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With the enactment of the Motor Vehicle Accident Claims Act,[1] the State of Michigan has treated a lingering problem with a remedy which is in some respects new in the United States. The Michigan Act is the most recent and radical of the many solutions advanced during the last forty years for the problems posed by the financially irresponsible motorist-tort-feasor.[2] Although several proposed solutions have suggested replacing to some degree the basic negligence system of tort liability,[3] the programs which have actually been adopted are designed to function within the framework of that system. Protection against the financially irresponsible motorist may be provided by the so-called "fund approach," which, basically, provides compensation from a state pool for certain persons injured by culpable uninsured or unidentified motorists. A more common treatment of the problem, however, has been the "insurance approach" which assumes different forms in various states. Under one of the earlier plans, the Financial Responsibility Act, a driver who is unable to compensate his first accident victim is required to establish, in order to retain his driving privileges, his capacity to reimburse future victims.[4] However, most states have adopted the so-called Security Responsibility Act[5] which requires a motorist-tort-feasor to post security for present as well as future judgments.[6] A third alternative, adopted in three states, is a system of compul-

1. MICH. COMP. LAWS §§ 257.1101-.1131 (Supp. 1965) [hereinafter cited as Michigan Act], as amended, Mich. Pub. Acts 1965, No. 389 [hereinafter cited as Michigan Amendment].

2. For a bibliography which includes books and articles on all the major proposals, see KEETON & O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 519-42 (1966) [hereinafter cited as KEETON & O'CONNELL]. This study also contains an explanation and critique of the important proposals. See *id.* at 76-240. For other bibliographies, see GREGORY & KALVEN, CASES ON TORTS xlix-lii (1959); 9 PRAC. LAW. 91 (October 1963).

3. *E.g.*, COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES, REPORT BY THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS (1932) (workmen's compensation approach); CONARD, MORGAN, PRATT, VOLTZ & BOMBAUGH, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS (1965) (social insurance); KEETON & O'CONNELL 273-482 (basic protection insurance). For a discussion of the Columbia University plan see Smith, Lilly & Dowling, *Compensation for Automobile Accidents: A Symposium*, 32 COLUM. L. REV. 785 (1932). Several books and articles have been written criticizing the strict liability approach. See, *e.g.*, BLUM & KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM—AUTO COMPENSATION PLANS (1965).

4. For the provisions of a financial responsibility statute which has been superseded by a security responsibility statute, see, *e.g.*, OHIO LAWS 1935, § 6298-1 to -25, at 218. See also KEETON & O'CONNELL 103-05.

5. The Security Responsibility Act has replaced the older financial responsibility law in most states. KEETON & O'CONNELL 106.

6. *E.g.*, W. VA. CODE ANN. §§ 1721(482)-(539) (1961). Many of these statutes were patterned after the UNIFORM VEHICLE CODE §§ 7-101 to -505. See Kesler v. Department of Pub. Safety, 369 U.S. 153, 165 (1962). See also KEETON & O'CONNELL 105-09.

sory liability insurance under which all automobile registrants must carry a minimum amount of public liability insurance.[7] Finally, somewhat more common than the compulsory liability system,[8] is the compulsory uninsured motorist endorsement plan which requires all persons holding liability insurance to carry a minimum amount of protection against uninsured motorists. By means of the endorsement, the insurer agrees to pay the insured a stated portion of the damages which the insured would be entitled to recover from a financially irresponsible tort-feasor.[9]

With the adoption of the Michigan Act, Michigan has become the fifth state[10] to adopt a comprehensive program utilizing both the insurance and the fund approaches. Moreover, the Michigan Act, apparently inspired by its Ontario prototype,[11] contains some elements which were previously unknown in United States legislation.[12] Consequently, it may prove enlightening to examine the scope and purpose of the Michigan Act, and to compare it with similar legislation in other states.

Source of the Michigan Fund

The Michigan Fund consists of assessments against registrants of all motor vehicles[13] in Michigan beginning with the 1966 regis-

7. Massachusetts: MASS. ANN. LAWS ch. 90, §§ 34A-J, ch. 175, §§ 113A-J (1959), as amended, MASS ANN. LAWS ch. 90, §§ 34 A,D,H,J,K (Supp. 1965), ch. 175, §§ 113 A,B,D,K (Supp. 1965); New York: N.Y. VEHICLE & TRAFFIC LAW §§ 310-21; North Carolina: N.C. GEN. STAT. §§ 20-309 to -319 (Supp. 1965). For a treatment of these statutes see KEETON & O'CONNELL 76-102.

8. KEETON & O'CONNELL 111.

9. *E.g.*, N.H. REV. STAT. ANN. ch. 268, § 15 (1955). For a discussion of the New Hampshire Act and some of the problems arising under it, see Kelly, *Kirouac v. Healey: Comments on the Uninsured Motorist Endorsement in New Hampshire*, 7 N.H.B.J. 91 (1965).

10. The four states other than Michigan are: Maryland: MD. ANN. CODE art. 66½, §§ 150-79 (Supp. 1965), as amended, Md. Laws 1965, chs. 93, 298, 494, 540-44, 557, 692, 874 [hereinafter cited as Maryland Act]; New Jersey: N.J. STAT. ANN. §§ 39:6-61 to -91 (Supp. 1965) [hereinafter cited as New Jersey Act]; New York: N.Y. INS. LAW §§ 600-26 [hereinafter cited as New York Act]; North Dakota: N.D. CENT. CODE §§ 39-17-01 to -10 (Supp. 1965), as amended, N.D. Laws 1965, chs. 52, 187 [hereinafter cited as North Dakota Act].

