January 1996

Consumer Choice in the North Carolina Auto Insurance Market

Jeffrey O'Connell
Stephen Carroll
Michael Horowitz
Allan Abrahamse
Bradley Miliauskas

Follow this and additional works at: http://scholarship.law.campbell.edu/clr
Part of the Insurance Law Commons, and the Torts Commons

Recommended Citation

This Article is brought to you for free and open access by Scholarly Repository @ Campbell University School of Law. It has been accepted for inclusion in Campbell Law Review by an authorized administrator of Scholarly Repository @ Campbell University School of Law.
CONSUMER CHOICE IN THE NORTH CAROLINA AUTO INSURANCE MARKET

JEFFREY O’CONNELL, STEPHEN CARROLL, MICHAEL HOROWITZ, ALLAN ABRAHAMSE, AND BRADLEY MILIAUSKAS

I. THE PRESENT SITUATION

Traditional tort liability for personal injury from auto accidents has long been criticized on the grounds that its costs are too high and that any compensation therefrom is inefficient, unfair, and dilatory. But no-fault laws themselves are criticized as

1. This article is excerpted, updated, and adapted for precise application to the state of North Carolina from three articles of more general application by the same authors (with the addition here of Bradley Miliauskas). See Jeffrey O’Connell et al., Consumer Choice in the Auto Insurance Market, 52 U. Md. L. Rev. 1016 (1993) [hereinafter “Maryland One”]; Jeffrey O’Connell et al., The Costs of Consumer Choice for Auto Insurance in States Without No-Fault Insurance, 54 U. Md. L. Rev. 281 (1995) (written by the authors of Maryland One and Daniel Kaiser) [hereinafter “Maryland Two”]; Jeffrey O’Connell et al., The Comparative Costs of Allowing Consumer Choice for Auto Insurance in All Fifty States, 55 U. Md. L. Rev. 160 (1996) (written by the authors of Maryland One and Paul Jamieson) [hereinafter “Maryland Three”]. For an especially helpful description of the current situation with reference to auto insurance in North Carolina, see ROBERT H. JOOST, AUTOMOBILE INSURANCE AND NO-FAULT LAW 4:25 (2d ed. 1992).

† Jeffrey O’Connell; Samuel H. McCoy, II, University of Virginia; B.A., 1951, Dartmouth College; J.D., 1954, Harvard University.

Stephen Carroll; Senior Economist, RAND; B.S., 1962, Illinois Institute of Technology; Ph.D., 1968, Johns Hopkins University.

Michael Horowitz; Senior Fellow and Director, Judicial Studies Program, Hudson Institute; B.A., 1960, City University of New York; J.D., 1964, Yale University.

Allan Abrahamse; Mathematician, RAND; B.S., 1961, Ph.D., 1967, University of Michigan.

Bradley Miliauskas; B.A., 1992, College of William and Mary; J.D., 1996, University of Virginia.


For more recent data supporting the various criticisms of traditional tort liability, see generally INSURANCE RESEARCH COUNCIL, AUTO INJURIES: CLAIMING BEHAVIOR AND ITS IMPACT ON INSURANCE COSTS (1994).

Presidential candidate Robert Dole, in the 1996 election year, made auto insurance reform an issue in the election when he proposed the choice plan
infringing on fundamental legal rights to be paid not only economic but noneconomic damages (mostly for pain and suffering) and for failing to suppress auto insurance costs.\textsuperscript{4} The latter criticism is countered with the argument that no-fault laws' financial shortcomings are due to preserving too many tort claims (above defined thresholds of either dollar losses or verbally described severity of injury) payable in addition to no-fault claims.\textsuperscript{5}

Is there a compensation scheme that can free us from the failures of tort law and at the same time mend the shortcomings of current no-fault laws?

