New York's Motor Vehicle Accident Indemnification Corporation: Past, Present, and Future

Peter Ward
Cornell Law School

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview
Part of the Torts Commons

Recommended Citation
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss2/1

This Leading Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
NEW YORK'S MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION: PAST, PRESENT AND FUTURE

By Peter Ward*

Effective January 1, 1959, some victims of New York's highway traffic are provided with an additional corporate defendant against whom, in certain instances, they may collect an amount "which does not exceed ten thousand dollars, exclusive of interest and costs, on account of injury to, or death of, one person and, subject to such limits for the death of, or injury to, any one person, the amount hereof which does not exceed twenty thousand dollars, exclusive of interest and costs, on account of the injury to, or death of, more than one person in any one accident."²

A new Article 17-A has been added to the New York Insurance Law. The stated purpose is as follows:

§600. Short title and declaration of purpose. (1) This act shall be known and may be cited as the "motor vehicle accident indemnification corporation law."

(2) Declaration of purpose. The legislature finds and declares that the motor vehicle financial security act as enacted in nineteen hundred fifty-six, which requires the owner of a motor vehicle to furnish proof of financial security as a condition to registration, fails to accomplish its full purpose of securing to innocent victims of motor vehicle accidents recompense for the injury and financial loss inflicted upon them, in that the act makes no provision for the payment of loss on account of injury to or death of persons who, through no fault of their own, were involved in motor vehicle accidents caused by (1) uninsured motor vehicles registered in a state other than New York, (2) unidentified motor vehicles which leave the scene of the accident, (3) motor vehicles registered in this state as to which at the time of the accident there was not in effect a policy of liability insurance, (4) stolen motor vehicles, (5) motor vehicles operated without the permission of the owner, (6) insured motor vehicles where the insurer disclaims liability or denies coverage, and (7) unregistered motor vehicles. The legislature determines that it is a matter of grave concern that such innocent victims are not recompensed for the injury and financial loss inflicted upon them and that the public interest can but be served by closing such gaps in the motor vehicle financial security act through the incorporation and operation of the motor vehicle accident indemnification corporation.

This legislation is the latest of many compromises over a span of more than half a century. Its future is probably no more settled than its past.

*Professor of Law, Cornell Law School.


The lawyer and the geopolitician, alike, in analyzing American historical development, share the need for studying her lines of communication. This meant her canals and waterways in the first half of the nineteenth century, her railroads in the latter half, her automobile highways and airways in the twentieth century. Much of America's damage law has been and is being hammered out along the tow-paths, on the grade-crossings, down the oil-marked pavements, beside the airports. Nineteenth century America had a continent to embrace, riches to claw out, industries to create. The cost in flesh and blood along the waterways and railroads was a price society, by and large, was willing to pay for its rendezvous with destiny. Negligence and its concomitance, contributory negligence—liability only for unreasonable fault, made the nineteenth, from the standpoint of damage liability, the defendants' century.

According to the census of 1890 the western frontier was no more. America had conquered its continent. Now it began to fill up with people, some areas much faster than others. People and industry gravitated along the lines of communication. Groups in some areas began to change their ideas regarding a proper charge to be assessed industrial America for its necessary consumption of blood and bones. The values that the fault-liability concept protected, in some instances, began to suffer a depreciation. Human loss to society began to take on an economic significance regardless of fault. The "fault" pendulum began to swing the other way toward the plaintiffs' twentieth century. Fault, yes, but easier to find and sometimes liability regardless of fault.

This, then, is the background out of which the Model T came chugging—a few hundred cars on a few thousand miles of roads scattered among 80 million people. Now 65 million multi-ton vehicles race along two and one half million miles of speedways along side of which 175 million people live and work.

In the early part of the automobile century little thought was given to comprehensive licensing procedures, either of the car or its driver. Safety requirements, when considered, were as apt to be thrust by the courts through such a medium as a broken wheel as by the legislature in headlight and brake requirements. It soon became apparent that the inertial energy of the automobile far exceeded that of the surrey. But who was to pay for the damage? Clearly enough in those early days only the well-to-do man could afford such an "infernal machine" and he drove it himself, or his chauffeur did. But soon he was loaning the car to friends who were driving for their pleasure and members of his family were borrowing it for their own errands. Fences were being broken down, pedes-
trains and bicyclists hurt; old folks in the car and children playing in the streets were knocked about and bones cracked; other vehicles were being involved. At first no one disputed the insulation of the bailor from the bailee's negligence. Soon the practical necessity for finding a solvent defendant began to eat away at the owner's financial protection. Courts began to ask disturbing questions—was the owner present in the car? Was the driver really on his own business or, in some way, on the owner's? Was the son's evening date all part of a family purpose? Had the owner made a negligent entrustment? Was this somehow a joint enterprise? A few state legislatures were even more direct, thrusting liability on the owner for damage negligently caused by one driving the car with the owner's permission or consent. Henry Ford's five dollar per day wage helped make it possible for working men to own the autos they built. Additional defendants, yes, but could they pay damage claims? Millions of cars each year were now being built. Annual traffic deaths were being counted in the tens of thousands, the injured and maimed by the million. This toll in human life soon exceeded the total of all of America's soldiers killed in all her wars. In the ten years from 1921 to 1930, 230,353 were killed.\(^3\) According to the Columbia Committee Report published in 1932\(^4\) with nearly 27 million cars registered in 1929, over 19 million had only the financial solvency of the owner and/or driver standing behind the damage legally caused. Liability insurance covered only 27 per cent of all the private passenger and commercial vehicles in America.\(^5\)

The impact of such statistics as these brought legislative action along two fronts. In 1925 and 1926 studies were carried out in Massachusetts which led to compulsory insurance in that state, effective January 1, 1927.\(^6\) Thereafter, no privately owned motor vehicle could be registered in that state without proof of liability insurance coverage in the amount of $5,000, one person, $10,000, one accident. Property damage was not included. No provision originally was made for the damage caused by the hit-and-run or out-of-state driver. The guest occupant was excluded from coverage. Insurance rates were set by the state. Massachusetts still operates under a system of compulsory insurance.

At about the same time Connecticut was seeking solutions to similar problems but along different lines. Effective January 1, 1926 Connecticut became the first state to adopt a so-called Financial and Safety Responsibility law.\(^7\) In just over 30

---

3. ACCIDENT FACTS, 1931. Published annually by the National Safety Council of Chicago.
4. REPORT BY 'THE COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS TO THE COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES (1932) [hereinafter cited as COLUMBIA REPORT].
5. Id. at 45.
6. MASS. ANN. LAWS c. 90, §34A-J; c. 175, §113A-G (1946).
7. CONN. PUB. ACT c. 183 (1925).
years from that date, all but our 49th state were to adopt some variant of this type law.8

Financial Responsibility Legislation

The legislative theory was to discover both the hazardous driver and the financially irresponsible owner, requiring, as a condition to continued licensing, that they post security both for damage that had been done and what might be done in the future. In most instances their future security took the form of a liability insurance policy in the amount of $5,000 one injury, $10,000 one accident, $1,000 property damage. Ideally these rates would be higher than those of the safe driver or responsible owner and this would thus have a certain prophylactic effect.

