medical costs now makes even a "minor" injury exceed the threshold. (See Reference No. 6) Simple fractures that heal without any disability, crosses the threshold. As a result, the no-fault mechanism has broken down. It is not working. The only present remedy is rate increase. And, perhaps sharp increases UNLESS

WE WANT TO CORRECT THE FAULT IN NO-FAULT:

We must make corrections to meet the requirements of the original concept. We must take the NON-SERIOUS claims out of the courtroom -- (Not the serious ... but the non-serious). (See Reference No. 7)

Remember this --- No-Fault does not take away ones right to the courts. A person may sue for any and all damages that No-Fault benefits do not pay, EXCEPT pain and suffering. Non-serious claims contemplate minimum pain and suffering.

LOW MEDICAL THRESHOLD WAS FAULTY FROM THE START:

Anything new must start someplace, but in retrospect a monetary threshold was wrong from the beginning. Using a $500 threshold, as Kansas adopted, failed to recognize that over 90% of the minor injury claims were settled by the industry without need of an attorney in the first place. With a fracture a basis of suit without any medical costs, the target area for lawsuit reduction was extremely narrow.

With a "target to reach," a monetary threshold is conducive to "seeking" more medical treatment than is necessary. The more the doctor charges, the quicker the target is reached. The monetary threshold is a contributing cause to the cost of medical services to all. And we all pay! (See Reference Number 8)

WHAT IS SERIOUS INJURY:

It should be an injury that is a permanent injury. Even 1%! An injury that impairs future life or work ability. If a fracture is serious,

then a $10,000 monetary threshold is no restraint to litigation.

Define "serious injury" in the law and remove the monetary threshold. (See Reference No. 3 - "Verbal Threshold") Make the system work for those who need to use it.

The Western has never felt, nor has ever said "No-Fault" would reduce the cost of insurance. There is still but 70¢ in the insurance dollar to pass on to recipients of insurance benefits. No-Fault is simply a way to get more money to more people, more quickly! That's all. (See Reference No. 3 & 4)

WHAT IS THE BENEFIT OF NO-FAULT REFORM

TO THE WESTERN:

If the public or any state legislature became serious and expressed support for the position of The Western in respect to No-Fault Reform, you will hear words like -- "Rip-off" ... "Windfall" ... "Excessive Profits" -- but those who will take the time to examine the facts .... understand rates and how they are made .... will simply know better!

Rates are predicated upon losses. Rates are also REGULATED. In respect to the automobile line, we are allowed a 2 1/2% profit margin. To set our rates today, we are allowed to take expenses and losses (of the past) and 2 1/2% of premium earned. We have to set rates today for the losses of tomorrow!

To be candid ... to run an insurance company, we don't care what the threshold might be ... or even if there is any threshold. Again, to write insurance, it makes little difference what system is used ... court system ... no-fault system ... or any other mechanism the public wants! We still have to work within the 2 1/2% profit margin!

There is no windfall ... nothing for The Western to gain by recommending an overhaul of the No-Fault concept ... except ... we are convinced the No-Fault concept is a better delivery system.

This is the mandatory benefits the law requires. These must be updated periodically for inflationary reasons. Not too many years ago, if your hospitalization policy provided $50 per day room benefits you would feel reasonably protected. Not today! So it is with the No-Fault benefit package. The lost wage benefit -- up to $650 per month -- was not too bad in 1973. It's not enough today!

The Western is of the opinion the No-Fault benefit package must be increased. It should be doubled! (See Reference No. 11)

WE SELL IT:

The Western sells this increased benefit package today! In fact a high percentage of our policyholders have purchased the extra benefit package.

THEN WHY

MAKE IT FREE:

We can't. In order to offer it as higher mandatory benefits under the No-Fault law, we have to receive something back that translates into -- "in lieu of premium" -- The intended result of "No-Fault" was to take legal expense out of the premium dollar in exchange for higher benefits at no extra cost.

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HOW DO

YOU DO THIS:

The No-Fault concept intended the "threshold" to be a "magic level," that had to be reached before a lawsuit could be filed. It must be high enough, or sufficient enough, to carve out the legal system the non-serious injuries. The $500 monetary threshold such as used by Kansas, is simply not sufficient to warrant present benefits, much less higher benefits!

IF YOU DOUBLE BENEFITS, WHY NOT JUST DOUBLE

THRESHOLD:

Because the monetary threshold has no real relationship to the cost of benefits. When the "No-Fault" concept was new, there had to be a starting point. Using medical expenses as a barometer to divide serious injuries from non-serious injuries, it seemed logical. -- In retrospect, this concept was doomed to failure at the out-set.

The reason was and is .... about 90-95% of injuries with medical expense of $1,000 or lower are settled by the "industry" without need of legal expense.

One may well have a serious injury and incur less than $200 in medical cost. One may have $2,000 in medical bills and not have a serious injury.

The "threshold" must be defined in a way to take not 90% of the non-serious injuries out of the $500 medical monetary threshold, which are being settled now without legal costs, but at least 95% of the non-serious injuries out of the legal system, IRRESPECTIVE OF MEDICAL COSTS INCURRED!!

THERE IS SOME INEQUITY IN ANY SYSTEM:

-- The system before "No-Fault" was not without some inequity. Some people did not recover anything from the lawsuit when perhaps they should have recovered. Some recovered less ... some more than what would be considered "reasonable" by experts.

It is humanly impossible to "define a threshold" that is so perfect it would meet any and every set of facts. -- You can, however, devise one that will reduce inequity to a minimum, which at the same time guarantees that everyone receive reasonable compensation for all damage except the so-called "pain and suffering" which with serious injury is real, and with non-serious injury is sometimes real, but many times imagined.

WHAT WILL HAPPEN TO RATES IF THE FAULT IS REMOVED FROM NO-FAULT:

We do not know! WE can say this ... if you start from a base of adequate rates, (not excessive and not inadequate) and:

1. The social climate does not change
2. The legal climate does not change
3. The economic level remain steady
4. The cost of things insurance promises to pay for does not change ...

Then rates will not change!

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WHAT IF THRESHOLD IS TOO HIGH OR TOO LOW:

Rates will increase or decrease accordingly. Rates will seek their own level of the regulated formula regardless of what is done or not done, based upon the frequency and severity of claims! It's that simple.

DOES WESTERN SUPPORT A MONETARY THRESHOLD OF $5,000:

Not really. The only reason that so-called magic figure is used is that many actuaries feel this is the figure that translates into a verbal threshold.

WHAT IS VERBAL THRESHOLD:

It is a defined threshold based upon language not money. A verbal threshold simply defines what a "serious injury is." (See Reference No. 10)

WHAT IS THE DRAW-BACK TO A VERBAL THRESHOLD:

The fear that no matter how carefully the language is drawn, that it will take a lawsuit to see if you have the right to bring a lawsuit. (See Reference No. 10)

WHAT THEN IS THE POSITION OF THE WESTERN:

Position of The Western:

1. The No-Fault concept is presently defective. It is not working. (See Reference No. 9)

2. That while the industry can operate under any system, the No-Fault mechanism is best

for the most. It delivers more money from the insurance dollar to the injured person faster!

3. That the additional money to finance the additional benefit level has to be removed or obtained from the legal system.

4. That the right of a person who is injured and that injury causes permanent disability of any nature, must have access to the courts. Again, any damages not paid by first party benefits can be recovered through the courts whether the injury is serious or not.

5. That No-Fault does not guarantee the lowest possible insurance rate, but it does provide the most for most at the lowest cost.

6. That to cure the fault in "No-Fault," the threshold must be meaningful. Meaningful means remove the target level. Remove non-serious or frivolous claims, or so-called "nuisance" lawsuits and use the savings for the person who sustains a serious injury.

7. Philosophically, we do not support a threshold that is monetary only at any figure. From a practical standpoint, we do support an "and/or" concept with a high monetary level such as $5,000. "And/or" means the monetary level is but one guide. Other guides must allow the "serious" injury the right to the courtroom even if medical incurred is "zero" (0), with the second guideline being a verbal guideline -- the more seriously injured people do not have to run up unnecessary medical bills just to cross the threshold.

8. The Western does support the legal system we have in America. It does have some inequities, but no one has ever devised a better system. There is a need for the

trial lawyer and the defense lawyer to use their skills for the benefit and the protection of their clients to maintain an equal balance of justice. There is nothing wrong with the system today, **EXCEPT THE COST!** This cost is passed on to all of the insurance buying public. Excessive verdicts, excessive settlements, excessive in either quantity or amount is a cost shared by all of us, even though we are not a party to the litigation. From a standpoint of selling more insurance, our present system produces more premium for the insurance companies. However, we are insurance buying consumers, too --- and we are concerned. We are concerned with the question --- **HOW MUCH PROTECTION CAN WE AFFORD??**

Respectfully submitted,

THE WESTERN CASUALTY & SURETY COMPANY
THE WESTERN FIRE INSURANCE COMPANY
THE WESTERN INDEMNITY COMPANY, INC.

Homer H. Cowan, Jr.*
Vice President

*Registered Lobbyist in the State of Kansas and the State of Missouri

WHY SOME NO-FAULT LAWS WORK AND OTHERS DON'T

By E. JOHN CUCCI

Injuries from auto accidents exact a tremendous toll on American lives and American dollars. For years, state government and insurance companies have been struggling to find a fair and efficient way to compensate victims of auto accidents for economic and non-economic losses. Good no-fault auto insurance has proven to be an equitable solution to the problem.

In the ten-plus years since no-fault auto insurance laws were first enacted in this country, its goals have remained constant: To pay more people for their medical costs and lost wages; to pay them faster and more equitably regardless of driver negligence; and to reduce court congestion and legal costs associated with auto accident injury settlements.

In contrast, the present tort system requires determination of fault in auto accident settlements. That premise alone often causes claims disputes.

But in order to be cost-effective in guaranteeing protection, a no-fault system limits payments on non-economic losses (pain and suffering) to make dollars available which can then be applied to make extensive payment of medical expenses and lost wages when necessary. This approach avoids overcompensating people for minor injuries.

No-fault laws do not deny seriously injured citizens their right to sue. Motorists in no-fault states simply agree to limit suits for non-economic loss to cases involving losses over a mandated ceiling ("threshold"). For example, in a no-fault state with a $5,000 medical threshold, insured drivers agree not to sue for non-economic damages unless medical expenses exceed $5,000. And, when medical bills do surpass the threshold, accident victims still have the right to initiate tort action for losses due to pain and suffering. In other words, insured drivers in a no-fault state trade uncertain tort recovery in less serious accidents for guaranteed first-party coverage.

Auto/Personal Lines Review

In a tort system, disproportionate claim settlements are often made. Insurers sometimes pay too much to settle small nuisance claims in order to avoid more costly litigation. Litigation expenses that insurers incur defending their policyholders under liability coverage lead to higher premiums for all policyholders.

Payment for medical treatment prior to settlement is often delayed by the tort system, hindering an individual's financial recovery. Claimants are not guaranteed compensation for medical expenses or loss of income resulting directly from injuries sustained in an auto accident. Service replacement costs are also difficult to recover, and often when an attorney becomes involved, net settlements are reduced to cover the attorney fees.

No-fault coverage provides medical expense, wage-loss, service replacement costs and funeral expenses up to specified amounts. Claimants are swiftly and fairly compensated for out-of-pocket expenses. The system works because claimants deal with their own insurers, with levels of protection they select. There is no need to determine fault before the bills are paid.

No-fault laws do not, however, permit careless drivers to escape retribution. Drivers at fault in an accident are still subject to state traffic laws and can be sued if they cause loss in excess of the state's tort threshold.

No-fault coverage also offers a method of handling auto accident claims with minimal recourse to the courts. It reduces the need for court action by offering quicker, more satisfactory claims settlement. The result in many no-fault states has been a reduction in the need for attorney representation to settle disputes, and fewer nuisance claims contributing to the congestion

Cont'd on Page 72

Cont'd from Page 4

of already clogged court dockets.

The reduction in litigation has multiple and long-term advantages. The immediate result is that a no-fault state spends less money administering the settlement of small auto injury claims in the judicial system. In 1982, the Institute for Civil Justice, in its study "Costs of the Civil Justice System," reported that many court cases cost the state government more to administer than is at stake for the litigants.

Insurance companies, too, spend less money on court costs and attorney fees as a result of the reduction in litigated claims. The savings for both the state and insurers ultimately benefits the consumer as a taxpayer and policyholder.

Balanced no-fault legislation is one factor in a cost-effective auto insurance program for any state. Many uncontrollable factors impact insurance prices, such as medical and auto repair costs. Some states, however, have achieved significant cost controls under no-fault.

Cost stability occurs more often in no-fault states that adopt a strong tort threshold, particularly a verbal threshold. A verbal threshold describes the type and extent of injury that warrants a tort suit for pain and suffering.

For example, a recent study by the Alliance research department estimates that 1982 injury claims costs in Florida are 21 percent lower than they would have been had that state continued under a tort system. Michigan and New York have had similar experiences. Injury claims costs in Michigan are down an estimated 17 percent, with a six percent estimated decrease occurring in New York.

While a verbal threshold works best, a dollar threshold is most effective

WHY SOME NO-FAULT LAWS WORK AND OTHERS DON'T

when it is set at a high amount and regularly increased relative to state medical care costs. For example, Alliance researchers estimate that even states with moderate thresholds, where medical costs are relatively low, are spending less in claims costs. Kentucky, with a $1,000 threshold, is estimated to be spending 29 percent less on injury claims than it would have under tort. In North Dakota, also with a $1,000 threshold, injury claims costs are estimated to be 19 percent lower per year than they would have been under tort.

The impact of a given threshold varies from state to state partly because of the dramatic differences in medical care costs. Some states operating under no-fault law have seen insurance rates rise because thresholds are so low that no-fault benefits are merely added to already high tort settlements. Hawaii, for example, has raised its threshold from $1,500 to $4,500. Injury claims costs there had gone up an estimated 37 percent due to the imbalance between the threshold and medical care costs.

No-fault auto insurance can help to stabilize the cost of bodily injury coverages, but success is dependent on the limits of the tort threshold. Verbal tort thresholds provide for immediate payment of economic losses and still allow recovery for general damages such as pain and suffering in serious injury cases. The savings in administrative costs and litigation expenses under a verbal threshold allow for payment of higher benefits to seriously injured persons and eventual savings for the policyholder.

Florida is more than a good example of how no-fault can reduce claims costs. University of Nebraska Law Professor Roger C. Henderson used Florida to demonstrate that no-fault can achieve its other stated goals as well.

In a 1976 report to a special Congressional Committee on Motor Vehicle Accident Reparations, Mr. Henderson showed that, in Florida, no-fault laws reduced the amount of litigation arising from auto accidents. Florida passed its original no-fault law in 1971. From 1969 to 1974, Mr. Henderson reported, personal injury tort litigation had dropped by as much as 15 percent in one representative county.

Florida insurers reported a definite shift from third-party (liability) claims payments to first party (PIP) payments. Two companies there said that before no-fault, third-party claims payments were 60 percent of total auto claims and 40 percent were first-party. After no-fault the distribution shifted to 80 percent first-party and 20 percent third-party, indicating that more people were handling their own auto injury claims with less friction or dispute than under the previous third-party system.

Were those claimants paid faster? Mr. Henderson's study showed that first-party claimants received their first payments in one-third less time after the accident than did third-party claimants under the old tort system.

