ACR 3914

FORWARD

When I sought the responsibilities of State Treasurer and Insurance Commissioner, I pledged that upon taking office, I would immediately commence a review of Florida's automobile insurance statutes, and insurance market generally, to determine how to best reduce premium costs.

I promised to complete this review, if possible, prior to the convening of the 1977 Legislature so there would be no delay in dealing with this urgent problem.

That review is now finished, and a report of our findings and recommendations is attached.

The report is in two parts. Part I is a summary of the relevant historical background of Florida's worsening automobile insurance crisis. It highlights why past attempts at reform have failed to have any meaningful impact on the continuing escalation of insurance premiums. Part II is a summary and analysis of the proposals which can be implemented forthwith to provide, finally, an effective remedy for this very real problem. If implemented fully, these recommendations will provide major rate relief for every Florida motorist.

Some of the proposals will not require new legislative enactments. Where statutory authority already exists, the need can be fulfilled through a positive and aggressive attitude within the Department of Insurance.

Where the solution will require legislative enactment, it is earnestly hoped that the 1977 Legislature will consider fully and objectively the carefully integrated program we are presenting, and give special recognition to the interdependent nature of our several recommendations.

Careful analysis of the proposals embodied in our report demonstrates that they will bring an immediate premium reduction at least 30% from the presently mandated coverages and limits fo auto insurance coverage.

Depending upon individual needs and preferences, the reductions could be as high as 80%.

These proposals will have other salutary effects:

- They will ensure that no private passenger automobile carrier makes excessive profits on Florida business.
- They will greatly strengthen the Department of Insurance's hand in fighting insurance fraud and protecting the Florida policyholder from insurance company insolvencies.
- They will make great strides toward assuring that the driver classification systems, which

determine the actual premium paid by the individual motorist, are as close to being fair and equitable as they can be made to be.

Obviously, this is not a timid program designed to strike a consensus among every possible interest. Ten years of compromise has gotten us where we are today. Rather, it is a bold program...a program designed to finally deal effectively with a problem which is, perhaps, beyond consensus.

While the public will be delighted with our proposals, it must be recognized from the outset that some people will not be. There are some, the vested beneficiaries of the status quo, who will resist them bitterly. These interests are highly organized, they are well-heeled, and they have prepared their armaments diligently for that time when someone would document for the people of Florida what the automobile insurance crisis is really all about.

That time has come.

BILL GUNTER
Tallahassee, Florida
March, 1977

PART I

The Problem:
Old Answers and Why
They Have Not Worked

I. INTRODUCTION

One need not look far beyond the surface symptoms to detect the utter bankruptcy of our present system of automobile liability insurance:

- It has become the fastest growing single item in an increasing number of Florida household budgets.
- Despite rate increases of 100%[1] and more in the past three years, auto insurers claim they still lose money in the Florida market.
- More and more Floridians cannot buy insurance on the open market at any price, as witnessed by the incredible growth of the Joint Underwriting Association (JUA), our "insurer of last resort", from 202,000 to 416,000 automobiles in just the past two years.[2]
- Despite patches sewn into existing criminal law by successive sessions of the Legislature, estimates of fraud in auto accident claims run as high as 30% statewide, higher in Southeast Florida, and are mounting steadily.
- Even with Florida's compulsory insurance law, as many as 40% of the drivers in some parts of the State have decided they absolutely cannot afford automobile insurance. Statewide, an estimated 1,400,000[3] automobiles are on the streets and highways in violation of the law--that is, without either the compulsory liability coverage OR the $5,000 personal injury protection (PIP) coverage.

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1. Florida Department of Insurance record.
2. Florida Joint Underwriting Association Monthly Reports to Department of Insurance.
3. Florida Department of Insurance estimate.

The complications and contradictions in our existing system of compulsory automobile liability insurance seem endless, and perhaps they are.

For each one, of course, there has always seemed to be an answer--rate increases, repeal of laws requiring prior approval for rate increases, more rate increases, passage of a modified version of "no-fault", more rate increases, more modification of "no-fault", further rate increases, additional modifications in "no-fault", ad infinitum.

With each additional rate increase, and as the promise of each reform has paled when compared to its performance, the standard solutions have become less and less adequate.

Day-by-day, more and more motorists, and indeed, more and more insurance companies are being forced to the bottom line, and the ultimate questions:

> The Motorist, "Can I afford what Florida law dictates I must buy?"
>
> The Company, "Can I make a profit from the product which I am in business to sell?"

With phenomenal and ironic frequency, the answer from both quarters, from buyer and seller alike, is resoundingly short and in the negative.

Neither can afford what each is called upon to do.

At the same time, in a mobile society which has made the automobile an absolute necessity for the vast majority of Americans, few can long afford to risk the potentially catastrophic consequences of driving without the protection of automobile insurance.

All of the foregoing has suggested a search beyond the surface symptoms of a system which is obviously in the advanced stages of fundamental collapse--a search which would examine and challenge many of the assumptions which have traditionally buttressed liability insurance principles, a search which necessarily went beyond the formal confines of insurance itself, and finally, well beyond consensus.

II. TEN YEARS ON COLLISION COURSE

If we could somehow relive 1967, when we began in Florida what is generally thought of as a 10-year sequence of major "reforms" in our automobile liability insurance system, we would be hard put to tell the difference from today.

Insurance companies were pressuring the Department of Insurance to approve rate increases. Without these rate increases, the companies claimed, they were losing money, and therefore, would refuse to insure more drivers. There was sharp debate about whether or not insurance should be compulsory, and many people found they could not buy insurance except as "assigned risks."

(A) The First "Reform": The California Plan

The proposed solution to it all, in 1967, was to abolish the so-called "prior approval" system of rate regulation.

If companies could set their own rates without prior approval of the State Insurance Commissioner, then insurance would become available to virtually everyone on the free market, and the natural pressures of free enterprise competition would keep rates from becoming excessive.

Or so the 1967 argument went.

That was the year and the argument which gave Florida the "California Plan", also known as the "open competition rating law." Not unpredictably, rates went into a dramatic upswing as companies exercised the new-found authority to set their own rates. Although insurance companies did open up the market, the public was outraged by the rapidly increasing rates and by the inability of the insurance regulators to do anything about them.

Within four years, the pressure for reform was once again irresistible, and the public, to a great extent, had identified the "California Plan" as the culprit in the growing rate crisis. Its fate was sealed, as well it should have been.

(B) The 1971 Session: Use and File

In 1971, along with passage of Florida's first version of "no-fault", automobile liability insurance, and compulsory insurance, the Legislature replaced the "California Plan" with a system of regulation which has been generally construed as a "use and file" system. That system, which has remained essentially intact through the intervening six years, requires companies to file their rates with the Department within thirty (30) days after they are increased. Although the statute is silent as to

the procedures to be utilized, the Department is given authority to "review" the increased rates.[4]

Under the administration of the 1971 law, the companies have raised their rates almost as easily as when the Department had no authority over the rates charged.

