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Article abstract

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The effect of allowing motorists to opt out of tort law in the United States

Jeffrey O'CONNELL, Stephen CARROLL, Alan ABRAHAMSE, Michael HOROWITZ, Alexander KARAN*

As applied to U.S. traffic accidents, both tort law and no-fault law are often attacked. A proposed solution would allow motorists to choose an option bypassing the inadequacies of both tort law and current U.S. no-fault laws. Actuarial estimates indicate large savings available to motorists so choosing. But as time goes on, the savings are diminished as low required limits of coverage in the U.S. meet inflation, leading not only to admittedly lessened savings but also to the anomaly of more and more motorists in non no-fault states pursuing tort rights for only economic losses.

Dans le domaine des accidents d'automobile, le droit commun et les législations spéciales font souvent l'objet de critiques aux États-Unis. Une proposition présentement à l'étude permettrait aux automobilistes d'obvier à ces critiques en choisissant le système d'indemnisation qui leur serait applicable. Des projections actuarielles font état d'économies substantielles pour les automobilistes. Ces économies sont cependant en diminution depuis quelques années puisque les montants minimaux obligatoires d'assurance automobile n'ont pas suivi le taux d'inflation. Il en résulte que de plus en plus d'automobilistes, sous le droit commun, se contentent d'une réclamation pour leurs pertes de nature économique.

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Traditional tort liability for personal injury from auto accidents has long been criticized on the grounds that its costs are too high and that any compensation therefrom is inefficient, unfair, and dilatory[1]. But no-fault laws[2] themselves are criticized for infringing upon the fundamental legal right to be paid based on fault not only economic but also noneconomic damages (primarily for pain and suffering), and for failing in their promise to suppress auto insurance costs[3]. The latter criticism is countered with the argument that no-fault laws' financial shortcomings are due to preserving too many tort claims (above thresholds of either dollar losses or verbally described severity of injury) payable in addition to no-fault claims[4].

Is there a compensation scheme that can free us from the failures of tort law and at the same time mend the shortcomings of current no-fault laws ?

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1. See three articles by the same authors : « Consumer Choice in Auto Insurance Market », (1993) 52 *Md. L. Rev.* 1016 [hereinafter *Maryland One*] ; « The Cost of Consumer Choice for Auto Insurance in States Without No-fault Insurance », (1995) 54 *Md. L. Rev.* 281 (written by the authors of *Maryland One* and D. KAISER) [hereinafter *Maryland Two*] ; and « The Comparative Costs of Allowing Consumer Choice for Auto Insurance in All Fifty States », (1996) 55 *Md. L. Rev.* (written by the authors of *Maryland One* and P. JAMIESON) [hereinafter *Maryland Three*]. See also : S.J. CARROLL, J.S. KAKALIK and D. ADAMSON, *No-Fault Automobile Insurance : A Policy Perspective*, Santa Monica, RAND, 1991, p. vii ; J. O'CONNELL and C.B. KELLY, *The Blame Game : Injuries, Insurance, And Injustice*, Lexington, Mass., Lexington Books, 1987, pp. 114-115. For other recent data supporting the various criticisms of traditional tort liability, see generally : INSURANCE RESEARCH COUNCIL, *Auto Injuries : Claiming Behavior And Its Impact On Insurance Costs*, Oak Brook,1994 [hereinafter *Claiming Behavior*].
2. A no-fault law mandates the purchase of auto insurance payable by one's own insurer for economic loss without reference to fault, but also precludes accident victims from recovering noneconomic damages in tort unless they can prove another person was at fault and that their losses exceed a threshold defined by the no-fault law.
3. S.J. CARROLL, J.S. KAKALIK and D. ADAMSON, *op. cit.*, note 1, p. vii : J. O'CONNELL and C.B. KELLY, *op. cit.*, note 1, p. 118.
4. J. O'CONNELL and C.B. KELLY, *op. cit.*, note 1, p. 120.

