CHAPTER 6

Tort Settlements In the Serious Injury Cases

For the victims of serious automobile injuries, tort liability was the most important single source of reparation. It accounted for nearly half of the total reparation received and expected (Table 5-2 supra).

The settlements were of all sizes, and in all kinds of circumstances. In some cases there was little if any reason to believe that a particular driver was liable; but he or his insurer saw fit to pay a “nuisance settlement” rather than dispute a claim. At the other extreme, some were found guilty by juries, and paid under the threat of legal compulsion. From one extreme to the other, the payments are called “settlements” because they represent amounts that one party agreed to pay the other, whether under a slight or a great degree of duress. Some of the variations in sizes and circumstances are detailed in this chapter.

A comprehensive view of the numbers of tort settlements received in various amounts, and at various stages of litigation, is presented in Table 6-1. Particular lessons of interest in regard to tort settlements will be more fully explained in the present chapter.

A. STAGES OF CLAIM AND LITIGATION

Although popular descriptions of the process of tort settlement often indicate that such claims must be collected by hiring lawyers and going to court, this is far from a valid generalization. Tort claims, like claims for life insurance payments and for social security payments may be and often are paid directly to the claimant without a lawyer and without a suit, much less a trial. Only if
<table>
<thead>
<tr>
<th>Amounts of settlements</th>
<th>All cases</th>
<th>No lawyer hired</th>
<th>Lawyer hired</th>
<th>No suit filed</th>
<th>Suit filed</th>
<th>Not trial</th>
<th>Trial begun</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total receiving settlements</td>
<td>5,675</td>
<td>1,755</td>
<td>1,641</td>
<td>1,286</td>
<td>624</td>
<td>369</td>
<td></td>
</tr>
<tr>
<td>$1—999</td>
<td>1,619</td>
<td>955</td>
<td>425</td>
<td>129</td>
<td>53</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>$1000—2999</td>
<td>2,090</td>
<td>555</td>
<td>753</td>
<td>368</td>
<td>265</td>
<td>149</td>
<td></td>
</tr>
<tr>
<td>$3000—9999</td>
<td>1,496</td>
<td>180</td>
<td>310</td>
<td>569</td>
<td>275</td>
<td>162</td>
<td></td>
</tr>
<tr>
<td>$10,000 or more</td>
<td>470</td>
<td>65</td>
<td>153</td>
<td>220</td>
<td>31</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Total not receiving settlements</td>
<td>4,607</td>
<td>3,480</td>
<td>684</td>
<td>199</td>
<td>112</td>
<td>132</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>10,282</td>
<td>5,235</td>
<td>1,485</td>
<td>1,485</td>
<td>736</td>
<td>501</td>
<td></td>
</tr>
<tr>
<td>Aggregate settlements</td>
<td>$20,662,900</td>
<td>$2,917,320</td>
<td>$5,264,950</td>
<td>$8,966,057</td>
<td>$2,310,732</td>
<td>$1,203,841</td>
<td></td>
</tr>
<tr>
<td>Mean for those receiving settlements</td>
<td>$3,738</td>
<td>$1,662</td>
<td>$3,280</td>
<td>$7,398</td>
<td>$3,858</td>
<td>$3,382</td>
<td></td>
</tr>
<tr>
<td>Mean for all cases</td>
<td>$2,066</td>
<td>$557</td>
<td>$2,340</td>
<td>$6,642</td>
<td>$3,349</td>
<td>$2,518</td>
<td></td>
</tr>
<tr>
<td>Number of interviews¹</td>
<td>320</td>
<td>156</td>
<td>72</td>
<td>46</td>
<td>29</td>
<td>17</td>
<td></td>
</tr>
</tbody>
</table>

¹ The number of interviews forming the basis of information in various tables and figures varies because some interviews did not furnish information on all points.
the defendant refuses to pay the amount which the claimant demands, is it necessary for the claimant to hire a lawyer, or file suit. And these steps may also be necessary if a life insurance company, or the Social Security Administration, refuses to pay. The relevant difference between tort liability and most other sources of reparation lies in the frequency of disagreement, and the consequent frequency of litigation.

The extent of litigation was carefully studied in connection with the approximately 10,300 persons who suffered serious injuries in Michigan automobile accidents in 1958. Some of these persons made no attempt to collect any damages. Others tried to collect, but were unsuccessful, and they gave up without putting their cases in the hands of a lawyer (for their reasons, see Table 6-3, infra). The total of the two groups who thus "dropped" their claims without settlement was about 34 percent of the seriously injured individuals. Others were more fortunate; they received tort settlements without having to hire lawyers; about 17 percent were in this group, leaving 49 percent of the cases to be handled by lawyers. Very few of these lawyer-represented cases were dropped without suing or collecting, but about a third of them (16 percent of the serious cases) got settlements without having to file suit. This left 26 percent of the serious injury cases in which suits were filed for personal injuries.

Of those who filed suits, nearly half (12 percent of the cases) obtained settlements without going to trial or a pretrial conference. Of those cases which went to pretrial conference, about half were settled without going to trial.

Figure 6-1 indicates the pattern of disposition of injury cases at various stages of claim and of litigation.

Although the number of cases settled is less at each successive stage of litigation, the same cannot be said of the amounts. Of the settlements made without lawyers, a very small percentage are over $3000; of the settlements made by lawyers after suit filed, a majority are over $3000. However, the amount of settlement
FIGURE 6-1—DISPOSITION OF CASES AT VARIOUS STAGES OF CLAIM AND LITIGATION
(Percentage distribution of serious injury cases)

Number of interviews providing this information: 312.

does not rise at each successive stage; there are proportionately more small settlements after pretrial than between suit and pretrial; there are proportionately more small settlements after trial than between pretrial and trial. It appears that the defense pays off most of the big winners before getting to the pretrial conference, and goes to pretrial and trial chiefly in cases where there are means of defeating or holding down the recovery. The distribution of settlements at the various stages is shown in Figure 6-2.

Because they usually settled for smaller amounts, the 31 percent of claimants who settled without a lawyer received only 15 percent of the aggregate amount of settlements. In contrast, the 23 percent who settled after filing suit but before trial or pretrial got 43 percent of the aggregate settlements because many of their settlement amounts were quite large. The distribution
TORT SETTLEMENTS IN SERIOUS INJURY CASES

FIGURE 6-2—AMOUNTS OF TORT SETTLEMENTS MADE AT SUCCESSIVE STAGES OF CLAIM AND LITIGATION
(Percentage distribution of serious injury cases)

---

**LEGEND:** Amount of settlement

- No Settlement
- $1-999
- $1000-2999
- $3000-9999
- $10,000 or more

<table>
<thead>
<tr>
<th>Stage of Claim or Litigation</th>
<th>No Settlement</th>
<th>$1-999</th>
<th>$1000-2999</th>
<th>$3000-9999</th>
<th>$10,000 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>No lawyer hired</td>
<td>66%</td>
<td>18%</td>
<td>11%</td>
<td>4%</td>
<td>1%</td>
</tr>
<tr>
<td>Lawyer hired, no suit filed</td>
<td>29%</td>
<td>18%</td>
<td>33%</td>
<td>13%</td>
<td>7%</td>
</tr>
<tr>
<td>Suit filed, no trial or pre-trial</td>
<td>10%</td>
<td>8%</td>
<td>25%</td>
<td>41%</td>
<td>16%</td>
</tr>
<tr>
<td>Pre-trial held, no trial</td>
<td>13%</td>
<td>7%</td>
<td>37%</td>
<td>39%</td>
<td>4%</td>
</tr>
<tr>
<td>Trial begun</td>
<td>26%</td>
<td>11%</td>
<td>30%</td>
<td>33%</td>
<td></td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 155, 71, 42, 28, 16.

of aggregate settlements among the successive stages of claim and litigation is shown in Figure 6-3.

B. GROSS TORT SETTLEMENTS

The "gross settlement" is the amount paid out by anyone, usually a liability insurance company, to settle the insured's potential liability for negligence. Even in serious cases, most of the settlements are relatively small, and the frequency of occurrence falls off rapidly as the amount rises. Figure 6-4 illustrates this relationship.

This distribution gains more significance when it is reduced to
FIGURE 6-3—AGGREGATE TORT SETTLEMENTS AT SUCCESSIVE STAGES OF CLAIM AND LITIGATION
(Percentage distribution of estimated aggregate amounts in serious injury cases in which a settlement was obtained)

Number of interviews providing this information: 320.

a smaller number of categories, and compared with the distribution of losses among the same subjects of injury. Although all of the serious injury victims had some economic loss, 45 percent of them obtained no tort settlement at all. To put it the other way around, 100 percent had a loss, but 55 percent received a tort settlement. Twenty-six percent of the serious injury victims had losses between one and a thousand dollars, but only 16 percent of the same group had settlements in this range. The disparity mounts as the amounts rise, so that 20 percent with losses over $10,000 compare with 5 percent receiving settlements over this figure. This comparison is graphed in Figure 6-5.