(C) Regulating for Profits and Solvency

Because much of the public believes the high cost of insurance is directly related to the method by which the companies obtain approval for rates, there has been continuing debate over the relative merits of the "prior approval" law, the "California Plan", the "file and use" law or the "use and file" law. In reality, however, each of these regulatory schemes suffer from a major defect. It is difficult, if not impossible, to project with any degree of certainty what future claims experience will be; but it is the amount of these claims which, in great measure, determine the ultimate validity of fairness of the rate. While this projection can be done in life insurance with a high degree

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4. In considering whether a rate is appropriate, the Department is charged with consideration of a number of factors, including loss experience, a "reasonable" margin of underwriting profit, investment income from unearned premium reserves and loss reserves, the long run profitability for such insurance within the State (expressed as a percentage return on insurer's invested capital and surplus), and other relevant considerations, including judgment factors.

of "actuarial precision", trying to splice these "actuarial principles" onto casualty insurance amounts to little more than educated guess work.[5]

This is particularly true for the lines of bodily injury liability insurance where the period of time over which claims are paid is so lengthy. In order to provide for these projected claims, a company must first estimate the claims, then reserve sufficient money to pay them. But under all of the regulatory schemes mentioned above, the determination of an underwriting profit or loss has been made at the time the losses are projected.

The insurance regulators, moreover, are confronted with conflicting objectives. If the amount reserved is too low, then the company will be jeopardizing its financial ability to pay claims, that is, its solvency. If the amount reserved is too high, then the premiums charged were too high and excess profits result.

In reality, the validity of a rate can only be viewed with any degree of certainty from a retrospective viewpoint, that is, after all or most claims have been paid. Only then can the true

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5. In practice, it is very difficult for the Department to validly second guess a company's estimate of its projected losses. The company itself has the greatest knowledge of its customers, its present claims experience, its claims adjusting practices and its ultimate exposure to loss. The public simply cannot afford to pay the salaries of the thousands of actuarial staff necessary to evaluate effectively the projected claims of the approximately 250 companies writing automobile business in Florida.

underwriting profit or loss be determined for the premiums written in a given year. Only then can a valid determination of "excess profits" (or losses) be made.

A second major aspect of effective regulation derives from the fact that virtually all of the companies writing insurance in Florida also sell in other states. Each state has a different system for determining claims, differing standards on award of damages, and different levels of regulatory competence. Therefore, while a reduction in exposure to damages in one state will reduce claims in that state, the national accounting practices of the companies do not presently guarantee that claims reductions in a given state will be passed back to the policyholders of that state in the form of lower premiums. This is a major area of potential abuse and one which the Florida Department of Insurance will work to correct in the months ahead.

It should also be noted that, in evaluating rate increases made during the last ten years, the Florida Department of Insurance has:

- Rarely determined on a retrospective basis whether claims in Florida have been consistent with projections.
- Relied upon unaudited statements of each company's financial condition, including the statements of underwriting profits and losses, reserving practices and investment income.

- Never determined the amount of investment income earned by companies from their business in Florida.

At the same time, it should be stressed that the information which is currently available on a national basis shows that most companies are neither over reserving for losses nor making substantial underwriting profits. In recent years, the profits of most companies have been limited to those earned from investment of reserves and accumulated capital. The available records show, moreover, that Florida is one of the states where underwriting losses are highest.

(D) The 1971 Session: No-Fault Insurance

Probably no aspect of insurance has been debated more in Florida, since its enactment in 1971, than the State's modified version of no-fault insurance.

Its passage in 1971, signified the Legislature's recognition of the obvious; that regardless of the rate approval procedure utilized, insurance rates were skyrocketing because the cost of claims was skyrocketing. And no where was this more true than in the area of bodily injury liability insurance, where both the number and amounts of verdicts and settlements had increased enormously.

Prior to the passage of Florida's no-fault law, a person injured in an automobile accident could bring suit against the

person "at fault" in the accident, and claim compensation from the "at fault" party for ALL monetary damages suffered, such as lost wages or medical expenses. In addition, the injured party could claim monetary compensation for damages which have no monetary measure; for example, pain and suffering, or mental anguish. For these "speculative" elements of damages, juries were asked to make their own evaluation of the extent of suffering and were asked to arbitrarily determine a dollar amount to compensate for it. This system, in effect prior to no-fault, is referred to as the tort system.

In practice, under the tort system, the amount of dollars awarded by juries (thereby constituting the basis for most out-of-court settlements as well) for the speculative categories of damages has been much greater than the dollar amount of medical expenses incurred.[6] For many minor cases, under this system, the cost of determining fault and damages through litigation exceeded the amount in controversy and thus encouraged companies to settle frivolous cases for excessive amounts. Additionally, many minor injuries resulted in substantial jury verdicts based more upon sympathy, or upon the dramatic or oratorical skill of the plaintiff's attorney, than upon the actual injuries suffered.

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6. American Mutual Insurance Alliance - "Cost Analysis, Uniform Motor Vehicle Accident Reparations Act, National Conference of Commissioners on Uniform State Laws."

These aspects of the tort system tremendously increased the cost of insurance claims and, therefore, insurance premiums, and a number of proposals surfaced to deal with the problem.

The alternative most commonly offered to deal with the rising cost of liability claims is "no-fault." Proponents of a "pure" no-fault law argue that the determination of fault is meaningless in the context of an automobile accident. They point out that virtually everyone makes driving errors, making it largely a matter of chance as to who may be at fault in any given accident.

They argue further that the process of determining fault is expensive (attorneys' fees, for example), very burdensome on the court system, and inevitably wasteful.

Under a "pure" no-fault system, each driver would be responsible for insuring himself against bodily injury and loss. Each driver would not have liability for injuries caused to others. Recovery by injured parties would be limited to strictly tangible, monetary damages, such as lost wages and medical expenses; there would be no recovery of what have been termed "speculative" damages, such as pain and suffering, or mental anguish.

The Florida no-fault plan adopted by the Legislature in 1971, is essentially a compromise between "pure" no-fault and the traditional tort system. The Legislature attempted to distinguish

between major and minor injuries, prohibiting persons injured by private passenger automobiles from bringing suit for injuries which were, by definition, minor. Persons were required to insu themselves against minor injuries and were allowed to look only to that insurance for payment, regardless of fault.

In thus restricting tort claims, the Legislature prohibited those persons suffering only minor injuries from claiming or collecting the "speculative" elements of damages. For injuries which were, by definition, major, the tort system remained unchanged.