11. Motor Vehicle Accident Claims Act, 1962, 10 & 11 Eliz. 2, c. 84 (Ont.), as amended, Motor Vehicle Accident Claims Amendment Act, 1964, 12 & 13 Eliz. 2, c. 66 (Ont.), as amended, Motor Vehicle Accident Claims Amendment Act, 1965, 13 & 14 Eliz. 2, c. 75 (Ont.). See Letter From Rep. Marvin R. Stempien to the *Michigan Law Review*, Nov. 1, 1965. Representative Stempien is one of the co-authors of the Michigan Act.

12. For a history of the fund idea in the United States see generally Elder, *The Unsatisfied Judgment Fund and the Irresponsible Motorist*, 1953-1954 CURRENT TRENDS IN STATE LEGISLATION 45, 54-59 (1954).

13. Michigan Amendment § 3. Neither "vehicle" nor "registrant" is defined in the statute. Apparently, however, the word "vehicle" includes such things as motorcycles, and the word "registrant" includes dealers. OPS. MICH. ATT'Y GEN., No. 4453 (Jan. 31, 1966).

tration year.[14] Insured registrants[15] are assessed one dollar for each registered vehicle while uninsured registrants are assessed thirty-five dollars.[16] By thus placing the major burden for the financing of the system on the uninsured motorist, the Michigan Fund is distinguished from the funds of other states, which funds are typically sustained by assessments against those insurance companies writing liability policies within the state.[17]

Although a lack of operational experience and the incalculable impact of numerous variables preclude accurate prediction as to the ultimate success of the Michigan Fund, it is possible that the present system of financing will be inadequate to sustain the Fund. The Secretary of State of Michigan, the official representative of the Fund,[18] has speculated that 1,000 claims against the Fund will be presented during every month of 1966.[19] If this prediction proves correct, 6,000 claims will have been presented during the fiscal year ending June 30, 1966. Approximately $8,000,000 has been appropriated to the Fund for that period, of which more than $7,000,000 is designated for claim settlements.[20] Thus, if every claim forecast by the Secretary were paid, an average recovery of about $1,200 per claim would exhaust the Fund by the end of the fiscal year. An even more ominous sign as to the potential financial stability of the Michigan Fund is the fact that other less liberal fund programs have encountered considerable financial difficulty; recent studies indicate that the Maryland and New Jersey Funds are in substantial danger of insolvency.[21]

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14. Michigan Amendment §§ 3(2)-(3).

15. The Michigan Act refers to the state's Security Responsibility Act, MICH. COMP. LAWS §§ 257.501–.532 (Supp. 1961), for the definition of an insured registrant. To be considered insured under this act, one must hold a policy which will pay $10,000 for the death or injury of one person, $20,000 for the death or injury of two or more persons, and $5,000 for the destruction of property. To be self-insured a person must have twenty-five vehicles registered in his name and satisfy the Secretary of State that he will be able to pay all judgments against him.

16. Michigan Amendment §§ 3(2)-(3). For the criminal liability provisions for persons furnishing false information at the time of registration and for those who fail to furnish evidence of payment of the fee when demanded by a peace officer, see Michigan Act §§ 4, 10; Michigan Amendment §§ 3(4), 6(5)-(6).

17. Maryland assesses insurance companies and uninsured registrants. Maryland Act § 151. New Jersey assesses insurance companies and all registrants. New Jersey Act § 39:6-63. New York assesses only insurance companies. New York Act § 607. North Dakota assesses only registrants without regard to insurance status. North Dakota Act § 39-17-01.

18. In practice the claims will be administered by a director with or without an advisory board. See generally Wenck & Storm, *Michigan's Motor Vehicle Claims Act*, Michigan Economic Record, Oct. 1965, p. 2.

19. Ann Arbor Conference on Auto Insurance 34 (Sept. 15-16, 1965) (remarks of Secretary of State James Hare, on file with the *Michigan Law Review*) [hereinafter cited as Ann Arbor Conference].

20. See ENROLLED S.B. No. 687, 73d Legis., Reg. Sess. (Mich. 1965).

21. See Hasmi, *Unsatisfied Judgment Funds*, 33 J. RISK & INS. 93 (1964).

Persons Entitled To Recover

In the five states utilizing the fund approach, the claimant must meet various statutory qualifications in order to recover from the fund. All of the states require the claimant to have a cause of action under tort law which would entitle him to be compensated by the uninsured tort-feasor.[22] In Michigan, the statute permits a claimant to recover from the Fund without a prior judgment against the uninsured,[23] so long as there is a valid claim.

A second requirement in four of the five fund states is that the claimant must establish that the tort-feasor is either uninsured or unidentified.[24] A determination as to whether the tort-feasor had originally secured a liability insurance policy could easily be made by inspecting his registration certificate.[25] However, the claimant may encounter substantial difficulties when the tort-feasor's insurer disclaims liability,[26] and the Fund refuses to recognize the validity of the insurer's disclaimer;[27] no procedure is provided for such a situation in the Michigan Act. Although it would be possible for the claimant to bring suit against the tort-feasor, thereby forcing the disclaimer issue into court,[28] such an approach would be undesirable; not only would it impose the burden of litigation on the claimant, but it would also deprive the claimant of the speedy and inexpensive procedures described below for claiming and receiving compensation without acquiring a prior judgment.[29] Although the Secretary's discretion to refuse to make payment from the Fund should be exercised when the claimant does not deserve the amount sought, it seems clear that the claimant should be compensated by someone when the only ground on which the Secretary refuses

22. Maryland Act § 158; Michigan Amendment §§ 6, 7, 12; New Jersey Act §§ 39:6-69 to -78; New York Act § 608; North Dakota Act § 39-17-03.