The RAND Corporation, an organization specializing in statistical research, which takes a neutral position in matter, has published a study of auto compensation plans[5]. Terming insurance payable for economic loss without regard to fault personal injury protection (PIP) insurance[6], RAND studied the following issues :

1) The effect of PIP reform on a) the costs of compensation ; b) transaction costs (mailnly lawyers' fees and allied costs of processing claims) ; c) « the adequacy and equity » of compensation ; and d) promptitude of compensation[7].
2) The effect of variations in the design of PIP reforms on items a)–d) above[8].
3) Variations in different states[9].

The RAND study came to the following conclusions :

1) A PIP system can produce either substantial savings compared to the fault-based system or can increase costs, depending on the plan's design and variables in different states that affect auto insurance costs[10]— variables such as the size of PIP benefits, the nature and extent of any barrier to tort claims for noneconomic damages, the litigiousness of the state's populace, etc. ;
2) PIP plans decrease transaction costs[11] ;
3) Compensation under PIP reforms aligns compensation with economic losses (mainly expenses for medical costs and wage loss) more closely than tort law[12] ;
4) Present PIP reforms eliminate compensation for noneconomic losses (mainly for pain and suffering) but only in cases of less serious injuries[13] ;
5) Compensation is paid more promptly from PIP coverage[14] ;

5. See generally : S.J. CARROLL, J.S. KAKALIK and D. ADAMSON, *op. cit.*, note 1.
6. Insurance payments that do not take account of fault are usually termed personal injury protection or personal protection payments, in either case commonly nicknamed « PIP ».
7. S.J. CARROLL, J.S. KAKALIK and D. ADAMSON, *op. cit.*, note 1, p. vii.
8. *Ibid.*
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*
14. *Ibid.*

6) In choosing between traditional tort law and PIP reforms, policymakers must determine « whether to cut costs or to preserve or increase compensation for injured people, and what balance to seek between compensation for economic and for noneconomic losses[15].

A good measure of an underlying cause for the rise in auto insurance premiums is the change in recent years in the ratio of bodily injury (BI) to property damage (PD) claims, *i.e.*, the BI-PD ratio[16]. In other words the higher the ratio the more people are claiming for bodily injury. Nationally, that ratio has risen steadily — for example from 17.9 BI claims per 100 PD claims in 1980 to 29.5 per 100 by 1995[17]. These recent increases in frequency of claims for personal injury are all the more dramatic for having occurred while many correlative indices have decreased. Technological advances and public policy initiatives have decreased both the frequency and severity of automobile accidents[18]. Examples include 1) safer cars containing collapsible steering wheels, padded dashboards, energy-absorbing fronts, and airbags ; 2) massive education and law enforcement campaigns against drunk driving ; 3) increased urbanization, with resultant lower rates of speed which diminish accident severity ; and 4) use of seat belts and child-restraint devices. According to a study by the Insurance Research Council, most of the additional automobile personal injury claims were for soft-tissue injuries (*e.g.*, sprains and strains to the neck and back)[19], which, not coincidentally, are difficult to diagnose objectively. At the same time there was a manifest drop in the number of automobile injuries that could be objectively diagnosed (*e.g.*, broken bones), as well as a drop in hospital admissions and disabilities caused by automobile accidents[20]. Such decreases make a dramatic contemporaneous increase in bodily injury claim frequency all the more anomalous. (Here again the problems are more acute in urban areas. For example, the frequency of BI claims in metropolitan Minneapolis is 56 % higher than in the rest of Minnesota, with average loss costs 52 % higher though the severity of accidents is approximately 2 % lower[21]).

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15. *Ibid.*
16. See *Maryland One, loc. cit.*, note 1, 1019-1020.
17. INSURANCE RESEARCH COUNCIL, *Trends In Auto Bodily Injury Claims*, Appendix A, table A-1 (2nd ed., Wheaton, 1996) [hereinafter *Trends*].
18. See, *e.g.*, BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *Statistical Abstract Of The United States 609*, 112th ed., Washington, G.P.O., 1992 [hereinafter *1992 Statistical Abstract*] ; D. POPES, « The Fraud Tax : The Cost of Hidden Corruption in America's Tax Law », *Legal Backgrounder* (27 March 1992) 1 (published by the Washington Legal Foundation).
19. See *Claiming Behavior, op. cit.*, note 1, p. 21.
20. See *id.*, p. 21 (Fig. 3-9).
21. *Trends, op. cit.*, note 17, Appendix B, table B-24.

