FINANCIAL RESPONSIBILITY OF AUTOMOBILE DRIVERS

BY

EDSON S. LOTT*

President, United States Casualty Company

The popular agitation for "compulsory automobile insurance," which has produced a typical result in the notorious Massachusetts law, is like a stone which is thrown at two birds, misses both targets, wings a smaller bird in between the two, cripples an unoffending bystander and does other damage. The two birds missed—the two objectives popularly aimed at—are accident prevention and assurance of relief to victims of automobile accidents generally. The bystander hurt is "sound insurance." The other damage done is an increase in speculative litigation. And the little bird touched—the only good effected—is the production of somewhat more general security for the recovery of damages in those automobile accident cases in which the victims can prove that they are legally entitled to damages.

Besides the Massachusetts law, there are, in response to this popular agitation, other illustrations of legislation, which is doomed to failure through a similar attempt to hit several birds with one stone. I shall return to them later. Here I would emphasize that there cannot be one remedy—a single panacea—that will effect all that the public has been misled to expect of "compulsory automobile insurance"—and that the public should be educated to abandon the vain idea of a general panacea and give more favorable consideration to less pretentious and more intelligently directed remedies for the several evils complained of.

Let us take up categorically the various objectives associated with compulsory automobile insurance in the popular mind, namely:—accident prevention; more general security for the recovery of damages in those automobile accident cases in which the victims can prove that they are legally entitled to damages; and assurance of relief to victims of automobile accidents generally.

1. *Accident Prevention.* In 1924 the National Conference on Street and Highway Safety, organized by Secretary Hoover,

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entirely rejected compulsory automobile insurance as a means for increased safety, and recommended instead the control of the automobile *driver* by means of an individual driver's license, subject to suspension as a caution and to revocation as a means of permanently removing dangerous drivers from the highways. That is the standard, or expert's, means for accident prevention. Let us look through the various measures for automobile security (disregarding the laws for security by public carriers, taxicabs and the like) and see how far they assist in promoting that means, or, on the other hand, possibly tend to the contrary.

The Massachusetts compulsory automobile insurance law says nothing about *drivers*. It requires security of the *owners* (*registrants*). In May, 1927, the Commercial Casualty Company canceled a liability policy on a delivery truck written in August, 1926, for the Prime Kosher Market, on the ground that there had been six accidents under the policy and that as to some of such accidents the company had been seriously prejudiced because of the assured's failure to report promptly. The assured thereupon appealed to the Board of Appeal to compel the continuance of the policy, contending that the drivers involved in the accidents had all been promptly discharged and that the delays in reporting to the insurance company had been due to delays by the drivers in reporting to the assured. The Board granted the appeal and ordered continuance of the policy. This is simply an illustration of how the Massachusetts law works. To my mind, a law that compels an insurance carrier to continue indefinitely to insure a motor vehicle owner who continually employs reckless drivers most emphatically does not contribute to the removal of such drivers from the highways.

In comparison, the Connecticut law does far better. That law empowers the Motor Vehicle Commissioner to require security, up to certain limits—in the form of an insurance policy, bond, deposit, etc.,—from any person convicted of (or who evades prosecution for) violation of certain provisions of the motor traffic laws, or who is concerned in any motor vehicle accident causing injury to person or damage to property in excess of $50, in default of which such person's license or registration shall be revoked; or, if he is a non-resident, he shall be forbidden to operate any car in the State or to have operated therein any car owned by him. The primary purpose of this law is to require

security for the payment of damages from those persons most likely to cause injury to others, without burdening the great body of careful motorists who seldom do harm; but, incidentally, since it calls for security from the *driver* responsible for the accident and the alternative is revocation of the *driver's license*, and not only revocation of the *owner's registration*, this law unquestionably tends to remove reckless drivers from the highways.

In Maine, Minnesota, Rhode Island and Vermont there are now laws (adopted in 1927) similar in form and effect to the Connecticut law, with the material exception that the Rhode Island law is defective (in some cases) in penalizing the *owners* alone, leaving the reckless drivers (who are not owners) unpunished.

The New Hampshire law (which is an adaptation of the "Stone Plan") provides that, in an action for damages for injury to person or property resulting from an automobile accident, the court, upon application of the plaintiff, shall make a preliminary inquiry, and, upon finding that the defendant is probably liable, the court shall compel him to deposit security for the payment of whatever judgment may be rendered (subject to limits) in default of which the defendant (who may be the driver or/and owner) shall forfeit his license and registration. It further provides that a certificate of liability insurance, with the prescribed coverage, is to be accepted as sufficient security. The object of this law is to induce motorists generally to insure, since an uninsured owner or driver, if involved in an accident, is liable to be suddenly held up, and, in default of heavy security, to lose the use of his car and/or the right to operate any car. But, incidentally, insofar as it may result in revocation of *drivers' licenses*, it may tend to eliminate reckless drivers.

