

12-1933

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Carl M. Gray  
*Member, Petersburg Bar*

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### Recommended Citation

Gray, Carl M. (1933) "Compulsory Automobile Insurance," *Indiana Law Journal*: Vol. 9 : Iss. 3 , Article 2.  
Available at: <https://www.repository.law.indiana.edu/ilj/vol9/iss3/2>

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## COMPULSORY AUTOMOBILE INSURANCE

By CARL M. GRAY\*

This paper deals with Compulsory Automobile Insurance, Compulsory Compensation for Motor Vehicle Injuries and Motor Vehicle Financial Responsibility Laws and the Adjudication of Cases growing out of Motor Vehicle Accidents without regard to fault.

We shall have little or no difficulty in agreeing that there are instances where injuries are sustained by reason of motor vehicle accidents where it is almost an impossibility to determine who is at fault. This situation has led to a school of thought favoring the adjustment of such cases without regard to fault. There are some instances where persons receive injuries, as a result of motor vehicle accidents where the operator or owner of the car is financially irresponsible. In these cases, a burden many times is placed either upon the relatives of the injured or upon society. This situation has led to legislation seeking to establish financial responsibility for all owners and drivers of motor vehicles. However, statistics reveal that there are no more failures to realize on judgments obtained in motor vehicle litigation than other classes of litigation. From this viewpoint, there is no more reason to demand compulsory automobile insurance or motor vehicle financial responsibility laws than legislation to require financial responsibility in other cases. Many complex problems are presented when an effort is made to correct this condition by legislation. When we take into consideration the fact that insurance companies carrying compensation insurance fail, and a loss to the injured employee results and that other insurance companies fail, and that business enterprises fail, we view with pessimism an attempt to solve this social problem by legislative enactment. This is especially true since we have recently witnessed the financial collapse of so many business enterprises. Some of the States have embarked upon this legislative voyage with varying results, but in most cases with results indi-

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\* Of the Petersburg bar.

cating progress toward ultimate solution. We shall now examine some of this legislation briefly.

New York has the Financial Responsibility Plan which allows the denial of an operator's license or the revocation of a registration license or the revocation of a registration and driver's license if a judgment has been obtained against a person for personal injuries in any amount, or for property damage in an amount over \$100.00, and the same judgment has not been satisfied, on showing that such judgment is still unpaid after fifteen days from the date the same became final.

Connecticut has a law which provides that upon conviction or violation of the more important safety laws resulting in an injury to a person or property, the motorist involved (owner or operator or both) must upon order of the Commission of Motor Vehicles furnish proof of financial responsibility to pay damages recovered against him in any future accident. Recently Connecticut has further improved its law by providing for the payment of judgments and by requiring the establishment of responsibility for owners and operators under twenty-one years. Maine, Rhode Island, Vermont and Minnesota and one or two other states have enacted laws operating upon the same basic principle.

New Hampshire has a law which provides that after the accident has occurred, the plaintiff, having instituted an action to recover damages, may compel the defendant immediately to establish his financial responsibility for that particular accident, provided that, upon a preliminary inquiry, the defendant is found *prima facie* guilty of negligence and the plaintiff not guilty of contributory negligence. By subsequent amendment, application for the issuance of an order that financial responsibility be established for the particular accident, may be made also to the Commissioner of Motor Vehicles. Failure to establish financial responsibility, in accordance with the provisions of these laws, is penalized by a suspension of registration and driving rights during the continuance of each failure.

This legislation has resulted in increasing the numbers of owners of motor vehicles who carry liability insurance, thus insuring a recovery where negligence is established. The increase in insurance varies but in one State it has increased ninety-five percent.

In the State of Massachusetts compulsory liability insurance law became effective in 1927. Under this law a car could not be registered without complying with the following conditions:

1. To take out public liability insurance in the amount of Five

Thousand Dollars (\$5,000.00) for one person injured and Ten Thousand Dollars (\$10,000.00) for two or more persons injured, or, 2, to procure a motor vehicle liability bond from a surety company in the same amounts, or, 3, to deposit with the Department of Public Works cash or securities of a certain amount. The latter two alternatives have not been used to any extent.

The Massachusetts law empowers the Commissioner of Insurance to fix the premium rates. In the first instance the rates were materially reduced, but this provision led to much discontent and has been injected into politics. This law also provides for the right of an appeal to the Board of Appeals in the event the insurance company refuses to issue a policy to the applicant. There were approximately eleven hundred complaints filed in the first four years under the law and less than three hundred were decided against the insurance companies after hearing or on default, but approximately five hundred were reinstated by the insurance companies without hearing. During this period more than eight hundred thousand motor vehicles were registered annually and it is quite probable that the insurance companies accepted a great number of risks that they would not have accepted had there been no Board of Appeals to compel them to do so.