The financially irresponsible motor vehicle owner was to be discovered by the process of an unsatisfied judgment against him. The vehicle involved in the accident was the particular target not all owned vehicles. Gradually such legislation began to concern itself with financially irresponsible operators as well as owners. Other cars began to be affected. In 1937 New Hampshire became the first state to thrust a compulsory security requirement on the operator or owner of a motor vehicle which had merely been involved in an accident.9 This, obvi-


THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION

ously, covered many more cars than the more limited, unsatisfied judgment requirement. Most states, in adopting this type regulation included some form of administrative fact-finding to determine fault. The heart of this “one accident” as opposed to “one judgment” type legislation was an efficient motor vehicle administration that would be triggered into automatic operation by the due reporting of accidents, generally based on any personal injuries or property damage exceeding $50 (more recently raised to $100). Too often break-downs occurred both in the reporting of the accidents and in the administration of the system.

The widespread development of these financial responsibility laws (the stress gradually was placed here rather than on safety) called for the establishment of standard or required clauses in the liability policies to be used as financial security. Of particular importance were the provisions concerning cancellation and rescission both before and after loss. Termination of the policy by the insurer before loss had occurred created only administrative problems that could be handled by the giving of timely notice to both the insured and the state. Arrangement then could be made either to cancel the registration or to transfer the risk to some form of assigned-risk pool before the policy lapsed. Difficult questions arose when the termination was sought by the insurer after loss because of the alleged breach of certain conditions in the policy. What should be the interests of the injured third parties in these “required” policies? Should they be derivative or primary? Should the type of condition violated be determinative, i.e. a misrepresentation regarding the risk as compared to a condition requiring the cooperation of the insured after loss? Absent any statutory enactment, the case-law development rather generally put the injured party in the position of the insured and treated the problem as a derivative one. Legislatures, on the other hand, inclined to the view of granting primary rights in “required” policies to the injured party and disregarding subtle distinctions between conditions precedent and subsequent.

In a state by state survey as of August, 1958, 38 states provided that those “required” policies become “absolute” after loss.10 California, Connecticut, Florida, 

Tennessee, and Vermont, although having financial responsibility laws, make no provision regarding the termination after loss and presumably would handle this as a case-law problem. Georgia provides only that the policy cannot be cancelled within 12 months of its effective date unless a subsequent conviction for an offense authorizing a license revocation is involved. Idaho and Wisconsin provide that "The policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured (emphasis added) after the occurrence of any injury or damage covered by said motor vehicle liability policy." Alaska has no provisions concerning automobile liability insurance. Massachusetts makes her compulsory policies absolute after loss. In 1946 Massachusetts added a special financial-responsibility law for non-residents. Under this legislation these policies need not be absolute after loss. New York, although adding a compulsory insurance law effective January 1, 1956, continues to maintain a financial responsibility law which provides that the required policies be absolute after loss. The joker here, though, is the new section 94-r of the Motor Vehicle Law. Section 94, with all its subdivisions, is the New York Motor Vehicle Safety Responsibility Act, formerly Article 6-A but renumbered Article 6-B when the legislature adopted the Motor Vehicle Financial Security Act (Compulsory Automobile Insurance) and numbered it Article 6-A. In 1957 the legislature added section 94-r effective April 19, 1957 which provides:

Notwithstanding any other provision of law, no person, on and after February first, nineteen hundred fifty-seven, shall be required to file or maintain proof of financial responsibility pursuant to this Article.

The effect of this would seem to be that, at least under the New York Safety Responsibility Act, there no longer are any "absolute" policies required by Article 6-B of the Motor Vehicle Law.

Even when the various state statutes stated that the policies should be "absolute" after loss, what did that mean? Suppose the policy were a $100,000/300,-

(Footnote continued from preceding page.)
000 one issued under a state act whose statutory limits were $5,000/10,000? Was the entire policy "absolute" or only up to the statutory amounts? Suppose the printed provisions of the policy made it subject to the financial responsibility laws of the state but actually the policy was not a "required" one in that the insured had never been involved in an accident? Suppose a previous accident was involved but the insured never advised his insurer, taking out the policy under an assumed name? Rather generally the case interpretations of these statutes laid down a pattern of partial absoluteness. Absolute, yes, but only up to the statutory amounts, when the policy had been required and issued by the insurer with knowledge that it was a required policy.

There were problems other than of termination under financial responsibility laws. It was the insured and not the car that was covered. Even where a required policy was involved, the liability insured against was for claims caused by the car while being driven with the "consent or permission" of the owner. "Absolute" policies had no application to the stolen car as it was obviously driven without the "consent or permission" of the owner. Unregistered automobiles were unprotected. At first the out-of-state driver created a large exception to coverage. Gradually, however, states with financial responsibility laws began to adopt reciprocity legislation. Most states now, as a matter of comity, interchange protection. Hazards still exist as to the hit-and-run driver, the uninsured motorist having his first accident. In 1954 New York State required all applicants for 1955 vehicle registration to state whether or not they were covered by liability insurance. The results of this survey indicated that 14 per cent of the vehicles registered by the end of that year were not covered by insurance—more than one half million motor vehicles. No figures are available to indicate how many allegedly insured owners, not having "required" policies, have their policies terminated after loss because of breaches of conditions set forth in the policies.

Thus had financial responsibility legislation progressed over a 30 year period from that January 1, 1926, in Connecticut. This was one financial solution being widely offered to a sociological phenomenon that each year was destroying in equivalence, every man, woman and child in a city the size of Watertown, New York, or Brownsville, Texas, or Bakersfield, California.

22. U.S. Census figures.
The Massachusetts Plan of Compulsory Insurance and Its Progeny

On January 1, 1927, Massachusetts had adopted another approach—that of compulsory insurance for her residents. Municipally and state owned vehicles were excluded from the insurance requirements; "guest" victims were not covered. Such limitations are common under financial responsibility legislation. To avoid the cancellation and rescission problems, the Massachusetts act provides:

(5) That no statement made by the insured or on his behalf, either in securing the policy or in securing registration of the motor vehicle or trailer covered, thereby; no violation of the term of the policy and no act or 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 within the limit provided in the policy by a judgment creditor proceeding under the provisions of said section one hundred and thirteen and clause (10) of section three of chapter two hundred and fourteen.