Of the automobile security laws just reviewed, other than the Massachusetts law, it should be noted further that none prevents "selection of risks" by insurance carriers. Consequently, howsoever ineffective or slightly effective for accident prevention these laws may be, at least none of them exerts any adverse influence. It is otherwise with the Massachusetts law; from the standpoint of "safety first" that law is a positive menace.

2. *More general (but not universal) security for the recovery of damages for injuries in automobile accidents in those cases in which the victims can prove that they are legally entitled to damages.*

That is what the Massachusetts law accomplishes. It does not

assure any relief to the large majority of victims of automobile accidents who, because more or less at fault themselves, are not legally entitled to damages, or who, through lack of evidence, cannot prove their right, or who are hit by foreign cars, unlicensed cars, cars used without the owners' consent, cars owned by the State or a municipal corporation, etc. In other words, it merely increases a little the extent of security for recovery of damages—for, in a large proportion of the cases in which the collection of damages is secured under the law, it would be secured anyhow by voluntary insurance or by the financial responsibility of the motorist liable. And what is the price for this small gain in security? Answer:—Demoralization of insurance; the removal of an influence for accident prevention through the elimination of "selection of risks"; an increase in "strike" and "nuisance" claims and suits; worse court calendar congestion; the imposition upon motorists of a burden and annoyance generally useless; an increase in bureaucracy; and a diversion of public effort and expenditure from accident prevention to the manipulation of "red-tape." (For a detailed explanation of some of these evil results of the Massachusetts law I must refer you to my articles in the American Agency Bulletin of March 23 and April 13, 1928.)

Is there, then, no better alternative? Sure, there is. The evil sought to be remedied by the Massachusetts law is that some unascertainable proportion of judgments for damages is uncollectible and that other valid claims for damages are not reduced to judgment because of a high degree of probability that the judgment would be uncollectible. For that evil there is a specific remedy—not a "cure-all," it is true, any more than "compulsory insurance" is really a "cure-all"—but a way of making judgments far more generally collectible by putting "teeth" in them. That remedy is to enact a law providing, in substance, that no one, against whom there is an unsatisfied and unstayed judgment for damages for injury to person or property arising out of an automobile accident, shall be permitted to register or operate a motor vehicle in the state. "Pay for the damages for which you have been adjudged liable or keep off the roads" is a rule that would accomplish good in three ways:—It would make judgment debtors try to pay up instead of trying to dodge payment; it would incite financially irresponsible drivers to be more careful, and it would remove many financially irresponsible, reckless drivers

from the roads. Therefore, in my opinion, this is the most advisable of all measures under consideration relating to automobile accidents. It has, as you know, been positively recommended by the Committee of Nine. Bills for such a measure have been passed by the Legislatures in Pennsylvania and New York. Unfortunately, the Pennsylvania bill was vetoed by the Governor, not on its merits, but because it conflicted with a peculiar provision of the Pennsylvania State Constitution; and the New York bill was vetoed by the Governor for some unexplained reason, perhaps because he favored a measure, rejected by the Legislature, for the creation of an investigating Commission.

Besides the measure just commended, there are two others that, in my opinion, merit consideration under this heading. One of the objections to compulsory insurance in the Massachusetts form is that it applies *compulsion*, which is always obnoxious, and does so far more broadly than is at all reasonable or worth while. To illustrate, I recently saw the statement, from a well informed source, that in Nebraska 40 per cent. of registered motor vehicles are "owned on the farm", that such 40 per cent. of the vehicles are involved in only about 1 per cent. of the accidents, and that their owners are 98 per cent. financially responsible. Why burden and bother the owners of those farm owned cars because security is wanted from another lot of motorists?

The "Stone Plan" (the New Hampshire law) meets that objection by not applying "compulsion" at all but making insurance almighty desirable for those motorists who operate in congested districts or are otherwise apt to become involved in accidents. And the Connecticut law meets the objection by applying compulsion only to those who have put themselves in the dangerous class by being involved in an accident or violating traffic regulations.

I think that it is a serious mistake to dismiss from consideration measures like these just because they do not pretend to cure the evil but merely to be a means of mitigating it. At least they would do no harm. Perhaps they represent the limit, beyond which it is impracticable to go without doing more harm than good. And, in any event, though promising far less, they do not fall short in performance as does the Massachusetts law.

3. *Assurance of relief to all victims of automobile accidents.* The agitation that resulted in the enactment of the Massachusetts law has aroused popular expectations or aspirations which that

law falls short of fulfilling by an immense margin. The public, or at least a highly vocal proportion of the public, have been stirred up to demand compensation for all the 25,000 deaths and 750,000 injuries that are resulting annually from automobile accidents in this country; and they want the compensation big; and they want it certain; and they want it cheap; and they want it quick; and they want it without litigation. And they have been and are being assured by distinguished jurists that they can get it just about as they want it through the mystic instrumentality of insurance. Such a fool notion really merits no consideration. But it has been recommended for favorable consideration by a committee of the New York Bench and Bar on calendar congestion, and bills designed to put it into effect have been introduced in Congress and the New York Legislature. So it is up to us of the insurance profession to bring home to the public that it *is* a fool notion.