Under the compulsory liability insurance law in Massachusetts, the insurance companies are required to pay only after the insured has been adjudged the sole and absolute negligent party causing the injury to the injured person under the ordinary principles of the common law. The legal rules of negligence on the part of the operator or of contributory negligence on the part of the injured person are not affected.

Proponents of the compulsory insurance plan are now suggesting that all cases growing out of motor vehicle accidents resulting in personal injuries be submitted to a Board or Commission created for that purpose to determine the rights of the parties without regard to fault. This plan would be similar to the adjustment of cases occurring under the Workmen's Compensation Act. The principle of liability without regard to fault has already been established in some countries with respect to motor vehicles. In Sweden, Denmark and Finland this principle is established by statute and in France it is established, at least as respects injuries to pedestrians, by a recent decision of the Court of Cassation.

Liability without fault is not a new doctrine in the United States. It exists in some instances at common law and has been

embodied in the Workmen's Compensation statutes. The Workmen's Compensation laws were adopted in this country and in this State in an endeavor to expedite litigation, to relieve the congested condition in the courts, and to afford certain compensation to an injured employee, thereby forcing the industry to bear the burden of caring for the injured as a proper charge to the industry. Prior to the enactment of the compensation law the injured employee was compelled to establish negligence on the part of the employer before he was entitled to recover. He was compelled to meet the defense of assumption of risk, contributory negligence, and that the injury was occasioned by the act or acts of a fellow servant. Under the compensation act in this State, we are not concerned with the question of negligence, contributory negligence, assumption of risk or that the injury was occasioned by the act or acts of a fellow servant. The only question to be determined is whether the injury was the result of an accident received in the course of employment.

If the compensation plan is adopted to apply to motor vehicle accidents, the following similar problems would be involved: 1, did the injury arise out of an automobile accident? 2, if it did, what shall be the amount of compensation? 3, if compensation is awarded, what shall be done to make sure that it will be paid?

The first of these problems is substantially identical with that in the workmen's compensation, but the nature of automobile accidents makes proof more difficult; the second, as to the amount of compensation raises difficult and interesting problems. The injured person may be a child without an earning capacity, or the injured person may be an elderly person without any occupation or avocation; a housewife, or a student, or a person disabled. It may be impossible to work out a definite standard by which a Board or Commission could determine the amount of compensation due.

As heretofore said, compulsory compensation does not guarantee the payment of an award or judgment. It occurs to the speaker that compulsory insurance is a step in the direction of the State going into the insurance business, which should not be countenanced under the guise of correcting an existing and admitted evil, when it is repugnant to our form of government.

The plan outlined by a committee to study compensation for automobile accidents, submitted to Columbia University, is based on a combination of the Massachusetts workmen's compensation law and the New York workmen's compensation law, with

benefits based on the latter. That plan is substantially as follows:

The general purpose of the compensation plan is to impose on the owners of motor vehicles a limited liability, without regard to fault, for personal injury or death caused by the operation of their motor vehicles. The liability to pay rests primarily on the owner of the motor vehicle and the plan provides security for this liability by requiring every registered motor vehicle to be covered by compensation insurance.

The owner of any motor vehicle which causes injury or death must pay compensation if the motor vehicle at the time of the accident was driven by him or by another with his consent. This gives a remedy in every case except those in which the motor vehicle has been operated without the owner's consent or cannot be identified. If the motor vehicle is registered in another State, the owner's liability is the same, although there is no practical way of enforcing the insurance requirement. Hence, if the owner of an out-of-state car carries insurance against compensation liability, the injured person will be protected, while if he carries no such insurance, the injured person will stand exactly as he stands now with an uninsured defendant, except that he will have the right to defined benefits and will not have to prove negligence.

When can a motor vehicle be said to cause injury or death? This question is also presented in applying the law of negligence. The Committee suggests that a compensation law should use the word "cause" allowing the administrative board and the courts to apply accepted legal principles in the process of interpretation. It would of course be possible to limit the liability of an owner to cases in which his motor vehicle caused the injury by collision, thus omitting such cases as those in which a motorist causes an accident by his glaring headlights or by forcing another off the highway.

In cases involving simply a pedestrian struck by a motor vehicle, the owner of the motor vehicle must of course pay compensation. But where two motor vehicles collide, the problem is more complex. Here the Committee believes that it would be best to require each owner to compensate the occupants of his own motor vehicle, except the owner himself, who will look to the owner of the other motor vehicle for compensation. Such a plan avoids the objection, which may have some constitutional force, that a man should not be required to insure against loss caused by injuries to himself.

In the occasional case where more than two motor vehicles cause the accident, any owner injured will be entitled to claim against the other owners jointly; otherwise the situation will be the same as where only two motor vehicles cause the accident.

A pedestrian or other person outside of a motor vehicle whose injury is caused by more than one motor vehicle will be entitled to recover compensation from all the motor vehicle owners jointly.