The disparity between amounts of loss and of settlements does not mean that tort law is not doing the job for which it is designed—the compensation of the innocent by the guilty. Indeed, the fact that 45 percent of the injured receive no settlement might be taken to show that the tort law is working as it should in making recovery depend on negligence and freedom from contribu-
TORT SETTLEMENTS IN SERIOUS INJURY CASES

FIGURE 6-4—FREQUENCY OF SETTLEMENTS OF VARIOUS AMOUNTS
(Percentage distribution of serious injury cases in which a settlement was obtained)

Number of interview providing this information: 183.

tory negligence. Viewing the matter from this point of view, one might wish to compare the percentage distributions of losses and settlements, with uncompensated cases excluded. On this basis of comparison, one finds a striking similarity between the two distributions. The only glaring dissimilarity appears in the bracket of "$10,000 or more," in which the proportion of settlements is significantly lower than the proportion of economic losses. The comparison is made in Figure 6-6.

Perhaps the most striking aspect of these distributions is the large proportion of injured persons who receive settlements which must be far below anyone's estimate of their actual loss. Tort
theory, which calls for the recovery of all or nothing, offers no justification for this phenomenon. Presumably it results partly from the desire of parties to compromise rather than to gamble for the all-or-nothing result of a jury verdict and partly from the expectation that a jury would also compromise to reach agreement
between those who want to give all and those who want to give nothing. This hypothesis is supported by the examination, in Section H of this chapter, of factors which augment or limit the amounts of settlements.

The frequency of obtaining a settlement, and the size of the settlement received, varied greatly in relation to the steps taken to obtain a settlement. Of seriously injured persons who did not hire a lawyer, only about a third obtained a settlement; of those who hired a lawyer but did not file suit, more than two-thirds obtained settlements; and of those who filed suit, over five-sixths obtained settlements (Figure 6-7).

**Figure 6-7—Amounts of Tort Settlements Made at Successive Stages of Claim and Litigation**

(Percentage distribution of serious injury cases)

Number of interviews providing this information: 155, 71, 86.

However, after suit was filed, further stages of litigation were not accompanied by higher frequencies or higher amounts of settlement. To the extent that conclusions can be drawn from the diminishing number of cases at each stage, claimants were less likely to obtain a favorable settlement after pretrial conference than before, and still less likely after trial (see Table 6-1).
The correlations between litigation and settlement obviously do not establish a causal relation. The fact that more favorable settlements are obtained in lawyer-represented cases might be attributed either to the skill of lawyers in obtaining settlements, or to the disposition of clients to hire lawyers only in hopeful cases, or to some combination of the two.

C. COLLECTION EXPENSES

For most injury victims, the amount of the tort settlement was not a net benefit; it was obtained at the cost of lawyers' charges, lost work time, and transportation costs. The major portion of lawyers' charges was usually fees for professional services, but often included court filing fees, photographers' and stenographers' fees, and other elements. Most claimants had very little idea of the composition of lawyers' charges, and the survey was not able to obtain such details from claimants' lawyers in all cases. Therefore, "collection expenses" were taken as a gross amount comprising out-of-pocket expenses of the claimant and his lawyer, as well as compensation for the lawyer's professional services.

The interesting aspect of collection expense is not primarily its dollar amount, but its relation to the amounts of gross settlement. What people want to know is, do the collection expenses eat up most of the settlement, or do they only nibble at the fringe? To answer this question, cases of tort settlements have been classified in the following categories:

- No collection expense
- Collection expense from 1 to 19% of tort settlement
- Collection expense from 20 to 39% of tort settlement
- Collection expense from 40 to 59% of tort settlement
- Collection expense of 60% or more of tort settlement

It may surprise some readers to discover that 32 percent of those who collected settlements did so without incurring any collection expense. On the other hand, it will surprise no one that when collection expense was incurred, it was usually in the 20 to
39 percent bracket; the mean was 32 percent. It may be more surprising that large blocks of claimants fell outside of these limits, with some reporting expenses equaling more than 60 percent of the settlement. The distribution is indicated in Figure 6-8.

**Figure 6-8—Collection Expense as a Percent of Settlement**
(Percentage distribution of serious cases in which a settlement was received)

![Legend for Figure 6-8](image)

Number of interviews providing this information: 165.

Collection expense did not appear to vary significantly between urban and rural areas, nor with other differences in the character of claimants, but it varied very significantly with the amount of the settlement. Among the smaller settlements, almost two-thirds were obtained with no collection expense at all; among the larger settlements, only about a tenth were obtained without expense. The distribution of collection expense rates among settlements of different sizes is shown in Figure 6-9.

The main factor in determining whether there would be any collection expense, and how much, was whether or not a lawyer was hired. Of the claimants who received a settlement without hiring a lawyer, 92 percent had no collection expense; of those who hired a lawyer, only 3 percent escaped collection expense (Figure 6-10).

Among claimants who hired lawyers, the distributions of collection expense varied less. But the proportion incurring a high
rate of expense was significantly greater for those whose lawyers filed suit than for those who settled without it; and it was greater for those who went to trial than for those who settled before trial (Figure 6-11).

D. RATIOS OF SETTLEMENTS TO LOSS

One main objective of the present study has been to determine to what extent injury victims are economically impaired or enriched by the scarcity or abundance of reparation. Since tort settlements are the largest component of reparation, it is interesting to see what part the tort settlements play in this impairment and enrichment.
FIGURE 6-10—COLLECTION EXPENSE AS A PERCENT OF TORT SETTLEMENT WITH AND WITHOUT A LAWYER (Percentage distribution of serious injury cases in which a settlement was obtained)

Legend: No Expense, 1-19%, 20-39%, 40-59%, 60-79%

<table>
<thead>
<tr>
<th>Lawyer Hired</th>
<th>3%</th>
<th>17%</th>
<th>55%</th>
<th>20%</th>
<th>5%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer Not Hired</td>
<td>92%</td>
<td>5%</td>
<td>1%</td>
<td>2%</td>
<td></td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 47, 118.

FIGURE 6-11—COLLECTION EXPENSE AS A PERCENT OF TORT SETTLEMENT AT SUCCESSIVE STAGES OF LITIGATION (Percentage distribution of serious injury cases in which a settlement was obtained)

Legend: No Expense, 1-19%, 20-39%, 40-59%, 60-79%

<table>
<thead>
<tr>
<th>Lawyer hired, no suit filed</th>
<th>8%</th>
<th>24%</th>
<th>53%</th>
<th>11%</th>
<th>4%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suit filed, no trial</td>
<td>14%</td>
<td>59%</td>
<td>23%</td>
<td>4%</td>
<td></td>
</tr>
<tr>
<td>Trial begun</td>
<td>48%</td>
<td>35%</td>
<td>17%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 46, 60, 12.
From this point of view, the net settlement—rather than the gross settlement—is the significant sum for comparison. This was derived in each case by deducting the collection expense from the tort settlement—relying on claimants' reports of both amounts.

From some other points of view, the gross settlement might be more interesting. Since tort law specifies what the defendant must pay, rather than what the plaintiff must get out of it, a comparison of gross settlements with losses would doubtless be interesting to tort theorists. However, in order to measure to what extent the tort law is doing its appointed job, one would have to include amounts of psychic, as well as economic loss. In the absence of any method of measuring these losses, a study of the ratios of gross settlements to losses might be more misleading than enlightening. Therefore the study does not present ratios of gross settlements to economic losses.

When all serious cases are viewed together there is no striking pattern in the distribution of ratios. It looks as though the amounts of settlement were a random choice, or at least completely unrelated to amount of economic loss. Despite the breadth of the bracket for settlements approximating loss (76 to 150 percent), only 34 percent of the cases fell within this bracket. Twenty-four percent fell in the narrower bracket from 26 to 75 percent. And there are substantial proportions in the exterior brackets—under 26 percent, and over 150 percent (Figure 6-12).

When the settlements are divided into classes according to amount, a more definite pattern appears (Figure 6-13). A very large proportion of the settlements which were small in amount were also small in proportion to the amount of loss which the injured person had sustained. It will be recalled that a large proportion of these small settlements were made directly with the injured person, unrepresented by counsel (Figures 6-9, 6-10, supra).

In the next higher range of settlements, the ratios were much better; the modal group was in the neighborhood of 100 percent
TORT SETTLEMENTS IN SERIOUS INJURY CASES

FIGURE 6-12—Net Tort Settlement as a Percent of Economic Loss
(Percentage distribution of serious injury cases in which a settlement was obtained)

LEGEND: Per cent of loss

1-25%  26-75%  76-150%  151% or more

Per cent of cases

26%  24%  34%  16%

Number of interviews providing this information: 159.

FIGURE 6-13—Net Tort Settlement as a Percent of Economic Loss for Settlement of Varying Amounts
(Percentage distribution of serious injury cases in which a settlement was obtained)

LEGEND: Per cent of loss

1-25%  26-75%  76-150%  151% or more

Amount of Settlement

$1 - 999

40%  21%  31%  8%

$1,000 - 2,999

22%  21%  43%  14%

$3,000 - 9,999

20%  24%  28%  28%

$10,000 or more

14%  52%  19%  15%

Number of interviews providing this information: 41, 55, 49, 14.
of economic loss. In settlements between $3000 and $10,000, settlements were still more generous; more than a quarter of them were far above economic loss. But the settlements of over $10,000, though large in amount, were generally modest when viewed in relation to losses; two-thirds of them were less than 75 percent of estimated economic loss.