Mr. Henderson quoted a Florida closed claim file study to show that no-fault benefits were allocated more evenly than tort benefits. The study indicated that more claims were settled in amounts closer in value to verified medical losses than under tort law. In addition, it showed that more serious injuries (those claims over $2,000) were receiving larger payments and there were more frequent payments below $500. This suggests that under no-fault law serious cases are more adequately compensated.

Floridians, according to Mr. Henderson, found no-fault settlements simpler. Consequently, they hired fewer attorneys for smaller cases. In 1971, before the no-fault law was enacted, 25 percent of all insurance claims in Florida were settled without attorneys. By 1973, after no-fault had been operative for one-and-a-half years, that number had grown to 80 percent.

Mr. Henderson said his findings also indicated that no-fault generally results in less expense to the system while it allows a greater portion of insurance premiums to be returned to victims. The simplicity of the system also reduces stress on victims as they pursue their claims.

The key to the success of no-fault auto insurance in Florida and in other states has been the design of the law. The Alliance and its member companies have led attempts to pass effective no-fault laws and reform poorly designed rules in state legislatures across the country.

A poorly designed no-fault law is one which increases overall claims costs—and resulting premiums—by setting the tort threshold so low that no-fault benefits simply become a "bonus" payable to anyone who has an auto accident. In such states, costs increase because no-fault benefits are being paid in addition to large tort settlements. Some states (like New Jersey) not only legislated low tort thresholds but added "unlimited" benefits to further increase the total claims settlement bill for the state. New Jersey has recently tried to correct its no-fault law.

Experience has proven that the best no-fault law creates a balance in allocation of benefits to persons injured in auto accidents. There are some very basic provisions necessary to accomplish that balance.

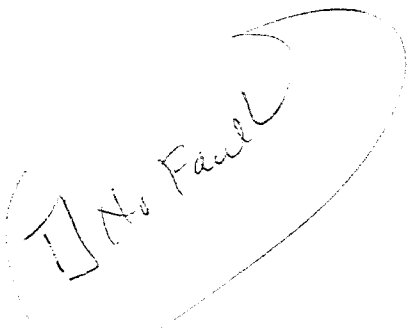
Generally, a good no-fault law includes suitable tort restrictions—with a verbal threshold—developed according to state experience. Benefits must be reasonable but not excessive while insurers are allowed to offer higher optional coverage limits. Provisions are made to offset recovery from other sources like workers' compensation. Rates must provide adequate income which will help insurers to cover claims costs while premiums remain affordable for the state's drivers.

Following is a more specific outline of the provisions of a workable no-fault auto insurance law. It mandates:

- A verbal threshold that allows suit when an accident results in death, serious and permanent disfigurement, or serious and permanent injury.
- Insurer must offer reasonable medical and rehabilitation benefits.
- Coverage for work loss, service replacement costs, housekeeping, child care, survivors' loss, funeral, cremation and burial expenses.
- A deadline for collection of benefits and placement of claims.
- Against "stacking:" coverage from more than one car cannot be applied to a single case.
- Anti-fraud provisions.
- That provisions be made for reparations payments to persons injured in auto accidents who are not covered by no-fault (assigned claims plan). ◆

Mr. Cucci is assistant vice president of the Alliance of American Insurers—New York office.

KANSAS CITY TIMES
April 13, 1984



Nearer to No-Fault

The revised no-fault automobile insurance bill passed by the Kansas Legislature still is far from ideal, but it does represent an improvement and Gov. John Carlin would be ill-advised to veto it. This piece of legislation has produced intensive lobbying by two strong interest groups — the insurance companies and the trial lawyers, but the first concern should be for the welfare of the individual policyholder.

The pure concept of no-fault insurance, so highly acclaimed a few years back, has never been truly tried by any of the 25 states, plus the District of Columbia, which have such laws. It requires the policyholder's insurance company to pay for his medical expenses — regardless of who was at fault in the accident — in return for the insured's forgoing his right to sue for damages for pain and suffering. The objective, of course, was to limit long and costly litigation which jammed the courts, delayed justice and boosted car insurance premiums.

But the legislators, with some advice from the sidelines, found it difficult to deny legal compensation as well to those more seriously hurt, and accordingly prescribed thresholds of medical care costs above which the right to sue came into effect. In the Kansas no-fault law, this level has been $500, ridiculously low in the light of today's medical costs.

The 1984 Legislature, after originally considering a $5,000 figure, finally settled on $1,500. In exchange, the insurance companies would be required to cover with no-fault all medical costs up to $5,000 a person, instead of the present $2,000, and increase benefits for loss of earnings. The insurance companies, which support the new bill, say the low $500 threshold caused them to pay out more than $10 million in legal fees during 1981-82. The trial lawyers, opposing the change, say the existing law has reduced auto injury lawsuits in the last 10 years.

It is almost impossible to fix a fair level of severity above which a crash victim be entitled to sue for pain and suffering. But at least $1,500 edges closer to the no-fault ideal than $500. This proposed improvement in the Kansas statute should be signed into law.

National Underwriter, April 13, 1984

PROPER THRESHOLD FOUND KEY TO GOOD NO-FAULT

If the threshold is right, reduced or stabilized auto insurance costs will result in states operating under auto no-fault plans.

A newly published study by the Alliance of American Insurers suggests that cost savings generally occur in those states that have adopted a strong tort threshold, particularly a verbal threshold, limiting the right to sue for damages.

Study's findings

The study, "The Cost of No-Fault," found that "... thresholds of $1,000 or more, or preferably verbal thresholds, are more effective than those with lower values." However, in states with weak tort thresholds, costs under no-fault are likely to be higher than under the tort system they replaced.

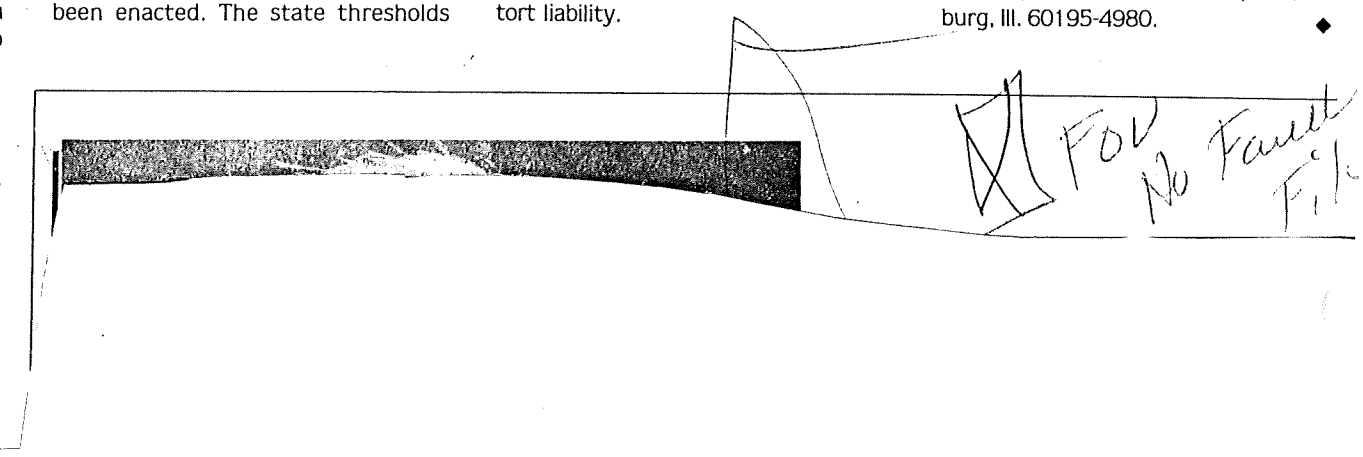
Undertaken to determine if no-fault plans have had a beneficial impact on reducing or stabilizing auto insurance costs for injury-related coverages, the study examined 18 states which have operated under a no-fault plan.

The study measured 1982 no-fault loss costs (pure premiums) against what the estimated average loss costs would have been if no-fault had not been enacted. The state thresholds were broken into four categories for comparison purposes: verbal threshold, threshold $1,000 or more, threshold less than $1,000, and add-on states.

Add-on states are defined as those states in which first-party no-fault coverages have been added to auto policies without any restrictions under tort liability.

An appendix to the study outlines differences in the coverages the studied states provide, and differences in the limitations on the right to sue for general damages.

Single copies are available free of charge from the Alliance of American Insurers, 1501 Woodfield Road, Schaumburg, Ill. 60195-4980. ◆



Press Clipping Division
Kansas Press Service, Inc.
Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

KANSAS
Ulysses News

APR. 26. 1984

No Fault Bill Vetoed

No-fault insurance could cost Kansan's between $9 million and $12 million annually. That point could become reality after Governor John Carlin vetoed House Bill No. 2833 as passed by the Kansas legislature because it increased medical and lost wage benefits to persons injured in auto accidents to compensate for inflationary increases in medical and other costs since 1973 when the no-fault law was originally enacted.

The bill would not change the original concept of 'no-fault' as adopted by the 1973 legislature, but was a badly needed change to enable payments to injured persons to return to the level originally established. In 1973 it was estimated that $2,000 would cover 98 percent of all medical expenses of persons injured in auto accidents.

With the increased costs in medical expenses since 1973 it is idiotic not to increase the benefit level. The $2,000 which covered 98 percent of expenses in 1973 has been reduced to $840 today in terms of 1973 dollars. This means the consumer will have to purchase higher first party benefits than the law requires if they are to have adequate insurance protection.

If House Bill 2833 would have been allowed to become law, the increased benefits would have been provided at little or no cost and the premium of those persons who have already purchased such coverage would have been reduced.

The undesirable premium cost is further emphasized by the fact the Governor signed bills which provide liability coverage to family members; increases the wrongful death limitation on pain and suffering claims from $25,000 to $100,000; and, a bill that will permit the purchase of limited coverage against punitive damages. All of this will push insurance rates up.

The one bill that would have pushed insurance rates down has been vetoed and three bills that will increase premiums have been signed.

Press Clipping Division
Kansas Press Service, Inc.
Affiliate of Kansas Press Association
Box 1773, Topeka, Kansas 66601

KANSAS
Parsons Sun

APR. 24, 1984

Veto will cost motorists

Once again, Gov. John Carlin has catered to the whims of special-interest groups. This time, it was the elite group of Kansas trial lawyers who benefited.

But in the process, Carlin has inflicted a disservice on Kansas motorists by killing a prudent revision of the state's 10-year-old no-fault insurance law.

According to Insurance Commissioner Fletcher Bell, the veto will mean the loss of between $9 million and $12 million annually in improved medical benefits that the bill would have added for policyholders without raising premiums.

The governor's veto simply means people will have to purchase higher first-party insurance benefits.

The legislators had offered a trade-off between the state's low threshold on lawsuits and the statutory limit on no-fault coverage of medical costs. It would have raised from $500 to $1,500 the amount of medical expenses necessary before a person could file suit for pain and suffering, and increased from $2,000 to $5,000 the medical benefits coverage.

But the Kansas Trial Lawyers Association, which like to throw their weight around in Topeka, has opposed a higher threshold for lawsuits on the grounds that it would deny access to the courts for too many motorists. That development remains to be seen. What the lawyers failed to mention, is they also have a vested interest to protect. A higher suit limit would mean fewer clients and less income for them.

Carlin, however, should not have given in to the pressure of petty selfishness. The governor has signed three bills into law that will increase insurance rates for Kansans. The one bill that would have helped offset some of those increases has been vetoed.

It's no wonder then that Bell is upset. He has good reason. Carlin ignored the recommendations of Bell, the Legislature and Kansas motorists. His veto was to please a group of close friends.

As your auto insurance rates increase, you have only Gov. Carlin to thank.

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Box 1773, Topeka, Kansas 66601

KANSAS
Ottawa Herald

APR. 23. 1984

A Costly Veto

Your motor car insurance is going up, Fletcher Bell, the State Commissioner of Insurance said recently, after Gov. John Carlin vetoed a bill revising the Kansas no-fault insurance law.

According to Bell, the increase in Kansas will be between $9 million and $12 million annually. What the bill did was increase benefits for those injured in auto accidents, allowing for medical-cost inflation since the original measure was passed in 1973.

Under the no-fault concept, injured parties with medical costs less that $500 waive the right to sue in return for immediate payment of medical costs. In these days, $500 isn't much. The proposed bill would have raised the limit to $1,500.

Bell's objection to the veto was seconded by the Alliance of American Insurers, a trade group whose members write more than $46 million in premiums in Kansas a year.

That group charged that Carlin "has capitulated to the will of Kansas trial lawyers at the expense of ... consumers." It added that the revision would have reduced lawsuits in Kansas and would help the already overburdened court system which is a growing tax burden for the state.

If only a part of what the insurance people say is true, the Kansas Legislature should vote to override the governor.

Press Clipping Division
Kansas Press Service, Inc.
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Box 1773, Topeka, Kansas 66601

KANSAS
Liberal Southwest Daily Times

MAR. 27 1984

OUR OPINIONS

No-Fault Law Left Unchanged

Efforts by insurance company lobbyists to increase the limits on no-fault auto insurance seem to be stalemated in the Kansas Legislature.

Insurers argued that the state's no-fault automobile insurance law is defective and needs to be changed. Company spokesmen also explained to the the Senate Commercial and Financial Institutions Committee that raising the limit on those benefits without altering other provisions of the law could increase automobile insurance rates.

Opposition came from spokesmen for two lawyers' groups urging the committee to kill the bill, arguing that suffering often results from accidents which cause less than $1,500 in medical expenses, the amount recommended by the House.

Under no-fault, which took effect in 1974 in Kansas, an individual injured in an automobile accident is compensated by his own insurance company instead of the other driver's insurer—regardless of who was at fault in the accident. The purpose of non-fault is to eliminate injury lawsuits in all but the most serious cases.

Insurance lobbyists argued that the bill, which would increae the medical expense limit to $5,000 from the current $2,000, would bring benefits into line with current medical costs.

Also, the bill would increase the limitation barring some lawsuits for pain and suffering. The limitation is designed to eliminate unnecessary lawsuits for minor injuries—currently defined as those with medical expenses of less than $500. Insurers contend the current $500 limit must be increased to keep insurance rates from increasing.

We, and most everyone else, would agree that benefits should be kept in line with current medical costs, but without raising insurance premiums. If raising the limits would make rate increases unnecessary, we would also favor that if some sort of compromise can be struck between the insurers and lawyers.

Automobile insurance is mandatory in Kansas, and it's important to keep rates reasonable. The higher the threshold, the less litigation and the less cost there is.

Carlin vetoes bill to alter no-fault law

Kansas City Times, 4-17-84

By Richard Tapscott
Kansas Correspondent

TOPEKA — Ignoring the advice of the state insurance commissioner, Gov. John Carlin on Monday vetoed proposed changes in Kansas' no-fault automobile insurance law.

Mr. Carlin, a Democrat, said in a message to the Legislature that there was no evidence the new law would have improved insurance protection for Kansas drivers. He also noted that the bill would have eliminated access to the courts for some injured Kansans.

Insurance Commissioner Fletcher Bell, however, estimated that the veto will cost policyholders $9 million to $12 million annually for higher benefits that would have been required by the bill at no added premiums.

Mr. Bell, a Republican, sent a letter to the governor last week urging him to sign the bill, which was designed to curtail automobile injury lawsuits.

"I strongly believed it was in the best interests of the insuring public of the state of Kansas," Mr. Bell said Monday.

The measure was passed by a slim margin of votes in the House, so chances of the Legislature overriding Mr. Carlin's veto appear slim.

A key provision in the vetoed bill would have increased from the current $500 to $1,500 the amount of medical expenses a person must incur to sue for compensation for pain and suffering.