As originally adopted in 1971, the Florida no-fault law required that each driver insure himself for injuries up to $5,000 (PIP coverage). It defined a major injury as either a permanent injury OR a non-permanent injury where medical payment occasioned by the accident totaled at least $1,000.

The Florida modified no-fault law was a mixed blessing. For two years the passage of no-fault lowered or at least stabilized insurance premiums. But beginning in 1974, the cost of insurance increased substantially.

There were a number of deficiencies in the 1971 law which soon became apparent and which were at least partially responsib for the increases. First, the $1,000 threshold proved to be a very minor obstacle to those determined to sue for large sums; it was easily avoided by the doctors, lawyers, and claimants who

sought to run medical bills beyond the magic $1,000 mark. Moreover, it encouraged overutilization of medical benefits. Thus suits and large judgments persisted, and new dimensions in insurance fraud were reached.

Second, because the mandated PIP coverage paid for up to $5,000 of medical bills and lost wages on a first party basis, a party successfully bringing suit could enjoy a partial double recovery of damages.[7]

Third, the frequency and severity of liability claims for major injuries, the claims unaffected by no-fault, increased substantially.

(E) 1976 Session: No-Fault Revisited

Recognizing at least some of these problems, the Legislature in 1976, removed the $1,000 monetary threshold requirement and in its place provided that an injured party could sue if he has suffered a non-permanent disability substantially affecting his "lifestyle" for "all or substantially all of the 90-day period" immediately following the accident.

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7. "Equitable distribution" allowed the PIP carrier to recover from its insured only part of the PIP benefits its insured collected against a wrongdoer. In practice, claimants retained between 50% to 80% of the PIP benefits (notwithstanding recovery against third parties). Thus "double recovery" resulted.

It is reasonable to assume that the newly adopted verbal threshold will tend to decrease the incentive to over utilize medical benefits; at the same time, however, it will likely result in a greater number of cases being brought under the tort system, and thus increase claims comprised of the speculative elements of damages.

The 1976 Legislature also ended the practice of "equitable distribution" of PIP benefits. Claimants were prohibited from recovering damages previously paid by a PIP carrier; and PIP carriers were prohibited from recovering any part of an awarded judgment. This, in effect, prevented double recovery of damages[8] and is certain to have a positive effect on claims costs.

The nominal purpose of the 1976 modifications to the no-fault law was to respond to the public outrage over the cost of insurance, but the ultimate result will certainly prove to be of little consequence.

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8. The Legislature also repealed the collateral source rule, and prohibited claimants from joining insurance companies as named defendants in automobile negligence cases. The collateral source rule prohibited defendants from offering proof that a claimant had had certain damages already paid by insurance. The new law permits such proof but allows the claimant to offer, as well, proof of payment of insurance premiums which provided the benefits.

The Legislature did not mandate premium reductions as part of the 1976 modification. Instead, the Department of Insurance was instructed to review the rates in October of 1977 to ensure that the public would benefit from whatever savings might result.

Although the Department has just recently instituted the process of reviewing the impact of the 1976 law,[9] it is already apparent that the reduction in premiums will be minimal, at best. It is extremely unlikely that the vast majority of the public will accept the 1976 revisions as an adequate response to the crisis in automobile insurance.

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9. Because the new threshold requirements became effective only on October 1, 1976, it is impossible to measure their actual impact on claims experience. The Department of Insurance has, however, ordered the companies to report their experience during the first five months of working with the law, in hopes of getting at least an early indication of its effect. Those reports are due April 1, 1977.

III. WHAT'S THE RISK?: The Classification and Underwriting System

In studying the phenomenal increase in the cost of automobile insurance, it is apparent that the increases have not been the same for all Florida drivers. For some, the increase has been double or triple what it has been for others. The differing premiums among drivers are based upon a system of driver classification and risk underwriting which theoretically prices insurance according to the actual risk assumed by the company. The methods used in determining those risks, however, can raise more questions than they answer:

- Why does my neighbor, in circumstances very similar to my own, pay half what I pay for automobile insurance?
- Why should the simple act of moving from one city to another, from Tampa to Miami, cause my insurance rates to skyrocket from $305 to $712 a year?
- Why, when the law forces me to buy automobile liability insurance, should I find my coverage not renewable simply because it became ncesssary for me to use the protection I have already paid so dearly for?
- Why should my insurance rates double just because I had my 70th birthday, or because I have not yet had my 25th, even though my driving record is spotless?

The answers are both simple and complex, revolving around what are known as "risk classification systems" which vary from company to company, sometimes dramatically.

In attempts to charge premiums proportionate to the likelihood of having to pay out claims for individual drivers' mishaps, companies have developed risk classifications based on combinations of such factors as age, sex, use of vehicle, and past driving record. Additionally, the State has been divided geographically into so-called rating areas and rates are further influenced by the amount of losses in a given rating area. For different companies, the classifications will vary from as few as a dozen, to literally thousands.

Although most companies prepare a rate for each of their classes, few if any companies write insurance in every class or geographic area. Nor do they write every applicant in every class.

The process of selecting where and for whom to write insurance is called "subjective" underwriting.

By underwriting--subjectively evaluating each applicant--a company attempts to exclude drivers who pose a greater risk than others in a given class. Underwriting thus becomes the

biggest single factor used by companies in their attempts to gain a competitive edge. Obviously, a company which can keep the biggest risks off its books and, hopefully, put them on the books of a competitive company, can minimize its losses and charge a rate lower than its competitors.

The process of subjective underwriting is unique in every company. Some companies, typically the smaller ones, might rely simply on the judgment of an individual agent. Larger companies like Allstate and State Farm have refined underwriting closer to a science.[10]

Because the bigger companies have more business volume, they are able to very effectively engage in a process known as "creaming", underwriting out all but the best risks. This leaves the high risk driver for the smaller companies, and contributes greatly to the wide variation in rates among companies.[10]

While the companies are compelled to file with the Department specific and detailed schedules of their risk classification systems, there is no public reporting of their more subjective underwriting criteria.

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10. "The Role of Risk Classifications in Property and Casualty Insurance", Stanford Research Institute, May, 1976.

IV. TRACKING TODAY'S INSURANCE DOLLAR

Private passenger automobile liability insurance in Florida is a $715,000,000 a year business, expanding under our current system at a rate in excess of 10% annually.

Theoretically, the bulk of that money is placed in a pool to pay for the mishaps of policyholders. In fact, barely half of the premium dollar that will be paid this year in Florida for automobile insurance will ever return to the pocket from which it came, the policyholder's pocket.

