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employee although negligent or foolhardy in the act of abandonment has done it innocently or to aid another in distress, (2) the abandonment is slight and presents little or no detriment to the interests of the employer, (3) estoppel element, although not mentioned specifically, in that if an employer is aware of an employee's continually doing an act which constitutes an abandonment and neither condemns nor condones such act, he may be in effect estopped from using this as a defense and such act will be considered "in the course," (4) where decedent is survived by a wife and children a most liberal interpretation is to be expected. These factors are by no means comprehensive, but one factor must be kept in mind — the Workmen's Compensation Act is humanitarian in nature and the interests of the worker are paramount.

*John A. Luchsinger*

## THE FINANCIALLY IRRESPONSIBLE MOTORIST: A SURVEY OF STATE LEGISLATION

Each year about 38,000 people are killed and another 1,200,000 are injured as the result of motor vehicle accidents.[1] So long as liability for these mishaps is based on the concept of fault, the financial resources of the wrongdoer are of primary importance to the innocent victim or his survivors. Once the accident has occurred and the fault has been determined, justice cannot be served if the successful plaintiff finds that the tort-feasor is unable to respond in damages. This then is the problem of the financially irresponsible motorist. Various solutions have been offered by the state legislatures and it is to these developing answers that we turn our attention with particular emphasis on the more recent developments.

As of this writing four types of statutes are in use in the United States to protect the innocent victim from the judgment proof driver.[2] They are: (1) compulsory automobile liability insurance; (2) the financial responsibility statutes; (3) the requirement that all automobile liability policies contain clauses protecting the insured against financially irresponsible motorists and (4) unsatisfied judgment fund laws.

1. Statistical Abstract of the U.S., pp. 65, 91 (1963). It is difficult to ascertain the number and percentage of accidents involving uninsured vehicles and those in which the uninsured party is at fault. Docket judgment statistics are misleading since many suits never reach the litigation stage because of the prospective inability of the defendant to respond in damages.

2. Many states do not limit themselves to one type of statute but combine two or three plans, thus providing extensive protection for the victim of an uninsured driver.

I.

COMPULSORY INSURANCE

As far back as 1925 the legislature of the State of Massachusetts was concerned with the inability of motor vehicle operators to answer for harm caused by their carelessness on the road. On January 1, 1927, that body passed an act[3] requiring every person registering a motor vehicle in the state (a) to show a certificate stating that he had liability insurance or (b) to produce a motor vehicle liability bond which guarantees that the registrant will satisfy all judgments rendered against him arising out of the use or operation of the motor vehicle or (c) to deposit cash, stock certificates or bonds in the amount of $5,000 as security for the payment of all judgments rendered against the vehicle owner for injury resulting from the operation of his vehicle. In the event a liability policy purchased pursuant to statutory requirements lapses during the registration period, upon notice to the state by the insurer, the registration is revoked making subsequent use of the vehicle within the state unlawful. In addition cancellation or rescission by the insurer after the accident is made impossible by the Massachusetts act which provides:

> . . . no violation of the terms of the policy and no act of default of the insured, either prior or subsequent to the issue of the policy, shall operate to defeat or avoid the policy so as to bar recovery . . . by a judgment creditor . . .[4]

In other words the policies become frozen after the loss; an absolute right of recovery is given to the injured party and it is up to the insurer to recoup his loss from the insured.

The only other states to adopt compulsory insurance schemes have been North Carolina[5] and New York,[6] whose regulations are substantially the same as those of Massachusetts, providing for revocation of registration in the event of policy lapse and enforcement of the various notice and certifying provisions with criminal sanctions.[7]

Since the adoption of the Massachusetts plan, charges and countercharges have been hurled over its efficacy. It has been alleged that com-