These "absolute after-loss" provisions, like those in the financial responsibility acts, apply only to the "required" policies provisions and only up to the statutory amounts. The part that really stirred things up involved the setting of insurance rates by the state. For the past thirty years charges and counter-charges have been hurled over the efficacy of the Massachusetts compulsory insurance program in solving the financial problems of the traffic victim vis-a-vis the private enterprise system. It is alleged that compulsory insurance makes operators accident prone. If this were sound the entire concept of insurance against loss is a dangerous fallacy. As a matter of fact, Massachusetts enjoys one of the lowest fatal accident rates in the country. A more substantial charge is that private insurance companies cannot operate there on a financially sound basis because of the low premium charges set by the state. There apparently is merit to this charge as far as the stock companies are concerned. While they appear to lose money on the "required" policy business, on their over-all automobile business they enjoy a profit. Mutual companies with their lower operating costs can operate profitably even on the required policies. The original theory of the rating was to set it at a level profitable to stock companies. Great court congestion is blamed on the act. Great congestion equally exists in states with-

23. See note 6, supra.
27. Accident Facts, 1958. Death rate, 1957, for United States was 5.9 per 100 million vehicle miles. The rate for Massachusetts was 3.3 or 519 deaths. Only nine states were below 5. For comparison, New York had a 5.0 rate or 2,191 deaths.
THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION

out compulsory insurance. Massachusetts has taken several procedural steps to relieve this congestion by encouraging the non-jury trials of automobile cases.29

In 1930, encouraged by the Massachusetts experiment, England embarked on a compulsory insurance program which has been in effect ever since.30 Like the Massachusetts Act it covers only death and personal injuries—no property damage.31 Proof of insurance must be presented for registration of the vehicle.32 Unlike Massachusetts, no limitations on amount are set forth. Rate setting is left up to the insurance companies. Even though these are required policies, the insurance company, after loss, may bring an action seeking a declaratory judgment cancelling the policy on a showing that the policy was obtained by the non-disclosure of a material fact or by a representation false in some material particular, and here the test of the "ordinarily prudent insurer" will be applied.33 Breaches of conditions subsequent to the formation of the contract are not available for avoiding liability after loss.34 All automobile cases are tried by the court without a jury as are most tort cases in England.35 The paucity of condemnatory literature in England on the subject of compulsory insurance would seem to indicate a successful experiment.36 Various forms of compulsory automobile liability insurance are in force in several European countries.37

The Columbia Report—A Compensation Plan—And Its Progeny

These two social experiments in compensating the traffic victim—financial responsibility acts and compulsory insurance legislation—were hardly well started when the national depression of the thirties posed new problems. Millions of unemployed meant a sizable increase in insolvent defendants. A committee, chaired by Arthur A. Ballantine, was formed at Columbia University for the purpose of studying compensation payments to traffic victims.38 As described in the Committee's report, its research "included the investigation of 8,849 cases of personal injury and death caused by motor vehicle accidents, the assembling of data furnished by public officials and by insurance companies, the examination of statutes

29. Id. at 315.
33. The Road Traffic Act, 1934, 24 & 25 Geo. 5, c. 50 §10.
38. The Committee was actually first organized in 1928 under the auspices of the Columbia University Council for Research in the Social Sciences. A research grant was obtained from the Rockefeller Foundation. A staff was set up under the direction of Shippen Lewis, Esq., of the Philadelphia bar.
and judicial decisions and the analyses of pamphlets and articles dealing with the problem. Particular attention has been given to the operation of the financial responsibility laws and of the Massachusetts compulsory liability insurance law, and to the probable effects of a system of compensation insurance analogous to workmen's compensation."\(^{39}\)

The report of the Columbia Committee was published February 1, 1932. It analyzed the traffic problem in terms of fault vs. non-fault liability. The approved solution was a scheduled compensation plan based exclusively on damage rather than fault liability. The conclusions of the Committee follow:

The Committee in its report has tried to present the facts without bias so that the careful reader can draw his own conclusions as to the relative advantages and disadvantages of existing systems and of the suggested plan of compensation. The Committee believes, however, that the reader is also entitled to a statement of its own principal conclusions from the facts presented. The conclusions of the Committee are therefore stated briefly as follows:

The generally prevailing system of providing damages for motor vehicle accidents is inadequate to meet existing conditions. It is based on the principle of liability for fault which is difficult to apply and often socially undesirable in its application; its administration through the courts is costly and slow, and it makes no provision to ensure the financial responsibility of those who are found to be liable.

The data obtained from the case studies indicate that uninsured owners of motor vehicles as a class pay for only a very small proportion of the damage which their motor vehicles cause. Financial responsibility laws do little to correct this injustice. The compulsory insurance liability insurance law has largely eliminated the evil of financial irresponsibility in Massachusetts and is the most advanced step taken in this country to solve the compensation problem. The Committee strongly approves of requiring every owner of a motor vehicle to insure against whatever legal liability may be imposed upon him for personal injuries or death caused by its operation.

The Committee believes, however, that the remedy must go further than the compulsory liability insurance law, and that no system based on liability for fault is adequate to meet existing conditions. The Committee favors the plan of compensation with limited liability and without regard to fault, analogous to that of the workmen's compensation laws. Such a plan would eliminate the use of the principle of negligence, would place the burden of economic loss on the owner or operator to whose activity the loss is chiefly due, would provide for an equitable distribution of the insurance fund according to the extent

\(^{39}\) Automobile Accidents, Report of Committee to Study Compensation (1932) at p. 2.
of the economic loss, and would provide a prompt remedy at small cost to the injured person or his family. The operation of such a plan would be of special benefit in the majority of cases of serious injury or of death. The Committee believes that such a compensation plan would be workable, that its cost to motor vehicle owners need not be unreasonable and that it would not violate the due process clause of the federal constitution.\(^{40}\)

This report did not generate wide popular support either with the insurance companies or with legislators. The crisis with which it was concerned began to improve with the national economic recovery.

In 1947, the Canadian Province of Saskatchewan adopted an automobile accident insurance act which combined the features of a scheduled compensation plan based on absolute liability with a full damage recovery based on fault.\(^{41}\) The act is buttressed on compulsory insurance (except for governmental vehicles in other than the Province of Saskatchewan)\(^{42}\) the basic rates for which are governmentally regulated.\(^{43}\) Insurers are given the opportunity to set extra charges for hazardous risks with provision for appeals to the Rate Appeal Board.\(^{44}\) Three different types of coverage are required: (1) Motor vehicle accident insurance which is based on damage rather than fault and provides death and personal injury benefits on a scheduled basis similar to workmen’s compensation acts and similar to that recommended by the Columbia Committee;\(^{45}\) (2) comprehensive insurance which covers loss or damage to the automobile itself on a contract rather than fault basis subject to certain statutory exceptions and less certain deductible amounts set forth in applicable regulations;\(^{46}\) and (3) public liability and property damage insurance, based on fault liability of the owner or one operating with his consent, in the amounts not to exceed $10,000 for bodily injury to or the death of one person in one accident and $20,000 for bodily injury to or the death of two or more persons in one accident and $2,000 property damage.\(^{47}\) Any payments made under either the non-fault accident insurance or the comprehensive insurance will be deducted from the amount of the fault judgment obtained unless the negligent operator was intoxicated, unqualified to drive, etc.\(^{48}\) Excluded from fault liability coverage are injuries covered by workmen’s compensation, injuries to certain close members of the family, injuries received while entering or alighting from the vehicle and while repairing, selling, servicing, starting or parking such vehicle.\(^{49}\) The policy includes the usual duty to defend

\(^{40}\) Id. at 216-217.
\(^{41}\) SASKATCHEWAN REV. STAT. c. 371 §§1-69 (1953).
\(^{42}\) SAS. REV. STAT. §3(2) (1953).
\(^{43}\) SAS. REV. STAT. §5 (1953).
\(^{44}\) SAS. REV. STAT. §§6-9 (1953).
\(^{45}\) SAS. REV. STAT. §§17-30 (1953).
\(^{46}\) SAS. REV. STAT. §§31-34 (1953).
\(^{47}\) SAS. REV. STAT. §§35-43 (1953).
\(^{48}\) SAS. REV. STAT. §62 (1953).
\(^{49}\) SAS. REV. STAT. §37 (1953).
and right to settle.\textsuperscript{50} If fault is established, the policy becomes "absolute" after loss except that no claim on behalf of the insured or through him is honored in the event of a false representation or false fact to the prejudice of the insurer.\textsuperscript{51} Farsighted provisions are made for the troublesome problem of plural plaintiffs in the multiple-car collision. The act provides:\textsuperscript{52}

(1) Where several actions are brought for the recovery of benefits or insurance money payable under this act in respect of a single accident, the court may consolidate or otherwise deal therewith in order that there shall be but one action for and in respect of all the claims made in such actions.