How to explain the anomaly ? Obviously, the key is the increasing tendency of motorists (encouraged by their lawyers) to both make and inflate their claims, including, in no-fault states, to exceed the threshold above which claimants can « double dip » (being paid both by PIP benefits and tort liability insurance)[22]. Thus the often suggested reform is to strengthen the tort threshold by adopting a verbal threshold like in New York's, where one must suffer a « significant » injury before suing in tort as opposed to state laws which include only a dollar threshold, *e.g.*, $2,000.

But the key element — overlooked by the many who urge a New York-type high verbal threshold as a model for no-fault laws — is that even in New York, claims for pain and suffering above its high threshold are hugely expensive, contributing disproportionately to auto insurance costs. As indicated above[23], the BI-PD ratio rose rapidly nationally from 1980 to 1993. Contrast this with New York, with a high threshold barring pain and suffering claims ; there the BI-PD ratio remained very constant during the time period 1980 to 1989[24]. But to illustrate the ill effects of BI tort claims, even New York's $50,000 in no-fault benefits contributed only 36 % of the total pure premiums for a category of claims including both BI tort claims and no-fault (PIP) benefits. In other words, the relatively few tort claims preserved over New York's high threshold contribute disproportionately (64 %) to total personal injury costs (including both BI and PIP coverages)[25].

Therefore, even New York's law is by no means an optimal model. In other words, if New York has long dealt relatively effectively with higher costs for smaller tort claims, even New York deals ineffectively with higher costs for larger tort claims. The only way to deal with both is to get rid of claims for noneconomic damages in cases both large and small. RAND has estimates that nationwide almost half of the bodily injury premiums are used paying for noneconomic losses in states like New York, which have high PIP benefits coupled with high thresholds[26]. Furthermore, even in New York the possibility of suing in tort above its relatively high threshold is being exploited by increasingly experienced plaintiffs' counsel. This activity has led to a more recent rise in New York's BI-PD ratio of almost 50 % from 1989 to 1993[27]. Thus, simply reducing the number of tort claims for

22. For data indicating major trends in claiming behavior in tort and in no-fault states compiled by the Insurance Research Council, see Appendix.
23. *Ibid.*
24. *Trends, op. cit.*, note 17, table A-34.
25. See *Maryland One, loc. cit.*, note 1, 1019-1020.
26. *Ibid.*
27. *Trends, op. cit.*, note 17, table A-34.

noneconomic loss over a higher threshold, including only a verbal definition as in New York, would fail to net optimal savings.

1. A System Allowing Choice

Presented here is reform called « auto choice » that replaces current tort law applicable to auto accidents burdened as it is in no-fault states not only with payments made without regard to fault for economic loss, but everywhere with expensive — and arguably even subsidized[28] — claims for both economic and noneconomic loss based on fault.

Under the choice plan, motorists have a choice between the state's present system and a system that pays without regard to fault up to the state's no-fault required limit, or, in a state without no-fault, up to at least their state's financial responsibility level for bodily injury, while banning recovery for both large and small non economic losses. (The choice plan does not apply to claims for property damage, which remain as is). To repeat, this alternative coverage is called PIP[29]. Motorists who opt for the current system are required to purchase currently required coverages, including BI tort liability coverage to at least the state's financial responsibility level, and are also required to purchase a new form of insurance, tort maintenance (TM), up to at least the same level. Tort maintenance coverage pays the policy holder based on fault if injured by a motorist who opted for PIP. More on this below. They also have access to the same coverages — no-fault (in a no-fault state), medical payments (MP), uninsured motorist (UM), and underinsured motorist (UIM) — available under the current system.

