

Do We Need No-Fault Insurance?

Pro

by **BERNARD H. PARKER**
Vice President-Southeastern Region
Nationwide Insurance

No-fault automobile insurance has been one of the most widely discussed issues in legislative bodies, in the press and in other public forums around the nation for the past 10 years or so.

Yet, no-fault is little understood by the public. Indeed, it's often misunderstood.

For example, no-fault auto insurance has been criticized for not meeting some expectations in many states where the plan has been adopted. However, these critical reviews fail to point out that most state no-fault laws are watered-down versions of what had been recommended by leading reform advocates.

And overlooked in these criticisms is the fact that no-fault insurance plans, even the watered-down versions, are paying more injured accident victims, more quickly and more equitably than the fault system which exists in most states, including North Carolina.

No-fault auto insurance actually is a relatively simple concept. Confusion is generated by the fact that there are several varieties or shadings of the concept, each backed by persuasive arguments as to why it's the best. And clouding the issue further—from the public standpoint—are charges and counter-charges by foes and supporters as to what no-fault will or won't do.

A short explanation of the difference between fault and no-fault auto insurance would go something like this: Fault insurance gives you the *right to sue for uncertain recovery* for your losses; no-fault insurance gives you the *right and certainty to recover* for your losses without lawsuits.

Moreover, no-fault compensates all injured accident victims; the fault system does not.

In more detail, what is no-fault auto insurance? Simply stated, if you're injured in a auto accident you would be paid by your own insurance company for your personal injuries, lost earnings and related injury expenses, regardless of fault for the accident.

Injured occupants of your car would receive the same benefits from your insurer. The injured driver and occupants of the other car would collect from that driver's insurance company.

How does this differ from the present liability or fault system? The chief difference is that under the liability system, fault for an accident needs to be proved *before* payment is made. You must prove the other driver was at fault to collect from him or his insurance company for injuries you suffered in an auto accident. The fact that you were injured is secondary to who was at fault.

What's wrong with a system that requires the driver who causes the accident to pay for losses? While it seems reasonable, the system doesn't work well at all—a fact documented by numerous impartial studies.

Proving fault is much too elusive—often impossible—in a society of congested highways, split-second crashes, multiple-car pileups and conflicting reports by drivers and witnesses. Besides, the person who causes the injury doesn't pay for the loss; his insurance company does.

Vast sums of premium dollars—premium dollars paid by policyholders—are spent to find fault for an accident before losses are

No-fault automobile insurance has been proposed several times in the North Carolina General Assembly, so far without adoption. Do we really need no-fault auto insurance? The Financial Times presents arguments for and against. Nationwide Insurance Companies Southeastern vice president Bernard Parker of Raleigh argues for no-fault, Winston-Salem attorney Eugene Phillips against it.

paid. Isn't it reasonable and better to use premium dollars to pay for accident injuries, rather than for fault-finding? Payment for losses—not fault-finding—is the better purpose of insurance.

Why does the insurance industry favor no-fault? What's in it for the insurance companies?

Until recent years, most of the insurance industry generally opposed no-fault auto insurance reform. The industry resisted change, perhaps because of its basically conservative nature and persuasion. Many in the industry viewed—and some still do view—no-fault as a threat to the traditional way of doing things.

Nationwide Insurance stood virtually alone 20 years ago when it not only advocated no-fault insurance, but actually came out with a no-fault coverage. Despite bitter opposition within the insurance industry, Nationwide marketed the coverage in most of its operating states.

North Carolina is not one of the states, due to its insurance laws. Because the industry failed to follow suit, Nationwide dropped no-fault coverage in 1965.

Purely by coincidence, that was the same year two college professors—Keeton and O'Connell—came out with a book, *Basic Protection for the Traffic Victim*, in which they advocated a no-fault auto insurance system.

This book, which depicted the present liability system as a veritable chamber of horrors, started the current no-fault reform movement.

Over the years, many independent studies concluded that no-fault auto insurance would be a vast improvement over the fault system. Studies were made by government agencies, consumer organizations, labor unions, the press, educational institutions and even bar associations.

The landmark study was sponsored by the U.S. Department of Transportation. It took 2½ years and \$2 million to complete the study, which filled 11,000 pages in 24 volumes. In its summary conclusion in 1971, the DOT had this to say about the fault system:

"...The existing system ill serves the accident victim, the insuring public and society. It is inefficient, overly costly, incomplete and slow. It allocates benefits poorly, discourages rehabilitation, and overburdens the courts and the legal system.

"Both on the record of its performance and on the logic of its operation, it does little, if anything, to minimize crash losses."

In support of its conclusion, the DOT offered these findings from its detailed investigation:

—At least 25% of all persons injured in auto accidents, and 54% of those who are seriously injured, receive NOTHING from the present lawsuit system. This is because they were judged to be negligent or because they could not prove someone else was at fault.

(Continued on page 14)

Con

[The writer was an executive committee member of the 1969-71 governor's commission to study automobile liability insurance and rates and has been a member of the Automobile Reparations Committee of the Association of Trial Lawyers of America since 1968. He is also an immediate past president of the North Carolina Academy of Trial Lawyers.]

by **EUGENE H. PHILLIPS**

No-fault insurance is no longer a serious issue in this state and it not likely to be again, now that its failures have become a matter of public record.

It was an artificial propoganda-created issued to start with, which made great headway, however, as long as it was an unknown quantity, advertised and promoted as a future reform.

And how extravagantly and glowingly it was advertised and promoted in those days. It would, so the public was told, repeatedly and with innumerable embellishments, cure most of the ills of our automobile insurance and civil justice systems, and most wondrous of all, it would save everybody a great deal of money.

I remember very well in 1971 when a member of the governor's commission to study automobile liability and rates was solemnly told—(along with the other commissioners and a room full of other interested people including several newspaper reporters)—by a high official of the American Insurance Association that its no-fault plan would reduce personal injury premiums to a cool 56%.

No North Carolina newspaper disputed it, although it was a self-evident fraud and was so demonstrated by the question and comments of various commissioners and others. It was promises like that made throughout the country that got no-fault going and kept it moving until it was the law in nearly half the country.

But success also brought exposure, and since no-fault promises have been replaced by verified audited fact, not a single new state has joined the parade.

Considering what has now been learned about this much-touted reform, few if any more states are likely to adopt it hereafter.

In Massachusetts, the first no-fault state, the automobile insurance system is in absolute chaos and is still the most extensive in the country. The small reduction that occurred in the personal injury premium has been offset four times over by enormous increases in collision and other rates.

In Florida, premiums have increased twice as much in other Southern states that do not have no-fault. In a recent compromise, with one house voting to abolish no-fault altogether, its legislature amended the plan to lower the threshold and to permit optional deductibles that will make the compulsory insurance requirement and no-fault generally almost meaningless.

It is now known that no-fault is to some extent at least, a disappointment everywhere that it is in effect. It is a disappointment, as the *Wall Street Journal* observed some months ago, simply because the "real world" is different from what theorists perceive it to be and from what the propogandists claimed it was.

They did not know, for example, that by

(Continued on page 14)