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Insurance - Motor Vehicle Accident Indemnification Corporation Law - Compensation Assured for Innocent Automobile Accident Victims

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RECENT LEGISLATION

INSURANCE—MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION LAW—COMPENSATION ASSURED FOR INNOCENT AUTOMOBILE ACCIDENT VICTIMS—A 1958 New York statute requires the organization of an Indemnification Corporation by companies selling automobile liability insurance within the state. The corporation will assess members[1] in order to establish a fund which will be used to reimburse persons who are injured in a motor vehicle accident and are unable to collect from the person causing the injury. In order to qualify, the injured party must not be covered by a policy of automobile insurance nor may he own an uninsured motor vehicle. He must secure a judgment against the financially irresponsible driver and petition the court to order the Indemnification Corporation to pay the claim. If the identity of the person causing the injury is unascertainable the injured party may apply to the state supreme court for permission to bring an application upon his claim against the Indemnification Corporation. Provision is also made for out-of-court settlement

[1] Each member is to be assessed in proportion to the fractional part of the total automobile liability insurance it wrote in New York in the preceding year.

between the corporation and the injured party. A companion statute requires that every policy of automobile liability insurance contain a clause providing the insured with the same protection afforded a qualified person under the Indemnification Law. 27 N.Y. Consol. Laws (McKinney, 1952; Supp. 1958) pt. 2, Art. 17A, §§600-626; pt. 1, §167(2).

For years the public has been appalled by the number of automobile accident victims who go unrecompensed because the person at fault is uncollectible.[2] State legislatures have reacted to this concern by enacting laws which require or encourage the automobile driver to provide for his financial responsibility.[3] In 1956 the New York legislature enacted a compulsory automobile liability insurance law to assure that all drivers would be able to respond in damages for injuries caused by them.[4] The advocates of the act acknowledged that it was only a partial solution for it failed to provide for injuries caused by out-of-state drivers, hit-and-run accidents, or cases where the insurer escaped liability because of some act or omission of the insured.[5] The Indemnification Law aims to fill these gaps.[6]

The initial question is whether the act is constitutional. State regulation of the insurance industry has been upheld in numerous cases.[7] It has even been suggested that "the power of the state is broad enough to take over the whole business."[8] It is probable that the courts will sustain the constitutionality of the Indemnification Law as another necessary regulation of the industry.[9] In light of the fact that the United States Supreme Court has held that the state has power to require the insurance companies to

2 See Ill. State Legislative Council, Publication 129, Nov. 1956, quoted in Corrick, "Motor Vehicle Accident Responsibility," 25 KAN. ST. B.A.J. 225 at 226 (1956-57).

3 Vorys, "A Short Survey of Laws Designed To Exclude the Financially Irresponsible Driver From the Highway," 15 OHIO ST. L.J. 101 (1954).

4 62A N.Y. Consol. Laws (McKinney, 1952; Supp. 1958), Art. 6A, §§93-93K. The statute requires proof of liability insurance coverage or fulfillment of an alternative requirement of financial responsibility before registration of a vehicle. See note, 32 N.Y. UNIV. L. REV. 147 (1957).

5 "This gap in the law will continue to demand remedial amendment, and I will continue to press for legislation to fill the void." Message of the governor approving the Motor Vehicle Financial Security Act, 1956 NEW YORK STATE LEGISLATIVE ANNUAL 471.

6 New York is the first state to combine compulsory liability insurance with an unsatisfied judgment fund. A combination of these two laws is in effect in Victoria and New South Wales, Australia. Victoria Acts of Parliament 1951, No. 5616. New South Wales Stat. 1942, No. 15, as amended by N.S.W. Stat. 1951. No. 59.

7 E.g., FTC v. National Cas. Co., 357 U.S. 560 (1958), note, 57 MICH. L. REV. 289 (1958). See also cases collected in California State Automobile Assn. Inter-Insurance Bureau v. Maloney, 341 U.S. 105 at 109, n. 2 (1951).

8 California State Automobile Assn. Inter-Insurance Bureau v. Maloney, note 7 supra, at 110.

9 For years the Supreme Court has upheld the constitutionality of funds which were created by the assessment of public service corporations similiar to insurance companies. Thus, a bank guarantee fund was sustained in Noble State Bank v. Haskell, 219 U.S. 104 (1910). See also Offield v. New York, N.H. and H. Ry. Co., 203 U.S. 372 (1906).

bear the cost of an assigned risk plan,[10] it would seem clear that the states can assess these companies in a more direct way to accomplish the same objective.