(2) In all actions where several persons are entitled to benefits or insurance money payable under the provisions of this act, the court may apportion among the persons entitled thereto any sum directed to be paid, and may give all necessary direction and relief.

This, then, is the outline of the combination answer Saskatchewan offers to the financial problem of the automobile victim. Its prophylactic virtues appear negative when compared with New York and Massachusetts on the death rate per 100,000 population based on 1956 figures: Mass.—9.4; N.Y.—14.6; Sask. —17.5.\textsuperscript{53}

\textit{The New York Development}

New York in 1929 joined the group of states adopting the Connecticut solution of Safety-Financial Responsibility Acts of the kind requiring insurance as security after an unsatisfied judgment for death or personal injuries (property damages in excess of \$100).\textsuperscript{54} This later was broadened to include certain accidents.\textsuperscript{55} The publication of the Columbia Committee’s Report in 1932 and its recommended non-fault compensation solution was very disturbing to the advocates of financial responsibility legislation. A joint committee of the New York State Legislature was created in 1935 to investigate automobile insurance and safety. This committee carried over into 1936. In 1937 a successor committee was created under the title of Joint Legislative Committee to Investigate Automobile Insurance. The first major report of this committee appeared in 1938 as Legislative Document No. 91. It was based on a study of 3,000 accidents occurring in New York State in the two years 1933 and 1934. Without making any recommendations at that time, the legislative committee set forth three alternative plans for handling the financial problems involved. One plan entailed

\textsuperscript{50} SAS. Rev. Stat. §38 (1953).
\textsuperscript{52} SAS. Rev. Stat. §47 (1953).
\textsuperscript{53} Accidents Facts, 1958.
\textsuperscript{54} L. 1929 c. 695, §1.
\textsuperscript{55} L. 1941 c. 872, §94-e.
a system of compulsory insurance, coverage to be supplied either by private insurance companies or by a combination of private companies and a State Insurance Fund. A second alternative was a compulsory compensation plan along the lines of the New York State Workmen’s Compensation Law. A third alternative involved amendments to the then Safety-Responsibility Law in order to immediately assure small payments ($300 maximum) to the victim of the “first” accident. This was to be accomplished by the establishment of a state bureau to guarantee limited compensation on a non-fault basis covering hospital, medical and surgical expenses only, plus funeral benefits ($300 maximum) in case of death. This plan was aimed directly at the uninsured owner. It was to be financed by him by an additional registration fee of $5 per year.

This Joint Legislative Committee, in 1939, reported that, in spite of the persuasive arguments of men like Arthur Ballantine, Jr., it was unable to recommend either the compulsory insurance or the compensation plan set forth as alternatives in 1938. It did recommend the third alternative requiring a modification of the Safety-Responsibility Act granting limited compensation protection for the “first” accident, with the injured party retaining his common-law cause of action, payments from the State fund being deducted from any judgment. The report and recommendation of the Joint Legislative Committee proved instructive only. The recommendation failed to become law. It wasn't until 1950 that legislative interest revived. In that year a Joint Legislative Committee on an Unsatisfied Judgment Fund was created and extended in 1951, 1952, 1953, 1954, 1955 and 1956. The report of this committee in 1956 recommended a Motor Vehicle Financial Security Act, i.e. compulsory insurance.

Surveys demonstrated to the satisfaction of some, that 13 or 14 per cent of the automobiles registered in New York State were without insurance. Many insurance companies offered, for a very small cost, a rider granting some protection against the uninsured driver. However, one needed an automobile policy to take advantage of the offer. The move toward compulsory insurance was not to be resisted. Governor Thomas Dewey publicly advocated the measure. In 1956 the Compulsory Insurance Act was passed, going into effect February 1, 1957. Thirty years after Massachusetts had required, as a condition precedent to motor vehicle registration, a liability insurance policy, compulsory insurance gained its second supporter.

The insurance coverage selected was 10,000/20,000 for death or personal

58. See note 21, supra.
injuries. Unlike Massachusetts, a $5,000 property coverage was compelled. Like the British Road Act, the state left to the insurance companies the rate-setting procedure. The victim of the non-resident motorist, the hit-and-run driver, the stolen vehicle, the “driven without consent” car, the unregistered vehicle was without the financial protection of the Act. The insurance companies succeeded in bringing about what appears to be a rather startling change in the status of their liability “after loss” under these new compulsory policies. Under the old Motor Vehicle Safety-Responsibility Law which is continued as Article 6-B of the Vehicle and Traffic Law, liability of the insurance company on a required policy became “absolute” after loss.60 Violation of conditions either precedent or subsequent were unavailable to the insurer once loss had occurred.61 The new compulsory insurance law, present Article 6-A of the Vehicle and Traffic Law, in §93-a (4) (a) thereof, continues this provision for policies required under the Safety-Responsibility Law. However, as pointed out earlier, the usefulness of this continuation is dubious when §94-r abolishes the requirement for filing proof of financial responsibility. As far as the new compulsory policies are concerned, the Superintendent of Insurance is forbidden by statute to promulgate any minimum standard provisions “which fail to reflect the provisions of automobile liability insurance policies, other than motor vehicle liability policies as defined in section ninety-four-q of this chapter, issued within this state at the date of such regulation or amendment thereof.”62 The position of the carriers is that except for 94-q policies (those required under the Safety-Responsibility Act), no “absolute-after-loss” policies were being written in the state and therefore the Superintendent of Insurance cannot make the new “compulsory” policies “absolute-after-loss.” How accurate this statutory interpretation remains to be seen. The first authoritative interpretation of the statute appears in the opinion of Judge McDonald sitting in Special Term, Kings County, New York, May, 1958.63 There the insurance company sought a declaratory judgment that it was not liable on a compulsory automobile policy after loss because of the failure of insured to comply with the policy provision for giving notice of the accident. The substance of the insured’s position was that the policy, issued under the new Compulsory Insurance Law, became “absolute” after loss. The substance of the insurer’s position was that the new Compulsory Insurance Law does not require an “absolute” policy. Judge McDonald held that the policy, as issued under the new Compulsory Insurance Law, was not an “absolute” policy. His obiter in interpreting §93-a (4) (a) will give little comfort to the insurance companies whose position has been that the Superintendent of Insurance has no statutory authority to make these compulsory policies “absolute.” Judge McDonald, after paraphrasing §93-a (4) (a) states:

THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION

By the foregoing the Legislature left it to the Superintendent of Insurance to determine the requirements of the policies to be issued but provided they should not be less than the standard policies then in force and while they did not exclude the possibility that the Superintendent might include provisions making the policies absolute they did not require him to do so. The legislature neither imposed the requirement that the liability policies issued pursuant to the statute be absolute nor did it repeal the statutory recognition of such defense which previously existed. [Emphasis supplied.]