Approximately 35¢ of every liability insurance dollar--$250,000,000--is consumed by the companies themselves, for profit, agents' commissions, legal defense fees, other loss adjustment expenses, and other administrative overhead. Another 10¢ of each dollar--$70,000,000, conservatively estimated--is consumed in fees and expenses to attorneys who sue insurance companies on behalf of claimants.[11]

Carrying the examination deeper, research into the destiny of each premium dollar indicates that:

- As many as 30% of all claims paid by insurance companies in Florida are either outrightly fraudulent or contain at least an element of fraud through exaggeration of damage and injury.

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1. Florida Department of Insurance estimate.

- More than half of the money paid out for bodily injury claims is reimbursement for "speculative" damages such as pain and suffering, or mental anguish, as opposed to reimbursement for tangible, measurable losses, such as doctor and hospital bills, and lost wages. Speculative damages (including attorneys' fees and the cost of claims administration), account for approximately 25¢ of every insurance dollar. Looked at another way, "pain and suffering" has become, in Florida, a $190,000,000 annual industry. [12]

Tracking insurance costs still further, the trail leads through the coverages, both compulsory and optional, and into the claims process itself.

(A) Compulsory Coverages

The coverages currently mandated by Florida law fall basically into four categories, with percentages of the basic premium reflecting the statewide average cost for each coverage.

(1) Bodily Injury Liability (51%)--Fully 51% of each premium dollar is expended for this third party coverage. It provides up to $10,000 reimbursement for bodily injury expenses in accidents caused to others by the insured individual, subject to a maximum of $20,000 for injuries suffered by two or more victims in a particular accident.

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12. Florida Department of Insurance estimate.

(2) Property Damage Liability (22%)--This coverage, also third party, accounts for 22¢ of each premium dollar. Minimum limits of coverage are $5,000 to care for damage caused to another person's property, normally a car.

(3) Personal Injury Protection (No-Fault Coverage, 18%)--This is a "first party" protection, and accounts for 18¢ of each premium dollar, with minimum coverage limits of $5,000. Personal Injury Protection reimburses the insured party for all reasonable expenses for injuries, regardless of who is at fault in an accident. It also provides a $1,000 death benefit.

(4) Uninsured Motorist (9%)--Uninsured motorist coverage may be affirmatively refused by the insured, therefore, it is not compulsory in the strictest sense, but because of its wide usage, it is included here as if it were compulsory. The minimum coverage for personal injuries under uninsured motorist (UM) is the same as bodily injury liability, $10,000 per injured person and a total of $20,000 for all of the persons who might be injured in a given accident. Unlike bodily injury liability, however, this "first party" coverage is designed to respond when the person at fault in an accident is uninsured, underinsured, or otherwise unable to pay for the expense of personal injuries for which he is liable. This accounts for 9¢ of each premium dollar.

(B) Optional Coverages

In addition to the four compulsory coverages, an insured has the option of purchasing three other types of automobile insurance protection.

(1) Collision--This coverage pays for damages to the insured's vehicle when he is at fault in an accident and, therefore, cannot collect from the other party; it also responds when there is no other party involved in the accident, regardless of fault.

(2) Medical payments--This is additional personal injury protection. It will pay for personal injury expenses in excess of the mandated $5,000 in cases where personal injury protection coverage applies, and from the first dollar of injury expense in cases where personal injury protection coverage does not apply.

(3) Comprehensive--This is an all-risk coverage to pay for damage to the insured's vehicle from causes other than collisions, such as fire, theft, violent weather, or vandalism.

(C) The Bottom Line: CLAIMS

In an inflationary economy, with enormous increases in the cost of medical care and automobile repair, no one could expect

rates for automobile liability insurance to remain static. But, the increase in insurance costs in many parts of Florida has far outdistanced inflation in the costs of repairing bodies, be they human or mechanical.

In Dade County, for instance, where rates charged a typical good driver by a typical large insurance company have risen 121% since 1974 for mandated minimum coverage, the increased cost for the bodily injury portion of the policy has been close to 250%, accounting for almost all of the overall increase.

In almost every regional rating area in Florida since 1974, the inflation in bodily injury insurance claims has been far greater, not only than the growth of claims for all other types of coverage, but also far greater, in many instances, than the high rate of inflation in the cost of medical care, which bodily injury is designed to cover.

The inevitable question is, WHY?

The circumstances are naturally quite complex, but two factors stand out prominently:

(1) <u>An Element of Fraud</u>

Few people would steal their neighbor's property, but many will indirectly pick his pocket by cheating the insurance company out of money they do not deserve.

Fraudulent claims have become a significant factor in automobile insurance rates in Florida.

It is impossible to say precisely the toll added to insurance rates by fraudulent claims, but spot-checks of company claims' files, and probing discussions with members of the insurance, legal, and medical professions, indicate that elements of fraud exist in as many as 30% of all the automobile liability insurance claims in the State. In Southeast Florida, those estimates are closer to 40%, and sometimes even higher.

Some frauds, of course, are relatively minor, such as the claimant and the crooked body shop operator who get together to inflate a repair bill so the claimant will not have to pay the $50 or $100 deductible provided for in his policy.

Other fraudulent claims, the larger and more significant ones, inevitably involve criminal collusion between the claimant, a lawyer, and a doctor, and, all too frequently, the unwitting assistance of a timid insurance company, afraid to fight, but ever willing to simply pay a fraud inflated claim and pass the cost on to already overburdened policyholders in the form of future rate increases.

Evidence further indicates that some claims are fraudulent from the outset, that the accident and injuries were entirely staged for the sole purpose of cheating an insurance company.

In other instances, so-called "runners" are employed or paid commissions by attorneys to monitor police radios and appear on accident scenes so that they might pass out the business cards of attorneys and doctors. Despite this obvious breach of professional ethics, comment is ample from within the legal profession in Southeast Florida that the use of "runners" now borders on common practice.

The Legislature, last year, adopted a statute making auto insurance claims fraud a third degree felony (it was not a specific crime previously) and authorized a 25-person squad to investigate fraud and develop cases for criminal prosecution. This is the first such investigative team of its kind at either the state or federal level, and represents an innovative and constructive attempt to deal with this problem.

But now that the Legislature has taken this initiative toward controlling fraud, it is essential that the Department and local law enforcement officials work diligently to enforce it.[13]

It must be noted, however, that no matter how many police officers and prosecutors attempt to deal with this problem, much of the insurance fraud costing policyholders millions of

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13. The U.S. Attorney in Miami has already successfully prosecuted one group consisting of a lawyer, doctor and a "runner" for fraudulently alleging claims. The example set by this conviction and the ones which follow, will help to deter others from abusing the system.

dollars today will continue to go undetected and unpunished unless there is a fundamental change in the method of determining damages. Today, every person who has been injured in an automobile accident caused by another has an economic incentive to over utilize insurance benefits. Because the amount of damages one is able to recover for pain and suffering or mental anguish is a function of the dollar amount of the medical bills, injured parties are encouraged to see every doctor and therapist, as often as possible, whether or not treatment is needed. This over-utilization of benefits for the purpose of inflating claims is a widespread practice resulting from the incentives in the present system. It simply cannot be measured, detected, or punished except in the most blatant of cases. As a practical matter, this abuse will continue so long as the economic incentive for it continues.