If the constitutionality of the act is accepted, there still remains the question of its social desirability. Basically the law provides that a fund will be established from the contributions of one group (the insured drivers who will pay the cost of the assessment against the insurance companies through increased premiums) to provide for injury which may result to a second group (the three million state residents who are not members of automobile owning families) from the tortious acts of a third group (the unidentified or financially irresponsible drivers who cause injuries). The general philosophy of fund laws such as workmen's compensation is to distribute the losses to the group ultimately responsible for creation of the hazard.[11] It would seem to follow that drivers as a group should bear the cost of the indemnification fund since they create the highway conditions which provide an opportunity for injury. But in this area drivers may be divided into two subdivisions: (1) those who carry insurance and have thereby assumed their share of the responsibility for creation of the hazard; and (2) those who are financially irresponsible. The first group is, under the indemnification law, forced to subsidize the delinquent group. It would seem more equitable to distribute the cost among those receiving the protection (the non-drivers) or at least to distribute it equally by increasing direct taxes.

Administration of the fund through the insurance industry seems satisfactory from the standpoint of the state.[12] Insurance companies are equipped to handle claims efficiently.[13] Since they are being assessed to provide the fund they will be motivated to protect it from diminution. Members of the insurance industry feel that such laws represent a step toward socialization of the business.[14] However, a law administered by

[10] California State Automobile Assn. Inter-Insurance Bureau v. Maloney, note 7 supra. See Factory Mutual Liability Ins. Co. of America v. Superior Court, 300 Mass. 513, 16 N.E. (2d) 38 (1938).

[11] Report of the Employers' Liability Commission of N.Y. (1910). See also Ives v. South Buffalo Ry. Co., 201 N.Y. 271, 94 N.E. 431 (1911). In the case of workmen's compensation the public, which creates the demand for the product, pays through higher prices the cost of compensating the injured workmen.

[12] Green, "An Insurer Looks at the New Jersey Unsatisfied Judgment Fund Law," 1956 INS. L.J. 728.

[13] The administrative weaknesses which result from state handling of the North Dakota unsatisfied judgment fund are criticized in Bergesen, "The North Dakota Unsatisfied Judgment Fund," 29 N.D. L. REV. 123 (1953).

[14] This opposition is illustrated by the battle waged against compulsory liability insurance in New York. Full page advertisements were carried in New York's leading newspapers criticizing the proposed law. N.Y. DAILY NEWS, Feb. 26, 1954. Most of the criticisms set forth in the ads are remedied by the Indemnification Law. See also Craugh, "The Problem of the Financially Irresponsible Motorist," 1955 INS. L.J. 310.

the insurance companies themselves at least does not involve actual participation by the state in insurance functions and thus may provide a significant compromise between state usurpation and a completely free enterprise.

The risk of injury from an automobile accident is similar to any number of other risks which man faces daily. Whether to protect himself from the resulting loss has generally been a matter of choice in our free enterprise system.[15] What then is the reason here for departing from this basic philosophy? Our society favors compensation of those who suffer personal injuries. Workmen's compensation laws reflect dissatisfaction with the traditional idea of compensation based on the fault and collectibility of the tortfeasor.[16] As to the fault principle the attitude is that the desirability of placing liability upon the responsible person is over-shadowed by the desirability of affording the injured party compensation.[17] Even when fault might be established, victorious plaintiffs have been left uncompensated and potential plaintiffs have refrained from litigating because a judgment could not be enforced. In recent years this general dissatisfaction has been most apparent in the area of automobile accidents, where an innocent miscalculation may result in disaster[18] and where proper claims are so formidable that they tend to exclude all possibility of payment by the average person. The Indemnification Law amounts to a compromise for it assures compensation to accident victims if they establish fault.[19] It is doubtful that this half-step to social insurance will provide a full solution. An injured party must still face crowded dockets and a costly trial. He must also avoid the pitfall of contributory negligence, no matter how slight. If a compensation type insurance plan is eventually accepted in the area of automobile accidents the question will arise whether the state or the insurance companies should administer it. The success of the operation of the indemnification fund may provide the answer.

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15 Wise, "The Problem of the Financially Irresponsible Motorist and the Uncompensated Accident Victim," 1957 INS. L.J. 139.

16 See generally RIESENFELD AND MAXWELL, MODERN SOCIAL INSURANCE (1950) and 2 HARPER AND JAMES, LAW OF TORTS, c. 13 (1956).

17 1 LARSEN, WORKMEN'S COMPENSATION §1.20 (1952).

18 In this regard the attitude of society has been substantiated by studies which indicate that some individuals are more accident-prone than others. Thus they may be physically at fault in an accident without being morally to blame. Rawson, "Accident Proneness," 6 PSYCHOSOMATIC MED. 88 (1944). Bristol, "Medical Aspects of Accident Control," 107 A.M.A.J. 653 (1936).

19 A complete repudiation of the fault principle in automobile injury cases was urged as early as 1932 in Columbia University Report, "Report of Committee To Study Compensation for Automobile Accidents." The report recommended the adoption of a workmen's compensation type plan. To date such a scheme has been accepted in only one jurisdiction in North America, Saskatchewan, Canada. Saskatchewan Rev. Stat., c. 371 (1953).