The differentiation among ratios of settlement to loss is even more accentuated when the cases are classified by the amount of economic loss sustained (Figure 6-14), instead of the amount of reparation received (as in the preceding figure). Among the cases of small loss, the largest settlement bracket was from 76 to 150 percent; a sizable fraction of the cases received over 150 percent of economic loss. The cases of large losses stood at the other extreme. Most of them got less than 25 percent of their economic loss, and none passed 75 percent. The smaller the loss, the higher the percent of settlement; the larger the loss, the smaller the percent of settlement.

Although low rates of settlement were more frequent in the large loss cases, instances of no settlement at all did not seem to vary according to any consistent pattern. There were 45 percent of no-settlement cases among the losses of under $1000, 43 percent among losses of $1,000 to $4,999, 32 percent among losses of $5000 to $24,999, and 53 percent among losses of $25,000 or more.

E. MEANING OF THE RATIOS OF SETTLEMENT TO LOSS

Ratios are capsules of analysis which condense a great deal of information, and which for this very reason demand some care in their interpretation.

Ratios of more than 150 percent may be conveniently thought of as signifying cases of full economic compensation plus substantial psychic compensation. Whether the psychic compensation is excessive or inadequate is a matter on which each reader will have to make his own estimates, since the survey directors have
not been able to devise any way to help him. It is hardly necessary to say that none of the ratios, however high, can be regarded as signifying "overcompensation" in the absence of a means of measuring psychic loss. Not only does the law command compensation for psychic loss, but questions asked in the course of this survey indicated that a large preponderance of people with injury experience believe in it (see Chapter 8, infra).

Ratios of 76 to 150 percent may be regarded as signifying full economic compensation without substantial psychic compensation. Accepting this view, it becomes extremely interesting that when all the serious injury cases were taken together, just half received full economic compensation or more, and half received less (Figure 6-12). It becomes even more interesting that among

![Figure 6-14—Net Tort Settlement as a Percent of Economic Loss for Varying Amounts of Economic Loss](image)

<table>
<thead>
<tr>
<th>Amount of Loss</th>
<th>1-25%</th>
<th>26-75%</th>
<th>76-150%</th>
<th>151% or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1-999</td>
<td>16%</td>
<td>2%</td>
<td>49%</td>
<td>33%</td>
</tr>
<tr>
<td>$1,000-4,999</td>
<td>12%</td>
<td>32%</td>
<td>40%</td>
<td>16%</td>
</tr>
<tr>
<td>$5,000-24,999</td>
<td>44%</td>
<td>33%</td>
<td>19%</td>
<td>4%</td>
</tr>
<tr>
<td>$25,000 or more</td>
<td>71%</td>
<td></td>
<td>29%</td>
<td></td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 29, 62, 43, 25.
the largest loss group (from $25,000 upward) no sampled case got into the full compensation range (Figure 6-14).

*Ratios of 75 percent* or less may conveniently be thought of as signifying *partial compensation* of economic loss, and no compensation at all for psychic loss. So viewed, these cases become interesting from several points of view.

In order to appreciate the extent of *partial compensation*, one should first recall that the proportions are calculated after laying to one side about half of the serious injuries, in which there was *no compensation* by way of tort settlement. The proportions now being discussed are fractions of the serious cases receiving *some compensation* by way of tort settlement. Over half of this half involves only *partial compensation*.

Among the cases of really severe economic losses ($25,000 or more), partial compensation is virtually the only kind that occurs; *no* cases of full economic compensation fell within the sample.

This observation is particularly striking in the light of the theory of tort law that an injury victim is entitled to recover his entire loss, including psychic loss, if he is entitled to recover at all. How can one reconcile this theory with the observation that half the people who recover tort settlements get substantially less than their purely economic loss?

In the large loss cases—those over $25,000, one of the explanations is the limits of insurance policies. Ten thousand dollars per injured person is still a very common limit of liability insurance. There are also cases in which settlements are held down by the lack of any insurance at all.

Another explanation for the deficiency is the fact that many tort settlements are subject to deduction of the fees and expenses of the claimants' attorneys. If the pay-out by the insurance company had been in each case exactly 100 percent of the economic loss as estimated by the survey, and if the claimant's attorney had deducted exactly a third of the settlement, the settlement ratio
would have been 66 2/3 percent, and would have fallen in the "partial compensation" zone.

But this phenomenon would not explain the large number of cases in the ratio bracket of 1 to 25 percent, nor the cases in which there was no collection expense. It is evident that a great many cases are systematically and consciously settled for substantially less than the economic loss.

In this respect, the statistics confirm what every lawyer and adjuster knows—that questions about negligence, proof, the defendant's ability to pay, and the claimant's desire for an end of litigation, lead to the compromise of claims at levels which correspond to no theory of legal right. Furthermore, the factors tending toward compromise are much more powerful in the cases of large economic loss than they are in the small ones.

F. RATIO OF SETTLEMENT TO EXPENSES INCURRED

The ratio of settlement to economic loss, which has just been examined, has one weakness. It views all elements from the injured person's point of view, taking his estimates of what he earned before he was disabled and of how much he will be able to earn in the future, and measuring the settlement by the amount that he receives after paying his collection expenses.

In order to view the matter as it may be seen by putative tort feasors and their insurers, an additional ratio has been constructed, which compares the settlement with expenses incurred. In this ratio, the settlement is not the net amount received by the injured person, but the gross amount paid by the alleged tort feasor or his insurance company. This amount is then compared with "expenses incurred," which exclude nearly every element about which there could be a wide difference of opinion. "Expenses incurred" include medical and hospital bills (regardless of who, if anyone, paid them), transportation and other expenses caused by the injury, plus the loss in value (if any) caused to the injury.
victim's car or other property (regardless of whether or not it was repaired or replaced).

In cases of death or permanent disability the “expenses incurred” figure is often a minute fraction of “economic loss,” because of the exclusion of income loss. Hence, the ratio of “settlement to expenses incurred” may be 100 percent although the ratio of “settlement to economic loss” in the same case would be only 5 or 10 percent. On the other hand, the partial disability of a housewife, or the temporary disability of a child, may result in no income loss, and the “expenses incurred” may be exactly the same as the “economic loss.” Even so, the ratio shown in this study would be much higher, since the gross settlement instead of the net settlement is used in making the calculation.

The ratio of “gross settlement to expenses incurred” presents a sunnier picture than the ratio of “net settlement to economic loss.” The largest group of those who received settlements received substantially more than their expenses, while only a fifth received substantially less than expenses (Figure 6-15).

**Figure 6-15—Gross Tort Settlement as a Percent of Expenses Incurred**

(Percentage distribution of serious injury cases)

<table>
<thead>
<tr>
<th>LEGEND: Per cent of expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Settlement</td>
</tr>
<tr>
<td>1-25%</td>
</tr>
<tr>
<td>26-75%</td>
</tr>
<tr>
<td>76-150%</td>
</tr>
<tr>
<td>151% or more</td>
</tr>
</tbody>
</table>

Per cent of cases

45% 3% 8% 18% 26%

Number of interviews providing this information: 298.

The ratio of gross settlement to expenses incurred was also a more orderly performer than the prior ratio, with respect to its consistency in varying expense brackets. When settlement was
made, it was usually generous in relation to expenses incurred. Ratios of more than 150 percent were numerous among claims of every size (Figure 6-16).

Another interesting feature appeared in relation to expenses incurred; the greater the expenses, the smaller the proportion of cases with no settlement.

**Figure 6-16—Gross Tort Settlement as a Percent of Expenses Incurred in Cases With Varying Amounts of Expenses**

(Percentage distribution of serious injury cases)

<table>
<thead>
<tr>
<th>Amount of Expenses</th>
<th>No settlement</th>
<th>1-25%</th>
<th>26-75%</th>
<th>76-150%</th>
<th>151% or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1-999</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>54%</td>
<td>7%</td>
<td>3%</td>
<td>19%</td>
</tr>
<tr>
<td>$1,000-2,999</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>46%</td>
<td>2%</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>$3,000-4,999</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>34%</td>
<td>16%</td>
<td>20%</td>
<td>30%</td>
</tr>
<tr>
<td>$5,000 or more</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>25%</td>
<td>7%</td>
<td>22%</td>
<td>46%</td>
</tr>
</tbody>
</table>

*Legend: Per cent of loss*

*Number of interviews providing this information: 74, 144, 46, 35.*

Although low ratios of settlement are infrequent when settlements are compared with expenses incurred, they do persist. Their persistence corroborates the view that many cases are compromised for an amount which does not correspond to anyone's estimate of the actual loss or expense. More important, the data suggests the probability that future economic losses are outweighed, as reparation measures, by the more easily estimated and proved
"expenses incurred." It is possible that injured persons find it difficult to insist on present payment for something so uncertain as future income losses.