(2) "Pain and Suffering"

Pain and suffering, those somewhat intangible damages for which it is difficult to assign dollar values, are exacting a larger toll from insurance in Florida than even escalating doctor and hospital bills.

Basically, bodily injury claims are divided into two categories, those called "tangible" damages, such as medical bills

and lost wages, and those called "speculative" damages, such as pain and suffering or mental anguish or loss of lifestyle.

Combined, these two types of bodily injury claims, with their attendant administrative expenses, have come to consume 60% of every premium dollar in Florida, and their rate of growth has far outstripped the rate increases for every other form of insurance coverage. An estimated 60% of the money awarded for bodily injury in automobile accidents in Florida today is for "speculative damages", with the remaining 40% sufficient to cover the actual expense of the injuries, and any financial loss the injuries might have brought about.

In fact, since attorneys' fees and other expenses of convincing a jury of the dollar value of pain and suffering consume a minimum of 30% of virtually every award, the suffering person gets far less than the total paid. That does not, however, reduce the toll of pain and suffering on the insurance consumer, nor negate the fact that this intangible has become the biggest single spiraling factor in the price of insurance.

The cost of pain and suffering claims has not been uniform throughout the State. Although the incidence of liability claims is growing rapidly everywhere, in Dade County, the rate of increase has been staggering. The source of that phenomenal increase in liability claims is interesting. The statistics indicate that the accident rate in Dade County is about typical;

higher than some areas of Florida and lower than others. Statistics indicate further, judging by the size of the claims filed for the repair of wrecked cars in Dade County, that the severity of accidents there is also about average. Yet, for some reason, accident victims in Dade County seem to be injured far more seriously and frequently[14] than accident victims in any other part of Florida. The average bodily injury claim paid in Dade County by a typical large insurance company is 100% more than the average for the rest of the State. Even the higher medical costs in Dade County cannot explain this variation.

It is worthy of note that more than 80% of all the personal injury claims in Dade County involve representation by an attorney, compared to less than 20% in the rest of the State, a four-fold difference.

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14. See also University of Michigan Journal of Law Reform, Volume 9, 1975, "No-Fault Auto Reparation in Florida: An Empirical Examination of Some of its Effects".

V. THE SITUATION IN SUMMARY

The message from consumers who need automobile insurance is clear and unmistakable.

An estimated 30% of the motorists statewide, and as many as 40% in Dade County, where the rates are most prohibitive, are willing to flout the law and risk accident liability suits which could take away any wealth they may have accumulated, rather than pay the present day price for automobile insurance. For some, it has literally come to the simple choice between food on the table or insurance on the family sedan.

The message from the insurance industry is equally clear and unmistakable--you cannot indefinitely take more money out of any system than you put in, and the companies cannot indefinitely continue to sell insurance in Florida, under current coverage and claims circumstances, without raising rates to levels even more prohibitive than they already are.

And there is also a message from the regulatory experience and reform of the past 10 years--there is no real relief in sight in the direction we are going.

- We can debate the different systems of rate regulation--the "California Plan", "file and use", "use and file", and "prior approval"--but the inescapable fact is that no regulatory system will substantially alter the claims losses which ultimately determine insurance rates.

- We can mend and patch Florida's present system of severely-modified no-fault, and with each new stitch in the law hope for a few percentage points savings in insurance rates, then watch savings turned to dust by the seemingly inexorable march of inflation.

- We can insist on maximum efficiency from the companies, but that will not materially alter the fundamental inefficiency of a system which sidetracks half of every dollar into overhead, attorneys' fees and illegitimate claims of insurance consumers.

- We can write laws requiring that people buy Cadillac-style protection against every eventuality, but events have shown that we cannot force them to buy it from their compact car budgets.

These are some of the things the Department of Insurance clearly perceives after protests from thousands of Floridians, after months of recent study, after careful projections of where we are headed with our present system.

These are things which have guided us to the conclusions and recommendations in the pages ahead.

These are the things which point beyond consensus.

PART II

The Program:

Insurance Protection

At Affordable Rates

PREFACE TO THE PROGRAM

Two considerations are etched firmly and balanced carefully on the program which is developed on the following pages.

- The basic need of everyone for protection against unforeseen loss or injury which he or she could not afford on their ordinary income or budget, recognizing that it is obviously impossible for anyone to protect against the the possibility of every adverse eventuality. This, of course, is the most fundamental principle of insurance.
- The absolute necessity of providing this basic protection at rates which everyone can afford. The whole subject, otherwise, becomes little more than an academic exercise.

The program blends these two objectives into a workable and practical solution.

This is a program which will guarantee, mandate, and enforce basic coverage and protection for every Florida motorist. Furthermore, it will do so at rates which are effectively regulated, to guard against company insolvency or excess profits, and rates which are substantially below current levels.

It is a program which promises premium reductions of at least 30% for every motorist who wants to maintain equivalent levels of coverage, and provides the means for any policyholder, depending on his or her own needs and preference for protection, to opt for a reduction in auto insurance premiums of up to 80% from currently existing levels.

PROPOSAL #1

RETROSPECTIVE RATING

The only effective way to evaluate a Florida carrier's profitability is retrospectively; the Department must know the amount of earned premiums, the amount of the actual claims paid, the amount of actual expenses, and the amount of investment income generated from Florida premiums. Although there must be a preliminary regulatory procedure to guide the Department's daily decisions, it cannot be as effective in the final analysis as a system which measures what actually happens.

The Legislature has recognized that in measuring the profitability of insurers, the Department should consider income from investments, the reasonableness of expenses, and the amount of underwriting gain or loss. A retrospective examination of these factors will permit companies to earn a reasonable profit on their Florida business but will ensure that these profits are not excessive.

Therefore, the excess profits law now in effect should be amended to provide that:

(A) At the conclusion of each year, each company selling private passenger automobile insurance in the State of Florida, shall provide a financial statement of its business

activities in Florida on a form prescribed by the Department. The Department may require the statement to be audited. The form to obtain this information is now being prepared.