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3. MASS. GEN. LAWS c. 90, §§ 34A, D, H, J (Supp. 1963); c. 175, §§ 113A, B, D (Supp. 1963); ch. 175, §§ 113C, E, F, G (1959); ch. 90, §§ 34B, C, E, F, G, I (1959).
4. MASS. GEN. LAWS c. 175, § 113A(5) (1959).
5. It is interesting to note that no state followed the lead of Massachusetts for over thirty years. This was due in part to strong opposition by the insurance lobby in the state legislatures. At first blush it would seem that a compulsory insurance scheme would increase their business but it must be remembered that the premium rates for required policies are rigidly controlled by the state and many of the smaller companies cannot operate on a financially sound basis under the low rates. See Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300, 312–17 (1950).
6. N.Y. VEHICLE AND TRAFFIC LAWS § 93-b (McKinney 1959).
7. The constitutionality of compulsory liability insurance has been sustained. For a complete discussion of this aspect see 39 A.L.R. 1028, supplemented by 69 A.L.R. 397.

pulsory insurance makes operators accident prone.[8] A more substantial charge is that compulsory insurance affords no protection against uninsured out-of-state vehicles[9] not within the purview of the act. Again, the typical liability insurance policy purchased pursuant to statutory requirement offers no protection to the insured for injuries resulting from accidents with stolen vehicles or those driven without the knowledge or permission of the owner. Unregistered motor vehicles or registered ones which for one reason or another do not carry the liability insurance required by the act present additional problems.

These objections have apparently been sustained, for the use of the compulsory insurance plan has been relatively limited. All three states which have compulsory insurance acts have combined them with some other type of statutory protection.

## II.

## FINANCIAL RESPONSIBILITY LEGISLATION

At present all fifty states have some form of financial responsibility legislation.[10] These statutes can be divided into two classes: (a) those which are triggered into operation by the happening and due reporting of a motor vehicle accident involving personal injuries or property damage exceeding a specified amount and (b) those which require an administrative or judicial finding of fault before any sanctions are imposed.

In the former, any owner or operator of a motor vehicle which is involved in an accident must, as a prerequisite to the continued use of his drivers license or motor vehicle registration, furnish proof of his ability to respond in damages for any personal injuries or property damage resulting from the accident. This proof may be in the form of a liability insurance policy (meeting certain state requirements), a bond or a deposit of cash or securities in an amount deemed sufficient by a state officer to satisfy any judgments arising out of the accident. If this proof of financial responsibility cannot be established, the operator's license and in some cases the motor vehicle registration will be suspended until the payment of any judgments that may be rendered against the individual.[11]

8. As a matter of fact, Massachusetts enjoys one of the lowest fatal accident rates in the country. Statistical Abstract of the U.S., *op. cit. supra* note 1.

9. If other states had followed suit and enacted similar legislation the problem might have been quite well resolved.

10. A complete list of citations is set forth in Kesler v. Department of Public Safety, 369 U.S. 153 at 165-69, nn.29-34 (1962). Also, see Ward, *New York's Motor Vehicle Accident Indemnification Corporation: Past, Present, and Future*, 8 BUFFALO L. REV. 215, 218 n.8 (1959). Pennsylvania's Motor Vehicle Safety Responsibility Provisions (which can be found at 75 P.S. § 1401 *et seq.*) make up Article 14 of The Pennsylvania Vehicle Code of 1959 (1959, April 29, P.L. 58).

11. In Pennsylvania, the suspension remains in effect until: (1) the deposit of the security required by the act, or (2) one year has lapsed following the date of the accident and no action for damages has been instituted, or (3) a release from liability or a final judgment of non-liability has been instituted or, (4) a warrant for confession of judgment or a duly acknowledged written agreement providing payment of an agreed amount in installments has been executed. 75 P.S. § 1407 (1959, April 29, P.L. 58, § 1410).

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In the latter class of statutes, upon an administrative or judicial finding of fault the negligent party must satisfy any judgment against him within a certain period.[12] As can be expected, upon one's failure to do so an immediate revocation of driving and/or registration privileges occurs which may remain in effect until satisfaction of the judgment.