No sooner had the compulsory insurance legislation been approved than plans were being urged to supplement it. Governor Averell Harriman in his annual message to the legislature of January 9, 1957 urged corrective legislation in the nature of an Indemnity Fund. In a special message in the same year he called the legislators' attention to bills already in the legislative hopper which set forth alternate plans to round out the compulsory insurance program. The Joint Legislative Committee to Study the Problem of the Unsatisfied Judgment Fund and Compulsory Insurance in 1957 recommended no change in the existing legislation until more time had elapsed. Again in 1958 Governor Averell Harriman in a special message to the legislature urged action on some sort of an unsatisfied judgment fund. All this political activity resulted in the present Motor Vehicle Accident Indemnification Corporation which went into effect January 1, 1959.


In 1947 North Dakota adopted an Unsatisfied Judgment Fund, N.D. REV. CODE §§39-1701-39-1710 (1957 Supp.), to be raised by a one dollar fee on each automobile in addition to the registration fee. In 1952 New Jersey adopted a similar but more thoroughly developed Unsatisfied Claim and Judgment Fund Law, N.J.S.A. tit. 39 §§6-51-6-91 (Cum.Supp. 1958). The pattern of the New Jersey legislation was adopted by Maryland in 1957. Unsatisfied Claim and Judgment Fund Law, MD. CODE ANN. art. 66 ½ §§150-179 (1957). These Acts all bear some similarity to the N.Y. MVAIC Law. However, they do not involve compulsory insurance. The N.J. and Md. funds are created by annual assessments of varying amounts on the uninsured, the insured motorist and the insurance companies doing business in the respective states. Unlike the N.Y. MVAIC, the N.J. and Md. Fund Boards are not all-insurance boards. Their membership includes both the Motor Vehicle Commissioner and the Supt. of Insurance as public representatives. Again, unlike N.Y., where the MVAIC does all the investigating and handling of claims, in N.J. and Md. the Fund Boards assign the investigation and handling of claims to the various insurers. The limit of payments under the N.D. Act is $5,000/$10,000—no property. The limit for N.J. and Md. is $10,000/$20,000/$5,000.

69. See note 2, supra.
As pointed out, compulsory insurance has provided protection for a much larger group of injured than the financial responsibility law. However, it did not provide protection for all traffic victims. There were still the uninsured non-resident drivers, the hit-and-run drivers, those driving stolen vehicles, unregistered vehicles, registered vehicles which were somehow not insured, vehicles operated without the consent of the owners and those owners and operators of insured vehicles whereon the insurer disclaims liability or denies coverage after loss. It was to protect against these tort-feasors that the Motor Vehicle Accident Indemnification Corporation law, hereafter referred to as MVAIC, was designed. This law makes no change in the fundamental concepts of fault liability. The traffic victim can recover only upon a showing of fault. The effect of the law is to say, if the injured party establishes fault against certain defendants from whom he is unable to collect a judgment in the amount of $10,000 on account of injury to or death of one person, or $20,000 on account of the injury to or death of more than one person in any one accident, then the traffic victim can turn to the Corporation for payment.

This Corporation is made up of all the insurers "authorized on or after the effective date of this article [January 1, 1959] in this state to write liability insurance in connection with motor vehicles . . . ."70 It is managed by a board of directors of six men which directors are required to be insurance men.71 The Corporation is declared to be a nonprofit one and is exempt from all but local taxes.72 At various times and in differing situations it is charged with the complex responsibility of looking after the interests of the insurance companies,73 the defendant tort-feasors74 and the injured plaintiffs.75

To understand just how this Corporation works it is necessary to divide the potential traffic victims into three groups. These groups are: (1) insureds, (2) qualified persons, and (3) those excluded from either category. The insureds are those New York residents who either own an insured motor vehicle, or who in some way qualify as an insured under the omnibus clause in policies written on or after January 1, 1959, as authorized by section 167 of the New York State

75. N.Y. INSURANCE LAW §§606(b)(c), 608 (Cum.Supp. 1958.).
A "qualified person" is one who is a resident of the State of New York who does not own an insured automobile or who at the time of the accident does not qualify as an insured under the omnibus clause required by section 167 of the Insurance Law, or whose policy was written before January 1, 1959. If on such pre-1959 policies the insured has included the rider offered by some insurance companies for protection against the uninsured automobile, then such an assured is neither an "insured" nor a "qualified person" under the new legislation and will seek his recourse from his insurance company based on this contractual rider. The excluded group presently covers non-residents, although the act provides for reciprocity with those states having similar legislation. At this writing North Dakota, New Jersey, and Maryland have legislation which New York may say is "of substantially similar character." Also excluded from either the classification "insured" or "qualified person" is the car owner in New York who does not have that car insured. In addition to leaving him outside of the protection of this law, his or her spouse is given no protection if the spouse is injured while a passenger in such uninsured vehicle. As a matter of practical politics it can be understood, although perhaps not justified why an Iowan hurt in New York can be left to his useless remedy against an insolvent tort-feasor, or why a New Yorker driving and hit in Erie, Pennsylvania, by a car stolen from Buffalo is without the umbrella of this act. But how can the broad exclusion of the uninsured owner, and under certain circumstances his spouse, be justified? Of course the theory of this is to force insured registration and that is in accord with the Compulsory Insurance Law. But consider the following situation. On January 30th of any particular year hereafter Mr. Jones owns two automobiles each one of which is covered by an insurance policy and each one of which has been properly registered in New York. On that day Mr. Jones decides to register, for the ensuing year only, one of those automobiles and to put the other one up on blocks in his garage. He goes through the proper procedure for cancelling the insurance on that unused automobile. Mr. Jones will still fit under the category of "insured" because of his policy on the other car and is still within the protection of the Corporation. Mr. Smith, however, a less affluent man, had only one car on January 30th. Perhaps, because of economic necessity, he could no longer afford to operate that car. He, therefore,

78. The liability endorsement required by N.Y. INSURANCE LAW §167 (2-a) (Cum.Supp. 1958) provides: "4. Limits of Liability . . . (b) Any amounts payable under the terms of this endorsement including amounts payable for care or loss of services, because of bodily injuries sustained by one person, shall be reduced by . . . (2) all sums paid to one or more insureds on account of such bodily injury under any insurance similar to that provided by this endorsement . . .".
80. See note 65, supra.
82. Ibid.
decides not to register that car for the coming year and properly cancels his insurance. Having no liability policy, Mr. Smith cannot qualify under the insured group and now as the owner of an uninsured motor vehicle, he cannot be classed as a “qualified person.” If, thereafter, he is injured by an uninsured defendant, the wording of the statute would seem to exclude him from protection. Can much of a defense similarly be made for the exclusion of his spouse, no matter how innocent she may be, if she is hurt while a passenger in her husband’s uninsured motor vehicle? This certainly is “guilt by association.”