In 1991, the RAND Corporation, which takes a neutral position in the debate about auto compensation plans, published a study of them.\textsuperscript{6} Terming insurance payable for economic loss without regard to fault personal injury protection (PIP) insurance,\textsuperscript{7} RAND studied the following issues:

- (1) The effect of PIP reform on (a) the costs of compensation; (b) transaction costs (mainly lawyers' fees and allied costs of processing claims); (c) "the adequacy and equity" of compensation; and finally (d) promptitude of compensation;\textsuperscript{8}
- (2) The effect of variations in the design of PIP reforms on items (a)-(d) above and;\textsuperscript{9}
- (3) Variations in different states.\textsuperscript{10}

The RAND study came to the following conclusions:

\textsuperscript{4} CARROLL & KAKALIK, supra note 2, at vii; O'CONNELL & KELLY, supra note 2, at 118.

\textsuperscript{5} O'CONNELL & KELLY, supra note 2, at 120.

\textsuperscript{6} See generally CARROLL & KAKALIK, supra note 2.

\textsuperscript{7} Maryland One, supra note 1, at 1017 n.7.

\textsuperscript{8} CARROLL & KAKALIK, supra note 2, at vii.

\textsuperscript{9} Id.

\textsuperscript{10} Id.
A PIP system can produce either substantial savings compared to the fault-based system or can increase costs, depending on the plan's design and variables in different states that affect auto insurance costs—variables such as the size of PIP benefits, the nature and extent of any barrier to tort claims for noneconomic damages, the litigiousness of the state's populace, etc.;

- PIP plans decrease transaction costs; 12
- Compensation under PIP reforms aligns compensation with economic losses (mainly expenses for medical costs and wage loss) more closely than tort law; 13
- Present PIP reforms wipe out compensation for non-economic losses—mainly for pain and suffering—but only in cases of less serious injuries; and 14
- Compensation is paid more promptly from PIP coverage. 15

In choosing between traditional tort law and PIP reforms, policymakers must determine "whether to cut costs or preserve or increase compensation for injured people, and what balance to seek between compensation for economic and non-economic losses." 16

The people of North Carolina, like all Americans, are living in a time of rapidly rising auto insurance premiums. Bear in mind that, in the U.S. between 1980 and 1992, insured American motorists saw average auto premiums increase 150% in real dollars, 17 and that half of Americans considered paying automobile insurance a problem, with nearly 20% calling it a major problem. 18

A good measure of an underlying cause for the rise in auto insurance premiums is the change in recent years in the ratio of bodily injury (BI) to property-damage (PD) claims, e.g., the BI-PD ratio. 19 Nationally, that ratio has risen steadily—in North Carolina it rose from 25 BI claims per 100 PD claims in 1980 to 34 per

11. Id.
12. Id.
13. Id.
14. Id.
15. Id.
16. Id.
19. Maryland One, supra note 1, at 1019-20.
100 in 1993. These recent increases in frequency of claims for personal injury are all the more dramatic, having occurred while many correlative indices have decreased. For example, the rate nationwide of actual personal injuries from auto accidents has been sharply declining, as has the number of property damage claims. Recent technological advances and public policy initiatives have decreased both the frequency and severity of automobile accidents — for example (1) safer cars containing collapsible steering wheels, padded dashboards, energy-absorbing fronts, and air bags; (2) massive education and law enforcement campaigns against drunk driving; (3) increasing urbanization, with resultant lower rates of speed which diminish injury severity; and (4) use of seat belts and child-restraint devices. According to a study by the Insurance Research Council, a majority of the additional automobile personal injury claims made in the United States during the period 1987 to 1992 were for soft-tissue injuries (e.g., sprains and strains to the neck and back), which, not coincidentally, are difficult to diagnose objectively; yet during the same period, there was a clear decline in the number of automobile injuries that could be objectively diagnosed (e.g., broken bones), as well as a decline in hospital admissions and disabilities caused by automobile accidents. As a further corroboration of the anomaly of the rise in auto bodily injury claims during the 1980s, fatality frequency dropped by 38%, from 3.35 per 100 million miles driven in 1980 to 2.07 in 1990. The numerous decreases occurring in closely related events make the dramatic contemporaneous increase in personal injury claim frequency all the more anomalous.