Both the "one accident" and the "one judgment" type statutes have many features in common.[13] For example, most provide for installment payment of the judgments.[14] Upon payment of the initial amounts due the license will be returned; to insure prompt payment of all installments as they become due the license privileges are immediately revoked in the event of default in any payment. Thus, in a state which has an installment payment provision a defendant who is unable to pay a large judgment does not face a semi-permanent loss of his driver's license (a device that may offer no real assistance to the injured plaintiff in collection). Indeed, in many states restoration of license and/or registration privileges may be possible even without satisfaction of the judgment if the judgment creditor consents[15] and additional state requirements (to be discussed *infra*) are met.

However lenient a judgment creditor may prove to be upon the tortfeasor, the state usually takes a more jaundiced view and thus as an additional prerequisite to the return of one's driving or registration privileges proof of future financial responsibility must be shown. That is, the ability to respond in damages which may result from any accident in the future must be demonstrated. This proof usually takes the form of a liability insurance policy.[16] In this light, of particular interest are statutory provisions concerning cancellation and rescission of the policy both before and after the future accident. Termination of a policy before an accident has occurred creates only administrative problems which are handled by the giving of timely notice by the insurer to the insured and the state.[17]

12. OHIO REV. CODE §§ 4509.01–4509.99. Notification of an unsatisfied judgment is usually given to the motor vehicle commission by a court clerk either (a) without the creditor's direction or (b) only after the creditor requests notification in writing.

13. Pennsylvania's Motor Vehicle Safety Responsibility Law combines the "one accident" and "one judgment" type statutes. See 75 P.S. § 1404 (1959, April 29, P.L. 58 § 1404) and 75 P.S. § 1413 (1959, April 29, P.L. 58 § 1413).

14. TEX. REV. CIV. STAT. ANN. art. 6701(h), § 7, subd. 3 (Vernon Supp. 1964). Pennsylvania's installment payment provision is found in 75 P.S. § 1416 (1959, April 29, P.L. 58 § 1416).

15. Effective in 36 states and the District of Columbia, Kesler v. Department of Public Safety, 369 U.S. 153 (1962). See 75 P.S. § 1413(b) (1959, April 29, P.L. 58 § 1413) which provides:

> If the judgment creditor consents in writing, in such form as the secretary may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the secretary, in his discretion, for six (6) months from the date of such consent, and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any instalments thereof prescribed in section 1416 (*supra* note 14) provided the judgment debtor furnishes proof of financial responsibility.

16. In Pennsylvania proof may be given by filing a certificate of insurance, a bond or a certificate of deposit of money or securities. 75 P.S. § 1418 (1951, April 29, P.L. 58 § 1418). However, it is the rare motorist who is willing to leave a deposit of cash or securities with the motor vehicle bureau as proof of his responsibility.

17. It is of course up to the insured to renew his policy or obtain another, otherwise he will suffer revocation or cancellation of his driving privileges. See 75 P.S.

Difficult questions arise however when cancellation is sought by the insurer after the accident because of an alleged breach of certain conditions in the policy (*e.g.*, misrepresentation by the insured regarding age). As is the case in the compulsory insurance area, the statutes have granted the primary rights to the injured parties. No violation of the terms of the policies and no act of default by the insured either before or after the issuance of the policy will operate to bar recovery by a judgment creditor from the insurer. The policies become frozen or absolute after the loss and it is incumbent upon the insurer to recoup his loss from the insured.[18]

Another common provision in many of the statutes is that of requiring proof of financial responsibility by a person whose driving record is marred by traffic violations, license suspensions and the like. Although the individual may never have been involved in an accident the operating privilege will be revoked if proof of financial responsibility is not forthcoming. In theory, this clause has the effect of requiring liability insurance of those most likely to become involved in motor vehicle litigation.[19]

Probably the most controversial clause contained in nearly all financial responsibility statutes[20] is the provision that a discharge in bankruptcy shall not be a substitute for satisfaction of the judgment. The license and/or registration suspensions remain in effect in the face of the bankruptcy discharge until complete payment of the judgments arising out of the motor vehicle accident. This provision has been continually challenged[21] without success under the supremacy clause of the United States Constitution as an attempt by the state legislatures to change the effect of the federal bankruptcy law.