To flesh all this out[30], auto accident victims who elect the current system proceed under their state's current system if injured by a motorist who also elects the current system, or if injured by an uninsured motorist. The current system's rules also dictate the amount accident victims recover if injured by a motorist who elects PIP ; but, in this instance they would seek payment from their own insurer under their TM policy for any amount the PIP motorist would have owed them under the current system. In other words, in a tort state (*i.e.* a state without no-fault insurance, including an add-on statute), tort insured victims are paid by their own TM coverage for whatever amount the PIP motorist would have owed them had that motorist

28. *Maryland Two, loc. cit.*, note 1, 282 and note 7.
29. See *supra*, note 6, and note 30 *infra*.
30. For the terms of a bipartisan federal auto choice bill, see : S. 625, 105th Cong., 1st Sess. (1997).

elected tort. For example, presently, if motorists A and B are involved in an accident, A is entitled to payment for both his economic and noneconomic losses to the extent that B was tortiously responsible for the accident. As a practical matter, A seeks payment from motorist B's insurer or, if B is uninsured and A has UM coverage, from his own insurer. Under choice, if A had elected tort and B PIP, A would still be entitled to payment for both his economic and noneconomic losses to the extent that B was responsible for the accident, but, A would seek payment from his own insurer (under his TM coverage) just as he would if B were uninsured and A had UM coverage.

Under choice in a no-fault state, insured victims staying under the current system would be paid for their economic loss by their own no-fault coverage up to the policy limit, and, if their injury surmounted the tort threshold, by their TM coverage for whatever amount above the threshold the PIP motorist would have owed them had that motorist also elected the current system.

In any state, then, accident victims who elected PIP would be paid without regard for fault by their PIP insurance for any economic losses resulting from an auto accident, including accidents involving motorists who elected their state's current system, up to the PIP policy limit. Motorists electing PIP could neither claim, nor be claimed against, for non-economic losses[31]. Uninsured motorists who are injured would proceed as under their state's current system if injured by a motorist who elects the current system or by another uninsured motorist. Uninsured motorists injured by a motorist who elects PIP would seek payment based on fault from the other motorist for economic losses in excess of the mandated PIP limit.

Under choice, motorists who choose either tort of PIP bind their resident relatives to that choice. And motorists, whether electing the current system or PIP, would be liable in tort to those they injure for economic losses in excess of the applicable TM coverage (if the victim elected the current system) or PIP (if the victim elected PIP). When such claims for excess economic loss are pressed, a reasonable attorney's fee would be recoverable, in addition to such excess economic loss[32].

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31. The choice plan would allow any accident victim to recover under tort when the injury was caused by intentional misconduct or by a tortfeasor's alcohol or drug abuse. And PIP electors guilty of such misconduct would forfeit their PIP benefits. Because of data and resource limitations, these provisions are not considered in RAND's cost analysis.
32. *Maryland One, loc. cit.*, note 1, 1026-1027.

2. Research Approach

There follows an estimate, based on research by RAND, based in turn on 1992 data, of how a plan that offered a choice between tort and PIP would affect the costs of auto insurance in states with[33] and without[34] a no-fault law.

3. Findings

The results indicate that the choice plan can dramatically lower the costs insurers incur in paying people injured in automobile accidents whether a state currently has a no-fault law or not. If insurance premiums are proportional to compensation costs, motorists in most states who opt for PIP could buy their personal injury coverages, for about 46 % less on average than what they pay for those coverages under their state's current auto insurance system[35]. Because personal injury coverages amount to a little less than half of total auto insurance premiums (with property damage coverages amounting to just over half), this reduction translates into a roughly 20 % reduction in the average policyholder's total auto insurance premium[36]. The estimated savings vary little with the fraction of motorists who elect PIP : For example, if half of all insured motorists in tort states switch to PIP under choice, they will save an average of 20 % on their total insurance premiums ; if all insured motorists switch, their savings will