Excluded also from coverage is the element of damage to property. Only personal injury and death claims are protected.83

With the membership of the Corporation in mind and the three classifications of traffic victims before us, consider the procedures by which the traffic victim ultimately presents to the Corporation his claim for payment. Let’s examine a traffic accident slightly more complicated perhaps than the average accident but one in which the various procedures may be analyzed. The accident is a multiple-car collision on U.S. Route 20, a major east-west highway. Car No. 1 is proceeding west on Route 20. It is properly registered in New York and insured for the statutory minimum. It is being driven at the time by the owner, Mr. A. Riding with him is an unrelated infant guest, B, and an adult passenger, C, who resides in Pennsylvania. Car No. 2 is also proceeding in a westerly direction, immediately ahead of car No. 1. It is being operated by D, the 22 year old son of the insured owner, E, who is not present in the car but who had given his son permission to drive the car. While approaching a curve to the right, the driver of car No. 1 attempted to overtake and pass car No. 2. At that time car No. 3, proceeding in an easterly direction, was approaching head-on at an illegal rate of speed. There was adequate room for all three cars to pass abreast. Car No. 3 was a stolen automobile being operated by a thief, F. Seeing car No. 3 approach, the driver of car No. 2 panicked as car No. 1 was passing. Car No. 2 swerved out of line and bumped passing car No. 1, which in turn swerved over into the lane occupied by approaching car No. 3. To avoid the collision, car No. 3 swerved, missed hitting both cars No. 1 and 2 but did sideswipe a pedestrian, G, standing on the shoulder of the road, seriously injuring him. Cars No. 1 and 2 came to a stop. Car No. 3 left the scene of the accident and has never been identified. All occupants in cars No. 1 and 2 were injured. In the haste to take care of the injured parties the matter of officially reporting the accident was not taken care of until two days later. This situation presents us with “insureds,” “qualified persons” and “excluded

persons." In car No. 1, Mr. A is an insured, infant B is a "qualified person" and nonresident C is an "excluded person."84

At the time of the accident it is not apparent, of course, to the injured parties whether or not any financially irresponsible motorist is involved, that is, an uninsured motorist. It so happens that Mr. E, the absentee owner of car No. 2, has intentionally made a material misrepresentation to his insurance carrier when applying for his present policy.85

Absent this new legislation, the matter is relatively simple. The hit-and-run driver is gone and never found. Those damages properly chargeable to the negligence of the owner and operator of car No. 1 and car No. 2 can be processed at any time hereafter by any of the non-negligent plaintiffs within the usual statute of limitations and subject to the usual cross-claim procedure. In the event of judgments against the owner of car No. 1, they will be satisfied out of his insurance policy up to its applicable limits. The insurance on car No. 2 will not be available. This is because of the action for rescission thereafter successfully brought by the insurance carrier on car No. 2 based upon the material intentional false representation. What changes does the new legislation make in this situation?

Let us first consider the claim of the injured pedestrian. Without the Indemnification Corporation, having no hit-and-run defendant to identify and serve with the summons, his recourse, if any, would lie against the owners and operators of cars No. 1 and 2. The new legislation sets forth a hit-and-run procedure. The accident is to be reported within 24 hours or as soon thereafter as reasonably possible.86 Within 90 days of the accrual of the cause of action a notice of intention to file a claim against the Corporation must be filed87 alleging that the injured person is filing a claim either as a "qualified person" or "insured"; that he has a cause of action arising out of such accident for damages and setting forth the facts in support thereof; that such cause of action lies against a person whose identity is unascertainable; and that he intends to make a claim thereon for such damages. Thereafter, if proceeding as a "qualified person," he may bring a proceeding in the supreme court, upon notice to the Corporation, for permission to bring an action against the Corporation. If proceeding as an "insured," after giving notice of the claim, he can try to work out an agreement with the Corporation both as to the liability and as to the amount of damages.

84 The practitioner will need to make a last minute check for his non-resident clients whose state legislature may have just adopted legislation of "substantially similar character to that provided for by this article . . . ."
85 Under N.Y. INSURANCE LAW §149 (1949) this would permit the carrier to rescind.
If agreement is not reached, then, pursuant to the new endorsement that will go on all section 167 policies after January 1, 1959, the dispute must be submitted to arbitration.

Let me assume that in our situation the injured pedestrian owns no automobile and is a New York resident. He is, therefore, a "qualified person." He or someone in his behalf must report the accident as soon as reasonably possible and file the notice of claim referred to above with the MVAIC. The Corporation is given authority to settle claims under $2,000 without the approval of the court either before or after action is commenced against the Corporation. Approval of settlements exceeding that amount must be obtained from the supreme court. Assuming that this pedestrian's action is not settled and it hardly would be because of the potential liability as to cars 1 and 2, the pedestrian, with the approval of the supreme court, may commence an action against the Corporation. He may also want to bring an action against the owners and operators of cars No. 1 and 2. Can all of these actions be joined in one? The new legislation appears to continue the New York practice of permitting the plaintiff to select his defendants and authorizes the plaintiff to make the Corporation a party. Hence, apparently, in our situation the plaintiff could name as defendants the owners and operators of cars 1 and 2 plus the Corporation in one action. If he brings a separate action against the Corporation alone, can the Corporation on its own motion bring in additional defendants? Unless the courts are prepared to consider this as an indemnity rather than a contribution situation, CPA §211-a would appear to deny to the Corporation this privilege. If he gets a separate judgment against the Corporation based upon the liability of the hit-and-run driver, the act provides that the Corporation may apply in reduction amounts received from other sources, this being treated as excess rather than prorata insurance. Thus, if the pedestrian received in settlement or by way of collectible judgment $10,000 from cars 1 and/or 2, he would recover nothing in addition from the Corporation. On the other hand, if he had not proceeded against cars 1 and 2 but had recovered $10,000 from the Corporation, the Corporation would be subrogated to his claim against the hit-and-run operator and/or owner. Assignment of personal injury claims to the Corporation are specifically authorized in spite of the prohibition of §41 of the Personal Property Law.

At this point, one provision of the act concerning hit-and-run cases should be noted. This appears to be a very inadequate section and seems to need immediate legislative correction. This is section 617 of the Insurance Law. It

THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION

offers protection to the insured or qualified person only if, (1) the injured person was physically struck by the hit-and-run car itself or, (2) the automobile in which the injured person was riding was struck by the hit-and-run car. In our situation this would mean that no one in cars 1 and 2 would have a hit-and-run claim against the Corporation because the hit-and-run car did not make physical contact either with them or with their motor vehicle. Assume, for instance, that to avoid a hit-and-run car the pedestrian had attempted to escape and had been struck by a non-negligent automobile driver who would not, by definition, be liable. The pedestrian could not recover because there was no physical contact with the hit-and-run car.93

Examine now the collision problems facing A (owner and operator of car No. 1), B (infant guest) and C (non-resident guest riding in car No. 1) all of whom were injured. Non-resident C is without the protection of the act. He will have his usual common-law remedies, as amplified by sections 59 of the N.Y. Vehicle and Traffic Law and §167(1)b of the N.Y. Insurance Law, against the owner and operator of car No. 1, Mr. A and Mr. A's insurance company, and the operator D and owner E of car No. 2 but not against car No. 2's insurance carrier if it has succeeded in rescinding.