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§ 1422 (1959, April 29, P.L. 58 § 1422) which states ". . . , the insurance so certified shall not be cancelled or terminated until at least ten (10) days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the secretary, . . .".

18. Assuming a statute states that the policies become absolute after loss, there are many questions as to the meaning and extent of these provisions. In the event a liability policy protects the insured to the extent of $100,000 for one injury and up to $300,000 for one accident but the state only requires a policy of $5,000 per injury and $10,000 per accident, is the entire policy absolute or only the statutory amounts? What if the policy is not a required one in that the insured has never been involved in an accident or what is the result if the insured had no knowledge that the policy was required? The case interpretations of the statutes have laid down a pattern of partial absoluteness. Absolute yes, but only up to the statutory amounts (Farm Bur. Auto Ins. Co. v. Martin, 97 N.H. 196, 84 A.2d 823 (1951)); when the policy has been required by law. (Cohen v. Metro Casualty Ins. Co., 223 App. Div. 340, 252 N.Y.S. 841 (Sup. Ct. 1931); Hartford Acc. and Indem. Co. v. Breen, 2 App. Div. 2d 271, 153 N.Y.S.2d 732 (Sup. Ct. 1956)); and issued by the insurer with knowledge that it was a required policy (Buzzone v. Hartford Acc. and Indem. Co., 23 N.J. 447, 129 A.2d 561 (1957)).

19. See 75 P.S. § 1417(e) (1959, April 29, P.L. 58 § 1417).

20. Effective in 47 states and the District of Columbia. Three states are silent as to the effect of a discharge in bankruptcy; Florida (FLA. STAT. ANN. ch. 324 (1958)); Georgia (GA. CODE ANN. ch. 92a-6 (1958)), and Massachusetts (MASS. GEN. LAWS ch. 90, § 22, 22A, 34A-K (1959)). In Pennsylvania "a discharge in bankruptcy following the rendering of . . . judgment shall not relieve the judgment debtor from any of the requirements of this article." 75 P.S. § 1414 (1959, April 29, P.L. 58 § 1414).

21. Twice in the U.S. Supreme Court; Kesler v. Dept. of Public Safety, *supra* note 10. Reitz v. Mealey, 314 U.S. 33 (1941).

There are three avowed purposes of financial responsibility statutes: first, to induce safety by imposing sanctions on negligent drivers; second, to provide judgment creditors with additional means of recovery; and third, to provide future victims with a source for recovery.[22]

Such a statutory scheme contains several weaknesses, the most notorious of which is that it does not necessarily protect the first victim of the irresponsible driver. One can operate without insurance; it is only when the accident has occurred that the statutes say "you shall not operate any more until you have secured the claim of the injured and filed proof of financial responsibility to respond in damages for any other accident that may happen in the future."[23] The mere suspension of the culprit's license does little to insure the payment of the claim of the first victim of the irresponsible driver.

Another problem is that of the "hit-and-run" driver. By their nature financial responsibility statutes act on a known tort-feasor. They can do nothing to alleviate the plight of the victim of the "hit-and-run." An additional weakness involves stolen automobiles or those driven without the knowledge or consent of the owner.[24] As is the case in the compulsory insurance area, most liability insurance policies (whether obtained voluntarily or under statutory requirement) do not include within their coverage damages resulting from accidents when the insured vehicle is driven without the knowledge or consent of the owner. The injured party must rely on the thief or the uninsured driver for recovery.[25]

The weaknesses[26] contained in both the compulsory insurance plan and the financial responsibility statutes have led to the development of new statutory methods by which fuller protection can be given to the victim of the financially irresponsible motorist. One such development is the Unsatisfied Judgment Fund.

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22. Grad, *Recent Developments in Automobile Accident Compensation, supra* note 5.

23. American Fidelity and Casualty Co. v. Sterling Express Co., 91 N.H. 466, 470, 22 A.2d 327, 330 (1941).

24. See 75 P.S. § 1406 (1959, April 29, P.L. 58 § 1406), which states "The requirements as to security and suspension of section 1404 (*supra* note 13) shall not apply:

> (3) To the owner of a motor vehicle, if at the time of the accident, the vehicle was being operated without his permission, express or implied. . . ."