G. The Bargaining Process

Since some claims are settled for more than double the apparent amount of economic loss, and others for less than half of it, one might expect the parties would start their bargaining from rather distant positions. It seems to be the prevailing tradition that the first step is a call on the injured person by the liability insurance adjuster. The injured person then tells the adjuster about his expenses and his past and expected future losses.

At this point, or soon after, it seems to be common for the insurance adjuster to offer a specific amount in settlement; less frequently, the injured person states the amount which he would accept. In many cases, this initial offer or demand is turned down, with or without the other party's naming a figure which he would accept. If there is no agreement, the injured person who wants to collect his claim will have to go on to further stages of litigation such as hiring a lawyer, filing suit, and preparing for trial. At some point before payment is coerced by the arm of the law, the insurer or the claimant will probably again propose settlement; if this is rejected, the process will be repeated by one side or the other until the minds meet.

1. First Offers

In order to obtain a view of the bargaining process, the survey included a question about the amount of the first offer received by the injury victim. Of those who reported a settlement, less than half reported a "first offer." The smallness of this fraction may have resulted from any of a number of causes. The amount may have been forgotten. If the injury victim went to a lawyer before he received an offer from an adjuster, he might not have known what offer if any the insurer initially made. If the adjuster's first
proposal was accepted, the injured person may not think of it as a "first offer," and might not answer the question for that reason. The precise questions asked are shown in the injured person's questionnaire, reprinted in the appendix (questions F19-F20c).

One of the "observers" of the study appointed by the Michigan State Bar believes that injured persons' perceptions and recollections of "first offers" are unreliable, because of a tendency to exaggerate what was offered, and to mistake for an offer some figure which may have been only casually mentioned.

First offers are most interesting when compared with other figures. One comparison was made by calculating the ratio of first offers to economic losses. These ratios showed a dispersion very like that of the settlement-to-loss ratios considered earlier, except that the concentration in the lower ratios was slightly more pronounced. Well over half of the cases showed a ratio of less than 76 percent of economic loss.

**Figure 6-17—First Offer as a Percent of Economic Loss**

(Percentage distribution of serious injury cases in which a tort settlement and a first offer were received)

<table>
<thead>
<tr>
<th>LEGEND: Per cent of loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-25%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Per cent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>36%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 78.

The dispersion of ratios becomes more significant when the cases are classified by amount of economic loss. Where the economic loss was under $1000, the distribution was fairly symmetrical; there were almost as many offers to pay more than 150
percent of the loss as there were to pay under 25 percent. The largest fraction of offers was in the 76-150 percent bracket. On the other hand, when the economic loss was over $1000, relatively few offers surpassed 75 percent; they grew fewer as the amount of loss rose. In these cases, the natural lack of inclination and ability to pay large sums was probably reinforced by the fact that much of the loss had not materialized when the "first offer" was made.

It must be remembered that all the analyses in this section concern only "serious injuries." Among minor cases where the other party was at fault and insured, offers equal to or larger than losses may well have been much more common.

**Figure 6-18—First Offer as a Percent of Economic Loss, in Cases with Varying Amounts of Economic Loss**
(Percentage distribution of serious injury cases in which a tort settlement and a first offer were received)

<table>
<thead>
<tr>
<th>Economic Loss</th>
<th>1-25%</th>
<th>26-75%</th>
<th>76-150%</th>
<th>151% or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1-999</td>
<td>28%</td>
<td>3%</td>
<td>42%</td>
<td>27%</td>
</tr>
<tr>
<td>$1,000-4,999</td>
<td>19%</td>
<td>48%</td>
<td>29%</td>
<td>4%</td>
</tr>
<tr>
<td>$5,000-24,999</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$25,000 or more</td>
<td>70%</td>
<td></td>
<td></td>
<td>30%</td>
</tr>
</tbody>
</table>

*Number of interviews providing this information: 15, 32, 22, 9.*
A most interesting question for the purposes of understanding the dynamics of claim settlement is whether the eventual settlements were larger than the first offers, and, if so, how much. In order to examine this problem, the first offer was divided in each case by the amount of the gross settlement (without deduction of an attorney's fee). The result is called "first offer as a percent of tort settlement." In reading these results, it must be remembered that the word "settlement" has been used to include all payments on account of tort liability, including payments after verdict or judgment (see page 181, supra).

Perhaps the most interesting result of this comparison is that 6 percent of the respondents admitted having received a first offer which was larger than their eventual gross settlement. Another 55 percent of the respondents reported first offers which were more than half of the eventual settlement. That left only 39 percent whose first offer was less than half of their eventual settlement (Figure 6-19).

One of the factors which seemed to relate to ratio of first offer to tort settlement was the amount of the economic loss which the subject eventually sustained (Figure 6-20). It is probably significant that the first offers which exceeded the final tort settle-

---

**Figure 6-19—First Offer as a Percent of Tort Settlement**

(Percentage distribution of serious injury cases in which a tort settlement and a first offer were received)

<table>
<thead>
<tr>
<th>Per cent of tort settlement</th>
<th>Per cent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-50%</td>
<td>39%</td>
</tr>
<tr>
<td>51-100%</td>
<td>55%</td>
</tr>
<tr>
<td>101% or more</td>
<td>6%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 75.
ment were more frequent when the losses were larger. When coupled with Figures 6-14 and 6-18, this suggests that people with large losses were likely to pass up offers which seemed small in relation to losses, but which may have been generous in relation to prospects of successful litigation.

**Figure 6-20—First Offer as a Percent of Tort Settlement for Varying Amounts of Economic Loss**
(Percentage distribution of serious cases in which a tort settlement and a first offer were received)

<table>
<thead>
<tr>
<th>Economic Loss</th>
<th>Per cent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1-999</td>
<td>31%</td>
</tr>
<tr>
<td>$1,000-4,999</td>
<td>47% 51% 2%</td>
</tr>
<tr>
<td>$5,000 or more</td>
<td>36% 47% 17%</td>
</tr>
</tbody>
</table>

Legend: Per cent of tort settlement
- 50% or less
- 51-100%
- 101% or more

*Number of interviews providing this information: 15, 28, 31.*

Another factor which varied significantly with the first offer ratio was the amount of the tort settlement (Figure 6-21). Particularly noticeable is the decrease in the ratio as the size of the eventual settlement rises. Where the eventual settlements were under $1000, the initial offers were usually more than half of that; the average was 67.8 percent. But where the settlements were over $3000 the initial offers were generally less than half of the eventual settlement, and the average ratio was just 50.9 percent. There were not enough cases of settlements over $10,000 to make a separate distribution for that bracket.
Although the rising proportion of low offers is striking, another factor in the distribution is equally significant. That is the persistence of a small group in which the original offer was more than the claimant eventually settled for. This group persisted even among the cases of settlements over $10,000 (not shown). In other words, some injury victims turned down offers of over $10,000 and later accepted less.

**Figure 6-21—First Offer as a Percent of Tort Settlement for Varying Amounts of Settlement**

(Percentage distribution of serious injury cases in which a tort settlement and a first offer were received)

<table>
<thead>
<tr>
<th>Amount of Tort Settlement</th>
<th>Per cent of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1-999</td>
<td>20% 75% 5%</td>
</tr>
<tr>
<td>$1000-2999</td>
<td>36% 58% 6%</td>
</tr>
<tr>
<td>$3000 or more</td>
<td>55% 38% 7%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 20, 28, 27.

Although the amount of money involved seemed to be the most important variable affecting the first-offer-to-settlement ratio, there was also a significant difference in the distribution pattern depending upon whether or not the injured person hired a lawyer. In lawyer-represented cases, the ratios were generally lower; or, as a lawyer might prefer to say, the settlement was a higher multiple of the first offer (Figure 6-22). The respondents' answers did not distinguish between first offers made before or after a
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FIGURE 6-22—FIRST OFFER AS A PERCENT OF TORT SETTLEMENT IN CASES SETTLED WITH AND WITHOUT LAWYERS
(Percentage distribution of serious injury cases in which a tort settlement and a first offer were received)

<table>
<thead>
<tr>
<th>LEGEND: Per cent of Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-50%</td>
</tr>
<tr>
<td>51-100%</td>
</tr>
<tr>
<td>100% or more</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lawyer not hired</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>20%</td>
<td>71%</td>
</tr>
<tr>
<td>9%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lawyer hired</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>53%</td>
<td>43%</td>
</tr>
<tr>
<td>4%</td>
<td></td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 32, 43.

lawyer was hired; presumably the answers included offers of both kinds.

2. Initial Demands and Damage Allegations

To compare with adjusters' first offers, it would have been interesting to have a record of the initial demands of injured persons. In the hope of obtaining such a record, injury respondents were asked, "At that time [the time of the first offer], did you mention to them some sum of money that you would accept?" The question was generally answered negatively or not at all, so that no significant comparison could be made between offers and demands, or between demands and eventual settlements. However, the absence of answers is itself significant. It shows that claimants did not usually take a position as to the amount owed them; rather they awaited offers to which they responded "enough" or "not enough."