Infant B, and his parents, of course, will have the same common law claims as amplified by sections 59 of the N.Y. Vehicle and Traffic Law and §167(1)b of the N.Y. Insurance Law, as does non-resident C. In addition B will have certain claims against the Corporation. He will have no claim against the Corporation for the hit-and-run driver as there was no physical contact. As his driver, Mr. A, is an insured driver there is no occasion there for protection by the Corporation. However, infant B will undoubtedly be interested in suing the owner and operator of car No. 2, the car that swerved out of line originally and bumped car No. 1. After the accident infant B learns that car No. 2 appears to be an insured automobile. This would seem to totally eliminate the Corporation from his consideration. He does not know of the misrepresentation made by the owner of car No. 2 to the insurance carrier. Presumably, therefore, he and his parents will sue D and E or A, D, and E and, perhaps, get a judgment for $10,000 running against all three, A, D, and E. At some point the insurance carrier for E discovers the material misrepresentation, seeks and obtains a declaratory judgment of no liability under the policy.94 The legislation requires that written notice of this disclaimer be given by the insurance carrier to the injured person or any other claimant.95 Within ten days of receiving this notice infant B must notify the Corporation by filing with it an affidavit including, among other things, notice of such disclaimer.96 Now if his judgment were just against D and E, the

93. N.D., N.J. and Md. have no such requirement. See note 65, supra.
94. I have, of course, assumed no waiver or estoppel.
owners and operators of car No. 2, then, after successful rescission or cancellation by their carrier and after having given notice to the Corporation, infant B would seek supreme court permission to collect said judgment against the Corporation, less any amount individually collected from D and E. Suppose, however, the judgment had run against not only D and E but also against A, the insured owner and operator of car No. 1. What then would the situation be? It would appear that infant B still should give notice to the Corporation of the disclaimer by the carrier on car No. 2. Although he will not be able to collect from the carrier on car No. 2, he may still collect the $10,000 from carrier of car No. 1 and therefore the Corporation will not have to pay. However, it is always possible that the carrier on car No. 1 may disclaim or also that the total amount of claims may far exceed the coverage and unless the notice of disclaimer of car No. 2 is given to the Corporation, infant plaintiff B will have no recourse against the Corporation for the negligence of car No. 2. The moral of this seems to be that when in doubt file an affidavit of intention with the Corporation—and this applies to nearly every personal injury case.

It is purposeful to refer again to the changes made in the old Safety-Responsibility Laws by the new Compulsory Insurance Law in these “required” policies. Prior to the Compulsory Insurance Law as pointed out earlier the carrier could not rescind after loss on a required policy. The Compulsory Insurance Law, as so far interpreted, permits this. Absent the MVAIC law this could impose serious hardship on an injured party. The Safety-Responsibility Act had placed this risk of loss on the individual insurance company. The Compulsory Insurance Law placed this risk on the injured traffic victim. The MVAIC law now spreads the risk over its entire membership. This would seem to be a superior way of handling the rescission cases.

In other than rescission cases the prescribed time period for the filing with the Corporation of written notice of intention to file a claim is 90 days. No time is specified for actually filing a claim, so presumably this will be governed by the usual statute of limitations. Infants and other persons under disability have a little longer than either the 10 or the 90 day period to file their notice of intention with the Corporation—but not much longer. If his notice of intention is not filed in time the person under disability has two choices. He may file late with the Corporation with an explanation for the late filing and hope that the Corporation will, in its own discretion, accept the explanation, or he may, within 120 days from the beginning of the applicable period for filing, make notice application to a court of competent jurisdiction for permission to

97. See note 10, supra.
98. See note 63, supra.
100. Ibid.
file late. Throughout the act these time limits are extremely short and may very well prove to be completely inadequate.\textsuperscript{101}

The owner and operator of car No. 1, Mr. A, similarly has no hit-and-run claim against the Corporation because there was no physical contact between car No. 3 and car No. 1. Like infant B he might not have suspected that he had a claim against the Corporation for the action of car No. 2 because at the time it appeared that there was insurance on car No. 2. Therefore, the Corporation would not seem to be involved. The disclaimer by car No. 2's insurance carrier will affect Mr. A as it affected infant B. His procedure for collecting from the Corporation will, however, differ substantially from that of infant B, as a qualified person. Mr. A, as the owner of an insured automobile, will be proceeding as an insured. Policies sold after January 1, 1959, will include the endorsement required under section 167 (2-a) of the Insurance Law. The endorsement was prepared under the direction of the Corporation\textsuperscript{102} and, supposedly, is in compliance with Regulation 35-A (superseding Regulation 35) of the Insurance Department of the State of New York establishing minimum provisions for automobile liability insurance policies. Condition No. 5 of the required endorsement reads as follows:

5. \textit{Arbitration.} If any person making claim hereunder and MVAIC do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured automobile because of bodily injury to the insured, or do not agree as to the amount of payment which may be owing under this endorsement, then, upon written demand of either, the matter or matters upon which such person and MVAIC do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such person and MVAIC each agree to consider itself bound and to be bound by any award made by the arbitrators pursuant to this endorsement.

This provision appears to be less favorable to the insured than that authorized either by section 167 (2-a) of the N.Y. Insurance Law or by Reg. No. 35-A (4) of the N.Y. Insurance Department which provides:

Such an "owner's policy of liability insurance" shall be subject to the applicable provisions of Section 167, as amended. For the purpose of complying with the provisions of subsection 2-a of Section 167, no policy subject to this Regulation shall be issued by any authorized insurer unless it contains coverage providing for payments to the insured, as defined in such coverage, by the New York Motor Vehicle Accident

\textsuperscript{101} The Md. and N.J. legislation similarly provides for 90 day filing or 30 days after a physical disability is removed. See note 65, \textit{supra}.

\textsuperscript{102} N.Y. \textit{INSURANCE LAW} §606(b) (Com.Supp. 1958).
Indemnification Corporation, pursuant to the provisions of Article 17-A of the Insurance Law applicable to such payments.

Compulsory negotiation, then, is the procedure for an insured as contrasted with the opportunity for litigation in the procedure for a qualified person. Query the effect of section 1448 of the N.Y. Civil Practice Act which excludes infants from compulsory arbitration without court approval.

The situation in which Mr. D, the injured driver of car No. 2, finds himself at the time of the accident is analogous to that of Mr. A, the driver of car No. 1. Mr. D assumes he is an insured driver and Mr. A demonstrates that he, too, is an insured driver. Because there was no contact between car No. 3, the hit-and-run car, and car No. 2, Mr. D will have no hit-and-run claim against the Corporation. There would seem to be no need to notify the Corporation. However, Mr. D would be wise, if he intends to sue Mr. A, to file a notice of intention with the Corporation in the possible event that Mr. A's registration or evidence of insurance is invalid, having only 90 days within which to make a decision.