25. Unlike the Compulsory Insurance Statutes, the out of state driver poses no problem. Generally the states have adopted reciprocity legislation in the legislative field. Most states now, as a matter of comity interchange protection. See for example Section 1405 of Pennsylvania Motor Vehicle Safety Responsibility Provisions (75 P.S. § 1405 (1959, April 29, P.L. 58 § 1405)), which provides that if the operating privilege of a resident of Pennsylvania is revoked by another state for failure to comply with that states security requirements under circumstances that would have resulted in suspension had the accident occurred in Pennsylvania — the Secretary of Revenue shall suspend the license or registration in Pennsylvania until with the law of such state. This provision applies only if the law of the other state contains reciprocal provisions.

26. Other criticisms of financial responsibility statutes include: (1) there is no evidence that the legislation operates to compel careless drivers to obtain insurance; (2) there is no decrease in the number of accidents or any relation between the number of accidents and the number of license revocations or suspensions. Report of the Committee to Study Compensation for Automobile Accidents, 1932.

## III.

## UNSATISFIED JUDGMENT FUND

A somewhat different approach adopted in several states[27] is the establishment of a fund available to the victim of an accident involving a financially irresponsible or unknown motor vehicle operator. The fund is created either by the joint contributions of the licensed drivers and insurance companies writing automobile liability policies in the state or, as is the case in New York, by the insurance companies alone. New Jersey on the other hand requires every person registering an uninsured vehicle to pay an extra registration fee in addition to the payments required of the insurance writers. In each case the funds are administered by an appropriate state administrative agency or officer.

When an accident occurs and the wrongdoer is unable to respond in damages after the judgment the injured party may by summary application seek recovery from the fund. Notice to the appropriate official[28] accompanied by estimates of the damage is required within a certain period after the cause of action accrued.[29] In addition the acts require that the applicant shall have recovered judgment against the defendant and that all appeals and time therefore have expired. The applicant must show that he has taken execution and made every effort to satisfy the judgment including attachment (returned partially or wholly unsatisfied) and discovery procedures.[30]

Four other provisions which must be met as a prerequisite to recovery from the New Jersey fund are: (1) no workman's compensation award can be available to the applicant; (2) the tort-feasor cannot be a member of the immediate family of the applicant; (3) the applicant was not a guest in the judgment debtor's car and (4) the applicant is not himself an uninsured motorist. Where the claimant has received compensation for his injury from other sources, such compensation is deductible from the amount recoverable from the fund.

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27. Maryland — MD. ANN. CODE art. 66½ §§ 150–79 (1957); North Dakota — N.D. REV. CODE §§ 39–1701–10 (1960); New Jersey — N.J. STAT. ANN. § 39:6–61, 91 (1954); New York — N.Y. CONSOL. LAW, Ins. Law art. 17–A § 600 (McKinney, 1959).

28. New Jersey and New York require notice of intention to seek recovery from the fund within 90 days of the accident. N.J. SESS. LAWS ch. 99 § 2 (1959); N.Y. CONSOL. LAWS art. 17–A § 608 (McKinney 1959). The purpose of the notice requirement is to allow an opportunity for a representative of the fund to appear and defend against any specious claims of the injured party against the tort-feasor.

29. In New Jersey when notice of an action against an uninsured motorist is received, the fund may assign an insured to defend the action. N.J. STAT. ANN. § 39:6–66(a)(b) (1961). The insurer which has been assigned may enter an appearance through counsel on behalf or in the name of the uninsured motorist. The original defendant has the right to employ his own counsel and defend the action against him. If the fund does not participate in the action it will investigate any claims against it. Investigation and defense of claims against the fund are distributed to each insurer under an equitable plan.

30. N.J. REV. STAT. § 39:6–70 (1954). Suit may be maintained directly against the fund when the identity of the owner or operator of the vehicle is unknown. After judgment against the fund it is subrogated to all rights the plaintiff has against the unknown owner or operator.