22. INSURANCE RESEARCH COUNCIL, AUTO INJURY CLAIM BEHAVIOR AND ITS IMPACT ON INSURANCE COSTS 21 (1994).

23. Id. at 23 (Fig. 3-9).

It should also be noted that RAND has done a further study indicating the difficulty inherent in allowing tort claims for pain and suffering damages. Because such damages are generally calculated as a multiple of medical bills, there is an incentive on the part of an injured claimant to pad those bills. Thus for every dollar incurred in medical bills, an injured party can receive two or three (or more) times as much compensation in pain and suffering damages. Insurance padding is not only lucrative for claimants, who receive several times their economic loss, but for health care providers (including, and perhaps especially, chiropractors) who receive additional business, as well as for lawyers who receive their contingent fees out of the pain and suffering component.

In this new RAND study a distinction is made between “hard” injuries that are objectively verifiable — for example, the loss of a limb or a fracture detected by an x-ray — as opposed to “soft” injuries such as sprains and strains that are not so objectively verifiable. Soft injuries thus present an incentive to exaggerate their existence or severity. More than in other states, no-fault auto insurance laws in effect in New York and Michigan have largely taken the profit out of unnecessary medical bills in smaller cases by virtue of their relatively high thresholds, below which claims for pain and suffering are barred. RAND found that in those two states there are seven soft injury claims for every ten hard ones. In California, a state — like North Carolina — without a no-fault law and where the tort system is therefore unimpeded by any barrier to tort claims, there are twenty-five soft injury claims for every ten hard ones.

The estimated costs of excess claiming nationwide have been enormous. Padding of soft injury claims has caused medical costs to be 59% higher than they otherwise would be, and overall excess medical costs (for both hard injury and soft injury claims) to be about 35-42% higher. As a result, the cost of excess health care consumption in 1993 was $4 billion. Additional insurer costs

26. Id. at 5-6.
29. Maryland Three, supra note 1, at 166 n.33.
30. Carroll et al., supra note 1, at 13.
31. Id.
32. Carroll et al., supra note 25, at 22.
33. Id.
due to excess claims were $9-13 billion.\textsuperscript{34} If premiums are assumed to vary in proportion to costs, then excess claiming added $13-17 billion to total premiums in 1994, or $100-130 per individual policy.\textsuperscript{35}

But the key element — overlooked by the many who urge a New York-type high threshold as the model for no-fault laws — is that even in New York, claims for pain and suffering above its high threshold are hugely expensive, contributing disproportionately to auto insurance costs. As pointed out above,\textsuperscript{36} the BI-PD ratio has risen in North Carolina — from 25 per 100 in 1980 to 34 per 100 by 1993.\textsuperscript{37} This was in contrast to New York, where a high threshold barring pain and suffering claims caused the BI-PD ratio to remain very constant at about 11 per 100 during the time period 1980 to 1989.\textsuperscript{38} In connection with this, however, illustrating the ill effects of BI tort claims, even New York's $50,000 in no-fault benefits contributed only 36% of the total pure premiums for a category of claims including both BI tort claims and for no-fault (PIP) benefits. In other words, the relatively few tort claims preserved over New York's high threshold contribute disproportionately (over 64%) to total personal injury costs (including both PIP and BI coverages).\textsuperscript{39}

So even New York's law is by no means an optimal model. Whereas New York has long dealt relatively effectively with higher costs for smaller tort claims, it has also long dealt ineffectively with higher costs for larger tort claims. Arguably the only way to deal with both is to eliminate claims for non economic damages in cases both large and small. (RAND estimates that on a nationwide basis almost half of the bodily injury premiums are used to pay for non economic losses in states like New York which have high PIP benefits coupled with high thresholds.)\textsuperscript{40} Furthermore, even in New York the possibility of suing in tort above its relatively high threshold is being exploited by increasingly experienced plaintiffs' counsel. This activity has led to a recent rise in New York's BI-PD ratio of almost 50% from 1989 to 1993, \textit{i.e.},

\begin{itemize}
  \item \textsuperscript{34} \textit{Id.}
  \item \textsuperscript{35} \textit{Id.}
  \item \textsuperscript{36} \textit{See supra} note 20 and accompanying text.
  \item \textsuperscript{37} \textit{See supra} note 20.
  \item \textsuperscript{38} \textit{Id.} at tbl. A-34.
  \item \textsuperscript{39} \textit{See Maryland One, supra} note 1, at 1019-20.
  \item \textsuperscript{40} \textit{See id.}
\end{itemize}
from 11 to 16 per 100. Thus, simply reducing the number of tort claims for non economic loss over a high threshold fails to net anything like optimal savings.