If the accident has been caused by negligence of someone not concerned in it as the occupant or owner of a motor vehicle or as a person injured, the owner or insurance carrier who has been obliged to pay compensation will be entitled to recoup by an action of damages against the negligent person. A common example of this would be the right to recover from the municipality any amount which the owner or insurance carrier had been required to pay by way of compensation to persons riding in the owner's car and injured because of defects in the street.

Compensation is to be paid in respect of any injury or death caused by the operation of a motor vehicle, unless the person injured or killed wilfully intended to cause injury to himself or to another. The Committee believes also that injuries to owners and operators of motor vehicles should be excluded, unless they are caused by another motor vehicle. An operator, for example, who is injured by driving his car into a tree will not receive compensation, because to allow him to do so would open a wide door to fraud. In the case of an owner, there would be the additional objection that to allow him compensation would be in effect to require him to insure against his own injuries.

The Committee drafted the following proposed schedule of benefits:

(1) The cost of medical care is paid in all cases regardless of the duration of disability.

(2) No compensation is paid for the first week of disability.

(3) Compensation is based on weekly wages. For employed persons, these are calculated as under the workmen's compensation law. For business and professional men, profits take the place of wages in the calculation. For persons temporarily unemployed, wages are calculated by reference to the last period of steady employment. For housewives, wages are assumed to be those paid for similar work at the time and place of their occupation. For permanently unemployed persons, for unemployed minors of nineteen and under, and for students of over nineteen, the minimum wage of \$8.00 is assumed.

(4) The injured person receives two-thirds of his weekly wages during the continuance of permanent total disability.

(5) The injured person receives two-thirds of his weekly wages during the continuance of temporary total disability.

(6) As in workmen's compensation, the plan includes a schedule listing various types of dismemberments or loss of use of members. In respect of each permanent partial disability, an injured person is entitled to receive two-thirds of his average weekly wages for a specified number of weeks, adjusted roughly to the seriousness of the case; if the injury is not covered by the schedule, he receives two-thirds of the difference between his wages before and after the accident. In cases of unemployed minors and in other cases where it shall be equitable, the compensation board may estimate the wages which the injured person would have received from time to time.

(7) During the continuance of temporary partial disability, the injured person receives two-thirds of the difference between his wages before and after the accident.

(8) For serious facial or head disfigurement or other disfigurement impairing the earning power of the injured person, he receives a proper and equitable amount, not to exceed \$3,500.

(9) Compensation in death cases is as follows:

(a) Funeral expenses are paid in all cases, not exceeding \$200.

(b) Dependents receive compensation as provided by the workmen's compensation laws of the state. This includes earners temporarily unemployed.

(c) Members of the family of a deceased housewife, living in her household, receive a minimum of \$500 and a maximum of \$1,500.

(d) For unemployed children of nineteen and under, the parents or the surviving parent receive a minimum of \$500, and a maximum of \$2,500.

(e) For unemployed students over nineteen, compensation is paid to the wife and children or to supporting parents, as in the case of employed persons, but with an assumed wage of \$10 a week.

(f) No compensation is paid with respect to earners without dependents, except the amount provided for the funeral.

(g) No compensation is paid with respect to permanently unemployed persons, except the amount provided for the funeral.

The plan submitted by the Committee provides that no motor vehicle can be registered unless the owner presents a certificate

showing that he has procured insurance against liability to pay compensation. As to whether insurance should be carried with private companies, with an exclusive state fund, or with private companies or a competitive state fund, each state would presumably follow its practice with respect to workmen's compensation.

The compensation provided by the Committee's plan is in lieu of all other compensation or damages for personal injury or death caused by the operation of a motor vehicle, except as to cases expressly excluded from the operation of the act. An example of a case so excluded is that of an operator injured by a train; he would still have his action against the railroad company based on the law of negligence.

The Committee has decided against the feasibility of an optional plan. If the injured person has his option to claim compensation benefits or to bring an action at law, the motorist must carry two kinds of insurance for full protection; while if the motorist has the option, the injured person will generally be relegated to the least profitable remedy.

The Committee's plan is to be administered by a special board created for that purpose, with the assistance of such referees and clerks as may be required. Procedure will follow that now in effect under workmen's compensation.

Owners and operators involved in accidents will under this plan, be required to report within a prescribed time to the commissioner of motor vehicles, and persons injured will be required within a prescribed time to give notice to the compensation board and to the insured motorist, stating the extent of injury, and the name and address of the attending physician.

Space does not permit the presentation of arguments for or against the proposed plan, and it is not the intention of the writer to present his views one way or the other in this matter, but he does desire to call attention to one or two propositions involved in his proposal.

There are many who believe that the right of trial by jury should not be abrogated in spite of occasional instances of miscarriage of justice. They are firmly convinced that no system of jurisprudence created by establishing an administrative or quasi judicial body can function as well as the courts and jurors. In addition, there is the constitutional provision which guarantees the right of trial by jury. It is the opinion of the writer that legislation creating a board or commission to adjudicate this class of case might well be in contravention of this constitutional provision.