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After a judge is satisfied of the inability of the defendant to respond in damages he makes an order against the appropriate state officer to pay out of the fund. Such orders are appealable. Upon payment by the fund it is subrogated to all rights the plaintiff had against the uninsured driver, for as a condition precedent to recovery the judgment creditor must assign his judgment to the official in charge of the fund.[31] Collection by non-residents from the fund is authorized on a reciprocity basis for those coming from a jurisdiction offering recourse of a "substantially similar character."[32]

A word about New York:[33] in New York the fund is maintained solely by contributions of the insurance companies. The carriers are entitled to have the amount of this charge considered as a rating factor in the determination of their premium rates. The statute creates a corporation known as the Motor Vehicle Accident Indemnification Corporation. Every insurer writing motor vehicle liability policies in New York must be a member and remain so as long as it continues to be authorized to write insurance in the state. The Board of Directors of this corporation is made up of elected representatives of the different companies and the enumerated powers of the corporation include the right to levy assessments against members of the corporation for a total amount sufficient (in the opinion of the Board of Directors) for the operation of the corporation. Each member contributes a proportionate share measured by the ratio of the amount of liability insurance done in the state to the total amount of business within the state.[34]

The unsatisfied judgment fund approach can be used to meet either or both of two problems. First, it can be used as a supplement to the coverage of a compulsory liability insurance law, to take care of cases which such a law cannot cover directly — for example, "the hit-and-run" driver, the stolen car driver and the out-of-state uninsured driver. In addition the fund plan also gives some measure of protection to even the first victim of a financially irresponsible motorist (a distinct advantage over the financial responsibility statutes). Second, however, it can be used as a basic alternative to compulsory insurance, where its chief purpose would be to provide recovery against the uninsured driver. Theoretically such a law produces the same coverage as a compulsory insurance law since either the defendant would be voluntarily insured or the plaintiff would be permitted to proceed against the fund.

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31. As might be expected the operator's license and/or registration of the debtor will be suspended until he has reimbursed the state fund.

32. As of this writing this applies to only three other states. See *supra* note 23.

33. New York has combined the best of two worlds by enacting both the fund and the compulsory uninsured motorist endorsement plan (to be discussed *infra*.) The New York act is also supplementary to a compulsory insurance act and thus primarily covers the victims of out of state drivers who are uninsured and the victims of hit-and-run accidents.

34. For an excellent analysis and criticism of the New York act see Ward, *New York's Motor Vehicle Accident Ins. Corp., Past, Present and Future. Supra* note 10.

Two criticisms of the fund system have been made: that the insured motorist is forced to pay part of the cost of the fund either directly or through hidden costs imposed on the companies; and that the mechanics and procedures for securing payment are cumbersome. Additionally, the funds are not intended to make every claimant completely whole. In New Jersey the stated maximum recovery from the fund for bodily injury or death is $5,000 and $10,000 respectively.

## IV.

## COMPULSORY UNINSURED MOTORIST ENDORSEMENT PLANS

This type of statute operates directly on the insurance companies. In every automobile liability insurance policy written in the state there must be included an uninsured motorist endorsement clause. The standard language contained in such a clause is as follows:

> The insurer agrees to pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury . . . including death . . . sustained by the insured caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile: provided, . . . determination as to whether the insured or such representative is legally entitled to recover such damages and if so the amount thereof, shall be made by agreement between the insured or such representative and the insurer, or if they fail to agree, by arbitration.[35]

To summarize, to recover under an uninsured motorist endorsement, the insured must have: (1) sustained injuries, (2) caused by an uninsured motorist, (3) from whom he would be legally entitled to recover.

The purpose of the statute and the required clause is to give the insured who has been injured by an uninsured motorist the same protection he would have had if he had been injured by a motorist covered by the standard liability policy.[36] New Hampshire,[37] Florida,[38] Virginia,[39] South Carolina[40] and California[41] have adopted the compulsory uninsured motorist endorsement requirement. Only Virginia and South Carolina, however, extend coverage to property damage as well as personal injuries.