(B) No company shall be permitted to earn an "excess profit" from business written in Florida. Determination of an excess profit shall be as follows:

(1) The Department shall determine, upon examining the company's financial statement the percent of return which is reasonable for that company for that prior year. In making that determination the Department shall consider the following factors:

(a) The earnings (or lack thereof) in prior years of the company;

(b) The size, financial strength and market position of the company;

(c) The risk undertaken by the company;

(d) The experience of the company in projecting its claims;

(e) The degree of competition for the business written by the company;

(f) The company's income or losses other than in Florida; and,

(g) Other factors which should be considered to foster active participation by insurers in the Florida market.

(C) Any amounts determined by the Department to be excess profits shall be returned to the company's policyholders either as cash refunds, or as credits to subsequent premiums. Also, upon a finding of excess profits, the Department may, at its discretion, order a rate reduction to prevent the excess from recurring.

(D) The present use and file law should be continued except that the statute shall be amended to provide procedures for rate review.

The above recommendations as to reporting requirements may be implemented by the Department under present statutory authority. The determination of excess profits, however, can only be made with implementing legislation.

The effect of this provision would be to ensure once and for all that no company is earning excessive profits from Florida consumers. Moreover, it will ensure that Florida policyholders will obtain the direct and immediate benefit of any changes in the law which reduce claims. The reduction of claims will not become a windfall to the companies.

PROPOSAL #2

INSOLVENCIES

The inequities resulting to policyholders from insurance companies which go bankrupt continue to be a serious problem in Florida. While the Department feels many of the problems which cause insolvencies (rapidly escalating claims cost, for example) will be brought under control by the other proposals suggested here, nonetheless, the Legislature should speak to this problem in the following ways by providing that:

(A) Each carrier doing business in Florida file with the Department an independently certified audited annual statement. Presently, Florida law does not provide for these certified statements.

(B) The Department may require an insurer to maintain a trust deposit for the protection of its policyholders of up to $1,000,000. Current Florida law provides for a deposit up to $250,000.

(C) The Department may require companies seeking admission to the State of Florida to compute certain assets at market value. Presently, Florida law does not provide for assets (bonds) to be valued at market for companies seeking admission.

(D) The Department may suspend an insurer's certificate of authority if it finds that the ratio of net premiums written to surplus exceeds four-to-one regardless of the dollar amount of surplus. Current Florida law prohibits the Department from suspending an insurer's certificate of authority if the insurer has a $5,000,000 surplus regardless of the amount of net premiums written.

These four provisions, all of which are somewhat technical in nature, will greatly strengthen the Department's hand in regulating potentially insolvent companies.

PROPOSAL #3

CLASSIFICATION SYSTEM

The multiplicity of risk classification systems currently used in Florida makes regulation and oversight of the insurance industry exceedingly difficult. Because each major company utilizes its own classification system, upon which it superimposes many other objective and subjective underwriting criteria, it is virtually impossible for the Department to know which drivers have access to the private insurance market, and which are excluded from it. It is equally difficult for new companies seeking to enter the market, or companies seeking to expand their share of the market, to determine the varying degrees of competition within any given class.

The development of a uniform statewide reporting system by the Department will go a long way toward resolving both of these unhealthy circumstances.

The Legislature should provide statutory authority for the Department to:

(A) Promulgate a uniform reporting plan to be utilized by all carriers providing private passenger automobile coverage in Florida.

(B) Require each carrier to annually report to the Department, in accordance with the categories established in the plan:

1. The number of policyholders it has written in each category by coverage;

2. The premium volume in each category by coverage; and,

3. The paid and reserved losses incurred in each category by coverage.

PROPOSAL #4

COMPULSORY INSURANCE Elimination of All Mandatory Liability Coverages

Today's motorist is encouraged to participate in an insurance risk pool to protect against the possibility of losing a suit for damages occasioned by automobile negligence. One who acquires a $10,000/$20,000 liability policy, for example, protects himself against the possible loss of $20,000 of his net worth and income in the event he causes an accident or injury. Obviously, anyone with a substantial net worth or income is well advised to purchase sufficient liability insurance to protect himself against its loss.

At the same time, a person with a negative or negligible net worth or income--a person who is judgment proof in the sense of an inability to respond to a suit for damages--has no personal financial reason to purchase liability insurance. For this person, the cost of insurance is not for his benefit because he is compelled to buy protection for assets he does not in fact have. In these cases, the requirement for insurance amounts to little more than a privilege tax to drive the public roads; a tax which is particularly onerous considering that private passenger automobile transportation is almost essential to living and working in today's world.

At the same time, the argument that one should be denied the privilege of using the public roads unless he has the financial ability to answer for his negligence must be resolved, for it is obvious that unfortunate social circumstances can result in cases where persons of modest means are injured by uninsured drivers.

The proposals offered herein respond to this very real question with a realistic answer. Every Florida motorist would be required to protect himself against the eventuality that he will be injured in an automobile accident by purchasing a minimum of $5,000 personal injury protection (PIP) coverage. This coverage would pay for his injuries regardless of fault.[15] But under these proposals, no one would be required to buy liability protection for bodily injuries or property damages caused to others.

This approach is founded on the overriding reality that everyone who drives a car on today's busy highways not only exposes himself to risk but also exposes others to a more or less equivalent risk. Every driver is both a risk taker and a risk giver. Motorists should acknowledge this fact and buy, on a first party basis, the protection they feel they need for themselves and their families.

By requiring every driver to pay for liability and personal insurance protection, we have forced a substantial percentage of

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15. The same as is currently required.

the public out of the insurance system. We have, therefore, left these persons uninsured both as risk takers and as risk givers. The repeal of mandatory liability insurance and the resultant premium reductions, will permit a reentry into the insurance system of the people its oppressive costs have, up to this point, driven out. It is, after all, the rapidly escalating rates for compulsory bodily injury liability coverage that have driven them out of the insurance system in the first place; the result being that, the driver and passengers of the motor vehicles which are uninsured today--approximately 1,400,000--do not even have the minimum $5,000 personal injury protection for themselves. A return to affordable premiums will allow these uninsured drivers to return to the system and will assure that the truly poor among them do not become wards of the State as a result of auto accidents.

The Legislature should make all liability coverages optional.

PROPOSAL #5

SPECULATIVE DAMAGES Elimination of Speculative Damages in Automobile Negligence Cases

It can be argued that all drivers are potential beneficiaries of the present system. Although few of us desire to be injured in an automobile accident, if by chance we are, if by chance we are not "at fault", and, if by chance, the person who caused the accident is either wealthy or has a large insurance policy, we stand not only to be compensated for all of our medical expenses and lost wages, but also to be compensated, in some arbitrary and frequently substantial amount, for intangibles such as pain, suffering, and anguish. The system today does more than compensate us for a loss in terms of actual out-of-pocket damages.

The cost of providing that insurance for speculative damages is more than many are able and willing to pay, as illustrated by the fact that an estimated 1,400,000 Florida drivers have been driven from the market, and have no insurance protection whatsoever.