The 1974 no-fault law, one of 26 state acts of its type in the country, was intended to eliminate injury lawsuits in all but the most serious cases. Under no-fault, an individual is compensated by his own insurance company, regardless of who is at fault.

The veto, which had been expected, was immediately attacked by a Kansas insurance industry trade association.

"The failure of the no-fault measure means the Kansas auto insurance rates most certainly will rise in the next several years much more than they would have had the bill become law," said John Young of

See CARLIN, Page B-4, Col. 1

Carlin vetoes measure proposing revisions in no-fault automobile insurance law

Continued from Page B-1

Hutchinson, president of the Kansas Association of Property and Casualty Insurance Cos. Inc.

A spokesman for trial lawyers, the main opponents of no-fault reforms, hailed the veto as a service to Kansas consumers.

"It continues to provide access to the courts for injured citizens," said Kathleen Sebelius, executive director of the Kansas Trial Lawyers Association.

Mr. Carlin complained that increasing the lawsuit level from $500 to $1,500 would make Kansas' threshold the fourth-highest in the United States.

"There is little evidence to indicate that our courts are unduly burdened with automobile lawsuits," Mr. Carlin said.

"I am reluctant to restrict rights of all the citizens of this state unless there is compelling evidence that the benefits received outweigh any potential harm."

The governor also cited a 1981 report by Mr. Bell that found no-fault insurance working well in Kansas.

On Monday, Mr. Bell said in an interview that he thought the current $500 threshold needed to be increased to keep pace with inflation in the last 10 years.

The threshold has not been raised since the law went into effect, Mr. Bell said, adding, "I believe (it is) inadequate and no longer serves the purpose for which it was originally intended."

David Chartrand, a spokesman for the Kansas Alliance for No-Fault, blamed the veto on the influence of trial lawyers.

"We feel that the governor was misled by a single-minded group of people, namely trial attorneys," he said, "who are more interested in protecting their income than they were with the welfare of people who drive cars and buy insurance in this state."

Mr. Chartrand said the alliance, a coalition of most major automobile insurers in the state, believes the veto will cause auto insurance premiums to go up more than they would have if the measure had become law. He conceded that insurgree regardless.

Ms. Sebelius, however, said the insurance industry had not presented testimony to the Legislature or exactly how rates would be affected.

"There was just a lot of talk about whatever the Legislature does will cause insurance costs to rise," she said Monday. "There's always just the threat that insurance premium

Wichita Eagle-Beacon 4-17-84

Revamping Of No-Fault Law Vetoed

From Staff and Wire Reports

TOPEKA — Gov. John Carlin vetoed changes in the state's decade-old no-fault automobile law that would have made it harder for people hurt in accidents to sue for pain and suffering.

The governor also vetoed a bill that would have required corrections officials to report to legislative leaders on the operations of two new prerelease centers for inmates about to be released from state custody.

The Democratic governor objected to the no-fault bill because of a provision that would have restricted who can sue for damages to cover pain and suffering.

"There is little evidence to indicate that our courts are unduly burdened with automobile lawsuits," said Carlin. "I am reluctant to restrict rights of all of the citizens of this state unless there is compelling evidence that the benefits outweight any potential harm."

THE MEASURE would have increased the medical benefits provided for in the law and raised from $500 to $1,500 a limitation or threshold that controls whether an injured person can sue for pain and suffering.

The limitation generally prohibits lawsuits for cases in which medical expenses are less than $500. It does not prevent a lawsuit to recover actual unreimbursed medical expenses and allows a person suffering from a broken bone to sue for damages for pain and suffering even if medical expenses are less than the threshold amount.

Under no-fault, which took effect in 1974, an individual injured in an automobile accident is compensated by his own insurance company instead of the other drivers' insurer — regardless of who was at fault in the accident. The purpose of no-fault is to eliminate injury lawsuits in all but the most serious cases and help lower insurance premiums.

THE CORRECTIONS bill would have limited to 15 the number of minimum security inmates that

VETO, 4B, Col. 4

Corrections Bill Also Axed

No-Fault Law Changes Vetoed

VETO, From 1B

could be kept at the prerelease centers in Winfield and Topeka as maintenance and support workers.

However, Carlin objected to other provisions that would have required the Department of Corrections to develop a plan to operate the prerelease centers and submit it to him, the attorney general, president of the Senate and speaker of the House before the institutions open this summer.

Moreover, those elected officials could require the Corrections Department to file a report at any time on operations of the institutions and any information on individual inmates housed in the centers.

Carlin criticized the proposal, saying the reporting requirements could be imposed "at the whim of individuals outside the executive branch of government."

"Most reporting requirements are periodic, set as to time, and advisory in nature," said Carlin. "These requirements are continuous, sporadic and on-demand. I find this intrusion to be unwarranted."

THE PRERELEASE programs will be non-violent, minimum-custody inmates who are nearing their parole eligiblity date, and are to help prepare prisoners for their return to society.

Besides the revised lawsuit threshold, the no-fault bill would have increased medical benefits. Maximum payments for medical expenses, for example, would have gone from $2,000 to $5,000 under the bill. Payments for loss of earnings would have gone from a maximum of $7,800 to $14,000 a year.

The insurance industry pushed the bill this session, saying Kansas' no-fault system was no longer working because inflation had made its provisions outdated. Industry representatives predicted sharp rate increases unless the 10-year-old law was revamped.

The most vocal opponent was the Kansas Trial Lawyers Association, which argued that an injured person's right to sue would be severely restricted by tripling the lawsuit threshold.

JOHN YOUNG of Hutchinson, president of the Kansas Association of Property and Casualty Insurance Companies, said Monday's veto made auto insurance policyholders "the losers."

"The failure of the no-fault measure means that Kansas auto insurance rates most certainly will rise in the next several years, much more than they would have had the bill become law," Young said in a statement.

"Unfortunately, the measure was attacked by a powerful single-interest lobby of trial attorneys. They were concerned not with providing extra benefits to injured persons, but only with tearing down a system that attempts to reduce insurance costs by reducing unnecessary litigation."

Kathleen Sebelius, lobbyist for the trial lawyers, said the group was pleased with the veto.

"We've maintained all along there was no justification to raise the threshold. All it would do is bar injured citizens from court. It's a good move for consumers of the state ... "

The Legislature could override Carlin's veto, but that would require a two-thirds majority in each chamber. That is unlikely with the no-fault bill because it passed the House with only 63 votes. It takes 84 votes in the House and 27 in the Senate for an override.

The Associated Press and staff writer Terry Wooten contributed to this story.

Governor vetoes no-fault bill that raised suit requirements

Topeka Capital-Journal 4-17-84

By ROGER MYERS
Capital-Journal Statehouse writer

Gov. John Carlin on Monday vetoed a bill that would have tripled the amount of medical expenses that victims of automobile accidents would need in order to file lawsuits to collect damages for pain and suffering.

Carlin vetoed the so-called "no-fault" bill because, "I am reluctant to restrict the rights of all the citizens of this state unless there is compelling evidence that the benefits received outweigh any potential harm.

"There is little evidence to indicate that our courts are unduly burdened with automobile lawsuits.

"There is no demonstration that the bill would enhance the protection for Kansas drivers."

Carlin's veto of the no-fault bill was viewed as a victory for Kansas trial lawyers and a defeat for insurance companies.

Rep. Rex Hoy, R-Fairway, chairman of the House Insurance Commitee which had recommended the bill, said, "People's vehicle insurance rates in Kansas are going to go up.

"The no-fault insurance law hasn't been changed since it was passed in either 1972 or 1974."

Hoy said he personally will not attempt to override Carlin's veto of the no-fault bill, and added he doubts whether any other House member will make the move.

The bill, which originated in the House, passed that chamber by a slender margin and a two-thirds majority vote is needed to overturn a governor's veto.

Kathleen Sebelius, executive director of the Kansas Trial Lawyers Association, said, "We're really pleased he vetoed the bill.

"It's been the contention of the Kansas Bar Association and the Trial Lawyers that there's absolutely no evidence the law needed to be changed.

"There's been a decline in automobile cases in Kansas, and has been ever since no-fault was passed.

"We believe raising the threshold of medical expenses needed to sue for pain and suffering would harm all the citizens of the state.

> "We believe raising the threshold of medical expenses needed to sue for pain and suffering would harm all the citizens of the state.
>
> —Kathleen Sebelius, executive director Kansas Trial Lawyers Association

"The present system is working, so why change it?"

The no-fault bill would have increased from $500 to $1,500 the amount of medical expenses which must be incurred before an injured party could sue for pain and suffering.

That was the most controversial aspect of the bill, and was Carlin's principal objection to the legislation.

The governor said in his veto message, "I support the concept of no-fault insurance as a mechanism which protects the citizens of Kansas by requiring the purchase of insurance, and provides a mechanism outside the court system for prompt and adequate compensation for mminor injuries.

"The current system also provides an avenue for those persons who have suffered more serious damages to seek redress through the court system."

The governor said he did not object to other provisions in the bill which raised the minimum benefits for such items as loss of earnings, survivors' benefits, funeral expenses, rehabilitation expenses and expenses for hiring substitutes to provide services to accident victims and their families.

But, he added, "using an increase in the threshold to finance those benefits seems unduly harsh to injured Kansas citizens.

"Most drivers currently choose to purchase insurance benefits which exceed the mandatory minimum, and since the package is available for only a few dollars a year, it unfairly penalizes all the citizens in Kansas to raise the threshold to fund these additional benefits."

The governor also vetoed a bill which would have required corrections officials to keep state officials and legislative leaders abreast of inmates who will be sent to the two new pre-release centers approved by the 1984 Legislature.

The governor recommended and the Legislature passed legislation establishing pre-release centers in unusued buildings on the grounds of Winfield and Topeka state hospitals.

The bill Carlin vetoed would have required corrections officials to file reports on pre-release inmates with the governor, attorney general, president of the Senate and speaker of the House.

The measure had been sought primarily by Attorney General Robert Stephan, a Republican.

Carlin said in vetoing the bill that it would create "a continuous reporting requirement by the secretary (of corrections) at the whim of individuals outside the executive branch of government.

"I find this intrusion to be unwarranted."

Benefits of No-Fault Auto Insurance

Why does it work?

Properly used, good no-fault auto insurance admirably serves the purpose for which it was created.

Injuries from auto accidents exact a tremendous toll on American lives and American dollars. For years, state government and insurance companies have been struggling to find a fair and efficient way to compensate victims of auto accidents for economic and non-economic losses. Good no-fault auto insurance has proven to be an equitable solution to the problem.

In the ten-plus years since no-fault auto insurance laws were first enacted in this country, its goals have remained constant: To pay more people for their medical costs and lost wages; to pay them faster and more equitably regardless of driver negligence; and to reduce court congestion and legal costs associated with auto accident injury settlements.

In contrast, the present tort system requires determination of fault in auto accident settlements. That premise alone often causes claims disputes.

Under tort law, you the policyholder purchase third-party liability insurance to protect yourself against lawsuit if you are negligent and cause injuries to persons in another car.

Under no-fault law, you buy Personal Injury Protection (PIP) which provides first-party coverage for medical expenses, wage-loss, rehabilitation, service replacement costs (for example, housekeeping and child care expenses) and funeral expenses for yourself, your family and other occupants of your car. So, no matter who is at fault in an accident, individuals in your car who suffer injury will be quickly compensated for their medical expenses and other economic losses up to limits you choose when you purchase PIP auto coverage. Payments for medical treatment can begin without delay.

No-fault insurance guarantees coverage whether you are hit by an uninsured motorist or are yourself at fault in an accident. Under tort law, if the driver who hits you has no insurance and no assets, you can recover

nothing. Under no-fault law, you protect yourself against losses incurred in auto accidents.

In order to be cost-effective in guaranteeing protection, a no-fault system limits payments on non-economic losses (pain and suffering) to make dollars available which can then be applied to make extensive payment of medical expenses and lost wages when necessary. This approach avoids overcompensating people for minor injuries.

No-fault laws do not deny seriously injured citizens their right to sue. Motorists in no-fault states simply agree to limit suits for non-economic loss to cases involving losses over a mandated ceiling ("threshold"). For example, in a no-fault state with a $5,000 medical threshold, insured drivers agree not to sue for non-economic damages unless medical expenses exceed $5,000. And, when medical bills do surpass the threshold, accident victims still have the right to initiate tort action for losses due to pain and suffering. In other words, insured drivers in a no-fault state trade uncertain tort recovery in less serious accidents for guaranteed first-party coverage.

In a tort system, disproportionate claim settlements are often made. Insurers sometimes pay too much to settle small, nuisance claims in order to avoid more costly litigation. Litigation expenses that insurers incur defending their policyholders under liability coverage lead to higher premiums for all policyholders.

Payment for medical treatment prior to settlement is often delayed by the tort system, hindering an individual's financial recovery. Claimants are not guaranteed compensation for medical expenses or loss of income resulting directly from injuries sustained in an auto accident. Service replacement costs are also difficult to recover, and often when an attorney becomes involved, net settlements are reduced to cover the attorney fees.

No-fault coverage provides medical expense, wage-loss, service replacement costs and funeral expenses up to specified amounts. Claimants are swiftly and fairly compensated for out-of-pocket expenses. The system works because claimants deal with their own insurers, with levels of protection they select. There is no need to determine fault before the bills are paid.

No-fault laws do not, however, permit careless drivers to escape retribution. Drivers at fault in an accident are still subject to state traffic laws and can be sued if they cause loss in excess of the state's tort threshold.

No-fault coverage also offers a method of handling auto accident claims with minimal recourse to the courts. It reduces the need for court action by offering quicker, more satisfactory claims settlement. The result in many no-fault states has been a

What Is a "Good" No-Fault Law?

The key to the success of no-fault auto insurance in Florida and in other states has been the design of the law. The Alliance and its member companies have led attempts to pass effective no-fault laws and reform poorly designed rules in state legislatures across the country.

A poorly designed no-fault law is one which increases overall claims costs — and resulting premiums — by setting the tort threshold so low that no-fault benefits simply become a "bonus" payable to anyone who has an auto accident. In such states, costs increase because no-fault benefits are being paid in addition to large tort settlements. Some states (like New Jersey) not only legislated low tort thresholds but added "unlimited" benefits to further increase the total claims settlement bill for the state. New Jersey has recently tried to correct its no-fault law.

Experience has proven that the best no-fault law creates a balance in allocation of benefits to persons injured in auto accidents. There are some very basic provisions necessary to accomplish that balance.

Generally, a good no-fault law includes suitable tort restrictions — with a verbal threshold — developed according to state experience. Benefits must be reasonable but not excessive while insurers are allowed to offer higher optional coverage limits. Provisions are made to offset recovery from other sources like workers' compensation. Rates must provide adequate income which will help insurers to cover claims costs while premiums remain affordable for the state's drivers.

Following is a more specific outline of the provisions of a workable no-fault auto insurance law. It mandates:

- A verbal threshold that allows suit when an accident results in death, serious and permanent disfigurement, or serious and permanent injury.
- Insurer must offer reasonable medical and rehabilitation benefits.
- Coverage for work loss, service replacement costs, housekeeping, child care, survivors' loss, funeral, cremation and burial expenses.
- A deadline for collection of benefits and placement of claims.
- Against "stacking:" coverage from more than one car cannot be applied to a single case.
- Anti-fraud provisions.
- That provisions be made for reparations payments to persons injured in auto accidents who are not covered by no-fault (assigned claims plan).

reduction in the need for attorney representation to settle disputes, and fewer nuisance claims contributing to the congestion of already clogged court dockets.