II. THE CHOICE SYSTEM

The auto insurance reform analyzed here would replace no-fault proposals, burdened as they would be with expensive, and even subsidized, claims for non economic loss along with automatic payment for economic loss. This system would give North Carolina motorists the option of foregoing both large and small claims for noneconomic loss, without forcing them to do so. Motorists would thus be given the choice of purchasing PIP coverage at the financial responsibility level required by North Carolina law for liability for personal injury ($25,000). Persons choosing PIP coverage ("PIP insureds") could neither sue nor be sued for pain and suffering in accidents with either those who elect PIP or otherwise. But such PIP insureds could claim in tort against other motorists, whether covered by PIP or otherwise, for economic loss in excess of their PIP coverage. As to accidents between PIP insureds and those electing to stay under the tort system ("tort insureds"), tort insureds would make a claim against their own insurer for both economic and non economic loss (under coverage termed "tort maintenance coverage"), just as they do today under uninsured motorist coverage. Claims for economic loss in excess of one's own tort maintenance coverage would be allowed against PIP insureds. In accidents between two tort insureds, the current common-law system would apply without

41. Trends, supra note 20, tbl. A-34.
42. Maryland Two, supra note 1, at 282 & n.7.
44. See Maryland Three, supra note 1, at 218.
45. Note that just as one can opt to buy more liability insurance than financial responsibility limits mandate, so one could also opt to buy more PIP coverage than financial responsibility limits mandate.
46. Maryland One, supra note 1, at 1026 & n.48. Uninsured motorist coverage (UM) pays up to the limit specified in the policy when the insured or others in the insured vehicle are injured by uninsured or hit-and-run motorists. Thus the insured's own insurer pays what the injured person is eligible to recover in tort from the other uninsured-at-fault motorist. Underinsured motorist coverage (UIM) similarly pays the insured and other occupants of the insured vehicle under UIM coverage when the at-fault motorist has liability coverage but with lower limits than those carried by the insured.
change. Motorists who are illegally uninsured would only be able to claim for economic (not noneconomic) loss against PIP insureds or tort insureds. The following table summarizes these aspects of the choice plan.

<table>
<thead>
<tr>
<th>Facing own insurance company</th>
<th>Facing another motorist who is a PIP insured</th>
<th>Facing another motorist who is a tort insured</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIP insured</td>
<td>May claim without regard to fault for economic loss under own PIP coverage</td>
<td>May claim in tort for economic loss in excess of own PIP coverage</td>
</tr>
<tr>
<td></td>
<td>May be claimed against in tort for economic loss in excess of other motorist's PIP coverage</td>
<td>May be claimed against in tort for economic loss in excess of other motorist's tort maintenance coverage</td>
</tr>
<tr>
<td>Tort insured</td>
<td>May claim in tort for economic and non economic loss under own tort maintenance coverage</td>
<td>May claim in tort for economic loss in excess of own tort maintenance coverage</td>
</tr>
<tr>
<td></td>
<td>May be claimed against in tort for economic loss in excess of other motorist's PIP coverage</td>
<td>May be claimed against in tort for economic loss and non economic loss</td>
</tr>
</tbody>
</table>

Some further details:\[^47^] PIP coverage would be in excess of all collateral sources\[^48^] and payable periodically. When claims for economic loss in excess of either PIP or tort maintenance coverage are pursued, a reasonable attorney's fee in addition to economic loss would be recoverable.\[^49^] No change would be made in the law applicable to property damage.\[^50^] If an injury was caused by a tortfeasor's intent or by alcohol or drug abuse, there would be no restriction on anyone's right to sue in tort.\[^51^]

[^47^]: See generally id. at 1045-53, for the terms of a model federal draft bill implementing this choice proposal. See also Maryland Two, supra note 1, and Maryland Three, supra note 1, at 207-13 (for the terms of model state draft bills implementing the choice proposal).