It is estimated, as noted earlier, that of the total claims paid for bodily injury liability, which amounts to 51% of total premiums paid for compulsory coverages, well over half is utilized to pay for the speculative categories of damages such as pain and

suffering.[16] It is the Department's belief that the overwhelming majority of Floridians would be willing to exchange the right to collect for speculative damages in exchange for minimum premium reductions of 30%.

It would be less than honest to suggest that premium reductions can be realized without some reduction in benefits; in ten years of trying, no legislative magicians have accomplished that result, despite many sincere attempts. But it is equally dishonest and equally unfair to force the public to pay for benefits which, in many cases, they neither need, want, nor can afford.

The legislative elimination of speculative damages as an element of recovery in automobile negligence will reduce bodily injury liability insurance premiums by 55%. It will reduce the total cost of presently mandated coverage by at least 30%.

Persons injured in an accident through the fault of another will continue to have the right to be made whole for all tangible, monetary damages suffered. All medical expenses, out-of-pocket expenses, lost wages, earning capacity, and lost benefits will be recoverable. What will not be recoverable are those speculative damages which have no dollar value.

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16. This 51% becomes 60% if uninsured motorist premium dollars are included, and over half of all UM claims are comprised of speculative damages.

Those who are guilty of gross negligence or callous indifference will still be liable for punitive damages, and, of course, still subject to the laws of Florida which regulate the right-to-drive.

The Legislature should eliminate the recovery of speculative damages in automobile negligence cases.[17]

With the elimination of speculative damages, the first $5,000 of damages collectible against one's own PIP carrier will be the same as those collectible against a wrongdoer. Therefore, there

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17. In the past, the Florida Legislature has adopted similar proposals to limit the tort system. For example, the No-Fault Worker's Compensation Law in the 1950's; the revision of the Wrongful Death Act in 1971; and no-fault automobile insurance in 1971. In each of these instances, the state organization of personal injury attorneys objected to the changes on the theory that it was unconstitutional to limit tort "rights." In each of these instances, the Florida Supreme Court rejected the constitutional argument (with the single exception of the No-Fault Law as applied to property damage claims). See Lasky v. State Farm Insurance Company, 296, So. 2d 9 (Fla. 1974); White v. Clayton, 323, So. 2d 573 (Fla. 1975); Martin v. United Security Services, Inc., 314, So. 2d 765 (Fla. 1975); Basset v. Merlin, 335, So. 2d 273 (Fla. 1976); Hughes v. B.F. Goodrich Co., 11 So. 2d 313 (Fla. 1943). It is not unreasonable to assume that the personal injury attorneys will urge the unconstitutionality of this proposal notwithstanding the fact that 1.4 million drivers are uninsured and notwithstanding the fact that the huge cost of the system benefits only a relative few. Although this question can only be ultimately answered by the Courts, the Department has made an exhaustive study of the legal aspects of the proposal to determine its constitutional validity. The conclusion in that study is that the proposal is clearly within the constitutional authority of the Legislature.

PROPOSAL #7

ATTORNEYS' FEES

At the present time, a party bringing suit for damages resulting from an automobile accident has no statutory right to be compensated for his attorneys' fees. In most cases, attorneys have represented claimants on a contingent fee basis, taking from 30% to 50% of the gross amount recovered. In practice, the source of these fees is the part of the award given for the speculative elements of damages. Rarely, does a successful claimant have to pay fees from money awarded for medical expenses or lost wages.

Therefore, if the Legislature prohibits recovery of speculative damages a claimant would either have to pay attorneys' fees from his own pocket, or from those sums awarded for medical expenses or lost wages. Such a result would not be equitable.

Thus, a party bringing a claim where speculative damages are not recoverable should be allowed to be compensated for the attorneys' fees necessary to protect his interests. But at the same time, the award of fees must not become an incentive to litigate, or a bar to swift settlement of claims. The method of determining the right to fees and the amount of fees, therefore, should encourage both the claimant and the defendant to arrive at a fair settlement, while at the same time fully protecting the interests of the claimant.

In establishing the statutory right of injured parties to collect attorneys' fees, the Legislature should provide as follows:

(A) Prior to or at the time of bringing a civil suit for damages, a claimant must notify the alleged wrongdoer of his intention to bring suit. The notice must be sworn to by the claimant and must include a statement of the basis of liability, the damages caused, and the amount thereof. If the notice includes claims for past and future medical expenses, copies of medical records, invoices for services, and medical evaluations shall be provided with the notice, together with permission of the claimant for the defendant to obtain all medical records, and a summary of all preexisting conditions and accidents. If the notice includes a claim for past and future lost wages, the notice must include a detailed statement of wages lost prior to the notice and those expected in the future. All other claims for damages should be specifically stated.

(B) The defendant or his carrier may require a claimant to submit a physical examination by a physician designated by the defendant.

(C) Within sixty (60) days of receiving the notice, the defendant or his carrier may offer a settlement of the claim. The offer, if made, must include a sum which in the judgment of the defendant or his carrier, is sufficient to compensate the claimant

for his damage and should include sums which in the judgment of the defendant are sufficient to compensate the claimant for those professional fees necessary to file the claim and review the sufficiency of the offer of settlement.

(D) If the claimant accepts the offer for damages, and rejects the offer of attorneys' fees, the amount of fees to be awarded would be determined by judicial proceeding.

(E) The claimant may reject the offer entirely and bring suit for the damage alleged. The offer of settlement would be inadmissible as evidence in the trial for damages.

(F) If the suit results in an award of damages, the Trial Court will, in post judgment proceedings, determine if the claimant is entitled to an award of reasonable attorneys' fees. If the amount awarded the claimant by trial is equal to or less than the offer of settlement, then the claimant shall not be entitled to an award of fees and costs. If the amount awarded is greater than the offer of settlement, then the claimant shall be entitled to an award of fees and costs, which amount would be established by the Court. In no event, however, shall those fees awarded exceed 50% of the difference between the offer of settlement and the amount awarded, unless the offer is shown to have been in bad faith.

(G) Attorneys shall be prohibited from accepting fees in excess of those fees awarded by the Court.

The foregoing recommendation for the award of attorneys' fees ensures that every person will have a "key to the courthouse", while at the same time, providing strong economic incentives for both the claimant and the defendant to arrive quickly at fair and reasonable settlements. This system will ensure that every person will have the benefit of representation, but that the economic incentives of that representation urge an immediate and reasonable resolution of the claim.

PROPOSAL #8

FRAUD

While it is obviously too early to fully assess the effectiveness of the Department of Insurance's new automobile fraud enforcement program, a number of legislative needs are apparent to ensure its potential.