The Virginia statute is a prime example of this type of plan. The financial burden of protecting victims of uninsured motorists is placed

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35. Standard Policy, Part IV, Protection Against Uninsured Motorists, Coverage J, Policy Form 3650(p) (rev. 1-63) promulgated by the National Bureau of Casualty Underwriters.

36. 7 Am. Jur. 2d, Auto Ins. § 135 (1963).

37. N.H. REV. STAT. ANN. § 268:15; § 412:2-A (Supp. 1961).

38. FLA. STAT. ANN. § 627.0851 (Supp. 1963).

39. VA. CODE ANN. § 38.1 (Supp. 1963).

40. S.C. CODE § 46-750.11 (1962).

41. CAL. INS. CODE § 11580.2 (1955).

upon the uninsured motorists themselves by requiring them to pay an additional registration fee. The money in turn is distributed to the various insurance companies in proportion to the amount of uninsured motorist coverage the company writes in Virginia each year.[42] This distribution has the effect of reducing the insured's premium costs.

Questions which frequently arise in connection with uninsured motorist endorsements include a determination of: what is an uninsured automobile; what persons are included within the coverage of the clause; how much is recoverable; what is the effect of the arbitration clause and what are the existing rights of subrogation.

What is an uninsured automobile? An uninsured automobile is defined in the standard policy[43] as:

> an automobile . . . of which there is . . . no bodily injury liability bond[44] or insurance policy applicable at the time of the accident . . . or with respect to which there is a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies coverage thereunder . . . or a hit and run driver.[45]

What persons are included within the coverage of the clause? The uninsured motorist provision is usually added to policies insuring against other events; ordinarily it covers anyone defined as an insured under the basic policy.[46]

How much is recoverable under the clause? The insured can recover all that he normally would recover in an action against the wrongdoer for bodily injury up to the limits of his policy coverage. This includes the dependents of those who are killed as well as the victims themselves.[47] Recovery under the uninsured motorist endorsement also provides for loss of wages and income, loss of support, medical expenses and payments for pain and suffering.[48]

What is the effect of the arbitration clause? It must be understood that the uninsured motorist endorsement does not promise payment of any *judgment* obtained against the uninsured motorist;[49] but rather it promises

42. See Comment, *Uninsured Motorist Coverage in Virginia*, 47 VA. L. REV. 145 (1961), for a detailed analysis of Virginia's uninsured motorist endorsement plan.

43. Standard policy, *supra* note 31.

44. Such bond might be required by a state financial security act.

45. In Virginia the insured may sue an unknown hit and run operator by naming the defendant as "John Doe." Service of process is then perfected by delivery of the pleadings to the clerk of the court. Service upon the insurer is made in the usual manner.

46. Utica Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co., 280 F.2d 469 (4th Cir. 1960).

47. American Universal Ins. Co. v. Rasson, 59 Wash. 2d 811, 370 P.2d 867 (1962).

48. Remsen v. Midway Liquors, Inc., 30 Ill. App. 2d 132, 174 N.E.2d 7 (1961).

49. As a matter of fact the Standard Policy provides that any judgment obtained by the insured against the uninsured motorist without the written permission of the insurer will not be conclusive as against the insurer. Standard Policy, *supra* note 31.

to pay only those sums which the insured would be legally entitled to recover had he proceeded to judgment. This figure is determined (either by arbitration or agreement) by the insurer and the insured or his legal representative.[50] Accordingly, the clause provides for impartial arbitration of disputes which cannot be settled by direct negotiation between the policy holder and the insurance carrier. The scope of the arbitration is limited to two issues: the legal liability of the uninsured motorist and the amount of damages suffered by the insured. In some states, however, an agreement to arbitrate a future controversy is unenforceable.[51] Where arbitration is prohibited, then the question of who shall control the defense (in the judicial action between the insured and the uninsured motorist) arises. Both the insured and the uninsured motorist have substantial interests at stake. The insurer will have to pay any judgment rendered for the insured. The uninsured motorist will be bound by any judgment against him and will be liable to the insurer as subrogee of the insured's claim. As a practical matter it would seem that the best results can be obtained by a close association of the attorneys for both the insurer and the uninsured motorist.