The reduction in litigation has multiple and long-term advantages. The immediate result is that a no-fault state spends less money administering the settlement of small auto injury claims in the judicial system. In 1982, the Institute for Civil Justice, in its study "Costs of the Civil Justice System," reported that many court cases cost the state government more to administer than is at stake for the litigants.

Insurance companies, too, spend less money on court costs and attorney fees as a result of the reduction in litigated claims. The savings for both the state and insurers ultimately benefits the consumer as a taxpayer and policyholder.

Balanced no-fault legislation is one factor in a cost-effective auto insurance program for any state. Many uncontrollable factors impact insurance prices, such as medical and auto repair costs. Some states, however, have achieved significant cost controls under no-fault.

Cost stability occurs more often in no-fault states that adopt a strong tort threshold, particularly a verbal threshold. A verbal threshold describes the type and extent of injury that warrants a tort suit for pain and suffering.

For example, a recent Alliance Research Department study estimates that 1982 injury claims costs in Florida are 21 percent lower than they would have been had that state continued under a tort system. Michigan and New York have had similar experiences. Injury claims costs in Michigan are down an estimated 17 percent, with a six percent estimated decrease occurring in New York.

While a verbal threshold works best, a dollar threshold is most effective when it is set at a high amount and regularly increased relative to state medical care costs. For example, Alliance researchers estimate that even states with moderate thresholds, where medical costs are relatively low, are spending less in claims costs. Kentucky, with a $1,000 threshold, is estimated to be spending 29 percent less on injury claims than it would have under tort. In North Dakota, also with a $1,000 threshold, injury claims costs are estimated to be 19 percent lower per year than they would have been under tort.

The impact of a given threshold varies from state to state partly because of the dramatic differences in medical care costs. Some states operating under no-fault law have seen insurance rates rise because thresholds are so low that no-fault benefits are merely added to already high tort settlements. Hawaii, for example, has raised its threshold from $1,500 to $4,500. Injury claims costs there had gone up an estimated 37 percent due to the imbalance between the threshold and medical care costs.

No-fault auto insurance can help to stabilize the cost of bodily injury coverages, but success is dependent on

Figure 1. Relative Change in Injury Coverage Costs Under No-Fault Auto Insurance

	Year No-Fault Effective	Threshold at Time of Study	Relative Change in Injury Coverage Costs**
Verbal Threshold			
Florida	1972	Verbal*	−21%
Michigan	1974	Verbal	−17%
New York	1974	Verbal*	− 6%
Threshold $1,000 or more			
Minnesota	1975	$4,000*	− 2%
Hawaii	1974	$1,500	+37%
Kentucky	1975	$1,000	−29%
North Dakota	1976	$1,000	−19%
Threshold Less than $1,000			
Pennsylvania	1975	$ 750	+53%
Colorado	1974	$ 500	+15%
Georgia	1975	$ 500	+15%
Kansas	1974	$ 500	− 9%
Massachusetts	1971	$ 500	−33%
Utah	1974	$ 500	−13%
Connecticut	1973	$ 400	+14%
New Jersey	1973	$ 200	+65%

*The verbal threshold in Florida became effective in 1976. The verbal threshold in New York became effective in 1978. Prior to 1978, Minnesota's threshold was $2,000.

**The latest year of no-fault experience (1982) measured against what the estimated average loss costs would have been if no-fault had not been enacted.

Source: "The Cost of No-Fault," Alliance Research Department, 1983. Since this research was completed (August 15, 1983), Hawaii increased its threshold to $4,500 and revisions are being considered in New Jersey and Pennsylvania.

Figure 2. What The Insurance Consumer Gets

TORT	NO-FAULT
A. Right to sue no matter how small the claim • for economic losses • for non-economic losses (pain & suffering)	A. Right to sue: • for uncompensated economic losses • for non-economic loss (pain & suffering) when injuries are serious and permanent or medical expenses exceed a dollar ceiling ("threshold")
B. Payment for medical expenses and non-economic damages when total losses are ascertained (sometimes months or years after injury) if the other driver is at fault • awards are often reduced by the plaintiff's percent of fault • if policyholder is at fault, coverage is not available for loss of income, loss of services or funeral expenses • medical expenses are severely limited when policyholder is at fault	B. Guaranteed and immediate payment of medical expenses regardless of who is at fault • coverage generally available for loss of income, loss of services, and funeral expenses
C. Large number of minor suits clogging court dockets	C. Reduced number of cases on court dockets
D. High percentage of settlement dollars go to attorneys	D. More settlement monies paid directly to injured parties

With both no-fault and tort law, policyholders are advised to purchase liability, uninsured motorist and underinsured motorist coverages.

the limits of the tort threshold. Verbal tort thresholds provide for immediate payment of economic losses and still allow recovery for general damages such as pain and suffering in serious injury cases. The savings in administrative costs and litigation expenses under a verbal threshold allow for payment of higher benefits to seriously injured persons and eventual savings for the policyholder.

The Florida experience

Florida is more than a good example of how no-fault can reduce claims costs. University of Nebraska Law Professor Roger C. Henderson uses Florida to demonstate that no-fault can achieve its other stated goals as well.

In a 1976 report to a special Congressional Committee on Motor Vehicle Accident Reparations, Henderson showed that, in Florida, no-fault laws reduced the amount of litigation arising from auto accidents. Florida passed its original no-fault law in 1971. From 1969 to 1974, Henderson reported, personal injury tort litigation had dropped by as much as 15 percent in one representative county.

Florida insurers reported a definite shift from third-party (liability) claims payments to first-party (PIP) payments. Two companies there said that before no-fault, third-party claims payments were 60 percent of total auto claims and 40 percent were first-party. After no-fault the distribution shifted to 80 percent first-party and 20 percent third-party, indicating that more people were handling their own auto injury claims with less friction or dispute than under the previous third-party system.

Were those claimants paid faster? Henderson's study showed that first-party claimants received their first payments in one-third less time after the accident than did third-party claimants under the old tort system.

Henderson quoted a Florida closed claim file study to show that no-fault benefits were allocated more evenly than tort benefits. The study indicated that more claims were settled in amounts closer in value to verified medical losses than under tort law. In addition, it showed that more serious injuries (those claims over $2,000) were receiving larger payments and there were more frequent payments below $500. This suggests that under no-fault law serious cases are more adequately compensated.

Floridians, according to Henderson, found no-fault settlements simpler. Consequently, they hired fewer attorneys for smaller cases. In 1971, before the no-fault law was enacted, 25 percent of all insurance claims in Florida were settled without attorneys. By 1973, after no-fault had been operative for one-and-a-half years, that number had grown to 80 percent.

Henderson said his findings also indicated that no-fault generally results in less expense to the system while it allows a greater portion of insurance premiums to be returned to victims. The simplicity of the system also reduces stress on victims as they pursue their claims. ■

REFERENCE INFORMATION DOCUMENTS

Insurance Facts

From INSURANCE INFORMATION INSTITUTE

6701 W. 64th Street
Suite 215
Shawnee Mission, Kansas 66202
(913) 831-0080

KANSAS NO-FAULT AUTO INSURANCE FACTS

-- No-Fault Law Citation: KSA 40-3103

Passed in 1973, became effective 1974

Terminology

-- No-Fault

The policyholder's insurance company pays certain benefits for injuries suffered in an accident -- regardless of fault. These benefits are the "no fault" part of your policy. No-fault does not include the physical coverage on the vehicle.

-- Personal Injury Protection (P.I.P.)
This term collectively refers to the no-fault benefits noted above.

These benefits include rembursement for lost wages, disability, medical expenses, rehabilitation services, death benefits, etc.

-- Lawsuit threshold (or tort threshold)

Fundamental component of a no-fault law. The threshold is the dividing line between what a given state defines as major injuries and less-serious injuries.

-- Kansas lawsuit threshold

The Kansas law states that a person who suffers certain, described serious injuries or incurs medical bills of $500 or more has crossed the threshold and has no restrictions on filing lawsuits

Restrictions only concern suits for non-pecuniary damages (i.e., pain, suffering, etc.) Injured persons have no restrictions on suits for actual, out-of-pocket losses.

"NO-FAULT" AUTOMOBILE INSURANCE

A major change in the biggest single line of property and casualty insurance—automobile insurance—has been in the making since the early 1970s. Widespread dissatisfaction with the operation of the traditional tort liability system, under which recoveries by accident victims of their losses are often dependent upon proving who caused the accident, has led to the adoption of "first-party" laws by about half the states and consideration of similar action by most of the other states.

A number of states have enacted laws mandating the purchase of auto liability insurance and a form of "no-fault" insurance which permits accident victims to recover such financial losses as medical and hospital expenses and lost income from their own insurance companies. Most of those states also have some restrictions on the right to sue. Several other state laws make optional the purchase of "first party" coverages up to specified minimum limits.

A new "no-fault" law in the District of Columbia, effective in October 1983, originally had been scheduled to become operative in September 1982.

Among the states which have adopted forms of "no-fault" auto insurance, the major variations involve: dollar limits on medical and hospital expenses (unlimited in some states), funeral and burial expenses, lost income and the amount to be paid a person hired to perform essential services that an injured non-income producer is unable to perform; also, conditions governing the right to sue which usually include death, serious injury and a point at which medical expenses reach a stipulated amount.

Jurisdictions which have forms of "first-party" auto insurance and the dates on which the laws originally became effective, follow.

Compulsory first-party/liability insurance; some restrictions on lawsuits

Colorado, April 1, 1974	Kansas, January 1, 1974	New Jersey, January 1, 1973
Connecticut, January 1, 1973	Kentucky, July 1, 1975	New York, February 1, 1974
District of Columbia, October 1, 1983	Massachusetts, January 1, 1971	North Dakota, January 1, 1976
Georgia, March 1, 1975	Michigan, October 1, 1973	Pennsylvania, July 19, 1975
Hawaii, September 1, 1974	Minnesota, January 1, 1975	Utah, January 1, 1974

Compulsory first-party, optional liability insurance; some restrictions on lawsuits

Florida, January 1, 1972	Puerto Rico, 1970

Compulsory first-party and liability insurance; no restrictions on lawsuits

Delaware, January 1, 1972	Maryland, January 1, 1973	Oregon, January 1, 1972

Compulsory liability, optional first-party insurance; no restrictions on lawsuits

South Carolina, October 1, 1974	Texas, June 17, 1981

Insurance not compulsory; first-party benefits optional, no restrictions on lawsuits

Arkansas, July 1, 1974	South Dakota, January 1, 1972	Virginia, January 1, 1972
New Hampshire, October 1, 1971		

Source: American Insurance Association.

No-Fault Insurance—The Concept

Reacting to the increasing problems in the existing legal system, legislatures in a number of states debated whether the no-fault concept (which in a somewhat different form had been operative for workers' compensation insurance for many years) could be successfully applied to automobile insurance. The writings of researchers were widely read by lawmakers, insurance industry leaders, the legal profession, and others.

The theory of no-fault is quite simple. Basically, the aim was to reduce the number of automobile accident cases in the tort-liability system. The dollar savings resulting from this reduction in tort litigation (and the costs associated with it—including attorney's fees), would be accumulated and used to pay the new and generous first party no-fault benefits designed to compensate victims for essentially all of their actual economic loss. It was believed that if the non-serious cases could be removed from the tort system, through the use of what has come to be known as a "threshold," the substantial overpayment of such claims settled pursuant to the nuisance theory (settlement was less expensive than defense in court) would be eliminated. This dollar savings would more than make up for the new costs of the required no-fault payments. Simply stated, the intended result of no-fault was to compensate most, if not all, accident victims for their economic loss, while allowing those who were seriously injured to pursue a cause of action in tort to receive compensation for pain and suffering—all this without having to raise rates.

No-Fault Auto Insurance—Its Many Varieties

On January 1, 1971, Massachusetts became the first U.S. state to enact an auto no-fault law. In the next five years 24 other states enacted some form of auto no-fault insurance legislation. However, of the total of 25 states, the laws of only 17 states included "threshold" limitations on the right to recover "general damages." The other eight states legislated only that Personal Injury Protection coverage (commonly called PIP) be required or at least be made available to protect a policyholder for actually incurred expenses up to specific per-person dollar limits. Three states included provisions in their laws for auto property damage no-fault. Later Florida and Massachusetts rescinded those provisions, with only Michigan retaining this feature as of the time of this writing.

The laws of many of the no-fault states were soon challenged in the courts, with various interest groups contending that the limitations on the right to claim and sue if necessary for "general damages" was a deprivation of a constitutional right. In general, the state supreme courts upheld the constitutionality of the no-fault laws. The exception was Illinois, where the law was struck down in 1972, largely on technical grounds.

In spite of the fact that about half of the states in the U.S. passed auto no-fault legislation in the relatively short span of a half-decade, many differences exist between the various state laws. Often the differences are the result of what individual legislatures regarded to be the local needs of their own states.

For example, the scope of the Personal Injury Protection coverage varies widely with some states requiring only a few thousand dollars of first party no-fault coverage, while other states such as Michigan, New Jersey and Pennsylvania require unlimited medical expense coverage and several thousands of dollars of coverage for wage losses and other expenses. The tort thresholds (used to remove cases from the tort system) also differ greatly between states.

SOURCE: Allstate Insurance Company's, *Insurance Handbook for Reporters*, 1979, pp. 22-27.

A Statistical Look at NO-FAULT

The results of three newly-released studies on auto injuries confirm that the no-fault system has some benefits, but no-fault has not yet been perfected and a need exists for continued experimentation with no-fault auto insurance in the various states. The studies, released by the All-Industry Research Advisory Committee (AIRAC), include a Closed Claim Study of more than 60,000 auto injury claims countrywide, a study of large-loss injury cases (over 100,000) arising under the unlimited medical coverages now available in Michigan, New Jersey and Pennsylvania and an independent Consumer Panel Study based on the auto accident experience of 1,849 U.S. families.

The three studies provide data on the kind of auto injuries now occurring, the amounts of economic loss being generated by auto crashes, and the payments being received by injured persons from various sources. They also provide a data base for studying the operation of the tort liability system and the changes wrought by passage of no-fault laws.

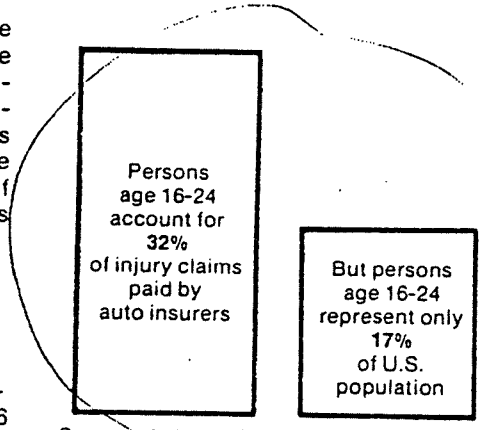
Major findings of the Closed Claim Study

Data from the Closed Claim Study indicate that no-fault laws enacted in 16 states have brought about major changes in the way auto accident victims are paid for their injuries.

The study shows that 77 percent of all auto injury claims were paid on a no-fault basis in those 16 states, compared with 34 percent of claims in states that remained under traditional tort liability laws. The no-fault coverages (primarily medical payments coverage in tort states and personal injury protection coverage in no-fault states) accounted for 35 percent of the total dollars of payment in no-fault states, compared with only 10 percent in the tort states.