[^48^]: But see infra note 70 and accompanying text.

[^49^]: The recovery of attorney's fees is necessary because attorney's fees typically are paid out of damage awards for pain and suffering; thus, a regime not paying for pain and suffering calls for an alternate source of payment. Pain and suffering damages are "a rough measure of the plaintiff's attorney's fees." Wolfram, supra note 27, at 528 n.21.

[^50^]: For the rationale for excluding property damage from PIP coverage see Robert E. Keeton & Jeffrey O'Connell, Basic Protection for the Traffic Victim 280-81 (1965).

[^51^]: Maryland Two, supra note 1, at 283 & n.12.
III. ESTIMATING THE EFFECTS OF THE CHOICE PLAN

A. General Approach

We first estimate what auto insurers would have to charge the average private passenger car insured motorist in North Carolina to recover the costs incurred in compensating accident victims under all coverages and limits under the status quo. We also estimate separately the costs of those buying only mandatory coverages and limits.\(^{52}\) We then develop corresponding estimates for tort insureds who elect to retain the status quo and for PIP insureds who switch to the new plan allowed by choice. Next, we compare these estimates to determine how the adoption of the plan allowing choice would affect the costs of auto insurance, depending on whether motorists become PIP insureds or tort insureds, and whether they buy more than mandatory coverages.

Under the status quo, North Carolina motorists can purchase several different personal injury coverages at various limits — Bodily Injury (BI),\(^{53}\) Uninsured Motorist (UM), including Underinsured Motorist (UIM)\(^{54}\), and Medical Payments (MedPay).\(^{55}\) Accordingly, insured motorists must bear the sum of the compensation costs of any of those coverages at the limits they buy. We estimate the compensation cost of the status quo to the average insured motorist by taking the sum of what insurers pay out plus the associated transactions costs, under all the above applicable coverages and limits, divided by the total number of insured motorists. As indicated, we also compute the average costs for those buying only mandatory coverages. Motorists who are uninsured, of course, bear none of the costs of auto insurance.

Under the choice plan, motorists may remain in North Carolina's current system (tort insureds), elect the new system (PIP insureds), or be illegally uninsured.\(^{56}\) Tort insureds will purchase tort maintenance coverage, in addition to BI coverage to cover tort claims brought against them by others for both economic and

---

52. See Maryland Three, supra note 1, at 169 n.53.
53. Bodily Injury means tort liability coverage for personal injury, thereby excluding property damage. See also infra note 57 and accompanying text.
54. See supra note 46.
55. Medical Payments coverage is a supplemental coverage payable by one's own insurance company for medical expenses without regard to fault, often at low limits, e.g., $500-$1,000.
56. See Maryland Three, supra note 1, at 207-13 (for a proposal allowing motorists to be legally uninsured at the price of losing any right to claim for non economic loss).
noneconomic losses of tort insureds and for economic losses in excess of PIP policies, and may also purchase MedPay or UM. Following the pattern set forth in the foregoing paragraph, we estimate the average tort insured's compensation costs under the plan allowing choice as the sum of what auto insurers pay injured people and the associated transaction costs under all coverages and limits on behalf of tort insureds, divided by the total number of tort insureds. Note that the average tort insured's compensation costs include the costs insurers incur on one's behalf in providing compensation under personal injury tort liability type coverages — BI, UM, and tort maintenance — plus any applicable MedPay coverage. 57

Motorists who become PIP insureds under the plan allowing choice purchase not only PIP but may also (although not required to) purchase BI to cover liability claims brought against them by others for economic losses in excess of either PIP or tort maintenance policy limits. 58 Following the pattern set forth above, we estimate the average PIP insured's compensation costs as the sum of the costs auto insurers incur on behalf of such motorists for PIP and, if purchased, BI coverage, assuming PIP insureds will not need UM or MedPay, 59 divided by the number of insureds. As was the case under the status quo, people who go uninsured under the plan allowing choice bear none of the costs of compensating auto accident victims. 60

57. All of these coverages, per terminology adopted by the National Association of Insurance Commissioners, are subsumed under the term "Liability," although technically speaking MedPay coverage is not liability-like coverage. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AVERAGE EXPENDITURES & PREMIUMS IN 1994, at page entitled "Technical Notes" (Nov. 1995). See also infra Table 2, Column 3.