Lawyers for plaintiffs were also asked about initial offers and about their demands, and they were generally able to answer. Two-thirds of the initial offers were for less than half of the
Number of interviews providing this information: 49.

amount that the lawyer was demanding. This distribution is shown in Figure 6-23.

Another figure of some interest in connection with the bargaining process is the allegation of damage in the complaint filed on behalf of the injury victim when suit is started. Many lawyers protested against reporting this amount at all, on the ground that it is notoriously unrelated to any actual expectation. One lawyer, when asked how much he had sued for in a particular case replied, "Oh, the usual astronomical amount."

But in the interest of documenting the actual significance or insignificance of the damage allegation (often called by lawyers "the ad damnum clause"), these allegations were recorded and compared with settlements. Of the suits which claimed from $10,000 to $25,000, more than two-thirds were settled for less than $5000. Of those which claimed $50,000 or more, three-fourths were settled for less than $10,000, and so on. The average damage allegation of $46,910 compared with an average settlement of $5408.

H. DETERMINANTS OF BARGAINING BEHAVIOR

Why do some injury victims push their claims to ultimate
judgment, while others drop theirs without payment? Why do some hold out for all their economic loss, while others settle for a small fraction of it? Looking at the matter from the other side, why do defendants pay some claims so generously, and others so scantily, or not at all?

In order to illuminate these subjects, a number of questions were posed to injury victims and to lawyers for claimants and defendants.

Injury victims who received no tort settlement were asked why not. Their reasons were widely scattered, but over half of them related to the fault problem; either no one was thought to be at fault, or the victim considered that he himself, or a member of his

### TABLE 6-2

*Injured Persons' Reasons for not Receiving a Tort Settlement*

(percentage distribution of serious injury cases in which no tort settlement was received)

<table>
<thead>
<tr>
<th>Reasons involving supposed improbability of getting any settlement</th>
<th>80%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nobody to collect from; nobody else at fault; the person at fault unknown or address unknown; injured person at fault, or member of family at fault</td>
<td>68%</td>
</tr>
<tr>
<td>The person at fault had no insurance, or no money</td>
<td>12%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reasons involving unwillingness to push claim</th>
<th>3%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The person at fault was a friend or relative</td>
<td>2%</td>
</tr>
<tr>
<td>Too expensive to try to collect; couldn't afford a lawyer</td>
<td>1%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other reasons</th>
<th>17%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our insurance company took care of it</td>
<td>2%</td>
</tr>
<tr>
<td>Still trying to collect</td>
<td>8%</td>
</tr>
<tr>
<td>Unclassified</td>
<td>7%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL</th>
<th>100%</th>
</tr>
</thead>
</table>

Number of interviews 134
immediate family, was the faulty one. A significant fraction—over a tenth of those who got no settlement—laid it to the lack of any assets or insurance held by the party who was at fault. These answers were given by people who had hired lawyers as well as by those who had not, so they doubtless included some reasons which the claimants had heard from their lawyers, and passed on to the interviewer (Table 6-2).

A more penetrating inquiry into the reasons for noncollection would separate the various decisional stages. The first of these, for most injury victims, would be the decision whether to see a lawyer in order to get a settlement or a larger settlement than the defendant had offered. Reasons given for not seeing a lawyer
were generally the same as those for not getting a settlement. Most of them related to the absence of fault on anyone else's part, or the presence of fault on the part of the claimant or his immediate family. Evidently these respondents considered themselves competent to estimate their chances of winning without aid of professional advice. Financial irresponsibility of the tortfeasor was mentioned much less frequently than in answer to the question about why no settlement was received (Table 6-3).

There was an interesting difference between the reasons given for not seeing a lawyer in the small and the large cases. Where the amount of economic loss exceeded $5000, the “unwillingness to litigate” reasons and the “other reasons” disappeared. All those with losses over $5000 who did not see a lawyer gave a reason involving supposed improbability of getting any settlement.

Claimants who hired a lawyer but did not file suit were asked why they did not take this further step. Most of the answers were too diverse to permit meaningful classification. The only interesting factor which emerged was that many more respondents characterized the decision not to sue as their own (31 percent) than referred to it as the decision of their lawyer (9 percent).

Considerably more information was obtained from injured persons' lawyers, when they were asked what were the principal sources of controversy between themselves and counsel for defendants. These questions were asked only in court-filed cases, which included some injuries classified as "minor," along with the "serious." The answers which far outdistanced all others were those which related to whose fault it was that the accident happened. The distribution of these and other answers is shown below in Table 6-4.

Following the free-answer question reported on in Table 6-4, claimants' lawyers were handed a card naming five possible areas of disagreement, and were asked, "Which of the following items, if any, were major sources of disagreement between yourself and the defense counsel?" If any of the items on the card was men-
TABLE 6-4

*Claimants' Lawyers Reasons for Disagreement*
*(percentage distribution of answers in court cases)*

<table>
<thead>
<tr>
<th>Major points of disagreement between claimant's lawyer and defense counsel</th>
<th>Total reporting disagreement (by area of disagreement)</th>
<th>101%c</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who was at fault (how accident happened)</td>
<td>55</td>
<td></td>
</tr>
<tr>
<td>Whether claimant's ailments resulted from the accident or from independent causes</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>The medical prognosis (future costs of injury)</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Damages: Value of wages and services lost (past or future)</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Valuation of pain and suffering</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Extent of value of injury (general comment)</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Damages (general comment)</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Other areas of disagreement</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Total reporting no disagreement</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>Not ascertained</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>116%c</td>
<td></td>
</tr>
<tr>
<td>Number of interviews</td>
<td>148</td>
<td></td>
</tr>
</tbody>
</table>

---

*a* The question was: "What were the main points on which you and the defense counsel disagreed?"

*b* Excludes one case for which the plaintiff's lawyer stated that no suit had been filed, although survey records indicated that it had been.

*c* Since some lawyers reported more than one area of disagreement, the total exceeds 100%.

mentioned, the lawyer was asked, "Would you rank them in order of importance—'one' for the most important, 'two' for the next, and so on?" Some lawyers ranked all five items; other ranked only one or two, while indicating that others were nevertheless "major sources of disagreement"; a number of lawyers spontaneously indicated some of the answers as not being factors in the particular case.

The claimants' lawyers responses are presented in Figure 6-24.
As in the free answers to the preceding question, the fault question held first place; it was mentioned as one of the major factors in 67 percent of the cases, and ranked as the foremost source of disagreement in 50 percent of them. On the other hand, 25 percent of the answers indicated that it was not a major factor in that case.

More surprising was the forward surge of the answer, "valuation of pain and suffering." The proportion of cases in which it was a factor (66 percent) was nearly the same as for negligence, and the number excluding it as a factor was less than for neg-

**Figure 6-24—Claimants' Lawyers' Selection of Reasons for Disagreement**
(Percentage distribution of answers in court cases)

- **Legend**
  - Frequency of mention as one factor
  - Frequency of mention as first-ranking factor

<table>
<thead>
<tr>
<th>Reason</th>
<th>Frequency of mention as one factor</th>
<th>Frequency of mention as first-ranking factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who was at fault; how accident happened</td>
<td>46%</td>
<td>67%</td>
</tr>
<tr>
<td>Valuation of pain and suffering</td>
<td>17%</td>
<td>66%</td>
</tr>
<tr>
<td>Medical prognosis</td>
<td>7%</td>
<td>56%</td>
</tr>
<tr>
<td>Value of lost wages and services</td>
<td>3%</td>
<td>48%</td>
</tr>
<tr>
<td>Whether claimant's ailments were caused by accident</td>
<td>11%</td>
<td>41%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 148.
ligence. Third place was taken by "medical prognosis," which was entirely excluded in only 28 percent of the cases, but was very rarely (in only 7 percent of the cases) the leading factor. Fourth and fifth place in prominence were taken by "value of wages and services lost," and by "whether the accident caused claimant's ailments." Figure 6-24 shows the frequency of first-place ranking and the frequency of mention.

Exactly the same question, with the same preformulated answers, was presented to defendants' counsel, and the results were strikingly similar. The fault question again led in frequency of

**Figure 6-25—Defendants' Lawyers' Selection of Reasons for Disagreement**
(Percentage distribution of choice of answers in court cases)

<table>
<thead>
<tr>
<th>Reason</th>
<th>Frequency of mention as first-ranking factor</th>
<th>Frequency of mention as one factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who was at fault; how accident happened</td>
<td>71%</td>
<td>50%</td>
</tr>
<tr>
<td>Valuation of pain and suffering</td>
<td>66%</td>
<td>17%</td>
</tr>
<tr>
<td>Medical prognosis</td>
<td>60%</td>
<td>11%</td>
</tr>
<tr>
<td>Value of lost wages and services</td>
<td>46%</td>
<td></td>
</tr>
<tr>
<td>Whether claimant's ailments were caused by accident</td>
<td>44%</td>
<td>13%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 157.
mention and in frequency of ranking. The valuation of pain and suffering was again a close second in frequency of mention, and again a very poor second in frequency of first ranking. Medical prognosis was again third in both departments. Wage loss and causation switched positions, but remained close together at the end of the list. Figure 6-25 summarizes the defendants' lawyers responses.