File reviewers completing the survey forms in no-fault states were asked to judge whether persons receiving Personal Injury Protection (PIP) payments would be eligible to file a liability claim as well, both under the current no-fault laws and under the previous tort systems in those states. Their answers indicated that about 65 percent of PIP claimants would have been eligible for filing an additional liability claim under a traditional tort system, but that only 23 percent were eligible under current no-fault laws. This indicates that the tort thresholds contained in the various no-fault laws have eliminated about 42 percent of the potential liability claims among persons collecting no-fault benefits.

No-fault laws have reduced the portion of injury-related auto insurance payments that go for general damages, according to the report. In tort states, 57 cents out of the average dollar of payment goes for general damages and 43 cents goes for reimbursement of economic losses such as medical expenses and lost wages. In the no-fault states, 48 cents goes for general damages and 52 cents for economic losses.



Source: *Automobile Injuries and Their Compensation in the United States.* All-Industry Research Advisory Committee, April 1979.

The Closed Claim Study also provides information on the role of attorneys and lawsuits in the compensation of auto injury losses. The data show that 47 percent of individuals paid under the bodily injury liability coverage retained attorneys, compared with only 17 percent of the persons collecting under the no-fault PIP coverages. In most instances, PIP claimants who retained attorneys did so in order to assist them in pursuing an associated liability claim.

Attorney representation was more prevalent for auto accidents occurring in large metropolitan areas than for accidents occurring in small towns and rural areas. In all areas, more claimants with large economic losses retained attorneys than claimants with small losses.

The study indicates that about 21 percent of bodily injury liability claims countrywide involved lawsuits. However, only 1.5 percent went to trial, and less than 1 percent were tried to verdict. Persons whose claims were settled without lawsuits received more reimbursement per dollar of economic loss than persons whose claims involved legal controversy.

The Closed Claim Study also provides extensive information on the characteristics of persons who sustained auto injuries and on the crashes that caused them.

Young persons represented a much larger proportion of injury claims paid by auto insurers than might be expected on the basis of U.S. population data alone. For example, persons between the ages of 16 and 20 represented 9.8 percent of the U.S. population at the time of the survey, but accounted for 18.2 percent of the bodily injury liability claims, 15 percent of the uninsured motorist claims, 21.9 percent of the medical payments claims and 20.5 percent of the personal injury protection claims. Young persons also were disproportionately involved in the large-loss accidents. Persons under age 16 and those 65 and older were under represented in the groups sustaining injury, while those in the 25 to 64 age group reported injuries roughly in proportion to their share of the population.

Insurer Study of PIP Serious Injuries

The high injury rates generated by young adults were especially evident in serious injury cases.

The Insurer Study of PIP Serious Injury Claims in Michigan, New Jersey and Pennsylvania identified 420 open claims whose ultimate cost was estimated at $100,000 or more. The average cost per claim was estimated at $293,000, and the individuals involved are expected to continue receiving medical payments for an average of 27 years.

"...the no-fault system has some benefits, but no-fault has not yet been perfected..."

"Persons with relatively minor injuries collect more reimbursement per dollar of economic loss than persons with serious injuries."

Young adults between the ages of 16 and 24 accounted for nearly half of these

Continued on page 4

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NO-FAULT

Continued from page 3

large-loss claims, compared with about one-third of PIP claims of all sizes. This group's share of the U.S. population is about 17 percent. Single-vehicle crashes account for 43 percent of these cases. About 32 percent of the crashes occurred in rural areas.

All of these cases, by definition, involved serious injuries. Almost 60 percent were considered to involve permanent and total disability. Nearly 50 percent of the injuries resulted in brain damage or motor impairment, and another 40 percent involved spinal cord damage.

Consumer Panel Study

The Consumer Panel Study provides auto injury information independent of insurance company files, including information on benefit sources other than auto insurance. Two consumer research firms, Market Facts, Inc. and National Family Opinion, Inc., were hired to survey panels consisting of about 60,000 U.S. families, and to identify families that had experienced an injury-producing auto accident within the prior two years. Those families were asked to provide detailed information on the injuries and on the compensation received from all benefit sources.

The responses indicated that most persons injured in auto accidents have more than one *potential* source of reimbursement. About 92 percent of the 1,849 respondents said they were covered by auto insurance, and 84 percent said they had group health insurance. Only 2.4 percent said they had neither coverage.

Persons with relatively minor injuries collect more reimbursement per dollar of economic loss than persons with serious injuries. This trend holds true regardless of whether they collect from auto insurance, health insurance or various government benefit sources.

Most people sought reimbursement from only one benefit source if the economic loss was small. Only about 16 percent of persons whose claims were resolved had collected from more than one source when their economic losses were $500 or less. But when economic losses exceeded $5,000, about 61 percent had received payment from two or more benefit sources. On an overall basis, considering claims of all sizes, 78.5 percent of those receiving some payment collected from one source, 19.3 percent collected from two sources and 2.3 percent collected from three or more benefit sources.

As a group, persons who collected from a single benefit source received payments averaging $1.42 for each dollar of economic loss sustained. Those who collected from two sources received payments equal to $1.33 for each dollar of loss, and the few individuals who collected from three different sources received $1.56 per dollar of loss.

Persons with small economic losses received more reimbursement per dollar of loss than those with large losses, under all types of benefit systems, government and private.

Auto insurance was the single most important source of benefits for auto injuries, providing 67.5 percent of all reimbursement received by persons whose medical claims had been fully resolved. Group health insurance was next, providing 22.3 percent of total reimbursement. Government benefit programs provided 5.6 percent of the reimbursement, workers' compensation 3.5 percent and all other private insurance sources 1.1 percent.

> "Attorney representation was more prevalent for auto accidents occurring in large metropolitan areas than for accidents occurring in small towns and rural areas."

By area of residence, auto insurance provided the highest percentage of total reimbursement in large cities (75 percent), followed by suburbs and medium-sized cities (67 percent), rural areas (63 percent) and small towns (59 percent).

Among claims closed with payment, auto insurance provided 76 percent of total reimbursement in the no-fault states, compared with 63 percent in the tort states. Group health insurance provided about 22 percent, government sources about six percent and other miscellaneous programs less than five percent in the no-fault states.

About 22 percent of the injured persons on this Consumer Panel Study said they hired an attorney and 78 percent said they did not. Persons living in large cities were more than twice as likely to retain an attorney than residents of rural areas. Nearly 32 percent of large city residents reported they had hired an attorney, compared with 26 percent in the suburbs, 21 percent in medium-sized cities, 18 percent in small towns and only 14 percent in rural areas.

Attorney involvement was higher i the traditional tort states, with 23. percent of injured persons representec compared with 19.8 percent in the nc fault states.

The report, titled Automobile Injurie and Their Compensation in the Unitec States, is available in a two-volume set Orders are being handled on behalf o AIRAC by the Research Department Alliance of American Insurers, 20 N Wacker Dr., Chicago, IL 60606.

NO-FAULT AUTO INSURANCE

In the late 1960s there was a growing public discontent, shared by many auto insurance companies, with the traditional legal methods of compensating injured victims of auto accidents. Although most auto insurance policies did make available coverages to protect policyholders for medical expenses and other out-of-pocket losses, recovery of other major damages through liability coverages was generally dependent on the injured or deceased person not having caused or contributed to the accident.

Determining who was legally at fault for an accident sometimes involved an expensive and time-consuming investigation on the part of insurers and the parties involved. In disputed cases where legal counsel represented the claimant and the insurance company, attorney fees and congested court dockets further increased expenses and delays. Inadequate liability coverage limits in some instances (and an increasing number of negligent drivers who had no liability insurance at all) worked additional hardships on seriously injured accident victims.

SOURCE: Allstate Insurance Company's, *Insurance Handbook for Reporters*, 1979, pp. 22-27.

No-Fault Insurance—The Dollar Threshold

The majority of states employ a dollar threshold—that is, individuals are prevented from suing in tort to recover for pain and suffering, unless their medical expenses exceeded a certain dollar amount. The dollar threshold has failed in most states because it offers an inviting "target" at which the victim, his doctor, and his lawyer can take careful aim. All three have a substantial economic interest in witnessing the utilization of no-fault medical benefits to the extent necessary to cross the threshold: the victim because such gives him a chance at the "pot of gold" at the end of the tort liability rainbow, his lawyer because he takes 30% to 50% of the "pot of gold" from the victim in the form of contingent fees, and the doctor because auto insurers pay the costs of medical services rendered to an auto accident victim.

Thus, dollar thresholds encourage over-utilization of first party benefits, and such over-utilization, in turn, produces larger third party or tort liability judgments for pain and suffering, since pain and suffering awards are generally tied by way of a multiplier to the level of actual economic loss.

Ultimately, both first and third party costs increase beyond all expectation, and the people must simply be asked to pay more in the form of increased auto insurance rates.

No-Fault Insurance—The Disability Threshold

While the dollar threshold represents the predominant tort restriction mechanism in effect in most no-fault states today, other approaches have been tried, including what is known as the disability threshold. A disability threshold provides that a victim may not sue in tort unless he has been disabled (defined differently in various state plans) from the accident for a specific period of time. While perhaps a disability threshold is more difficult to abuse than a dollar threshold, it suffers from the same infirmities because, again, it offers a target (a specific time period) to the victim, his doctor, and his lawyer. Moreover, it must be remembered that it is not economically painful for the victim, under a no-fault scheme, to remain disabled for a considerable period of time because he is, at the same time, being compensated for all his medical expense as well as most, if not all, of his lost wages. Thus, he experiences little or no out-of-pocket loss while he waits long enough to qualify to pursue a cause of action in tort. Thus, the disability threshold approach, while perhaps superior to the dollar threshold, still suffers from fundamental and fatal flaws.

No-Fault Insurance—The Verbal Threshold

The other major type of tort threshold is what has come to be known as the "verbal threshold." Here victims are allowed to sue in tort only if their injuries meet certain verbal descriptions of the types of injuries which should, as a matter of policy, render one eligible to seek to recover for pain and suffering in a cause of action in tort.

The verbal threshold was invented to cure the "target" problems inherent in a dollar threshold, and it appears today that a verbal threshold holds out the best chance of meeting the original intent of no-fault which is to compensate most victims for all of their economic loss without having to increase insurance rates substantially.

No-Fault Insurance—Multiple Recoveries

One other problem that has not been addressed by many legislatures is the opportunity for injured persons to realize multiple recoveries for the same expenses. This creates the invitation to profit from unnecessary medical treatment and over-extended absence from work. When opportunities exist to duplicate an insurance recovery for the same expenses, the ultimate result is that higher premiums must be charged to cover such duplicate benefits.

Note
Still 1970
More evident
in 1984
The West

SOURCE: Allstate Insurance Company's, *Insurance Handbook for Reporters*, 1979, pp. 22-27.

The average cost in community hospitals per patient day has risen from $102.40 per day in 1973 to $284.30 in 1981! The cost is even higher in 1984, perhaps 30% higher!

The medical cost care component as a percent of the total annual budget for a four-person family has risen from 8.1% to only 9.4% in 1981.

All medical care items has risen from 137% in 1973 to 328.7% in 1982. This total has also increased sharply from 1982 to 1984.

The average Bodily Injury claim has increased from $2,125.00 in 1973, to $5,041.00 in 1982.

SPECIAL NOTE:

Source Documents for the above cost comparisons are attached and identified as Reference No. 6 (Continued).

Table 5.18
Medical Care Component as a Percent of Total Annual Budget

	Four Person Family			Retired Couple		
	Lower	Intermediate	Higher	Lower	Intermediate	Higher
1970	8.1%	5.3%	3.8%	12.3%	8.8%	6.0%
1971	8.4	5.6	4.0	12.7	8.9	5.8
1972	8.5	5.5	4.0	12.6	8.7	5.7
1973	8.1	5.3	3.8	12.0	8.4	5.7
1974	8.0	5.2	3.7	12.6	8.9	6.0
1975	8.5	5.4	3.8	12.2	8.6	5.8
1976	8.9	5.5	4.2	12.2	8.5	5.8
1977	9.4	5.8	4.1	13.3	9.4	6.4
1978	9.2	5.7	4.1	13.9	9.8	6.7
1979	9.3	5.7	4.0	13.9	9.8	6.7
1980	9.2	5.6	3.9	14.2	10.1	6.9
1981	9.4	5.7	4.0	15.0	10.7	7.3

SOURCE: U.S. Department of Labor, Bureau of Labor Statistics.

Table 5.19
Average Cost to Community Hospitals Per Patient Day and Per Patient Stay; Average Length of Stay in Community Hospitals in the United States

Calendar year	Average cost to hospital per patient day			Average length of hospital stay (days)	Average cost to hospital per patient stay
	Total	Payroll	Other		
1946	$ 9.39	$ 4.98	$ 4.41	9.1	$ 85.45
1950	15.62	8.86	6.76	8.1	126.52
1955	23.12	14.26	8.86	7.8	180.34
1960	32.23	20.08	12.15	7.6	244.95
1961	34.98	21.54	13.44	7.6	265.85
1962	36.83	22.79	14.04	7.6	279.91
1963	38.91	24.01	14.90	7.7	299.61
1964	41.58	25.26	16.32	7.7	320.17
1965	44.48	27.44	17.04	7.8	346.94
1966	48.15	29.41	18.74	7.9	380.39
1967	54.08	32.44	21.64	8.3	448.86
1968	61.38	36.61	24.77	8.4	515.59
1969	70.03	41.36	28.67	8.3	581.25
1970	81.01	47.30	33.71	8.2	664.28
1971	92.31	53.80	38.51	8.0	738.48
1972	105.30	59.80	45.50	7.9	831.70
1973	102.40	57.00	45.40	7.8	798.70
1974	113.60	61.90	51.70	7.8	886.10
1975	133.80	70.90	62.90	7.7	1,030.30
1976	151.80	78.00	73.80	7.7	1,168.90
1977	174.00	87.40	86.60	7.6	1,322.40
1978	194.30	96.60	97.70	7.6	1,476.70
1979	217.30	107.30	110.00	7.6	1,651.50
1980	245.10	119.20	125.90	7.6	1,862.80
1981	284.30	138.20	146.10	7.6	2,160.70

NOTE: Data prior to 1972 include hospital units of institutions. Total expenses include: payroll expenses; employee benefits; professional fees; depreciation expense; supplies and purchased services. Payroll expenses include: physicians' and dentists' salaries; medical and dental interns and residents; trainees in medical technology and administration; other personnel. Data for years 1973-1981 have been adjusted to include outpatients.

SOURCES: American Hospital Association, *Hospital Statistics* (various annual editions), and Health Insurance Association of America.

Table 5.13
Consumer Price Index for Medical Care Items in the United States (1967 = 100.0)

Calendar year	All medical care items	Physicians' fees	Dentists' fees	Hospital room	Drugs and Prescriptions: Prescription drugs	Drugs and Prescriptions: Over the counter items
Urban wage and clerical workers						
1947	48.1	51.4	56.9	23.1	-	-
1950	53.7	55.2	63.9	30.3	92.6	-
1955	64.8	65.4	73.0	42.3	101.6	-
1960	79.1	77.0	82.1	57.3	115.3	-
1965	89.5	88.3	92.2	75.9	102.0	98.0
1966	93.4	93.4	95.2	83.5	101.8	99.0
1967	100.0	100.0	100.0	100.0	100.0	100.0
1968	106.1	105.6	105.5	113.6	98.3	102.5
1969	113.4	112.9	112.9	128.8	99.6	103.2
1970	120.6	121.4	119.4	145.4	101.2	106.2
1971	128.4	129.8	127.0	163.1	101.3	110.3
1972	132.5	133.8	132.3	173.9	100.9	111.3
1973	137.7	138.2	136.4	182.1	100.5	112.4
1974	150.5	150.9	146.8	201.5	102.9	117.5
1975	168.6	169.4	161.9	236.1	109.3	130.1
1976	184.7	186.5	172.2	268.6	115.2	138.9
1977	202.4	206.0	185.1	299.5	122.1	148.5
1978	219.4	223.3	199.3	331.6	132.1	159.1
All urban consumers						
1978	219.4	223.1	198.1	332.4	131.6	159.0
1979	239.7	243.6	214.8	370.3	141.8	170.7
1980	265.9	269.3	240.2	418.9	154.8	188.1
1981	294.5	299.0	263.3	481.1	172.5	211.4
1982	328.7	327.1	283.6	556.7	192.7	234.2

NOTE: Beginning January 1978, the Bureau of Labor Statistics introduced a new index for all urban consumers.