58. Although no one is required to buy BI liability insurance, those with assets to protect can be expected to do so.

59. PIP insureds are by definition covered for their medical (as well as wage) loss, and therefore will presumably have no need for MedPay. STEPHEN J. CARROLL ET AL., RAND INSTITUTE FOR CIVIL JUSTICE, NO-FAULT APPROACHES TO COMPENSATING PEOPLE INJURED IN AUTOMOBILE ACCIDENTS vii-ix (1991). As for UM, PIP insured are guaranteed payments for economic loss whether or not the other driver is insured. Id. at vii.

B. The Results

The effects of the choice plan on premiums charged particular drivers will vary with such factors as the extent of coverage, policy limits, the insurer, the type of car and mileage driven, as well as their location within the state. Thus our estimates are only meant to indicate the general nature of cost effects averaged over all drivers, keeping such variables in mind. Furthermore, our results are based on (1) only private passenger (not commercial) vehicles, (2) claims experience in 1987, and (3) premium levels in effect in 1994.

With those caveats in mind, the following tables present our findings.

### Table 1

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total premium savings for all PIP insureds (%)*</td>
<td>Total premium savings for PIP insureds with low incomes and coverages (%)*</td>
<td>Total available savings ($ millions)**</td>
</tr>
<tr>
<td>31.3</td>
<td>46.5</td>
<td>$825</td>
</tr>
</tbody>
</table>

61. Note that the data in this article is largely based on auto insurance claims data collected by the Insurance Research Council in 1987. See generally ALL-INDUSTRY RESEARCH COUNCIL (AIRAC) [now INSURANCE RESEARCH COUNCIL], COMPENSATION FOR AUTOMOBILE INJURIES IN THE UNITED STATES (1985) [hereinafter COMPENSATION] and 1994 premium volume. But for a further update, see infra note 66 and accompanying text.

62. Although this part of our analysis examines only private passenger auto insurance, adoption of the choice plan would likely have an even much more favorable impact on insurance costs for commercial vehicles because the liability exposure for commercial vehicles (especially but not limited to large ones) is even greater than that for private passenger vehicles. More importantly, traffic victims in commercial vehicles are often already covered by workers' compensation that employers of such victims will be liable under PIP only for economic losses in excess of workers' compensation. See supra note 48 and accompanying text.

63. See generally COMPENSATION, supra note 61.

64. Id.

65. The data within, and the format of, Tables 1, 2, and 3 are drawn from more detailed versions of the same tables, coupled with tree charts, found in Maryland Three, supra note 1, at 181-206. the reader may replicate the method used by RAND to compute this data for North Carolina or any other state by referring to Maryland Three.
As can be seen, savings for PIP insureds in North Carolina, i.e., those covered by PIP combined with abolition of both large and small pain and suffering claims by and against them, turn out to be very substantial.

Table 1 shows changes in the costs in North Carolina of auto insurance as a result of the choice plan. Column 1 shows the percentage savings in total premiums (including not only for personal injury but property damage) for all PIP insureds, including both those who buy only mandatory coverage and those who buy more than mandatory coverage — which savings equal 31.3%. Column 2 shows percentage savings in total premiums for PIP insureds who buy only mandatory coverage (almost always those with lower incomes) — which savings equal 46.5%. As indicated above, mandatory coverage would not include BI liability coverage, nor UM, nor MedPay, nor collision, nor comprehensive coverages. Both Columns 1 and 2 assume that 50% of motorists become PIP insureds (but as indicated by comparing the figures in Table 1, Columns 1 and 2 to those in Table 3, Columns 6 and 5 respectively, savings estimates are not greatly altered based on the percentage of PIP insureds.) The total available dollar savings if all motorists become PIP insureds (by definition, this assumes that 100% of motorists do so) equal $825 million, as shown by Table 1, Column 3. Tables 2 and 3 present our findings for many other categories, including, for example, BI premium percentage sav-
ings for PIP insureds (65.5%, as shown in Table 2, Column 5) and tort insureds (6.0%, as shown in Table 2, Column 6), as well as total premium percentage savings for PIP insureds buying more than mandatory coverage (28.3%, as shown in Table 3, Column 2), and for tort insureds doing the same (2.6%, as shown in Table 3, Column 4).