23. See Michigan Amendment § 6. See generally text accompanying notes 52-56 *infra*. This qualification is obviously automatically satisfied where the claim is being made on an unsatisfied judgment. See Michigan Amendment § 7.

24. Maryland Act § 159(e); Michigan Amendment §§ 6, 7, 12; New Jersey Act §§ 39:6-70(f) to -78; New York Act § 610. The Michigan Act has dispensed with the qualification found in other fund states that the claimant himself must carry liability insurance which meets prescribed standards. See Maryland Act § 159(c); New Jersey Act §§ 39:6-70(d); New York Act § 611(b).

25. See Michigan Act §§ 4(2)-(3). A problem may exist where the tort-feasor's insurance has lapsed or been cancelled and he has not paid the thirty-five-dollar fee as required. See generally Michigan Amendment § 3(5).

26. Three fund states have specific provisions for disclaimer cases. See Maryland Act § 154(a); New Jersey Act § 39-6-65; New York Act §§ 608(c), 620. See generally Note, 39 ST. JOHN'S L. REV. 321, 337-38 (1965).

27. For a discussion of this situation, see McCullough, *The Uninsured Motorist*, 33 N.Y.S.B.J. 343, 348 (1961).

28. This procedure may be utilized under Michigan Amendment § 7. See generally text accompanying notes 43-51 *infra*.

29. This procedure under Michigan Amendment § 6 is discussed in text accompanying notes 52-56 *infra*.

to pay is the questioned validity of the insurer's disclaimer. The process of speedy recovery envisioned by the drafters of the Michigan Act[30] would be more readily effectuated by an amendment authorizing the Secretary to immediately reimburse the claimant in such cases and thereafter settle the disclaimer issue with the insurer by arbitration[31] or, if necessary, litigation. Regardless of the resolution of the issue of the validity of the disclaimer, the Fund would be subrogated to the rights of the claimant[32] against the tort-feasor; if the insurer's disclaimer were invalid, the Fund could recover from the insurer, whereas if the disclaimer were valid, the Secretary could proceed against the tort-feasor as if he were an uninsured motorist.[33]

A third qualification existing in various forms in all five fund states is the locale-residency requirement.[34] In order to recover from the Michigan Fund, the accident must have occurred on a Michigan highway, and the claimant must have been a resident either of Michigan or of a state which extends reciprocal treatment to Michigan residents.[35] The residency requirement may be justified by the necessity of protecting the Fund from depletion by non-contributing out-of-state residents.[36] The reciprocity provision is equally justifiable as an assurance that Michigan residents will be compensated when injured in those fund states which, because of Michigan's reciprocal treatment for their residents, provide equal treatment for Michigan residents.[37] On the other hand, the locale requirement, as applied to contributing residents, has been criticized on the ground that a state has as great an interest in compensating residents injured outside the state as it has in compensating those injured

30. See Letter From Rep. Marvin R. Stempien to the *Michigan Law Review*, Nov. 1, 1965.

31. See McCullough, *supra* note 27, at 348.

32. Michigan Amendment § 6(4).

33. See text accompanying note 54 *infra*.

34. Maryland Act § 150(g); New Jersey Act § 39:6-62; New York Act § 601(b); North Dakota Act § 39-17-03.

35. Michigan Amendment §§ 6, 7, 12; Michigan Act § 25.

36. *Cf.* Benson v. Schneider, 68 N.W.2d 665 (N.D. 1955). Several problems have arisen in regard to who is a resident or domiciliary of a particular state. See, *e.g.*, Williamson v. Potter, 80 N.J. Super. 517, 194 A.2d 261 (L. 1963) (a soldier while on duty in New Jersey may recover from the fund); Sullivan v. Saylor, 79 N.J. Super. 1, 190 A.2d 193 (App. Div. 1963) (a person who has a secondary home in New Jersey cannot claim against the New Jersey Fund); Catalanotto v. Palazzolo, 46 Misc. 2d 381, 259 N.Y.S.2d 473 (Sup. Ct. 1965) (one illegally in the United States may nevertheless be a resident of New York).

37. *Cf.* White v. Motor Vehicle Acc. Indemnification Corp., 39 Misc. 2d 678, 686, 241 N.Y.S.2d 566, 575 (Sup. Ct. 1963), where the court stated: "What is important to New York is the *expansion* of extraterritorial protection for *New York* citizens. The section is designed to encourage foreign jurisdictions to abandon antiquated non-liability rules with a view to reciprocity consistent with modern enterprise and social advancement." See generally Ward, *The Uninsured Motorist: National and International Protection Presently Available and Comparative Problems in Substantial Similarity*, 9 BUFFALO L. REV. 283 (1960).