SOURCE: U.S. Department of Labor, Bureau of Labor Statistics, *CPI Detailed Report*.

Types and Locations of Auto Accidents (continued)

three out of every four deaths resulting from noncollision accidents and from collisions involving two or more motor vehicles. Conversely, the injury rate is greater in urban areas in accidents involving more than one car.

Motor Vehicle Deaths and Injuries by Type of Accident, 1982

Type of Accident	Deaths			Injuries		
	Total	Urban	Rural	Total	Urban	Rural
Collision with:						
Pedestrian	8,600	6,100	2,500	90,000	75,000	15,000
Other motor vehicle	18,900	4,800	14,100	1,170,000	690,000	480,000
Railroad train	600	300	300	4,000	2,000	2,000
Pedalcycle	1,100	700	400	50,000	40,000	10,000
Animal, animal-drawn vehicle	100	*	100	6,000	3,000	3,000
Fixed object	3,600	2,200	1,400	80,000	50,000	30,000
Noncollision	13,100	3,300	9,800	300,000	90,000	210,000
Total	46,000	17,400	28,600	1,700,000	950,000	750,000

**Fewer than five.*

Source: National Safety Council estimates.

CLAIM COSTS, AUTO ACCIDENTS

The costs of insurance claim settlements and court awards resulting from auto accidents have risen steadily in recent years. From 1973 through 1982, the average paid bodily injury claim rose 137.2 percent from $2,125 to $5,041; the average paid property damage liability claim climbed approximately 155.5 percent from $375 to $958.

Countrywide Average Paid Claim Costs*
Liability Insurance, Private Passenger Cars

Year	Bodily Injury	Property Damage	Year	Bodily Injury	Property Damage
1973	$2,125	$375	1978	$3,123	$622
1974	2,472	397	1979	3,559	715
1975	2,646	445	1980	4,010	787
1976	2,583	490	1981	4,453	889
1977	2,890	544	1982	5,041	958

**For all limits combined, and including all loss adjustment expenses. Dollar averages exclude Massachusetts (for all years) and most states which have no-fault automobile insurance laws.*

NOTE: An apparent decline in 1976 in the amount of the average paid bodily injury claim is the result of an adjustment resulting from a change in the data base, and does not necessarily reflect an improvement in the claims experience. The revised data base has been applied to all claims figures for 1976 and succeeding years, but not to the figures for earlier years.

Source: Insurance Services Office.

Impact of Inflation

Although inflation moderated in 1982, it continued to be a problem, especially for the insurance industry. Costs of services and materials for which auto insurance pays — such as auto repairs and medical care — increased at a greater rate than the consumer price index for all items.

The U.S. Department of Labor's Consumer Price Index recorded an average increase of 6.1 percent in the overall cost of living. Auto insurance premiums rose 6.4 percent, but still remained below the overall consumer price index. Property insurance premiums, which take into account rising home values as well as changes in personal property insurance rates, went up 4.1 percent.

CPI increases in costs of goods and services related to auto insurance claims included; auto maintenance and repair, 7.6 percent; medical care, 11.6 percent; physicians' services, 9.4 percent, and hospital rooms, 15.7 percent.

Costs for housing maintenance and repairs increased 6.3 percent.

Motor Vehicle Accidents (continued)

An analysis of the economic cost to society of motor vehicle accidents, based on the nation's traffic accident experience in 1980, was released by the National Highway Traffic Safety Administration in 1983. The overall cost of more than $57 billion was equal to about 2.6 percent of the gross national product in 1980.

Medical costs were found to account for about $3.3 billion of the total, property losses for $21 billion, lost productivity for $14.2 billion and other costs for $18.7 billion.

Among the findings:

- Societal losses growing out of fatalities accounted for about $13.7 billion of the total cost. The cost of injuries was computed at $15.3 billion, and of property damage-only accidents at $21.1 billion. An additional $7 billion resulted from insurance overhead costs borne by consumers.
- The most serious injuries (shown as Injury Levels 4 and 5 in the table below) comprise only 1 percent of all injuries resulting from motor vehicle crashes. However, they account for more than 40 percent of the total cost of medical care.
- Medical costs associated with fatalities had less impact on the overall cost than any other measured factor — only 2 percent of the total.

Despite the high cost of accidents, the study warned, "The true value of the lives and mental capabilities which are destroyed in motor vehicle accidents can never be adequately measured, because the pain, suffering and frustration felt by individual accident victims cannot be measured in economic terms."

The report also commented: "There is considerable evidence to indicate that the most serious injuries are not adequately covered by insurance. Depending on the financial ability and insurance coverage of the individual victims, the medical and rehabilitative costs, as well as the loss in wages resulting from serious injury, can be catastrophic to the victim's economic well-being as the injuries are to their physical and emotional condition."

Summary of Societal Costs of Motor Vehicle Accidents, 1980
(Costs in millions of 1980 dollars)

		Property Damage	Injury Level**						
	Uninvolved*	Only	1	2	3	4	5	Fatality	Total
Medical Costs			$ 543	$ 622	$ 631	$ 335	$1,125	$ 70	$ 3,326
Productivity Losses			319	251	313	451	801	12,102	14,237
Property Loss		$16,984	2,656	612	424	100	33	174	20,983
Other Losses	$7,070	4,127	3,933	590	684	640	245	1,384	18,653
Total	$7,070	$21,111	$7,451	$2,075	$2,052	$1,526	$2,204	$13,730	$57,199

**Represents costs borne by owners of all motor vehicles not involved in accidents.*

***On scale, 1 represents the least serious and 5 the most serious injury types.*

Source: National Highway Traffic Safety Administration.

Prepared by Fletcher Bell, Commissioner of Insurance

SOME THOUGHTS ABOUT THE NO-FAULT LAW

With another legislative session rapidly approaching, proposed changes in Kansas insurance laws are being formulated and discussed.

One area in which there has been a considerable amount of discussion involves the Kansas No-Fault law. The law we now have was enacted in 1973 and went into effect in 1974. Although it has been amended in part over the years, the fundamental structure which encompasses the benefit package and tort threshold has not been changed. As a result, it appears that the No-Fault law may be in the process of becoming hopelessly outdated. For example, when the No-Fault concept was first discussed, our Department believed that a tort threshold of $3,000 was needed to be meaningful. Understanding the need for compromise to promote passage of the No-Fault Act, in 1973 we reduced that figure to $1,000. As you are aware, eventually a threshold of $500 was passed by the 1973 Legislature.

Although no one was overly concerned at the amount of the threshold at that time since the all-important concept of No-Fault insurance had been established in Kansas, it must be of concern now because after eight long years and innumerable increases in the cost of health care, the threshold has been seriously eroded. In fact, it is at a point now where it is difficult to tell whether it is discouraging litigation for pain and suffering claims as originally intended, or encouraging it by providing a convenient target.

Although a change in the threshold may need to be made, a change in the threshold alone is not sufficient. There must be a corresponding change made in the benefit package as well. The change in the benefit package needs to be a meaningful one with a realistic balancing of the first party benefits provided and the restrictions imposed on the right to sue for pain and suffering. To accomplish this balancing, there must be something more than just a boldface proposal to provide $25,000 in medical benefits with a $5,000 threshold, with no increase in present premium costs. What good would $25,000 in medical benefits do if $5,000 will cover 98% of the accident medical claims. Why not pass on a savings in premium to the insureds?

Also, when contemplating changes in the No-Fault law, thought should be given to incorporating a first party pain and suffering provision into the law. This would truly instill the No-Fault concept into our law, and further reduce the litigation and claims costs which brought about No-Fault in the first place.

Finally, one area that should be considered deals with the uninsured motorists coverage for property damage. Damage to one's property by an uninsured motorist oftentimes is more dramatic and causes more concern than personal injury. It seems like a logical extension to provide property damage coverage under the uninsured motorists coverage to remedy this problem. This is neither a new or novel idea, as many other States have adopted such coverage.

The forthcoming legislative session will be an interesting one. Many of these possible changes will no doubt be discussed.

REFERENCE NO. 7
(Continued)

'Unsuspecting Public'

"No-fault was foisted upon an unsuspecting public primarily as a means of reducing the cost of insurance," concludes a report by the Pennsylvania Trial Lawyers Association, the group that leads the repeal parade in that state. "The claimed advantages of no-fault have simply not materialized."

As a matter of fact, no-fault auto insurance hasn't materialized, either. True no-fault insurance has never been adopted anywhere, so no one can say whether it would work. But many measures have been put on the books under the name of "no-fault," and it is their spotty performance that has been giving no-fault insurance its shaky reputation.

"No-fault was probably a very reasonable idea in principle, but what we have isn't no-fault at all," says Scott Harrington, an assistant professor of insurance at the University of Pennsylvania's Wharton School.

Says J. Robert Hunter, the president of the National Insurance Consumers Organization: "The fault with no-fault isn't no-fault. The fault with no-fault is faulty no-fault."

Pure no-fault was devised in 1919 and promoted heavily in the 1960s. It was supposed to replace the old way of doing things, called the "tort liability system." In tort liability, a driver who got hit would sue the person who ran into him and try to collect from the other's insurance company. The suing driver could try to recover his doctor bills; if he wanted, he could also decide what his "pain and suffering" had cost him and sue for that, too.

System Had Flaws

Tort liability wasn't an evenhanded system. The Federal Department of Transportation found in 1970 that, on the average, insurance companies were paying small claimants more than four times their medical bills but were paying the victims of catastrophic crashes only 30% of the amount of their bills.

No-fault proposed something new, called "first-party coverage." A crash victim would go straight to his own insurance company, instead of the "third party" company that insured the other driver. His own company would reimburse him for his medical bills. The law would set limits on how much he could get, though. And he couldn't claim a cent for pain and suffering.

The idea was to promise first-party coverage to everybody, from the innocent Sunday-school teacher run down in a crosswalk to the wild-eyed teen-ager joyriding in his father's car. Such a broad system would cost insurance companies more than tort liability, and no-fault adherents proposed to make up for this by taking away a driver's right to sue. That would save the insurers money, the reasoning went, because they wouldn't need so many lawyers or have to shell out for enormous "pain and suffering" claims.

Pure no-fault, then, was a two-sided bargain: first-party coverage on one side, the denial of the right to sue on the other. The concept drew widespread support, but state legislators found the first side much easier to enact than the second.

There were simply too many problems with taking away a person's right to sue. Opponents argued that the hypothetical Sunday-school teacher shouldn't be denied the chance to clobber the hooligan who knocked her down. They said the fear of lawsuits made the hooligans—and everybody else—drive more safely. Besides, they said, if crash victims weren't allowed to recover the cost of their pain and suffering along with their medical bills, they would be getting cheated.

"Medical benefits are only a small fraction of the need," says William A.K. Titelman, a lobbyist for the Pennsylvania Trial Lawyers Association. "What about the young pianist who has a promising future on the stage whose hands are injured? You'd look up the medical benefits for her: Hand—$500. This is fundamentally offensive to the Western concept of justice."

No-fault proponents argued back that lawyers like Mr. Titelman opposed no-fault insurance only because it would take away their right to make money on lawsuits.

It was left up to the states to resolve the conflict. Nine of them responded by setting up "no-fault" systems that provide first-party coverage but don't take away the driver's right to sue for whatever amount of pain and suffering he feels he sustained. These systems really aren't no-fault.

The other states also permit pain-and-suffering suits but restrict them. They, too, don't limit the amount that crash victims can sue for, but they do impose a system of thresholds—criteria that victims have to meet before they can file their suits. Some states make the thresholds tough, others easy. The easier thresholds are behind most of the no-fault debates these days.

The reason: They don't prevent enough lawsuits. In Colorado, Kansas, Massachusetts, Utah and Georgia, for instance, people can file pain-and-suffering suits as soon as they spend more than $500 at the doctor's. In Connecticut, they can sue after spending $400. Rising health-care costs make it easy to spend the requisite sum and go scooting off to court. Insurance companies claim that people get unnecessary treatments just so they can sue.

"You don't have to stretch your morals very far to get past the thresholds, if you know what I mean," says James A. Stahly, a spokesman for State Farm Mutual Automobile Insurance Co.

And with many people padding their doctor bills, then suing for pain and suffering, insurance companies don't save enough money to pay for first-party benefits. When the system can't finance itself, consumers have to, through higher premiums.

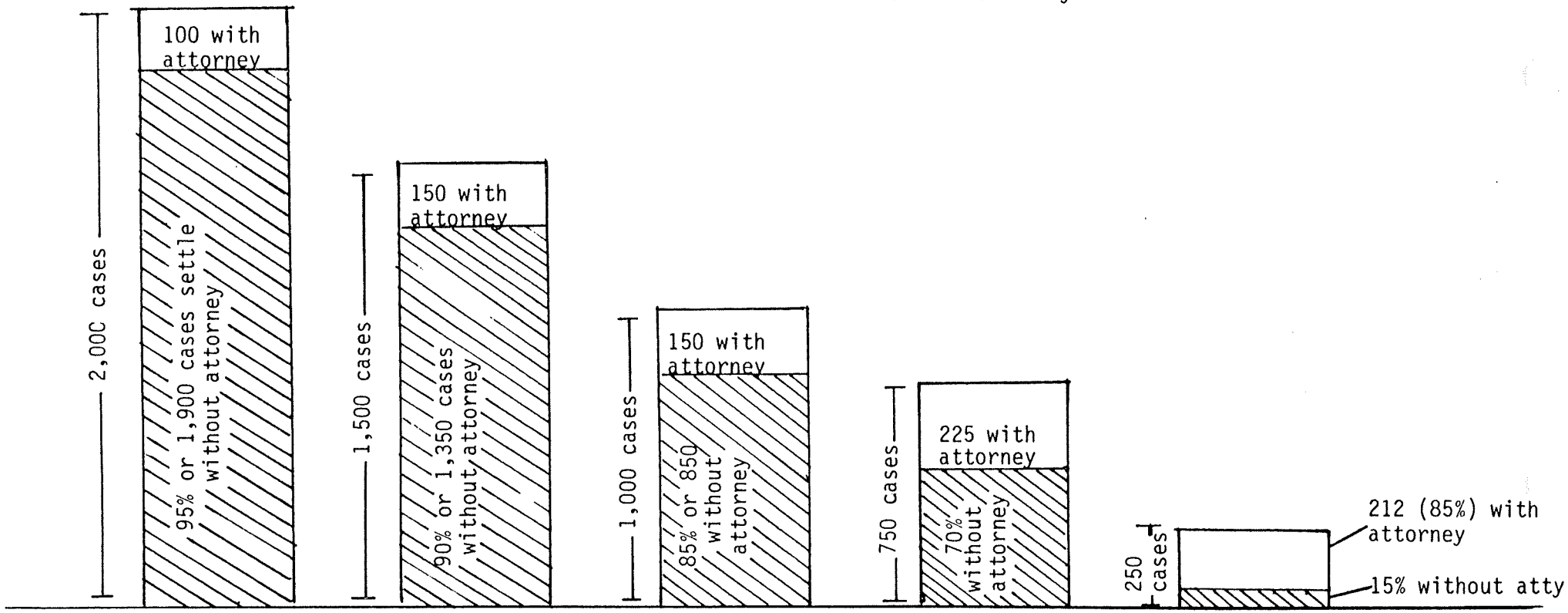
SOURCE:

"The Wall Street Journal
November 16, 1983

CHART REPRESENTS: 5,500 Auto Personal Injury Cases
Shaded area Represents % settled
without Plaintiff Atty Involvement

Historically (before No-Fault) approx.
80-85% of all personal injury cases
settled without attorney

5,500 Cases
4,662 - without atty
837 - with atty



Medical Expenses $500.00 or Below	Medical Expenses $1,000.00 or Below	Medical Expenses $1,500.00 or Below	Medical Expenses $2,000.00 or Below	Medical Expenses over $2,000.00
(This category has few "serious" injuries)	(This category has a few "serious" injuries)	(This category has approx. 20% "serious injuries)	(This category has approx. 40% "serious" injuries)	(This category has approx. 70% "serious" injuries)

REFERENCE NO. 8

No-Fault Insurance—Basic Idea Is Good

Legislatures in several major states have not enacted auto no-fault legislation partly as a result of the lack of success of such laws in other states. The basic idea of auto no-fault insurance is good. The motoring public needs financial protection to cover the large expenses that can result from an auto accident, and it needs the protection as promptly as possible when expenses are incurred. Premium dollars should be returned as much as possible in the form of benefits to meet a victim's needs, and not be mitigated by costly investigations and attorney fees.