Even more currently, the Joint Economic Committee (JEC) of the U.S. Congress, extrapolating from RAND's data, has computed figures for premium savings updated for 1997, which include savings for both commercial and non-commercial vehicles: total available dollar savings, assuming 100% become PIP insureds, are $1.197 billion,66 compared to RAND's estimate of $825 million as of 1993. The estimated 1996 average premium for individual North Carolina motorists who become PIP insureds drops from $602 to $402 — a savings per motorist of $200.67

The savings described above for total auto insurance premiums payable by PIP insureds are, of course, remarkably high — all the more so because, as noted, they stem from savings of 65.5% for bodily injury premiums for PIP insureds (Table 2, Column 5), since we assume no change in premiums for losses to property.68 Furthermore, as indicated above,69 such estimates are arguably conservative. RAND limited itself to readily available data, and did not take account of subtracting from PIP payments all collateral sources including private health insurance benefits, publicly mandated sources such as Medicare, Medicaid, workers' compensation, and all private sick leave or disability coverage for wage loss.70 With no or at least greatly lessened incentives to incur medical bills and wage loss as a means of inflating claims for pain and suffering,71 those who opt for PIP may often be inclined to incur lower economic losses and/or forego making claims at all compared to their inclinations under the tort system. RAND's estimates, without any means in its data of precisely weighing those likely reductions, do not include these factors in their primary findings.72 Furthermore, the savings mirror progressive
taxation in that they will be higher still for the less affluent. This results from freeing PIP insureds from any obligation to buy supplementary BI liability insurance — a freedom that will be embraced by those having few or no assets to protect, i.e., low income motorists who will buy only mandatory coverage. In addition, the poor generally drive older cars and therefore rarely buy optional collision or comprehensive coverages. 73

Thus, low income motorists who buy only mandatory coverage under a choice plan will save the most in absolute terms. While, as we have seen, all motorists are likely to experience significant savings on their auto insurance premiums under PIP, the impact of the savings will be much higher for the less affluent; the result will be significant positive impact on the fragile financial status of low income motorists. Currently, less affluent motorists may spend over 31% 74 of their annual household income on auto insurance and many are forced to put off buying basic necessities in order to pay their premium. 75 A recent study of low income insured motorists of Maricopa County, Arizona, found that 44% were forced at some point to postpone buying food in order to pay their auto insurance premium, 76 thus being forced to choose between putting food on the family table or complying with the law. In addition to consuming an exorbitant amount of their income, the relatively prohibitive cost of auto insurance has the potential of even more dire effects on the less affluent. North Carolina, like other states, has a compulsory insurance law penalizing those who go uninsured. Financially strapped individuals reliant on their vehicles for transportation to work may be forced to give up their driving privileges due to their inability to afford auto insurance. 77 The loss of driving privileges may in turn result in

73. In this regard, RAND's estimates are again conservative, as they are based on the premise that anyone choosing PIP coverage would also buy supplementary BI coverage at the same BI limits they bought under the traditional tort system. For former tort insureds who had bought liability coverage to protect their assets, that assumption would be correct. But many low-income motorists with few or no assets to protect previously bought BI only to comply with their state's compulsory or financial responsibility laws and would be unlikely to purchase supplementary BI coverage under a choice system. See id. at 290.


75. Id.

76. Id.

77. But see Maryland Two, supra note 1, at 291 n.49.
the loss of employment and propel them into total impoverishment and dependency on publicly funded support.