within its borders.[38] At the present time the Michigan resident traveling out-of-state would be able to recover for injuries suffered at the hands of an uninsured motorist in only three states: Maryland,[39] New Jersey[40] and New York.[41] Notwithstanding the paucity of states affording reciprocity, the harshness of the locale requirement will be greatly alleviated by the recently enacted uninsured motorist endorsement statute,[42] which requires all liability insurers to provide minimum uninsured motorist protection to purchasers of liability policies in Michigan unless such coverage is expressly refused in writing. This statute means, in effect, that most Michigan liability insurance holders will be covered regardless of the locale of the accident. Such coverage will not extend, however, to uninsured persons injured in non-fund states, and, thus, a significant number of contributing Michigan residents will be unable to recover from the Michigan Fund, a non-Michigan reciprocal fund or the uninsured motorist insurance carrier. Deletion of the locale requirement would more readily comport with the liberal tenor of the Michigan Act, for such a change would provide pervasive protection for all Michigan residents whose contributions entitle them to the Michigan Fund's benefits, regardless of the fortuitous circumstance of where the accident occurs.

Methods of Recovery

Persons who qualify for renumeration from the Michigan Fund are given three basic methods of recovery: unsatisfied judgment procedure, non-judgment claim procedure, and hit-and-run procedure. The first of these is the unsatisfied judgment claim whereby a claimant brings suit against the tort-feasor, obtains a judgment, and applies to the Michigan Fund for payment of any portion of the judgment which has not been satisfied by the tort-feasor.[43] In such cases the original service of process must be made on the Secretary, as the defendant's agent, who then forwards the process to the defendant. Failure to serve the Secretary constitutes a bar to subsequent recovery from the Fund. The Secretary may intervene in the action if he wishes.[44] Once the claimant obtains a judgment for damages and applies for payment, the Secretary may object to the judgment on the ground that the claimant has not pursued a

38. See Comment, 65 COLUM. L. REV. 1075, 1076-77 (1965).

39. Maryland Act § 150(g) has been construed to extend only to domiciliaries, not residents, of other fund states. *Cf.* Maddy v. Jones, 230 Md. 172, 186 A.2d 482 (1962).

40. New Jersey Act § 39:6-62.

41. New York Act § 601(b).

42. MICH. STAT. ANN. § 24.13010 (Supp. 1965).

43. Michigan Amendment § 7; *cf.* Maryland Act §§ 154-66; New Jersey Act §§ 39:6-65 to -77; New York Act §§ 608-16; North Dakota Act § 39-17-03.

44. Michigan Act § 5. No other fund state seems to have such a provision for service on the fund's representative.

remedy against all possible defendants,[45] thereby forcing the claimant to return to the court which rendered the judgment for a determination on the Secretary's objection.[46] It might be argued that this procedure is unduly burdensome on the plaintiff-claimant, especially since the Secretary had been served and could have become a party to the suit, thereby settling all of the issues in one proceeding. However, it must be noted that if the Secretary were not permitted to object to a judgment, he would, in effect, be forced to intervene in every action throughout the state to which he might have an objection. Thus, the prospect of minimizing expenditures by the Fund together with the fact that the present procedure will probably not impose on the plaintiff-claimant any substantial loss of time or money seem to justify retention of the present provision.

Other safeguards are provided to protect the Fund in cases involving unsatisfied judgments. If the uninsured defendant defaults or wishes to enter a consent judgment, the Secretary must be given sufficient notice to enable him to take appropriate action in place of and binding upon the defendant.[47] The Secretary has thirty days from the date of notice in which to act. If the pleadings have been closed, he may reopen them and conduct a defense.[48] However, it is unclear whether, once a consent or default judgment has been rendered, the Secretary may waive the notice requirement and reopen the case.[49] Although the Michigan Act does not provide for the setting aside of a judgment, a number of worthy claimants may be uncompensated if it is assumed that notice can never be waived.

The Michigan Fund is further protected by the provision that the Fund is not bound by any settlement between the plaintiff and the defendant unless such a settlement receives the Secretary's consent.[50] Since the Michigan Act lacks specificity, the provision may

45. Michigan Amendment § 7(3).

46. The Michigan Act is less specific on the objections which the Secretary may and must make than are the acts of other fund states. *Compare* Michigan Amendment § 7 *with* Maryland Act § 159, New Jersey Act § 39:6-70, New York Act § 611, North Dakota Act § 39-17-03. For the scope of the rule as to exhaustion of remedies, *compare* McGainey v. Cable, 65 N.J. Super. 202, 167 A.2d 405 (App. Div. 1961) (plaintiff's belief in the unlikelihood of recovery from the particular defendant does not relieve him of the duty to prosecute that defendant), *with* Gilbert v. Unsatisfied Claim & Judgment Fund Bd., 85 N.J. Super. 143, 204 A.2d 204 (App. Div. 1964) (where plaintiff had started suit against the defendant but service could not be obtained, plaintiff was not under an obligation to prosecute the suit to judgment).

47. Michigan Act §§ 8(1)-(3). Similar rules exist in other fund states. See, *e.g.*, Maryland Act §§ 163-64; New Jersey Act §§ 39:6-74 to -75; New York Act § 614; North Dakota Act § 39-17-04.

48. Michigan Act § 8(1).

49. *Compare* Bonniwell v. Flanders, 62 N.W.2d 25 (N.D. Sup. Ct. 1953) (the fund's representative cannot waive failure of the claimant to notify of an impending default judgment), *with* Mayes v. Darby, 38 Misc. 2d 979, 239 N.Y.S.2d 284 (Sup. Ct. 1963) (default judgment set aside and MVAIC permitted to intervene as defendant).