A new problem is faced by traffic victims in the position of Mr. D. Assume now that he has been hurt in a way which involves the Corporation as a defendant from whom he will attempt to collect the statutory amounts either as an insured or as a qualified person. If, before making such collection, his owner's carrier disclaims successfully, an immediate change takes place in the status of Mr. D. In the first instance, he will be making his claim as an insured person under the omnibus clause of the owner's policy and negotiating directly or through arbitration with the Corporation as provided by the statutory endorsement on the liability policy. If there is a successful disclaimer against the absentee owner his procedure will be that of a qualified person (This, of course, assumes that the disclaimer will also be valid as to him, an omnibus-clause insured. But query?) who will either settle with or sue the Corporation. Carry the matter a step further. Had his mother, the wife of the absentee owner, been riding with him and similarly injured, her status, prior to disclaimer, would have been that of a qualified person. However, under a successful disclaimer she would appear to be an excluded person, as a "spouse when a passenger in such vehicle [uninsured motor vehicle]."103

Apparently little consideration has been given in this legislation to the possibility of disclaimer by the plaintiff's insurance carrier, the supposition being that disclaimer, if any, naturally will be sought by the defendant's carrier on the theory that he has the only financial interest involved. Upon analysis, plaintiff's carrier in many situations may be financially motivated to disclaim. The act provides that the amount of money paid out by the Corporation and charged by

assessments back to the members will be a factor in determining rates. Recall that this Corporation is a 100 per cent insurance corporation, both as to members and as to management. Its interest would seem to be more closely aligned with those of the carriers than with those of the public. Sales resistance to higher rates is obvious. The fewer claims paid out by the Corporation, the smaller the impact on the rates. An insured traffic victim, who is also an assured, with a claim against the Corporation can, perhaps, have his status changed to an excluded person upon a successful disclaimer. What a tremendous bargaining weapon this puts in the hands of the Corporation as they negotiate with such an insured person. It poses the conflict of interest problem that time and again shows up when the Corporation in one instance may be charged with representing the interests of a financially irresponsible motorist, in another instance with the interests of its insurance company members and in still other instances with the interests of the innocent traffic victim.

This, then, is the present Motor Vehicle Accident Indemnification Corporation. In theory, the act plugs the half-dozen or so gaps in the Compulsory Insurance Law. It creates an insurance corporation to provide for some insured or qualified persons who are not otherwise protected by the compulsory law. It distributes this loss over the broad base of all the liability insurers in the state. Insofar as this theory is accomplished, the legislation carries out the aims and policies of its supporters. An analysis of the legislation shows that all the holes are not yet plugged. Innocent traffic victims hurt through the fault of others may still be unable to recover. Procedural difficulties of a serious nature may trip the unwary. Burdensome requirements are imposed upon them. Apparently unjustifiable distinctions are drawn between insured and qualified persons. Separate routes for recovery are required. The public official is completely eliminated from the management and control of the Corporation, leaving the members of the public, in many instances, subject only to the sufferance of an insurance-orientated corporation.

In the early parts of this article, I have attempted to show how the inadequacies of the past handling of the traffic victim brought forth New York's Compulsory Insurance Law and this new MVAIC. I suggest that this is not the last step in protecting the traffic victim. The inadequacies in MVAIC will call for additional remedies. It is possible, now that New York has created a new instrumentality for dealing with the economic loss caused by the motor vehicle accident in a way which distributes this loss over a broad base, that the time for rethinking the problems of the traffic accident may come sooner than many of

105. As pointed out in note 65, supra, both the N.J. and the Md. Fund Boards include the Motor Veh. Comm. and the Supt. of Ins.
us have heretofore thought possible. It is with that in mind that I would like to devote the final part of this article to some thoughts on the future of MVAIC.

Planning Ahead

Is the problem of traffic damage solved thru an MVAIC, the loop holes in which have been successfully plugged? Assume a 100 per cent insurance coverage of liability based on fault. Assume an absolutely impartial Corporation seeking to adjust the loss. These assumptions are the most that can be asked of our present system for handling the traffic victim. Will such a solution, can such a solution, satisfy society in the year 1970? Obviously none of us knows. The spectre of another system of compensation causes a former President of the New York State Bar Association to worry:

It is no exaggeration to say that if the automobile litigation is lost, the American trial lawyer will be a dead duck, and the entire profession will suffer damage from which I don’t think it will ever recover. Whether the danger is real or imminent is difficult to say, but we do know that recently the storm clouds have been gathering slowly but steadily.

I doubt if the American public is as concerned with the self-serving declarations of the so-called trial bar as it is with the plight of the traffic victim and society.

The non-fault compensation solution recommended by the Columbia Report in 1932 is but one alternate proposal that has no where been completely acceptable; nor, I think, because of the argument that it may make some lawyers poorer but because of inherent defects in any plan applying to traffic problems the same solutions as those offered for industrial accidents. As pointed out earlier, various programs of voluntary and compulsory insurance are being offered in different jurisdictions. Plans that seem called for during periods of vast national economic depression no longer appeal in periods of general economic prosperity. Solutions designed for a traffic count of 25 million motor vehicles may be inadequate for 65 million. What happens when the count reaches 100 million? Assessing fault on the basis of one car going through a stop sign and colliding with another may be far different from the six, eight or ten car collisions on today and tomorrow’s multilane speedways. Administrative and judicial procedures that were capable of handling X number of litigants break down before the deluge of 10X.

108. An eloquent plea has been entered by Dean Green on behalf of the traffic victim together with a well-thought-out proposal for handling the traffic problem. GREEN, TRAFFIC VICTIMS, TORT LAW AND INSURANCE (1958).
Should the vehicle and highway engineers be given a greater responsibility than heretofore in attacking this problem as we consider that motor vehicles designed to cruise at 80 m.p.h. will travel 50 feet before the average driver even realizes a potential peril and hundreds of feet more before he can do anything about it? Is it possible to handle the minor personal injury and property damage case under one procedure and the major ones another way? Can society continue to afford the cost of conscious pain and suffering as an element of damage in traffic cases? Society has refused to recognize it in other situations. Perhaps the detriment of that hazard may most economically be borne by the one suffering it. Should each member of society be required to act as a coinsurer for losses exceeding certain amounts? In determining a dollar indemnity should all collateral sources of income be considered, including tax advantages?

More than a quarter of a century has passed since the last comprehensive non-political study was made of the traffic situation in New York State. How fortunate we are, here in New York, to be heading into a near-term period in which financial protection for the traffic victim is as adequate as it is now. But the motor vehicles are still coming off the assembly lines at the rate of 6 million a year. Over the next two decades our population will probably show an increase of 90 million people. This would seem to be a most appropriate time for another intensive, non-political study looking to solutions beyond the near-term. The financing of such a research project well might be considered within the ambit of one of the great charitable foundations. The group making the study should be members of many disciplines—legislators, traffic engineers, mechanical engineers, lawyers, city planners, jurists, insurance actuaries, medical experts, business administrators, perhaps even professors—men and women whose training and experience qualify them to offer contributions to a problem, the magnitude of which transcends the limits of any one particular discipline.

A final solution to the traffic problem cannot be hoped for now or in the foreseeable future. However, continuous, intelligent and cooperative efforts directed at reducing to a minimum the hardships brought about by the motor vehicle should ameliorate most of the major irritants in this tremendous social phenomenon. With the immediate pressures removed by the Compulsory Insurance Law, as supplemented by the MVAIC, long-range research should be most effective. The time to plan is now.

109. Harvard University has just received an $809,000 Federal grant for a "grave-to-cradle study of fatal automobile accidents . . . The study will be made by a fourteen-member team from the Department of Legal Medicine of the Harvard Medical School." N.Y. Times, Dec. 7, 1958, p. 68, col. 1.