33. Because of a misunderstanding when the data were collected, the New Jersey claims in RAND's database may not be representative of the distribution of auto insurance claims in that state. Accordingly, RAND excluded New Jersey in its analysis. Although Connecticut repealed its no-fault law in 1993, RAND's data describes the outcomes of claims closed in 1992 under the no-fault plan then in place. Accordingly, the results for Connecticut pertain to its prior system.
34. Georgia repealed its no-fault law in 1991. RAND data composed of outcomes of claims closed in 1992, including both claims filed under the earlier no-fault regime and claims filed under the tort regime. Because RAND's ability to determine which regime affected any particular claim is limited, it excluded Georgia from this analysis. Pennsylvania offers motorists a choice plan between tort or a verbal threshold, no-fault plan. In its analysis, RAND examined the effects of the proposed choice plan on policyholders who elected either option. The effects of the plan on Pennsylvania motorists who opted for tort were included in the results presented for the tort states ; the effects of the plan on Pennsylvania motorists who opted for the verbal threshold were included in the results for the no-fault states.
35. S.J. CARROLL and A.F. ABRAHAMSE, *The Effects of a Choice Automobile Insurance Plan on Insurance Costs and Compensation; an Updated Analysis*, Santa Monica, RAND Institute for Civil Justice, 1998, p. 19.
36. *Ibid.*

average about 19%[37]. These estimates represent overall averages: Individual motorists would realize greater, or smaller savings, depending on factors such as their driving record and where their car is garaged and on the personal injury and property damage coverages and policy limits purchased.

At the same time, the plan will have little effect on those who opt for coverage under their state's current system. As indicated above, if injured by a motorist who elected PIP they would seek recovery for their losses from their own insurer under TM rather than from the other motorist's insurer as would be the case under the current system. Because, as pointed out above[38], the rules that govern the amount that those who opt for coverage under their state's current system can recover remain the same, there is no significant change in the insurance premiums is projected for those who elect to stay in their state's current system[39].

Extrapolating from these most recent RAND cost estimates, the staff of the Joint Economic Committee (JEC) of the United States Congress has provided its own cost estimates. Based on RAND's findings and further insurance industry data, the JEC estimates that auto choice would save over $35.5 billion in 1998 if all motorists chose PIP and $193 billion between 1998 and 2002. The average policy holder would save $184 per year per car[40] (See Table below).

37. *Id.*, 20. Note also that the savings for PIP insureds are slightly higher with 50% of motorists PIP insureds than with 100%. The reason is bottomed on the fact that a PIP insured must pay the economic loss of the person he tortiously injures above that person's PIP or tort maintenance coverage. See *supra*, note 32 and accompanying text. It is assumed that motorists who stay in the tort system will buy tort maintenance coverage at the same limits that they buy coverage under the present tort system, with many motorists today buying more than the state financial responsibility limits. On the other hand, it is assumed that motorists will buy only the minimum PIP insurance limits—which is consistent with what PIP insureds do today in no-fault states. Thus the exposure of PIP insureds to tort payment for economic loss above their victims' first party limits would be somewhat higher as more motorists are insured for PIP.
38. See *supra*, note 35, pp. 5-6.
39. See *Maryland One, loc. cit.*, note 1, 1038.
40. JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, *Auto Choice: Impact on Cities and the Poor*, Washington D.C., 1998, p. 34.

According to the JEC Report:

> Lower income drivers would enjoy significantly higher savings—36 percent on average. Since low-income families, by definition, have less disposable income, they often forgo the optional collision and comprehensive property damage coverages. As a result, the personal injury savings represent a larger share of their overall premium. The potential Auto Choice savings represent real savings for low-income households. [Even t]he average [lower] savings of only $184 is the equivalent of five weeks of free groceries, or free electricity for four months[41].