50. Michigan Act § 8(4). In the other fund states, the law is somewhat different. Maryland compels the plaintiff to get prior court approval of a settlement with the

be construed to allow the Secretary to give either prior or subsequent consent to the whole or any part of the settlement. However, it is equally possible to construe the provision to require only prior consent, and since it is unlikely that the Secretary can be forced through mandamus to make payments from the Michigan Fund,[51] the most prudent course of action would be to notify the Secretary and obtain his consent before the settlement is made.

Possibly the most important provision of the Michigan Act is section 6 which deals with the non-judgment claim procedure. A person having a cause of action against a known, uninsured motorist may elect to forego his tort action and apply directly to the Fund for payment of his damages.[52] Upon receipt of the claimant's application the Secretary is to mail notice of the application to the last known address of the uninsured tort-feasor. The Secretary may pay the claimant an amount which he considers proper if the claimant executes a written release to the Fund of all claims arising from the accident, and the uninsured motorist either consents to the payment and agrees to repay that amount to the Fund or fails to reply and dispute his liability within thirty days from the date of notice.[53] Once payment is made, the Secretary is subrogated to the rights of the claimant and may maintain an action against the uninsured tort-feasor either in the Secretary's or the claimant's name. Such actions might arise when the defendant fails to reply to the notice, or when the defendant defaults on the amount which he had agreed to repay.[54]

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defendant. In cases in which insurance companies as members of the fund board are assigned to defend uninsured motorists, the insurance companies may settle claims of under $2,500 with approval of the fund board and without court approval. Maryland Act § 161. Essentially the same procedure applies in New Jersey. New Jersey Act § 39:6-72. In New York the procedure is similar to that of Maryland with the exception that the insurer cannot settle a claim for more than $2,000. Apparently no provision for settlement is made in the North Dakota Act.

51. Although mandamus will lie to compel the execution of a ministerial duty, courts will not use it to control officers in the exercise of their discretion. Dearborn Fire Fighters Ass'n v. Dearborn, 323 Mich. 414, 35 N.W.2d 366 (1949); Nelson v. Wayne County, 289 Mich. 284, 286 N.W. 617 (1939).

52. Since under the hit-and-run provisions of the statute, the identity of the automobile, its driver and its owner must be unknown, this section apparently covers those situations in which one of the three is known and the others are not.

53. Michigan Amendment § 6(3)(c). The language of the Michigan Amendment does not, however, compel this conclusion. It states that the Secretary may make payment from the fund after notice is sent to the tort-feasor if the "person to whom a notice is sent . . . does not reply within 30 days of the date upon which the notice was sent and *disputes his liability.*" *Ibid.* (Emphasis added.) Thus, if the statute were construed literally, the Secretary may only make payment from the Michigan Fund if the tort-feasor does not reply within 30 days and on some day thereafter disputes his liability.

54. In such cases the Secretary must immediately upon learning of the default suspend the defendant's license. Michigan Amendment § 6(6).

Section 6 of the Michigan Act, which is unique among the five fund statutes,[55] demonstrates the liberal attitude of the drafters; a procedure is provided for the expeditious and inexpensive handling of claims and for the exercise of a considerable amount of discretion by the Secretary.[56] It seems likely that the provision will be used extensively for property damage and personal injury claims where the amount of damages is small and easily ascertainable, for when the amount is insignificant, the Secretary would be less hesitant to pay the claimant, and the uninsured motorist-tort-feasor would be more likely to agree to repayment. The section is not, however, limited in its application to small claims. Larger personal injury claims which might otherwise have to be litigated, either because the Secretary considers the amount demanded improper or the uninsured disputes his liability for the amount sought, may also be encompassed within the section. Its effective use in these larger personal injury cases will, in practice, depend upon the extent to which the Secretary and the claimant are willing to compromise in order to minimize the time and expense of litigation.

A third method of recovery in Michigan is to bring a suit directly against the Secretary. This procedure is available when the claimant has a valid cause of action but is unable to ascertain the identity of the owner, driver, and vehicle that injured him.[57] The procedure is also applicable if the identity of the owner is known but the driver, perhaps a thief,[58] is unknown. In cases in which only the identity of a co-tort-feasor is known, the Secretary may be joined in the place of the unidentified tort-feasor on the application of any

55. The possible exception is the Maryland statute which allows the insurance companies who are members of the Fund Board to settle claims between plaintiffs and defendants. If the defendant does not agree to a particular settlement, the insurer who is also the company assigned to defend the fund, sends a notice of withdrawal to the defendant stating that the defendant must retain counsel within 30 days. If the defendant fails to do this, a judgment is entered against the defendant in the amount of the settlement offer. Maryland Act § 156A.

56. The same provision in the Ontario statute has been described as a provision aimed at keeping down time and costs of litigation. See Corbett v. Rolfe, 1 Ont. 185, 187, 47 D.L.R.2d 222, 224 (1965).

57. Michigan Amendment §§ 12-13; Michigan Act §§ 15-17; See Maryland Act §§ 167-73; New Jersey Act §§ 39:6-78 to -85; New York Act §§ 617-19, 621; North Dakota Act § 39-17-03.1.