What are the existing rights of subrogation? Having paid the claim of the insured, the insurance carrier must protect its own interest by pursuing the claim against the culpable uninsured motorist via subrogation. This may be accomplished by the use of a trust agreement contained in the policies whereby the insured agrees to "hold in trust for the benefit of the company all rights of recovery which he shall have against such other person or organization because of the damages which are the subject of the claim . . .".[52]

As is the case with the judgment fund, the compulsory uninsured motorist endorsement fills the gaps left by compulsory insurance and financial responsibility legislation. The out of state driver poses no problem since the endorsement applies whether the insured is involved in an accident with a local or out of state driver. Express provision for the "hit-and-run" driver is made by the inclusion of the "hit-and-run" motorist within the definition of uninsured vehicle.

The burden of pursuing and collecting unsatisfied claims from the negligent uninsured driver is shifted to the insurance carriers who can better afford to wait months and even years for payment of the judgments.[53]

50. See the Standard Policy provision set forth in the text, *supra.*

51. Corbin, CONTRACTS § 1433 (1962). See also 135 A.L.R. 79 (1941). VA. CODE ANN. § 38.1-381(g) (Supp. 1962); S.C. CODE ANN. § 46-750.18 (1962). However, it is generally held that an award is binding if the parties voluntarily enter upon the arbitration and an award is made therein. Duvall County v. Charleston Eng'r. & Constr. Co., 101 Fla. 341, 134 So. 509 (1931); Oskaloosa Sav. Bank v. Mahaska County State Bank, 205 Iowa 1351, 219 N.W. 530 (1928).

52. Standard Policy, *supra* note 31, Part IV Trust Agreement. The trust agreement includes suing in the insured's name at the company's expense.

53. The insurance carriers are entitled to the full use of financial responsibility legislation to aid them in their collection of the unsatisfied judgments.

Finally, those who do carry liability insurance will themselves be protected from an uninsured motorist. It is submitted that this is an equitable result; for a motorist who has the foresight and good sense to obtain liability insurance benefits both himself and anyone with whom he is involved in an accident. Those who care neither for their own financial security nor for that of anyone they may negligently injure receive no protection.

These then are the methods by which financial protection is given to the victim of the financially irresponsible motorist. New developments such as the fund plan and the compulsory uninsured motorist endorsement are offering fuller protection than previously available. It would seem therefore that it is incumbent upon states such as Pennsylvania (whose coverage is limited to the financial responsibility type of statute) to supplement the rather incomplete protections afforded by the existing legislation with the added safeguards of the newer developments now in use. When the various statutory schemes are combined, as in New York, virtually complete financial protection is available — at least to the extent of the maximum amounts provided by the statutes.[54]

Standing alone, the financial responsibility type of statute does not guarantee compensation to the victim of the financially irresponsible motorist. Such legislation merely aids the victim's recovery by imposing the sanction of license or registration suspension on the wrongdoer. A judgment debtor willing to sacrifice his driving or registration privileges within a particular state can completely avoid the effect of the act. Again, there is no reason why the benefits of legislation which protects the victims of financially irresponsible motorists should not be extended to the victims of the drivers of "hit-and-run" or stolen vehicles as well as to those "fortunate" enough to be struck by a car which is driven with the permission of the owner and which stops at the scene of the accident.[55]

One can appreciate the innumerable problems which are involved in effecting the new types of legislation discussed in this article; however, one can also appreciate the fact that states such as New York, New Jersey, Maryland, North Dakota, New Hampshire, Florida, Virginia, South Carolina and California have surmounted these problems and now offer more complete protection to the victim of the financially irresponsible motorists than does Pennsylvania.

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54. It must be agreed, however, that the most complete financial protection that can be devised is but a partial answer to a sociological phenomenon in which there is an automobile death every thirteen minutes and an automobile injury every twenty-three seconds.

55. See 75 P.S. § 1406 (1959, April 29, P.L. 58 § 1406) *supra* note 24.