Improvement of existing state no-fault laws are entirely possible when legislators, insurers, the medical and legal professions, consumer organizations, and other interested groups objectively evaluate the results of such laws to date and resolve to work for solutions based on carefully selected common goals.

SOURCE: Allstate Insurance Company's, *Insurance Handbook for Reporters*, 1979, pp. 22-27.

COST RESULTS

The Insurance Services Office and the National Association of Independent Insurers collect claims data under the Fast Track Program. The data are provided to state regulators to assist them in their oversight activities. The claims data for automobile insurance indicate that the cost of insurance in nofault states has risen dramatically in comparison with tort states. Table 1 shows the pure premiums for tort states for bodily injury for the period from 1975 to 1982. Tables are on the following pages. The cumulative change for the period was 60.47 percent. This has to be compared with all three types of nofault statutes. The three major types are add-on, verbal threshold, and medical threshold (sometimes referred to as a monetary threshold). In nofault states with a medical threshold, the increase has been significantly higher as shown in Table 2. The percent increase was 95.35. Add-on nofault states showed an increase very similar to tort states, 56.26 percent. (See Table 3.) The verbal threshold states did even better. (See Table 4.) However, as discussed later, the excellent results in the verbal threshold states partially may be the result of artificial restraints. Tables 5 through 10 give the increase in the pure premium for nofault coverage and nofault and bodily injury liability coverage combined for nofault states by type of nofault law.

EVALUATING NOFAULT SYSTEMS

It is interesting that the medical threshold states had the greatest increase in pure premiums for nofault coverage and bodily injury combined (149.94 percent). The add-on states had the lowest increase in the combined pure premium (56.50 percent).

The rapid growth in the medical threshold states rates may have resulted because the threshold acts as a target. Rather than reducing cost by barring individuals from being able to sue for general damages, the medical threshold may serve as a goal which has to be achieved to obtain a tort remedy. If this is correct, the add-on system serves to reduce costs and may not result in a greater number of court cases than under a tort system. It is conceivable that the threshold could be set so high that this target effect (if it exists) would be eliminated. The question is "Can it be set high enough to lower the target effect and yet maintain any type of reasonable tort remedy?"

There are three states (Florida, Michigan, and New York) which have verbal thresholds and that provide the data for the verbal threshold tables. The argument could be made that while add-on statutes have not resulted in the same premium growth rates encountered by the medical threshold statutes that neither have the verbal threshold statutes. Based on the data, this would appear to be true. Graphs 1, 2, and 3 show the cost indexes for bodily injury liability, nofault coverage, and bodily injury and nofault combined, respectively. The graphs show what has happened in the tort, medical threshold, and add-on states. Florida, Michigan, and New York are shown separately. In the area of nofault damage, Michigan, Florida, and New York (verbal threshold states) all had a lower rate of increase in pure premiums than the medical threshold states and were fairly close to the add-on states' costs. (See Graph 2.) Florida appears to have had the slowest rate of growth. However, the three states comprising the verbal threshold group should be examined carefully before any conclusions are reached.

Florida has had its nofault law changed so many times that its results are unreliable and a poor indicator of anything. Since the Florida nofault law was passed in 1972, the following actions have been taken or the following court decisions have been rendered:

1. A mandatory 15 percent rate reduction was enacted when the law went into effect and a rate freeze was instituted for all of 1972.
2. The Florida Supreme Court adopted comparative negligence in 1973.
3. The tort threshold was declared unconstitutional in part in 1974. (The tort threshold relating to a fracture of a weight-bearing bone was eliminated.)
4. In 1976, the tort threshold was changed. The medical threshold segment was totally eliminated so that the state became a verbal threshold state.[5] In 1976, the maximum deductible was raised from $1,000 to $2,000 but the $5,000 maximum benefit was retained. The deductible was raised to $4,000 in 1977.
6. In 1977, medical expense coverage was reduced from 100 percent to 80 percent and the lost wages benefit was reduced from 85 percent to 60 percent.
7. The verbal threshold was tightened in 1978; coverage was increased to $10,000; the deductible was increased to $8,000. The deductible was lowered to $2,000 in 1982. (The impact of the new deductible is not reflected in the data in this article.)

With changes of this magnitude, there is no doubt that the Florida data are not credible at this point. If the law is not modified in the next two years the new data may be useful.

New York has not had the same number of changes in its statutes that Florida has had, but the ones that have occurred are important. New York's law was modified in 1977 when it was changed from a medical to a verbal threshold. The New York law also was amended to make benefits from other sources primary, and limits were placed on fees charged by suppliers of medical care.

Of the three verbal threshold states, Michigan has had the greatest cost increases. Michigan's increase may be the result of its unlimited medical benefits, but it is impossible to factor out this one component.

In terms of loss costs it would appear that savings have not accrued for the citizens of those states that have adopted nofault. The vision of a significant reduction in cost was wrong. Surprisingly, of the nofault systems, the add-on type seems to have resulted in the lowest rate of premium growth. Any analysis, however, which relies only on cost does not present a complete picture. Cost has to be compared with benefits. State nofault laws which provide high benefit levels, e.g., unlimited medical expenses, may cost substantially more, but they offer consumers better protection. Establishment of nofault benefits by a state's legislature and demand for nofault benefits by consumers create a classic supply and demand problem that has to be balanced by what consumers can afford. Pennsylvania and New Jersey are cases where the states provide unlimited medical benefits but the consumers have faced significant increases in premium cost. Pennsylvania had an 875.4 percent increase in its nofault pure premium from 1975 to 1982, and New Jersey had a 263.9 percent increase.

REFERENCE NO. 11

Law Offices

DAVIS & BENNETT
500 CAPITOL FEDERAL BUILDING
700 KANSAS AVENUE
TOPEKA, KANSAS 66603

CLAYTON M. DAVIS
MARK L. BENNETT
MARK L. BENNETT, JR.
MICHAEL E. FRANCIS

TELEPHONE 234-0417
AREA CODE 913

April 21, 1983

Mr. Homer Cowan, Jr.
The Western Companies
14 East First
Fort Scott, KS 66701

Re: No Fault Threshold

Dear Homer:

In pursuance of your request I asked Holly to determine from Jim Terrill what arguments they used in Colorado in support of their request for an increase in threshold. She advises that Jim Terrill, who is my counterpart in Denver, advised her that the proposal for an increase in threshold was originally made by a member of the Trial Lawyers Association there who was either a member of the legislature or was a lobbyist in the legislature. It was the thought there that that suggestion was made because of a recognition of the fact that the threshold was too low and could possibly avoid a greater increase by suggesting the $3,500 increase. This appears to be the magic there.

Very truly yours,

Mark

Mark L. Bennett

MLB:eg

The Western, in an attempt to develop some idea of the number of PIP claims in various ranges, did obtain a computer run of approximately 1,000 claim files. The breakdown is as follows:

MEDICAL EXPENSES BETWEEN:	NUMBER OF PIP CLAIMS
$1 - $500	705
$501 - $1,000	242
$1,001 - $1,500	103
$1,501 - $2,000	62
$2,000 & Over	261

Oddly enough, you will see the category of medical expenses $2,000 & Over exceeds the combined categories of $1,001 - $2,000.

Miscellaneous Data From

ALL-INDUSTRY RESEARCH ADVISORY COMMITTEE

Study on:

AUTOMOBILE INJURIES
And Their
COMPENSATION
In The
UNITED STATES

NOTE: This data is based upon a 1979 study.

TABLE 4-1

Distribution of Accidents and Claimants By State of Accident and By Coverage

	Accident Distribution				Claimant Distribution			
	BI	UM	MP	PIP	BI	UM	MP	PIP
Alabama	255	38	166	21	316	50	199	30
Alaska	27	4	11	0	33	5	12	0
Arizona	428	68	320	9	579	96	397	10
Arkansas	156	14	92	30	218	21	123	38
California	2,727	572	1,948	29	3,728	752	2,469	36
Colorado	83	22	11	413	103	28	13	493
Connecticut	181	18	8	588	215	19	10	648
Delaware	53	1	3	112	69	2	3	141
D. C.	103	14	36	43	134	17	45	58
Florida	608	147	71	1,778	788	167	77	2,079
Georgia	233	24	21	751	294	35	30	981
Hawaii	6	2	0	178	10	2	0	220
Idaho	74	5	69	10	91	7	81	12
Illinois	1,073	104	433	57	1,352	145	521	77
Indiana	271	33	135	21	341	43	173	30
Iowa	114	9	69	9	149	9	79	11
Kansas	42	5	17	288	49	5	26	360
Kentucky	57	8	14	380	66	10	14	463
Louisiana	473	78	167	19	686	99	197	31
Maine	90	3	43	15	107	3	55	17
Maryland	558	22	25	622	772	32	38	822
Massachusetts	278	7	56	581	341	7	60	711
Michigan	141	40	19	1,044	199	56	21	1,167
Minnesota	45	4	5	561	47	4	6	605
Mississippi	164	21	147	15	217	31	182	17
Missouri	518	54	316	14	687	71	389	16
Montana	47	6	38	4	54	7	53	4
Nebraska	72	8	56	3	87	10	68	5
Nevada	49	8	25	91	61	9	32	101
New Hampshire	57	5	51	9	72	6	62	10
New Jersey	477	28	6	1,918	560	29	7	2,140
New Mexico	73	23	62	10	95	32	74	13
New York	827	41	50	2,573	1,068	47	65	3,211
North Carolina	686	13	479	27	954	17	621	41
North Dakota	10	0	3	67	12	0	4	91
Ohio	985	124	448	15	1,332	182	574	15
Oklahoma	284	27	163	6	382	37	220	6
Oregon	210	12	12	255	271	16	14	329
Pennsylvania	292	33	29	1,874	372	37	33	2,144
Puerto Rico	5	0	0	10	7	0	0	10
Rhode Island	96	8	21	7	125	8	24	9
South Carolina	446	14	19	496	633	16	20	662
South Dakota	23	0	18	2	27	0	23	4
Tennessee	411	62	222	17	531	81	285	29
Texas	1,097	150	109	907	1,474	180	141	1,067
Utah	46	5	6	127	54	7	8	164
Vermont	27	1	21	7	35	1	24	7
Virginia	604	60	503	27	810	68	616	36
Washington	355	43	23	168	463	55	41	212
West Virginia	158	13	115	7	211	18	154	8
Wisconsin	458	32	193	5	596	39	230	6
Wyoming	19	1	35	4	29	1	43	8
Total Valid Responses	16,572	2,034	6,909	16,224	21,906	2,619	8,656	19,398

Economic Loss By Type of Injury

Strains were th ost common type of injury, followed oruises. Except for certain multiple injuries, however, fracture cases were the most costly.

TABLE 5-7

	Economic Loss By Type of Injury			
	BI-Tort States		PIP-No-Fault States	
Type of Injury	% of Cases	Average Loss	% of Cases	Average Loss
Fracture Only	4.8%	$4,560	7.8%	$3,266
Strain Only	50.5	715	34.6	823
Bruises Only	19.9	211	23.3	229
Cosmetic/Laceration	4.8	559	9.2	493
Multiple Injury	15.9	1,992	20.0	1,932
Other	4.1	1,333	5.1	1,511
Total	100.0%	$1,019	100.0%	$1,102
Total Valid Responses	13,300		15,494	

Economic Loss By Extent of Disability

Ninety percent of the injuries resulted in only temporary or no disability. About 1 percent were fatalities, while permanent total disability cases were even more rare. However, these permanent disability cases were clearly the most costly, and the dimensions of those costs and

Days of Wage Loss Paid

Nearly 70 percent of the claims did not involve reimbursement for days of wage loss. This includes both nonwage earners as well as employed persons with relatively minor injuries who did not sustain any days lost. Fewer than 15 percent involved more than two weeks of wage loss. Some 3.8 percent involved more than six months of wage loss under the BI coverage (Table 5-11) compared with only 0.1 percent of claims involving more than six months of hospitalization (Table 5-10).

Economic losses also correlated well with the duration of wage loss, except of course for the zero category which includes all economic loss for nonwage earners.

TABLE 5-11
Days of Wage Loss Paid

	BI-Tort States		PIP-No-Fault States	
Days of Wage Loss	% of Cases	Average Economic Loss	% of Cases	Average Economic Loss
0*	68.0%	$ 606	72.8%	$ 636
1	2.5	168	2.3	172
2-7	9.3	423	8.2	431
8-15	4.9	1,069	4.9	1,278
16-30	4.1	1,539	4.1	1,744
31-60	3.2	2,139	3.4	2,924
61-180	4.2	3,759	3.4	5,710
Over 180	3.8	4,794	0.9	16,532
Total	100.0%	$ 980	100.0%	$ 1,085
Total Valid Responses	13,108		15,339	

*Includes all nonwage earners as well as wage earners who did not sustain any wage loss.

Of the cases with wage loss, approximately 25 percent involved anticipated future work loss. About 2 percent were not expected to return to work or would probably do so at a reduced wage.

TABLE 7-1
Attorney Representation By Coverage, Countrywide

	BI	UM	PIP
Number of Claimants	21,650	2,588	18,367
Claimants Represented	10,122	1,248	3,171
Percentage Represented	47%	48%	17%

Attorney Involvement By Size of Economic Loss

Attorney involvement correlated strongly with the amount of economic loss sustained by claimants. For bodily injury liability, claimants with economic loss between $1 and $100 were represented by attorneys in only 16 percent of the cases. For those claimants with economic loss in excess of $10,000, some 85 percent were represented by attorneys.