Take the case in New York:—A committee of the legal profession had before it the problem of court calendars congested by a flood of negligence case awaiting jury trials. Did the committee search for a direct remedy through reform of admittedly archaic legal practice and procedure? Apparently not at all. That would have brought them up against opposition in their own profession. So they side-stepped (acting on the good old working rule that the place for reform is never at home), and recommended instead compulsory insurance of compensation for all automobile accidents. To be absolutely just, they did not recommend the *adoption*, but only a legislative *investigation*, of such a scheme. They did, however, so word their recommendation as to arouse among the ill informed public lively expectations of finding in that direction a veritable panacea for faults in the administration of justice. What a "gold-brick" to offer to the unsuspecting and confiding public! Let us analyze the proposition and see if that isn't so.

It is proposed to make "compulsory" the insurance by motorists of "compensation" for all personal injuries resulting from motor vehicle accidents on the highways, the compensation to be based upon wages, as under the Workmen's Compensation Law, where the injured persons were employed, and according to some fixed "blood-money" rates, never satisfactorily formulated, where the injured persons were unemployed—all disputes to be decided

informally and summarily by administrative officials, also as under the Workmen's Compensation Law.

Theoretically the right to benefit under such proposed insurance could be made "exclusive"—*i. e.*, exclusive of the right to full "damages" under any circumstances. Indeed, when this project was first broached by Judge Robert S. Marx, of Cincinnati, such was the proposition. But that would be too "raw". It would deny full justice to a man run down on a safety zone by a speeding "road-hog", treating him no better than if he had been injured through his own criminal wrongdoing. So now the proposition is that the victims of automobile accidents shall be given the option either to accept the benefits under the proposed compensation insurance or to sue for full damages under the public liability law where they think they can succeed.

Now, try to visualize the resulting situation for yourselves, in the light of your own experience, bearing in mind that the "ambulance chasers" would still be on the job. Every one injured, no matter how, who could produce or manufacture evidence to establish that his injury resulted from an automobile road accident would be entitled to "compensation", and every one injured in an automobile accident under circumstances now entitling him to recover damages would still be entitled to sue for damages. Claims would be multiplied enormously and doubtful claims in even greater proportion, thereby entailing a large increase in the total volume of litigation of one sort or another. It is true that under this proposed scheme some who now sue for damages would elect to accept compensation, thereby relieving the existing courts of some of their jury cases—but with compensation limited, as under the workmen's compensation laws, the lure of "punitive damages" and "sympathetic" verdicts would remain, and there would still be lots of liability suits to be tried by juries. Consequently the extent of relief to the existing courts would be speculative and uncertain, whereas the creation of a large volume of new compensation litigation before novel tribunals would be certain. Net result, therefore, "just more cats"!

But, we are told, this proposal would not merely relieve the courts "some" but it would also hit another bird by assuring relief to all victims of automobile accidents. That "listens fine". But it would be finer to compel everyone to insure himself against all injuries. Then the faultless victims of burglars and other

criminals would be protected as well as the "jay-walkers" and "joy-riders" who suffer injury through their own faults. To compel people to insure themselves may be in derogation of liberty, but, at least, it would play no favorites in the distribution of the cost; whereas there is no such redeeming feature in the proposal to compel motorists to insure all "jay-walkers" and to compel the careful and decent motorists to contribute to the insurance of all "joy-riders".

That this scheme would hit motorists hard and damage their pocket-books exceedingly is a drawback that its proponents seek to belittle. In New York city a silver tongued advocate of this pretentious "reform" told the taxicab drivers that the proposed insurance would be provided for all motor vehicles in the State at an average of $15 per car per annum. Another advocate, less visionary, put the cost at $26 per car. Unvisionary people like ourselves know that it probably would run up to very much more. But, just for discussion, let us accept $26 as the average cost. That would mean about $10 for the car "owned on the farm", and over $200 for the city taxicab. Note how badly the taxicab drivers would have been short-changed had they got what they were being asked to favor. But that is not all. Were this scheme to be adopted, motorists would still need liability insurance—and property damage and collision insurance—just about as at present. In other words, the cost of the proposed compensation insurance would be largely additional to the burdens, for insurance and otherwise, now resting upon motorists.

It is only by belittling the cost, ignoring its injustice and assuming an improbable result in the way of relieving court calendar congestion, that this scheme can be made at all attractive.

In conclusion, I do not think it is necessary to say anything specifically about State Insurance. The danger of State Insurance, in my opinion, arises principally from the fact that it is the likely result of the probable breakdown of experiments with the Massachusetts plan or the compulsory compensation insurance delusion. In Massachusetts there may be a way out, because of the strong local popular sentiment against socialistic State enterprises. But elsewhere it is essential to guide the movement for a remedy for the "automobile evil" along safe and sane lines.