Another approach to studying the elements of controversy was to ask plaintiffs' and defendants' lawyers what were the elements contributing to an increase in the amount of settlement, and what were the factors tending to restrict it. No prepared answers were offered, and it was necessary to classify a great variety of answers received. Lawyers might, and often did, mention more than one factor. These questions were asked for all court cases including a few which involved only "minor" injuries.

The responses were classified in the following categories:

1. "Good case on fault question" including such responses as strong evidence of liability of other party, no question of fault, no contributory negligence, other party's having been "ticketed" or had license revoked.
2. "Extent of economic loss" including past and future expenses for doctors, hospitals, nursing, household help, wage loss, future income loss, property damage.
3. "Seriousness of the injury."
5. "Effective representation" by claimant's lawyer (mentioned only by claimants' lawyers).
6. "Nuisance value of case" (mentioned only by defendants' lawyer).
7. "Ability to pay," including fact that defendant was insured, or that his insurance was adequate, or that defendant has other assets.
8. "Other answers," too scattered to classify.

The most striking fact about the answers to these queries was the high compatibility between the answers of claimants' and
Figure 6-26—Factors Augmenting Tort Settlement
(Percentage distribution of answers of claimants' and defendants' lawyers in court cases)

Good case on fault question
- Claimants' Lawyers: 28%
- Defendants' Lawyers: 28%

Extent of economic loss
- Claimants' Lawyers: 25%
- Defendants' Lawyers: 25%

Seriousness of injury
- Claimants' Lawyers: 17%
- Defendants' Lawyers: 14%

Extent of psychic loss
- Claimants' Lawyers: 5%
- Defendants' Lawyers: 14%

Effective representation
- Claimants' Lawyers: 0%
- Defendants' Lawyers: 0%

Nuisance value
- Claimants' Lawyers: 0%
- Defendants' Lawyers: 9%

Financial responsibility
- Claimants' Lawyers: 7%
- Defendants' Lawyers: 22%

Other answers
- Claimants' Lawyers: 9%
- Defendants' Lawyers: 9%

Number of interviews providing this information: 125, 137.
defendants' lawyers. Both sides agreed in awarding first, second, and third place to "good case on fault question," "extent of economic loss," and "seriousness of the injury." The results are graphically presented in Figure 6-26.

The relative prominence of some of the elements varied considerably with the size of settlement. Plaintiffs' lawyers mentioned psychic loss as a factor in only 5 percent of the cases settled for under $1000, but in 27 percent of the cases settled for more than $10,000. The fault question varied in the opposite direction; it was mentioned by claimants' lawyers in connection with about 30 percent of the settlements under $10,000, but in only 15 percent of those over that amount. Defense counsel mentioned the extent of the claimant's economic loss as a factor in 73 percent of the cases settled for more than $10,000, but in only 11 percent of those settled for less than $1000. The "nuisance" element was mentioned only in connection with cases settled for less than $1000.

Plaintiffs' and defendants' lawyers were also asked to suggest, without prompting, factors which prevented the amount of settlement from being larger than it was. On these factors there was much less agreement, although there were areas of consistency. The responses were classified under headings of which the following were most frequently mentioned:

1. "Extent of the loss" (size of loss would not support a larger settlement).
2. "Weak case on fault" (doubt or inadequate proof).
3. "Claimant's desire to settle," didn't want to go any further, wanted or needed money, wanted to leave town, reluctant or afraid to litigate or go to trial (mentioned only by claimants' lawyers).
4. "Inability to pay" (lack of assets or insurance, or policy limits of insurance).
5. "Inadequate proof of loss," no proof of damages, no proof of earnings, did not see a doctor, difficulty of proving pain and suffering.
(6) "Inadequate proof of cause" (ailment may have existed before accident).

(7) "Other answers," too scattered for classification.

There was a high degree of agreement between plaintiffs' and defendants' counsel in their frequency of emphasis on the weakness of proof of fault. Plaintiffs' counsel mentioned it in 29 percent of the cases, and defendants' counsel in 27 percent. On nearly everything else, they differed widely in frequency of mention, with some differences suggestively related to the presumable bias of the respective counsel. Defense counsel thought that the limited extent of loss prevented the settlement from being larger in 32 percent of the cases, while plaintiffs' counsel detected this as a limiting factor only in 18 percent. On the other hand, inadequate proof of loss was seen by claimants' lawyers as a limiting factor in 13 percent of the cases; defendants' counsel detected it in only 6 percent. Their views are contrasted in Figure 6-27.

Some factors varied in importance with the amount of the settlement. Inadequacy of proof of loss or of causation was never mentioned by claimants' lawyers as a factor in cases where the settlement was over $10,000, although it was named in 5 percent of the cases with smaller settlements.

The extent of the claimants' losses was regarded by defendants' lawyers as a restricting factor in only 15 percent of the settlements of $10,000 or more, although they detected it in 36 percent of the settlements under $5000. Plaintiffs' lawyers gave "extent of loss" about the same rating in small settlements as in large ones.

The defendant's inability to pay—for lack of insurance or of private assets—was quite differently seen by different observers. Claimants' lawyers thought it dampened the settlement in 18 percent of the cases, while defendants' lawyers detected it in only 8 percent. Both sets of attorneys agreed that its importance depended on the size of the settlement. In settlements of $10,000 or more, claimants' lawyers saw the lack of assets or insurance
Figure 6-27—Factors Limiting Amount of Tort Settlement
(Percentage distribution of answers of claimants' and defendants' lawyers in court cases)

Legend

<table>
<thead>
<tr>
<th>Claimants' lawyers</th>
<th>Defendants' lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extent of loss</td>
<td>18%</td>
</tr>
<tr>
<td>Weak case on fault</td>
<td>27%</td>
</tr>
<tr>
<td></td>
<td>32%</td>
</tr>
<tr>
<td>Claimants' desire to settle</td>
<td>22%</td>
</tr>
<tr>
<td></td>
<td>18%</td>
</tr>
<tr>
<td>Defendants' inability to pay</td>
<td>7%</td>
</tr>
<tr>
<td></td>
<td>18%</td>
</tr>
<tr>
<td>Inadequate proof of loss</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>13%</td>
</tr>
<tr>
<td>Inadequate proof of cause</td>
<td>6%</td>
</tr>
<tr>
<td></td>
<td>4%</td>
</tr>
<tr>
<td>Other answers</td>
<td>11%</td>
</tr>
<tr>
<td></td>
<td>19%</td>
</tr>
<tr>
<td></td>
<td>6%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 112, 127.

limits as a negative factor in 43 percent of the cases, while defendants' lawyers recognized it in only 27 percent. In settlements under $1000 the two sets of lawyers mentioned lack of assets with approximately equal frequency—11 and 13 percent for defendants' and plaintiffs' counsel, respectively. (At this level, none mentioned "lack of insurance.")

The survey produced a few other bits of information on ability
to pay, as affected by liability insurance. Injured persons were asked whether the driver of the automobile involved (the "other car" if there were two) had insurance. Of those who answered, 86 percent said "yes," and 14 percent, "no."

Injured persons who did not obtain a tort settlement were asked why not, and 12 percent blamed the defendant's lack of insurance or other assets (Table 6-2, supra). When injured persons who did not hire a lawyer were asked why not, 2 percent of them gave as a reason the fact that the party responsible for the accident was uninsured or had no assets (Table 6-3). A limited group of individual (unincorporated) defendants in suit cases were asked whether they had paid any part of the settlement from their own pockets; 3 percent of them said that they had (Table 8-20).

I. TIME INTERVALS IN TORT SETTLEMENTS

The length of time from injury to settlement is very important to injury victims. During that time there is likely to be hesitation to obtain the fullest desirable medical treatment, for fear of the burden of paying for it. If the victim is a wage earner, the family may well go on reduced rations, and even become a "relief case" while awaiting the settlement. Furthermore, many settlements which lawyers on both sides regard as being less than the economic loss are accepted by injury victims because of their desire to get over the waiting period; this may be because of need for subsistence, or of need to escape from the anxiety involved in litigation.

Taking the entire group of serious injury cases, 31 percent were settled within six months of the accident, and 50 percent within less than a year. Twenty-two percent waited more than two years for settlement. The distribution of settlement intervals for all serious injury cases is indicated in Figure 6-28.

What are the factors which lead to differences in time to settle? It might have been suspected that cases involving greater amounts of economic loss would require more time to settle, but no such
correlation appeared. The largest fraction of cases were settled within six months, whether the loss was under $1000 or over $10,000, or in any intervening bracket. In fact, the percentage of cases settled within six months were slightly larger for the over-$25,000 loss group than for any of the smaller loss groups. (These relationships are not presented graphically.)