58. Michigan Act § 15. It is to be noted that in all hit-and-run cases in which the Secretary is a defendant, the Secretary may deny any allegations in respect to the unidentified owner, driver, or vehicle, and he is not required to set out the facts on which he relies. Michigan Act § 16. Similar provisions exist in other fund states. See Maryland Act § 170; New Jersey Act § 39:6-81; New York Act § 618(d). Michigan Rule 111.4 provides that all denials must be supported by the substance of the matters relied upon. MICH. GEN. CT. R. 111.4. However, it is argued that the obvious fairness of § 15 will probably save it. See GILMORE, MICHIGAN CIVIL PROCEDURE BEFORE TRIAL § 7.209, at 74 (Supp. 1966).

party to the lawsuit or on the Secretary's application.[59] The claimant may take advantage of this procedure in any of the above cases so long as he has made a reasonable effort to ascertain the identity of the owner, driver and vehicle.[60] Surprisingly, the Michigan Act, unlike other fund state statutes,[61] fails to authorize explicitly the Secretary's settling of suits brought against himself under the above procedures. However, since the Secretary is not specifically precluded from making such settlements and since such settlements would be beneficial to both the claimant and the Secretary in terms of time and money, the Secretary can be expected to adopt such a procedure whenever possible.

Once judgment has been rendered against the Secretary he may apply under section 20 of the Michigan Act to the court for an order declaring "that any person was, at the time of the accident, the owner or driver of the motor vehicle that occasioned . . ." the accident. Upon issuance of the order the named person is deemed to be the defendant in the action in which the judgment was rendered against the Secretary, and the Secretary is consequently deemed to have a judgment against the named person for the amount paid to the judgment creditor from the Fund. The obvious defect in this provision is its seeming authorization for the issuance of ex parte orders on the motion of the Secretary.[62] The provision appears to have been drafted almost verbatim from the Ontario Motor Vehicle Accident Claim Act,[63] and it finds no counterpart in the legislation of other fund states.[64] Although there are apparently no decisions

59. Michigan Amendment §§ 12-13. It is important to note in this regard that the owner, driver and vehicle must all be unknown in order to sue the Secretary in a non-theft hit-and-run situation. *Cf.* Tinsman v. Parsekian, 65 N.J. Super. 217, 167 A.2d 407 (App. Div. 1961).

60. Michigan Act § 17. Such provisions exist in other fund states. See Maryland Act § 167(f); New Jersey Act § 39:6-78(e); New York Act § 618(a)(5). This provision has led to a good deal of litigation in other states as to what constitutes a reasonable effort to ascertain the identity of the owner, driver and vehicle. See, *e.g.*, Gilbert v. Unsatisfied Claim & Judgment Fund Bd., 85 N.J. Super. 143, 204 A.2d 204 (App. Div. 1964); Simmons v. Raiola, 36 Misc. 2d 555, 233 N.Y.S.2d 414 (Sup. Ct. 1962).

61. See Maryland Act § 171; New Jersey Act § 39:6-82; New York Act § 618(e).

62. Judge Gilmore apparently sees no problem with the provision since he describes it merely as a manner in which the Secretary may seek recovery for the Fund. GILMORE, *op. cit. supra* note 58, § 7.209, at 74.

63. Motor Vehicle Accident Claims Act, 1962, 10 & 11 Eliz. 2, c. 84 (Ont.), as amended, Motor Vehicle Accident Claims Amendment Act, 1964, 12 & 13 Eliz. 2, c. 66 (Ont.), as amended, Motor Vehicle Accident Claims Amendment Act, 1965, 13 & 14 Eliz. 2, c. 75 (Ont.).

64. The Canadian jurisdictions in general have, however, placed comparable provisions in their statutes. See, *e.g.*, Motor Vehicle Accident Claims Act, 1964, 13 Eliz. 2, c. 56, § 12 (Alta.); Motor Vehicle Act, 1955, 4 Eliz. 2, c. 13, § 298 (N. Bruns.). The provisions of the two statutes were obviously available for inspection by the drafters of the Michigan Act and the Michigan Amendment. The Michigan provisions, then, can reasonably be read in light of and in contradistinction to those two statutes. The

construing the Ontario provision, it is probable that it would be found valid since Canadian provincial legislatures are virtually unfettered in enacting legislation on questions of peculiarly local interest.[65] However, the existence of American constitutional limitations raises the question of the validity of the Michigan version. Since the section authorizes judgments to be rendered without providing for notice to the defendant, for the possibility of jury trial, and for the calling or confronting of witnesses, it would appear to be a most blatant denial of the due process of law requirement.[66] If the drafters of the Michigan Act envisioned a section which provided a procedure similar to a declaratory judgment, the section as enacted represents a very poor effort of draftsmanship. It is possible, however, that such was not the intention since the unusual language of the section does not even closely resemble that found in the standard declaratory judgment statute.[67] To avoid constitutional attack, therefore, the provision should be rewritten to coincide with the normal language of a declaratory judgment statute.

Amounts Recoverable

Recoveries from the Michigan Fund are limited to $10,000 for one person's death or injury, $20,000 for the personal injury or death of two or more persons in one accident and $5,000 for all property damage.[68] An October 1965 amendment to the Michigan

Alberta statute specifically provides for notice of hearing to the person named in the order, allows him to present evidence, and authorizes the judge to pass on the evidence and to grant or refuse the order. The New Brunswick statute is an even clearer indication that the Michigan provision was meant to be a departure from the normal methods of acquiring a judgment. That statute specifically calls for a declaratory judgment proceeding to be initiated by the fund's representative if recovery is desired from the person thought to be the tort-feasor.