TABLE 7-2
Attorney Representation By Amount of Economic Loss

	Total Number of Claimants and Percentage of Claimants Represented					
	BI		UM		PIP	
Economic Loss	#	% Rep.	#	% Rep.	#	% Rep.
$ 0	1,661	26%	200	27%	49	20%
1-100	5,108	16	442	17	6,005	3
101-200	2,934	29	301	22	3,181	6
201-500	3,807	51	460	49	3,046	16
501-1,000	2,871	68	363	65	1,987	29
1,001-2,000	2,300	76	314	70	1,728	38
2,001-5,000	1,857	79	327	72	1,574	44
5,001-10,000	679	82	116	78	504	48
Over 10,000	433	85	65	65	293	53
Total Valid Responses	21,650	47%	2,588	48%	18,367	17%

TABLE 7-6
Attorney Representation By Coverage and State Groupings

	Total Number of Claimants and Percent of Claimants Represented					
	BI		UM		PIP	
State Grouping	#	%	#	%	#	%
No-Fault	4,070	71%	443	77%	14,582	16%
Add-On	4,214	45	333	48	2,901	25
Tort	13,157	40	1,791	41	645	17
Total U.S.*	21,650	47%	2,588	48%	18,367	17%

*Total U.S. figures include claimants for which state code was not specified.

Reasons For Attorney Involvement in PIP Claims

Insurance company personnel who filled out the PIP survey forms were asked to indicate the reasons why an attorney was retained in PIP claims. Table 7-9 shows that fewer than 2 percent of PIP claimants retained an attorney solely to assist them in collecting PIP benefits. An additional 7.3 percent of PIP claimants retained counsel solely to pursue an associated tort liability claim (BI or UM), and another 7.9 percent hired attorneys to assist them in handling both the PIP claim and an associated tort liability claim.

TABLE 7-9
Reasons For Attorney Involvement In PIP Claims

	Number Represented	% of Total PIP Claims	% of PIP Payments Involved
To Pursue Associated Tort Claim	1,263	7.3%	15.4%
To Assist in Collecting PIP Claim	317	1.8	4.6
To Pursue Both Tort and PIP Claims	1,359	7.9	21.9
Responses For Total PIP Claims Involving Attorneys	2,939	17.0%	41.9%

TABLE 7-15
Reimbursement Per $1 of Economic Loss By Size of Loss

	Gross Before Attorney Fees					
Size of	BI		UM		PIP	
Economic Loss	Rep.	Not Rep.	Rep.	Not Rep.	Rep.	Not Rep.
$ 1-100	$10.48	$ 2.76	$10.24	$ 2.86	$ 1.34	$ 1.09
101-200	7.00	2.42	5.79	2.16	1.12	1.01
201-500	4.86	2.43	4.66	1.92	1.03	.93
501-1,000	3.65	2.39	3.97	1.85	1.00	.96
1,001-2,000	3.32	2.03	2.86	1.68	1.01	.98
2,001-5,000	2.71	1.92	2.55	1.91	.96	.89
5,001-10,000	2.19	1.77	1.65	1.53	.78	.80
Over 10,000	1.35	1.19	.91	.73	.68	.68
Total	$ 2.43	$ 1.99	$ 2.13	$ 1.53	$ .83	$ .86

(Refer to Appendix D for claimant count and dollar amounts)

Table 7-16 shows the same distributions with estimated attorney fees deducted. For BI and UM claims, persons with economic losses of $1 to $500 recovered a larger net amount when they were represented by an attorney, even after paying estimated attorney fees. In economic loss ranges over $2,000, however, claimants without attorneys received a higher amount of net reimbursement per $1 of loss.

How Tort Threshold Were Overcome in No-Fault States

Further insight into the significance of tort thresholds is provided in Table 8-15, which shows the percentages of bodily injury liability claims that overcame the threshold by various ways in each of the no-fault states. All of the states except Michigan required that the claimant have medical expenses exceeding a designated figure, or have various kinds of permanent detriment from the injury. In most states, a fracture or disability exceeding a designated period of time also would suffice to make the claimant eligible to file a liability claim in addition to his or her PIP claim. Michigan does not use a medical dollar threshold and is considered to have the most stringent type of tort threshold. (Florida has since adopted a similar version and New York has adopted a threshold based on days of disability.)

The table shows that "medical expense" was the most frequent way of overcoming tort thresholds, especially in states with relatively low medical dollar thresholds. In New Jersey, where the threshold is only $200, nearly 75 percent of the BI claims qualified on the basis of medical expense, while only 15 percent qualified on the basis of medical expense in Minnesota where the medical dollar threshold is $2,000. The next most frequently used method of overcoming the threshold was "permanent dismemberment or disfigurement."

In filling out this part of the survey form, file reviewers were first asked to determine that the claim was subject to the no-fault law, and then were asked to check the most serious condition that enabled the claim to exceed the tort threshold. If the claim involved some kind of permanent impairment, for example, that was the factor recorded and not the fact that it might also have qualified on the basis of medical expense.

The number of BI liability claims for each state is shown in parentheses immediately following the state name. Some states had very few claims and their results should be regarded as tentative.

TABLE 8-15
HOW THRESHOLD OVERCOME
Two-Week BI

State	Effective Date of Law	Medical Threshold Limitation	Death	Permanent Dismemberment Disfigurement	Permanent Injury	Loss of Bodily Function	Disability Period	Fracture	Medical Expense	Other
			% of Total	% of Total	% of Total	% of Total	% of Total	% of Total	% of Total	% of Total
New Jersey (467)*	1/1/73	$ 200	.6%	6.2%	6.0%	—	.4%	8.8%	74.7%	3.2%
Connecticut (118)	1/1/73	400	6.8	11.9	11.0	—	.8	12.7	53.4	3.4
Colorado (66)	4/1/74	500	7.6	12.1	10.6	3.0%	1.5	—	57.6	7.6
Georgia (179)	10/1/74	500	4.5	10.1	5.0	—	39.7	9.5	19.0	12.3
Kansas (38)	1/1/74	500	5.3	18.4	13.2	—	2.6	10.5	39.5	10.5
Massachusetts (162)	1/1/71	500	6.2	16.7	6.2	.6	1.2	32.7	30.9	5.6
New York (564)	2/1/74**	500	3.0	10.5	7.4	1.1	3.5	11.3	61.0	2.1
Utah (32)	1/1/74	500	6.2	12.5	6.2	3.1	3.1	12.5	40.6	15.6
Nevada (26)	2/1/74	750	7.7	3.8	3.8	3.8	—	7.7	57.7	15.4
Pennsylvania (142)	7/19/75	750	3.5	4.2	7.7	.7	6.3	11.3	64.1	2.1
Florida (552)	1/1/72**	1,000	3.8	12.5	38.6	2.4	8.3	3.3	26.3	4.9
Kentucky (22)	7/1/75	1,000	9.1	4.5	13.6	—	—	27.3	40.9	4.5
North Dakota (3)	1/1/76	1,000	—	—	—	—	66.7	—	33.3	—
Hawaii (6)	9/1/74	1,500	—	16.7	16.7	—	—	—	66.7	—
Minnesota (27)	1/1/75	2,000	3.7	29.6	25.9	—	18.5	—	14.8	7.4
Michigan (57)	10/1/73	—	19.3	24.6	14.0	24.6	1.8	7.0	—	8.8

*Figures in parentheses show the number of BI claimants subject to the no-fault law. The claim count is less than in some other tables, in part because some BI claims in this study were filed prior to the effective dates of the various no-fault laws, and therefore were not subject to the tort thresholds.

**On 7/5/77 Florida changed to a days-of-disability threshold and on 6/20/78 changed to a verbal threshold. New York changed to a days-of-disability threshold on 8/11/78.

AMERICAN INSURANCE ASSOCIATION
85 JOHN STREET, NEW YORK, NY 10038

LEGISLATIVE INFORMATION SERVICE

BILL MEMO # 57

COLORADO REGULAR SESSION 1984

S. B. 58
(HOLME et al)

MOTOR VEHICLES - NO-FAULT INSURANCE -PIP BENEFITS - TORT THRESHOLD

Would increase the maximum of payment for medical benefits under the no-fault law from $25,000 and $50,000 per person for any one accident. Would include benefits for rehabilitation into such medical benefit amount. Provides for a graduated scale for income loss benefits. Increases the threshold amount for tort actions from $500 and $2,000 of medical expenses.

TGK:lh
104-15
104-40 K

AIA FAVORS THIS BILL

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

HB2147

February 17, 1987

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Insurance Committee

by

David Litwin

Mr. Chairman, members of the committee. My name is David Litwin, and I am appearing on behalf of the Kansas Chamber of Commerce and Industry, and the Kansas Coalition for Tort Reform.

The Kansas Coalition for Tort Reform is a federation of diverse groups that share the view that certain changes in our civil justice system are needed for two general purposes: 1) to make that system more efficient, more just, and less costly, and 2) to provide, over the long term, a more stable environment that would permit the writing of high quality liability insurance at affordable rates.

The Coalition's membership includes the following: Kansas Chamber of Commerce and Industry; Kansas Farm Bureau; Kansas Contractors Association; Independent Insurance Agents of Kansas; Kansas Railroad Association; Wichita Area Chamber of Commerce; Kansas Motor Carriers Association; Kansas Society of Architects; Kansas Medical Society; Kansas Hospital Association; Associated General Contractors of Kansas; Kansas Association of Broadcasters; Kansas Grain and Feed Dealers Association; Kansas Association of Property and Casualty Insurance Cos., Inc.; Kansas Consulting Engineers; Kansas Engineering Society; Kansas Motor Car Dealers Association; Kansas Lodging Association; Kansas Petroleum Council; Kansas Independent Oil and Gas Association; American Insurance Association; Kansas League of Savings Institutions; Wichita Independent Business Association; Western Retail Implement and Hardware Association; Alliance of American Insurers; Kansas Telecommunications Association; National Federation of Independent Business/Kansas; Merrell Dow Pharmaceuticals, Inc., Overland Park; Hutchinson Division, Lear Siegler, Inc., Clay Center; Becker Corporation, El Dorado; The Coleman Co., Inc., Wichita; FMC Corporation, Lawrence; Puritan-Bennett Corp., Overland Park; and Seaton Media Group, Manhattan.

We appreciate the opportunity to testify in support of passage of HB 2147.

The Coalition, while diverse, does share certain convictions in common. One of the most important is that, while the Bar plays an invaluable role in our society and our justice system, adversarial proceedings are extraordinarily time-consuming and costly, to litigants and the taxpayers who pay for the court system. Thus it behooves us to take all reasonable steps to minimize the incidence of litigation, and at the same time get as much of the money entering our civil justice system into the hands of the injured people for whose benefit the system exists.

Stated differently, the transaction costs of litigated cases are so high, that in comparatively minor cases society is better off with nonadversarial ways of resolving disputes. Studies by the Rand Corporation and others, while varying in results, consistently show that our courts' transaction costs - attorney fees, court costs, witness fees, etc. - devour more than half, and as much as two-thirds, of all the funds poured into the court system.

These considerations are some of the philosophical underpinnings of the automobile no-fault system. The basic idea is to recognize that anyone can be involved in an accident, and where injuries are relatively minor, we are better off paying reasonable benefits to the injured without litigating the issue of fault. In that way, all injured people collect reasonable compensation, no injured people leave the courthouse emptyhanded, and the civil justice system doesn't consume the lion's share of the benefits.

However, the benefits and the tort threshold amount have not been changed since the no-fault bill became law in 1974. Thus 13 years of inflation are not recognized on either side of the ledger. In addressing both sides of the issue, in our judgment the bill contains equitable tradeoffs and would advance both of the primary purposes of no-fault: to keep smaller cases out of court, and provide fair compensation for less serious injuries. Thus all of the components of PIP would be increased sharply, and an entirely new kind of PIP benefit, "general benefits", would be allowed. The latter is really an allowance for pain and suffering.

On the other hand, the $500 medical expense tort threshold seems woefully small in 1987, not nearly large enough to separate serious injuries from the less serious kind which should be treated under no-fault. Thus a substantial boost in the threshold seems in order, and similar policy considerations also support elimination of bone fractures as automatic entitlement to sue in tort.

Thank you. If there are any questions, I will try to answer them.

WRITTEN TESTIMONY OF FARMERS INSURANCE GROUP

HB 2147 - February 17 and 18

The stated purpose of No-Fault auto insurance is to improve the auto compensation system through a balanced plan that prohibits tort action for less severe types of injuries while requiring compulsory first party coverage. Since the original act of the Kansas No-Fault law in 1973, medical costs have increased significantly due to inflation and other factors. Consequently we feel our current system is out of balance and needs adjustment.

Farmers Insurance Group fully supports the No-Fault bill, HB 2147, as requested by the Kansas Commissioner of Insurance. We believe that the sizeable increase in mandatory first party benefits for the insurance consumer, coupled with a change to a $3,000 monetary tort threshold will put back the necessary balance needed for an effective No-Fault system in Kansas.

In addition, we also are supportive of the first party "general benefit" for noneconomic damages. In past years, the Trial Lawyers Association and some concerned legislators have voiced their opinion that any substantial

House Insurance Committee
Feb. 18, 1987
Att. 3

raise in the tort threshold would be unfair to injured victims because of the increased limitation imposed on their opportunity to recover for pain and suffering. With the addition of the "general benefit" provision, we believe those concerns can now be put to rest.

We were supportive of last year's No-Fault bill, HB 2422, which passed both Houses, but was vetoed by Governor Carlin. HB 2147 is very similar to the 1986 version and we would urge this legislature to again support passage of this bill.

PROFESSIONAL INSURANCE AGENTS OF KANSAS

Protecting Your Future

James R. Oliver,
Executive Director

Statement of James M. Rhine, CPCU, insurance agent from Manhattan, Kansas and chairman of the Legislative Committee of the Professional Insurance Agents of Kansas, Inc., (PIAK) before the House Insurance Committee hearing on HB 2147, February 17, 1987.

PIAK believes that HB 2147 represents the best efforts of the Kansas Insurance Department to develop a package of improvements to the current Kansas Automobile Injury Reparations Act. The original act was passed in 1973 and this bill represents the first major udating of that law. We urge its approval without major amendments.

The idea of a reparations system not based on determining the fault of the person who causes or is responsible for the damge or injury has been a familiar feature of American law and insurance since the advent of worker's compensation legislation at the beginning of the century.

A necessary corollary to receiving no-fault benefits from a person's own insurance carrier is partial or total restriction of tort liability up to the amounts for which no-fault benefits were provided. The key to a successful no-fault law is to have the tort threshold high enough to reduce the amount of litigation generated by automobile injuries. Generally the higher the tort

627 Topeka Ave., Topeka, Kansas 66603-329

House Insurance Committee
Feb. 18, 1987
Att. 4

threshold the greater the amount of insurance premium dollars that can be returned to the public in no-fault benefits because fewer dollars are diverted to the costs of litigation.

Some states restruct all tort claims when the dollar or verbal threshold has not been met. Kansas takes the middle gound and only restricts claims for general damages. HB 2147 contains a proposed tradeoff for this prohibition by offering an automatic payment for general damages "General Benefits" when medical bills have exceeded $1,500. In general we disagree with the inclusion of "General Benefits" in HB 2147 but would consider this an acceptable compromise if there were no other substantial amendments to the bill.

PIAK fully supports the increase in the threshold from $500 to $3,000 and the resulting increses in the economic loss benefits. We would have preferred to have had available an actuarial study, but recognizing budgetary considerations, we accept the adjustment based on the consumer price index.

Thank you for the opportunity to appear before you. I will be happy to try to answer any questions you may have.