On the other hand, a separation of cases by amounts for which they were settled disclosed an extremely sharp correlation between amount of the settlement and time taken to get it. Of settlements under $1000, 58 percent were made within six months, and 86 percent within one year. But among settlements of $1000 to $2999, only 28 percent were made within six months, and only 58 percent within a year. These data suggest that the man who has a severe injury is likely to settle for it quickly only if he settles for a relatively small amount. This presumably results, at least in part, from the necessity of letting several months pass in order to establish the full extent of a severe injury (see Chapter 7, section E, infra).
FIGURE 6-29—TIME FROM INJURY TO SETTLEMENT FOR SETTLEMENTS OF VARIOUS AMOUNTS
(Percentage distribution of serious injury cases in which a tort settlement was obtained)

<table>
<thead>
<tr>
<th>Amount of Settlement</th>
<th>Per cent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1-999</td>
<td>58% 28% 10% 4%</td>
</tr>
<tr>
<td>$1000-2,999</td>
<td>28% 30% 19% 23%</td>
</tr>
<tr>
<td>$3,000-9,999</td>
<td>13% 20% 31% 36%</td>
</tr>
<tr>
<td>$10,000 or more</td>
<td>31% 28% 12% 29%</td>
</tr>
</tbody>
</table>

Number of interviews providing this information: 44, 58, 51, 37.

J. CONSULTING AND HIRING LAWYERS

Persons involved in serious injuries—usually the victim himself, but sometimes the survivor of a decedent, or the parent of a minor—were asked whether a lawyer was consulted about collecting a tort settlement. Thirty-seven percent answered "no." These responses were received in cases of death and of high economic loss, as well as in cases of lesser injury. Consultation was, however, more prevalent in the cases of greater loss. The distribution is shown in Figure 6-30. Reasons given for not seeing a lawyer are presented in Table 6-3 (supra).
1. **Time Intervals**

Of those who did consult a lawyer, 31 percent did so within a week, 57 percent within a month, and 87 percent within six months. Only 13 percent straggled in at greater intervals. Figure 6-31 shows the frequency of various intervals.

The seriousness of the injury did not have a very important effect on the time permitted to pass before seeing a lawyer, except that the percent of persons seeing a lawyer within a week was much greater in the cases of less serious injuries. Otherwise there was little difference.
FIGURE 6-31—TIME BETWEEN INJURY AND SEEING A LAWYER
(Percentage distribution of serious injury cases in which a lawyer was seen)

Number of interviews providing this information: 183.

2. Choice of Lawyer

Claimants' reasons for deciding which lawyer to consult varied sharply in relation to family income. For claimants with family incomes of $7500 or more, the predominant factor in choice of a lawyer was prior use of the same practitioner's services; 36 percent gave this reason. This reason affected only 28 percent of the middle income group ($5000-7499) and only 17 percent of the low income group (under $5000). For the middle and lower income groups, the most frequent reason for choice was the recommendations of a friend; 38 percent of those in the lower income group, 33 percent of those in the middle income group. A family member's recommendation influenced 31 percent of the lowest income group, but only 21 percent of the middle income group and 19 percent of the highest income group. Table 6-5 presents the salient features for these three groups.

3. Hiring a Lawyer

The hiring of lawyers does not necessarily conform to the same pattern as the consultation of lawyers. In fact, 16 percent of those
<table>
<thead>
<tr>
<th>Reason for choosing the lawyer who was consulted</th>
<th>Less than $5000</th>
<th>$5000-$7499</th>
<th>$7500-or more</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommended by a friend</td>
<td>38%</td>
<td>33%</td>
<td>35%</td>
</tr>
<tr>
<td>Had used his services before</td>
<td>17</td>
<td>28</td>
<td>36</td>
</tr>
<tr>
<td>Recommended by a member of the family</td>
<td>31</td>
<td>21</td>
<td>19</td>
</tr>
<tr>
<td>Recommended or hired by respondent's insurance company</td>
<td>6</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Recommended by a legal aid bureau or public official</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Other answers</td>
<td>7</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Number of interviews: 195, 71, 67, 57.

who consulted a lawyer did not hire one. In several of these cases, the lawyer himself advised against his being hired.

Attempts were made to discover other factual elements which varied significantly with the decision to hire a lawyer. The most definite correlation was with the amount of the economic loss suffered as a result of the injury. In cases of economic loss of less than $1000, about a third of the claimants hired lawyers; in cases with losses of over $5000, more than two-thirds hired lawyers. There was also a markedly greater tendency of older people to hire lawyers; lawyers were hired by 29 percent of those between 16 and 24, 45 percent of those between 25 and 44, and 55 percent of those over 45. The tendency to hire a lawyer was
somewhat greater among persons with more education and with higher family income.

Prior experience in hiring lawyers did not correlate significantly with the decision to hire a lawyer for the personal injury in question. Those who had hired a lawyer before, and those who had not, hired lawyers for their personal injuries with equal frequency. The question related to prior hiring for any purpose; those who had previous personal injury experience were too few for significant measurement.

Another factor which had surprisingly little visible influence on the decision of whether or not to hire a lawyer was the respondent's opinion on whether a lawyer helps to get a larger settlement. Respondents were asked, "Do you think an insurance company will usually offer a larger settlement if you have a lawyer than if you don't?" Nearly three-fourths answered yes, while the rest gave negative or equivocal answers. But only half of the affirmative respondents hired lawyers, while 42 percent of the negative respondents did likewise.

K. Problems of Claims Handling as Seen by Lawyers for Claimants

In the course of interviewing lawyers who had represented injured persons in law suits, it was found convenient to solicit their views on what, if anything, is wrong with the handling of automobile personal injury claims in Michigan. The questions asked were:

"On the basis of your experience, do you feel that there are any major problems in the way auto injuries are handled in Michigan? How would you suggest these problems be reduced?"

Answers to both questions were combined for analysis.

Unfortunately the design of the survey did not permit asking the same question of lawyers who had represented defendants. For independent reasons, the defendants' lawyers' questionnaires were administered chiefly by mail, and it was judged unlikely that
lawyers would respond freely in writing to an unstructured inquiry of this sort.

The views collected provide significant clues for the study and evaluation of claim handling, provided that the principal characteristics of the statements are kept in mind. These might be summarized as follows:

(1) They are statements about the *problems* of claim handling, and are not overall evaluations of it.

(2) They are statements made orally and offhand, and presumably differ in some degree from what would be said on further reflection.

(3) They are statements of lawyers selected by virtue of representing claimants, and made in the context of discussing an injured person’s claim; presumably they are weighted in favor of claimant views.

(4) They are statements by a random selection of plaintiffs’ representatives, including some lawyers who had rarely handled such claims, and some who had more frequently represented defendants; the statements do not represent exclusively the views of claimant specialists.

Several important facts arose from an analysis and tabulation of the answers. First, an overwhelming majority of the lawyers who had represented injured persons (80 percent) thought that major problems exist, while a very minor fraction (15 percent) thought there were “no major problems.” Still less (5 percent) gave undecided or ambivalent answers.

A second fact which stood out was that these lawyers concurred significantly on the main areas which bothered them. Some mentioned more than one area, so that the total number of mentions exceeds 100 percent of the lawyers polled. The main areas in order of frequency were (1) delay in the courts—cited by 30 percent of lawyers; (2) attitudes and practices of insurance companies—cited by 28 percent; and (3) inadequacy of compensation of claimants—cited by 24 percent. The last two areas presumably
reflect the claimant-orientation of the lawyers in the sample; and the first may also reflect this point of view.

Another set of problem areas were concurred in by significantly smaller groups of lawyers. These were (1) inadequacy of the jury system, (2) attitudes and practices of claimants' lawyers, and (3) problems relating to expert witnesses. Several of the statements in these categories—especially those on claimants' lawyers—seemed to reflect greater sympathy with defendants’ positions than with claimants, although they may have been based on the view that bad claimants' lawyers' practices spoil things for the good claimants' lawyers. The interviews did not go into sufficient depth to probe the rationale of the statements. Some of the statements may be attributed to the fact that some of the lawyers who had represented claimants in the survey were customarily on the other side of the argument.

A large number of answers (20 percent all together) were given by so few persons that their frequency cannot be considered significant. Among these the contributory negligence rule, the idea of comparative negligence, and the rule on mentioning insurance to the jury were mentioned by more than one lawyer. Various other topics were mentioned by only one.

Table 6-6 summarizes the views of problem areas given by the sample of lawyers representing injured persons in personal injury suits.

Quotations from lawyers' answers

In order to show more specifically the aspects of claim handling which the questioned lawyers identified as problems, quotations from numerous answers, as recorded by interviewers, are reproduced below. They indicate the wide variety of answers given, from the moderate and carefully considered to the extreme and impulsive. Although a few of them were given in similar form by more than one informant, no quotation can be considered "typical" of any particular fraction of the bar. The only things
TABLE 6-6

Views of Lawyers for Claimants on Claim-Handling Problems

(percentage distribution of responses in court cases)

<table>
<thead>
<tr>
<th>Whether there are any major problems in the way auto injury cases are handled in Michigan(^a)</th>
<th>Percent of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>15%</td>
</tr>
<tr>
<td>Yes</td>
<td>129(^b)</td>
</tr>
<tr>
<td>Delay in the courts</td>
<td>30</td>
</tr>
<tr>
<td>Attitudes and practices of insurance companies</td>
<td>28</td>
</tr>
<tr>
<td>Attitudes and practices of claimants' lawyers</td>
<td>9</td>
</tr>
<tr>
<td>Inadequate compensation for claimant; specific mention of financial responsibility laws or compulsory insurance, or of precedent for valuation of the loss of a minor child</td>
<td>24</td>
</tr>
<tr>
<td>Jury system is inadequate</td>
<td>11</td>
</tr>
<tr>
<td>Problems relating to expert witnesses</td>
<td>7</td>
</tr>
<tr>
<td>Other problems</td>
<td>20</td>
</tr>
<tr>
<td>Not ascertained</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>149(^b)</td>
</tr>
</tbody>
</table>

\(^a\) The question was: "On the basis of your experience, do you feel that there are any major problems in the way auto injury cases are handled in Michigan? How would you suggest these problems be reduced?"