65. "A section of a provincial statute is not invalid on the ground that it conflicts with natural justice." 3 CANADIAN ENCYCLOPEDIC DIGEST (ONT.), *Constitutional Law* § 8 (1950). If the province of Ontario were to pass an act taking away property or money of *A* and giving it to *B*, the legislation, however unjust, would be valid so long as the effects of the legislation do not extend beyond the territorial limits of the province. *Ibid.* A court of law can only give effect to a provincial act, lawfully passed, according to its tenor. The suggestion that a certain act might be abused so as to amount to a practical confiscation does not warrant interference by the courts. *Id.* § 9.

66. Seemingly, the lack of provision for notice to the defendant is the most blatant denial of due process. In Wuchter v. Pizzutti, 276 U.S. 13 (1928), it was held that a state statute which failed to make provision for reasonable notice to be given to a non-resident defendant when the Secretary of State was served under the non-resident motorist statute in his place denied due process of law. It should also be noted that the Michigan Constitution guarantees that the right to jury trial shall remain. MICH. CONST. art. I, § 14.

67. MICH. GEN. CT. R. 521 is typical of a declaratory judgment provision in providing for jury trial and notice.

68. Michigan Amendment § 23(1). The limits in the other fund states are: Maryland, $15,000/$30,000/$5,000 (Maryland Act § 162); New Jersey, $10,000/$20,000/$5,000 (New Jersey Act § 39:6-73); New York, $10,000/$20,000 (New York Act § 610); North Dakota, $10,000/$20,000 (North Dakota Act § 39-1707). A problem exists which

Act[69] abolished the provision for the fifty dollar deductible on death and personal injury claims[70] and raised the property damage deductible from fifty to two hundred dollars.[71] In addition, the amendment excluded from coverage all property damage claims in hit-and-run situations,[72] presumably to avoid fraudulent claims by persons who have damaged their own property.[73] It appears that no reason has been formally advanced to justify abolishing the personal injury deductible, and the change is difficult to justify on practical grounds. The Michigan Secretary of State has said that the administrative expense in processing claims of under three hundred dollars may be prohibitive.[74] In the absence of any practical experience in administering the Fund, it may be contended that an increase in the deductible for personal injuries, such as that for property damage, would have been a more realistic method, at least for the present, for insuring the efficient administration and continued viability of the Michigan Fund.[75]

The Michigan Act requires that no payment shall be made from the Fund, in respect to a claim or judgment presented, for any amount of money paid or payable to the claimant by any insurer or any other person by reason of the existence of a policy, contract, agreement or arrangement providing for payment of compensation, indemnity or other benefits.[76] The impact of this provision, however, is substantially mitigated by the fact that no deduction is required for amounts payable to the claimant under a life insurance policy or any contract, agreement, or policy providing for the payment of hospital or medical expenses.[77] This unique life and hospi-

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is not provided for in the statute but which may be taken care of by administrative ruling. This problem arises when two or more persons are injured in the same accident with damages of more than $20,000 aggregate. In North Dakota the statute itself provides that a pro rata share is to go to each party. North Dakota Act § 39-17-09.

69. Mich. Pub. Acts. 1965, No. 389.

70. *Compare* Michigan Act §§ 6-7, 19, *with* Michigan Amendment §§ 6-7, 19.

71. *Compare* Michigan Act §§ 6-7, 19, *with* Michigan Amendment §§ 6-7, 19.

72. *Compare* Michigan Act § 13 *with* Michigan Amendment § 13.

73. The same rule is in force in New Jersey. *Cf.* Lewis v. Engelhardt, 79 N.J. Super. 171, 191 A.2d 75 (L. 1963).

74. See Ann Arbor Conference 30.

75. With only claims of over three hundred dollars being processed, the Secretary would be authorized to pay the amount of the claim over that figure and reclaim as much as possible of the whole sum from the uninsured to defray administrative costs. See Michigan Amendment § 6(4).

76. Michigan Amendment §§ 22(2)-(3). The statute also precludes the claimant from seeking payment to reimburse or indemnify persons who have made payment to him pursuant to any policy, contract agreement or arrangement. Michigan Amendment § 22(5). Compare Maryland Act §§ 159(l)-(m); New Jersey Act §§ 39:6-70(l)-(m); New York Act §§ 611(f)-(g).

77. Michigan Amendment § 22(4). This provision is apparently not in effect in any other fund state.

tal insurance provision is apparently intended to reward those persons who have purchased their own protection.[78] However, by merely ignoring the existence of a significant source of compensation for the average claimant, the provision does not comport with any reasonable pattern of damage allocation. Although laudable for encouraging the purchase of private insurance, the provision unjustifiably places an extra burden on the Fund by helping those persons who have been fortunate enough to help themselves.