The Department's experience under the fraud statute adopted in 1976 has prompted a request for three legislative initiatives this year.

(A) Subpoena powers for the Department's Division of Fraudulent Claims. Without this investigative tool, particularly when working in the complex and shadowy area of white-collar crime, the effectiveness of investigators is severely compromised.

(B) Additional and specific criminal penalties to cover "runners" and attorneys who employ them to solicit business which frequently results in fraudulent claims. Legal ethics currently prohibit the use of "runners", but this has proved to be no significant deterrent for the more enterprising members of the Bar. If criminal prosecution could be brought against "runners" and the attorneys who employ them, a vital link in the chain of fraudulent claim activity could be broken. The Department recommends that the act of using or engaging in "running" be considered a third degree felony under Florida law.

(C) Supplemental appropriations for special support of the offices of State Attorneys working on the prosecution of insurance claims fraud. Because most or all of these offices already carry enormous workloads, and because the prosecution of insurance fraud involves a certain expertise, the Department feels it is important to the ultimate success of the program to expend the relatively nominal sums necessary to assure that the prosecutor's offices have the staff, time and technical background to effectively conclude the cases which its investigators are building.

PROPOSAL #9

ENFORCEMENT OF COMPULSORY PERSONAL INJURY PROTECTION (PIP)

To enforce the philosophy that each private passenger automobile owner be financially responsible to himself, there is an obvious need for amendment of procedures which presently permit an estimated 1.4 million drivers to evade the compulsory insurance laws.

In this regard, the Department of Highway Safety and Motor Vehicles already has recommended a program which we feel would substantially correct the existing enforcement deficiencies.

Essentially, this program would require every company writing auto insurance in Florida to report regularly to the Department of Highway Safety and Motor Vehicles all business, including both new policies issued and policies that are discontinued. This information would be computerized and would provide the Department with the means to quickly identify any driver who lacks the legal minimum insurance coverage.

We recommend that the Legislature provide the Department of Highway Safety and Motor Vehicles with the necessary means to implement its program.

We further recommend that Chapters 324, 627.733, and 627.734, Florida Statutes, be amended to define "financial responsibility" to mean the compulsory $5,000 PIP coverage for all vehicles which currently come under the purview of the no-fault law.

PROPOSAL #10

RATE ROLLBACKS AND FREEZES

As a consequence of the elimination of the right of recovery for speculative damages by tort claimants, and the other modifications in these proposals, there will be an immediate and very substantial reduction in claims against policies written after the effective date of the law. To ensure that this reduction in claims does not become a windfall profit to the insurance companies, a premium reduction should be statutorily mandated.

The information currently available suggests that approximately 60%[16] of all bodily injury liability claims are for the speculative damages. The elimination of these damages will result in a substantial reduction of claims. At the same time, allowing successful plaintiffs to obtain awards of attorneys' fees will offset this reduction to some modest extent. Utilizing the procedure recommended in Proposal #7 for determining fees, however, will ensure that those fees do not become excessive. In fact, an insurer making a competent and good faith effort at settling claims will be able to keep exposure to fees to an absolute minimum.

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16. Including Uninsured Motorist's Claims.

At this juncture the Department, and the Legislature can estimate what the overall indicated premium reduction should be as a result of these changes. When some actual claims experience has been developed, there may well have to be an adjustment of rates to compensate for deviations from that estimate. With the information presently available, the Department estimates that a 55% rate reduction in bodily injury liability is indicated. The Department suggests that the Legislature statutorily mandate a rollback in this amount, and freeze these rates for six months. A mandated rollback and freeze, in similar amounts and for similar duration, should be applied to uninsured motorist coverage.

To the extent that better regulation of excess profits, and, to the extent that the economic incentives for running up medical costs have been removed from the system, the cost of PIP coverages will also be lower, but the amount of the decrease cannot be projected with accuracy. It could be as little as 5% of premiums or as great as 20%. The Department suggests that no statutory rate rollback be instituted for PIP coverage until it can more accurately determine what the true effect of the change will be.

It is also difficult to measure the effect these proposals will have on the number and costs of property damage liability claims.

The Department feels that there is extensive fraud involved in the automobile repairs which are necessitated by accidents, but cannot say for certain what this amounts to in terms of real dollar costs. Nor can anyone say, with absolute certainty, that the proposals advanced here will stop auto repair fraud, or even slow it down materially in the near future. The Department does feel, however, that given strong support from the Legislature, from prosecutors at both the federal and state level, from the news media, and, most of all, from the people themselves, great strides can be taken toward stopping at least the organized auto repair fraud rings. A candid evaluation of the situation, an evaluation free of false hope, has a hard time reaching beyond this promise. Thus, at this time, no rate rollback on property damage liability insurance is indicated.

AFTERWORD

No one knows better than the individual consumer what he can afford, a Rolls Royce or a Volkswagen, a 10-year old sedan or a new luxury limousine, insurance protection for every eventuality, or just the absolute necessities.

In the past four months, since taking office as Insurance Commissioner of Florida, I have heard directly from no less than 18,000 Floridians who have told me in no uncertain terms that they can no longer afford automobile insurance at the presently impossible rates.

The argument no doubt will be put forward that they must afford it, that to do less would be a breach of social responsibility to themselves and to others.

I appreciate that argument.

But that argument becomes purely academic in what has become an absolutely impossible economic situation for so many.

The inescapable conclusion is that literally hundreds of thousands of Floridians simply cannot afford insurance at present premium levels. That conclusion is dramatically buttressed by the distressing fact that 30% of the drivers in Florida (40% in Dade County) would defy the law and gamble everything on the chance of an accident rather than pay the price currently demanded of them for automobile liability insurance.

The fact is that a milieu of circumstances has effectively denied insurance protection to an enormous percentage of Floridians.

The program developed on these pages will finally restore that right.

- By eliminating speculative damages, it reduces the economic risk of driving, and thus insurance rates for protection equivalent to that mandated today, by approximately 30%.
- By reducing mandated coverage to $5,000 personal injury protection, it gives every driver the right to exchange reduced benefits for lower premiums with optional savings of up to 80%. At the same time, it guarantees him the right to buy as much coverage as his income and budget can tolerate.
- By providing an enforcement mechanism, it guarantees that every Florida driver will have at least minimum protection, at affordable rates.
- By substantially revising the regulatory system, it gives major new assurance that rates for all types of automobile insurance coverage will be fair, and based on the actual risk assumed in the coverage.
- By creating new investigative and prosecuting tools, it moves us closer to eliminating the toll taken by fraudulent claims.

In short, it effectively resolves what has become the most crushing economic issue faced today by untold hundreds of thousands of Floridians--the necessity for, and the prohibitive cost of automobile liability insurance.

The people of Florida can afford no less.

BILL GUNTER