\(^b\) Columns add to more than 100% because some lawyers mentioned more than one problem.

that can be considered typical are views as to what are the major problem areas, such as "delay," "attitudes and practices of insurance companies," and "inadequacy of compensation," on which significant percentages of the sample concurred.

One must always remember, too, the characteristics of the sample whose views are typified, and the fact that their views were expressed in the context of a case in which they had worked to obtain maximum compensation for an injured person. Under these circumstances it is not surprising that 28 percent complained
of insurance companies; it may be surprising that the percentage was not higher.

The quotations have been selected with a view to indicating the whole range of opinions expressed, without regard to the fairness of the statement or the qualifications of the informant. However, one group of answers—those relating to delay in the courts—are omitted here and presented in the following chapter in connection with other evidence on time intervals between injury and settlement.

Quotations citing attitudes and practices of insurance companies (28 percent)

"The award or settlement offers by insurance [companies] are inadequate."

"Insurance companies refuse to make any adequate offers at all, forcing us to file suit in many cases that should have been settled immediately."

"Insurance companies try to settle on a formula of actual costs, which forces us to go into court."

"[There] ought to be more of an attempt to settle cases promptly. Insurance companies cause the time loss. Make Michigan Department of Insurance compel the insurance companies to act in good faith."

"Poorly trained adjusters. [The companies should] pay them more, train them better, give them more authority."

"Claims departments should be fair and honest. [There is] no reason for this suit. More efficiency in claims departments would result in fewer law suits."

"The attitude of insurance companies is unduly influenced by fake claims sometimes filed. Insurance companies should be more liberal in bona fide cases, and if they aren't then the legislature should enact legislation."

"Trying to negotiate with insurance company: they start with a rule of thumb that it is a matter of compromise. You can't be
honest about it. The lawyer must ask for much more than the case is worth. [It would be better] if the insurance adjuster would take a realistic view toward the case, as well as the plaintiff."

"When people are injured and in hospitals, no one should be able to approach him and get statements—often [while person is] in shock, and phrased so as to benefit insurance company."

"There is a definite program to let [the] public think that insurance premiums are based on the huge settlements paid out in accident cases. That isn’t so. They are grafters of the first order. They charge premiums and try to chisel out of paying. I’d like the University to make a study of these institutions and show the public."

Quotations citing inadequacy of compensation for claimants (24 percent)

"The small claims are difficult and expensive, and [the] whole system is a tragic failure. If claimant wins he is still a loser—by the time [he] pays legal expense and his loss of time he cannot come out with just compensation. Cost of prosecuting claims has become so expensive."

"The claimants have to pay attorneys out of what they get and they are being short-changed. I feel the [insurance] companies should have to pay attorneys’ fees in addition to the amount of the verdict."

"We should see to it that the claimant gets the full amount of the judgment. We should have a judgment creditors’ pool to take care of cases like this."

"In the first place the concept of fault is a 19th century concept that has been outmoded. By that I mean that the concept of fault is ridiculous. That’s why I’m in favor of the workmen’s compensation system. Also these [personal injury] cases are based on the skill of the lawyer. Should be based on disability rather than the charm of a lawyer to the jurors."
specific mention of commission plan

"[Auto injuries] will eventually come under a system of schedule of benefits somewhat similar to workmen’s compensation, because of the indefinite nature of some injuries, e.g., whiplash."

"I don’t think they should handle auto injury cases the same as workmen’s compensation cases."

"Putting [cases] before [a] panel is not the answer. Workmen’s compensation compensates the employee if hurt on job whether negligence [is shown] or not; [this is] not true of accident case suits for injury. In other cases, these people have always had a right to a trial by jury; [a compensation plan] would take away their constitutional right for jury trial."

"I certainly do oppose a compensation plan for auto accidents. To have it handled by the state would be worse than ever as seen by workmen’s compensation. People [would] not [be] paid because of lack of funds which legislature failed to provide because of politics."

"I advocate compulsory insurance. Also a board similar to the workmen’s compensation board."

Quotations citing inadequacy of jury system (11 percent)

"[People are] dissatisfied with way various juries evaluate various injuries. One case tried in one term of court may be worth more or maybe less in another term of court."

"[There should be] fewer jury trials; you never know what a jury will do as they are swayed by emotions."

"The verdicts are getting out of proportion because juries know that most people are insured. I don’t think women should be on juries—they are usually housewives who do not have any contact with business and are not aware of points of law. I think we should pick a better caliber jury panel of informed, intelligent people who have contact with the business world."

"Often the jury lacks knowledge to be able to consider expert testimony by witnesses."
"[Should] change law so judge can instruct jury on merits in the case."

"Quality of jurors could be improved. [Should] break down court jargon to lay terms."

"There should be some limitations placed on the amounts a jury is permitted to award for the value of a life, and for pain and suffering."

"Most severe problem is to have cases properly presented in court so judge and jury see both sides completely; not covered by just one side. Procedure and rules of evidence should be changed. Also people feel insurance companies are wealthy and should pay regardless of legal liability. Juries love to give insurance companies’ money away."

Quotations citing attitudes and practices of claimants' lawyers (9 percent)

"We need better trained lawyers. More specialization in fields such as this [personal injury litigation]."

"Some plaintiffs’ attorneys reach too far; particularly the younger ones."

"Some lawyers will over-estimate the amount the claim should amount to in order to get a larger fee if possible."

"There seems to be more greed among the attorneys in Michigan. [There should be] less competition among the attorneys, and they should charge more realistic prices."

"The trouble is that the lawyers do not always work on a case as well as they should. Some are out to make a fast buck and don’t spend enough time to work up a case."

"One of the worst features is ambulance chasing by lawyers. Many lawyers for plaintiffs are exaggerating facts. There should also be greater communications between plaintiffs and their lawyers so that plaintiff knows at all times what the lawyer is going to do."
"There is a lot of litigation on whiplash cases where the lawyer contributes to the client's misery by calling him everyday asking how he feels. Client feels pain because the lawyer wants him to feel it."

Quotations citing problems relating to expert witnesses (7 percent)

"Big problem could be reduced if doctors would be honest in evaluation of injuries particularly insurance company doctors."
"High cost of expert witnesses."
"Should be able to compensate witnesses adequately."
"Expert witness fees should be specified by court at end of trial and make it a criminal offense to pay more."
"Great difficulty in getting doctors into court to testify. Continuation of efforts of bar to inform medical profession of our problems. Passage of a statute authorizing payment of witness fees to doctor prior to his appearance in court—said fees to be between $50 and $100 minimum."

Quotations citing other problems (20 percent)

contributory negligence
"Contributory negligence is hard to prove."
"Yes, a fair legal definition of 'fault.' We have a contributory negligence statute which definitely needs to be repealed, in my opinion. Also the guest statute is unfair."
"I don't think the question of contributory negligence should be resolved solely by jury. I think that we should be able to get a directed verdict."

comparative negligence
"Need comparative rather than contributory negligence law."
"Would like a better comparative negligence liability law."
"A comparative negligence rule should be adopted. It would simplify litigation."
"Basic legal problem in Michigan—a contributory negligence
state—1 percent of neglect would bar his recovery even though defendant is 99 percent responsible. Comparative practice in Dakotas more satisfactory. It would reduce plaintiff’s recovery to his intelligent proportion. Comparative insurance identical to admiralty law. Much more satisfactory.”

—mention of insurance

"Attorney is not allowed to advise a jury that there is insurance. Juries often conclude there is no insurance and then allow their sympathy for the defendant’s financial plight to influence their verdict."

"The Wisconsin rule permitting mention of insurance and the name of insurance carrier is far better than to let the jury guess and guess wrong. Have to be very careful not to mention the word insurance in Michigan trial."

—miscellaneous subjects (mentioned in only a single interview)

"Basic problem is finding a sound basis for reaching a sound evaluation of damages."

"A more active pre-trial arrangement for stipulation purposes prior to trial."

"Police, at scene of accident, should check mechanical failures, skid marks, and should take photos of accident."

"I represent more defendants than plaintiffs. In this field the decisions of the State supreme court are too liberal. It has gotten to be a giveaway program."

"The law is heavily weighed with technicalities which tend to favor defendants."

"More people should tell the truth. You get somebody up there who starts telling how much they suffered since the accident and the first thing you know the jury is all teary."