As originally written the Michigan Act reduced the maximum amount payable from the Fund on a judgment debt by an amount equal to that recovered from any other source in partial discharge of the judgment debt.[79] The Michigan Amendment, however, deletes the former rule and, in effect, subtracts the amount recovered from other sources from the judgment before limiting the recovery to the maximum amount payable from the Fund.[80] The Amendment, which is a departure from the rule established in other fund states, raises the question of the basic purpose of the Michigan Act. The New Jersey Act, for example, has been construed as an attempt to afford an accident victim only a specified and uniform amount,[81] rather than total compensation for his injuries. To this end, the New Jersey Act reduces the amount available from the New Jersey Fund by an amount received by the claimant from other sources.[82] Michigan, on the other hand, seems to create excess insurance for the victim who is also able to recover from private sources.[83] A Michigan claimant may sustain damages similar to those of a New Jersey claimant, and both may collect $10,000 from other sources. In both states $10,000 is the maximum amount recoverable from the funds.[84] If the total amount of damages has not been satisfied by the $10,000, the Michigan claimant may proceed against the Michigan Fund for the unsatisfied portion of his claim up to $10,000 while the New Jersey claimant is precluded from asserting any claim against the New Jersey Fund. The unfortunate weakness in the Michigan approach is its disparate treatment of Michigan residents; indeed, the Michigan Act is constituted so as to provide

78. See Letter From Rep. Marvin R. Stempien to the *Michigan Law Review*, Nov. 1, 1965.

79. Michigan Act § 23(2).

80. Michigan Amendment § 23(2).

81. See Wormack v. Howard, 33 N.J. 139, 162 A.2d 846 (1960).

82. New Jersey Act § 39:6-71(b)(2); see Lewis v. Engelhardt, 79 N.J. Super. 171, 191 A.2d 75 (L. 1963) (amounts received from joint-tort-feasors reduced the amount plaintiff could claim from the fund).

83. See Letter From Rep. Marvin R. Stempien, *op. cit. supra* note 78. Representative Stempien suggests that this treatment as excess coverage encourages persons to insure themselves since they then are able to claim two sources.

84. See note 68 *supra*.

the opportunity for greater compensation to those who can best afford to provide their own protection than to those with lower incomes, who may be unable to afford private insurance. Such anomalous treatment does not comport with any reasonable scheme of allocating the social costs of automobile accidents. It would seem that if the Michigan Fund can afford to be an excess insurer of insured persons injured by uninsured motorists, it should first raise its maximum amounts payable to $15,000 or $20,000. However, if the Michigan Fund cannot afford the extra expense, as is likely the case, a provision similar to New Jersey's is more easily justified than the present provision.

Notice Requirements

The Michigan Act requires that the claimant file notice of his intention to claim with the Secretary within one year from the date that the cause of action accrues.[85] The Michigan notice provision is significantly less complicated and more liberal than similar provisions in other fund state statutes.[86] Although it enables recovery for persons who by their own or their attorney's inadvertence would be precluded from recovery because of the shorter time period in other states,[87] the Michigan Act fails to recognize the need for stringency in order to prevent the presentation of fraudulent claims.[88] It would seem that a solution embodying the best elements of the liberal and strict positions would be to adopt the more stringent requirements while empowering the Secretary, in his descretion, to waive the deadline in the interest of justice.[89]

Conclusion

The most striking features of the Michigan Act are its liberality with regard to persons entitled to claim, claim procedure, deductions, notice requirements, and the greater degree of discretion vested in the Secretary. These factors mark a decisive split with the procedures of other fund states. Because the Ontario statute has only been in effect for four years, experience under this type of statute is not as great as under the prototype of the Maryland, New Jersey,

85. Michigan Act § 18.

86. See Maryland Act § 154; New Jersey Act § 39:6-65; New York Act § 608. See generally Annot., 2 A.L.R.3d 760 (1965).

87. See McCullough, *The Uninsured Motorist*, 33 N.Y.S.B.J. 343 (1961).

88. This, at any rate, is the avowed purpose of the provisions of other states. See, *e.g.*, Downing v. Stewart, 85 N.J. Super. 62, 203 A.2d 724 (App. Div. 1964).

89. Other fund states, while not providing for a discretionary waiver by the fund's representative do have provisions which alleviate the harshness of the general rule in some situations. See New Jersey Act § 39:6-65 (allowing physical incapacity of the claimant to toll the 90-day period); New York Act § 608 (allowing infants to file late where the fund is not prejudiced).

or New York Acts. However, it seems likely that the end result of the liberal and discretionary character of the Michigan Act will be more extreme, either good or bad, than in other fund states. For example, if section 6 of the Michigan Act functions normally, the vast majority of persons injured by uninsured motorists will receive compensation in much less time and with less expense than would be required to collect the same amount from an insured tort-feasor. On the other hand, the Secretary could, through the exercise of his discretion, create, in effect, an insurance group which sought to permit recovery in as few cases as possible. This liberal attitude may lead to a comprehensive strict liability compensation system either supplementing the present tort framework,[90] or to a great degree replacing such a framework.[91] Although it is unlikely that such plans will be adopted in the near future, it is hoped that the liberal attitude of the Michigan legislature may act as a stimulant for research on the problem of the compensation of automobile accident victims.

90. See CONARD, MORGAN PRATT, VOLTZ & BOMBAUGH, AUTOMOBILE ACCIDENT COSTS AND PAYMENTS (1965). The Conard "Social Insurance" Plan is, in essence, a combination of expanded existing programs of compensation, including the tort system, under a compensation plan administered under the social security system. This book is especially significant for Michigan practitioners since it contains and is based on a survey of Michigan accident costs and compensation.

91. See generally KEETON & O'CONNELL. The essential features of the new plan are a form of compulsory automobile insurance which is in the nature of an extension of the principle of medical payments insurance, covering all out-of-pocket losses up to $10,000 and, second, legislation exempting basic insureds from tort liability up to a certain amount. A bill patterned after this proposal has been introduced into the Michigan Senate. S.B. 660, 73d Legis., Reg. Sess. (Mich. 1965).