Table 1

Estimated 1998 savings from Auto Choice[42]

	Private	Commercial	Total
Average premium savings	22.8 %	27.5 %	23.7 %
Average savings per car	$184	—	—
Savings for low-income drivers	36.0 %	—	—
Total available savings if 100 % switch (billions)	$27.4	$8.1	$35.5

4. Why 1992 Based Percentage Savings Are Lower Than 1987 Based Results

Earlier studies by RAND and the JEC reported greater savings than reported above. Use of a 1987 database indicated that the choice plan would reduce BI compensation costs about 60 % (versus about 45 % under 1992 data), translating into a roughly 30 % reduction in premiums (versus approximately a 21 to 23 % reduction under 1992 data)[43]. Why the difference ?

Economic losses from auto accidents increased from 1987 to 1992. Accident victims in RAND's 1992 database suffered economic losses that

41. *Id.*, 37.
42. *Id.*, 34.
43. Compare A. ABRAHAMSE and S. CARROLL, *The Effects of a Choice Automobile Insurance Plan Under Consideration by the Joint Economic Committee of the United States Congress*, Santa Monica, RAND Institute for Civil Justice, 1997, p. 1, with A. ABRAHAMSE and S. CARROLL, *The Effects of a Choice Automobile Insurance Plan on Insurance Costs and Compensation : An Updated Analysis*, Santa Monica, RAND Institute for Civil Justice, 1998, p. 4. Compare also, JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, *The Benefits and Savings of Auto Choice*, Washington D.C., 1997, pp. 8-9, with JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, *op. cit.*, note 40, pp. 34-35.

were significantly greater, on average, than losses suffered by accident victims under RAND's 1987 database. In California, as an example, 1987 accident victims incurred an average of $5,433 (1987 dollars) in economic losses, whereas 1992 California accident victims incurred an average of $10,286 (1992 dollars)[44]. But motorists have generally not increased their policy limits to keep pace with the rate of growth in losses. Nor has the law required them to do so (so expensive are current limits in the eyes of state legislatures)[45]. As a larger fraction of 1992 accident victims' economic losses neared insurance policy limits, payment from total auto insurance grew at a slower rate than did economic losses claimed. For example, the ratio of auto insurance payment to economic loss in California fell from 1.04 in 1987, to 0.88 in 1992[46]. The result : more and more auto insurance payment went for economic, not noneconomic, losses. Thus eliminating noneconomic damages results in lower savings. Thus, in turn, 1992-based estimates of the cost of compensating auto accident victims for economic losses alone under the choice plan are greater and, hence, its updated estimates of the plan's savings from eliminating payment for noneconomic losses, are lower than were the earlier 1987-based estimates.

This is a « bad news, good news » scenario for advocates of choice auto. The « bad news » is that the percentage savings for motorists who choose PIP decline as passing years inflate economic losses from auto accidents while financial responsibility limits remain stable. The « good news » from the point of view of choice auto advocates is that the tort system as the years go by is paying less and less for noneconomic loss and more and more for only economic loss — and paying for the latter based on fault. If motorists are to be paid only for economic loss, critics of the tort system might ask, why filter such payment though a fault-based system with all its attendant transaction costs, including one third for the claimant's lawyer, increasingly now extracted not from the « extra » payment for pain and suffering but from the amount meant to pay for the client's own economic losses ? (In this connection, recall that under the auto choice proposal, when payment is made only for economic loss based on fault, a reasonable attorney's fee is paid by the liability insurer *in addition* to economic loss[47]).

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44. See *supra*, note 35, p. 41.
45. *Ibid.* An exception is New York, which increased its limits in 1995 from 10/20/5 to 20/50/10.
46. *Ibid.*
47. See *supra*, note 32 and accompanying text.

Early on, the debate over paying for auto injuries was not so much over cuts in premiums, but over which type of insurance, tort liability with common law damages or payment without reference to fault for only economic loss, provides better value for the consumer[48]. In part, at least, the debate seems to be reverting to that issue[49].