The choice plan will have a beneficial effect on the less affluent in terms of both percentage of household income and absolute dollars saved. Of further importance to low income drivers, PIP coverage, provides more rapid benefit payments for economic loss than does today's adversarial tort system. Low income drivers, lacking collateral resources to cover the costs of their accidents, are often forced under tort law to accept low settlements because of their need for immediate cash awards of even modest amounts. A more prompt insurance system based on simple proof of injury would be greatly to their advantage.

Finally, as to the less affluent, the plan allowing choice can correlate premium rates with the likely costs of payout. Under today's third-party liability auto insurance, insurers in rating their insureds only take account of the likelihood that their insureds will be involved in an accident, not what their insureds will be paid in the event of an accident. This is so because insurers pay not their insureds but the unknown persons whom their insureds might injure in a future accident. As a result, the poor (along with the young) are charged very high premiums even though when they are in accidents, their losses are comparatively small, often suffering relatively little or no wage loss, for example. Under third-party liability insurance, the less affluent, along with those with middle incomes, pay into the insurance pool the same as the more affluent for any given level of coverage, even though they stand to be paid much less from the pool. With first-party insurance, the less affluent can at least get credit for the advantageous side of their risk — that their losses are likely to be smaller. Keep in mind, too, that it is the less affluent who seem least likely to pursue a tort remedy and who generally derive the least benefit from the tort system.

IV. DETERRENCE

Will substitution of PIP coverage for traditional tort liability lessen deterrence of unsafe conduct, and thereby increase costs? We think not; substituting PIP for traditional tort liability is

78. Maryland Two, supra note 1, at 291-93.
79. Id.
80. See id. at 293 (discussing the unfairness of settlement outcomes for the poor).
likely to create offsetting incentives.\textsuperscript{81} For example, negligent motorists will absorb (or “internalize”) less of their loss than under traditional tort law because they recover even if they cause accidents and are no longer liable for pain and suffering. However, those same motorists will internalize more costs because their insurers also pay for losses when they were not at fault and thus they, too, cannot recover for pain and suffering.\textsuperscript{82}

Furthermore, quite apart from the effects of insurance in muting motorists’ responsibility for tortious conduct under traditional tort liability, unsafe driving is not deterred by a single influence; rather it is affected by a combination of criminal as well as civil sanctions, tort sanctions, and arguably above all by one’s interest in preservation of one’s own body and property.\textsuperscript{83} Thus, under PIP, all elements of deterrence but one remain unchanged, and even the influence of civil sanctions are transformed but not eliminated. Finally, the first-party character of the choice plan allows insurers to calibrate rates on the basis of the crash-worthy features of their insureds’ vehicles, thereby creating a market mechanism to enhance auto safety. In other words, the choice plan thus replaces today’s third-party system under which the obligation of insurers to pay those who claim against their insureds makes it unfeasible to fix rates on the basis of crash-worthiness.\textsuperscript{84}

V. CONCLUSION

The merits of allowing motorists to opt out of payment for pain and suffering and other noneconomic loss, in return for lower

\textsuperscript{81} Id. at 293 n.54.


\textsuperscript{83} Keeton & O'Connell, supra note 50, at 373 & n.31.

\textsuperscript{84} Maryland One, supra note 1, at 1041. But see Warren Brown, Air Bag Aftermath: The Device Saves Lives, But Socks Insurance Firms as Medical Costs Rise, Wash. Post, Mar. 21, 1993, at H1 (indicating that while air bags save lives, they may cause insurers higher costs in payments for surviving victims’ medical and rehabilitation expenses).
costs and receipt of automatic PIP benefits for economic loss,\textsuperscript{85} are worthy of intense consideration in North Carolina.

\textsuperscript{85} J. David Cummins & Sharon Tennyson, \textit{Controlling Automobile Insurance Costs}, 6 J. ECON. PERSP. 95 (1992) (for a study echoing points made herein, emphasizing the necessity of combining PIP payments with the concomitant elimination of claims for pain and suffering as a means of controlling auto insurance costs); see also Kevin Eastman et al., \textit{The New York Verbal Threshold for Third-Party Liability Under No-Fault Insurance}, 12 J. INS. REG. 369 (1994).