48. R.E. KEETON and J. O'CONNELL, *Basic Protection for the Traffic Victim*, Toronto, Little, Brown, 1965, pp. 292-295.

49. Some attention has recently been focused on modest reductions to auto insurance premiums in several states. See, *e.g.*, J.B. TREASTER, « Auto Insurance Is Now Cheaper In Many States », *The New York Times* (15 April 1998) A1. Due to successful investing by the insurance companies, less drunken driving, and reductions in crash severity on account of anti-lock breaks and air bags, some insurers have begun to reduce premiums. The Insurance Information Institute projects that rates will drop over all by an average of one percent this year, to $692 for the average policy (*ibid.*). Such marginal reductions, however, will do little to make insurance all that affordable — note that premiums had tripled in the last two decades. Note also that premiums continue to rise in some states and in parts of states where the overall average is lower. Some drivers hit hardest by skyrocketing insurance premiums (*ibid.*) — for example most drivers in New Jersey, which continues to have the highest rates in the nation — will receive no relief from the recent decreases in premiums (*ibid.*). Not only are such reductions too marginal to obviate the need for comprehensive auto insurance reform at present, but they are also not likely to keep rates from rising in the future. Higher medical and legal costs, more lawsuits, and fluctuating interest rates can easily set auto insurance rates climbing again in all areas, including those areas where premiums have slightly fallen. Already, premiums are far too expensive for a substantial proportion of America's drivers so that some slight and temporary good news ought not stand in the way of sensible reform.

Appendix

A. Four trends[a]

1. More people involved in auto accidents are making claims for injuries, even though accident rates declining because of:

   a) increased seat belt use;

   b) increased use of air bags;

   c) tougher DWI (Driving While Intoxicated) laws.

2. Many additional claims for relatively minor injuries
3. Medical expenses climbing rapidly
4. People more likely to hire attorney for help

B. Personal Injury Protection (PIP) Claims – 1980-1995[b]

1. Claim frequency – up 1.1 %
2. Claim severity – up 157 %
3. Average loss cost – up 160 %

C. Bodily Injury (BI) Claims – 1980-1995[c]

1. Claim frequency – up 38.6 %
2. Claim severity – up 100.1 %
3. Average loss cost – up 176.7 %

D. Property Damage (PD) Trends – 1980-1995, down 16.2 % (frequency)[d]

E. Number of BI Claims per 100 PD Claims (*i.e.*, measures likelihood of injury claim being paid given an accident serious enough to cause some danger); 1980-1995 increased 64.8 % (17.9 to 29.5)[e]

F. Insurance Research Council additional data based 1987-1994 supports trends[f]

1. Average injury loss costs (BI, PIP, UM, UIM) up 52.1 % (6.2 % per year)
2. Average property damage loss costs up 26.9 % (3.5 % per year)
3. Injury-to-property damage cost index up 19.8 % (2.6 % per year)

G. Insurance Research Council Study of 62,000 closed claims nationwide supports trends[g]

1. Sprains/strains growing share of all injuries

   a) BI claimants, 1987-1992, 66 % to 71 %

   b) PIP claimants, 1987-1992, 58 % to 62 %

2. BI and PIP claimants with no recorded periods of disability, 1977-1992[h]

   a) BI – 40 % to 59 %

   b) PIP – 45 % to 56 %

3. Medical Expenses Climbing[i]

   a) 1977 – medical expenses 2/3 of total economic loss;
   average economic loss $1,162

   b) 1992 – medical expenses 3/4 of total economic loss;
   average economic loss $4,532

4. Attorney representation countrywide – all coverages combined increased significantly[j].

a) 1977 – 31 %

b) 1987 – 42 %

c) 1992 – 46 %

Notes

[a] INSURANCE RESEARCH COUNCIL, *Trends In Auto Bodily Injury Claims*, 2nd ed., Wheaton, 1996, Part One, pp. 1-4.

[b] *Id.*, Appendix A, table A-1.

[c] *Ibid.*

[d] *Ibid.*

[e] *Ibid.*

[f] INSURANCE RESEARCH COUNCIL, *Auto Injuries: Claiming Behavior and its Impact on Insurance Costs*, Oakbrook, 1994, p. 19 (Fig. 3-3).

[g] *Ibid.*

[h] *Id.*, p. 23 (Fig. 3-8).

[i] *Id.*, p. 3.

[j] *Id.*, p. 44.