

HEADLINE:

PUT A LIMIT ON UNINSURED MOTORISTS' RIGHT TO SUE

Stephen D. Sugarman

Sacramento Bee

April 26, 1995, METRO FINAL

CALIFORNIA'S Department of Insurance recently confirmed that more than one-quarter of the state's motorists are driving around without the automobile liability insurance required by law. The proportion of uninsured drivers rises above 90 percent in some ZIP codes.

Insurance Commissioner Charles Quackenbush hardly helped by offering this explanation: "Why buy liability insurance to protect assets you don't have?" This is cynical, even if true. So long as we have a fault-based legal system for auto accidents, the morally proper behavior is to carry insurance so that a driver will be able to compensate those whom he may negligently injure. Just because a driver has little wealth, making him not worth suing, hardly relieves him of his duty to others.

Moreover, uninsured motorists cost the rest of us money. The typical car owner is now pressured by state law to purchase "uninsured motorist" coverage as part of his auto insurance policy. This unwieldy protection assures that if we are hurt we will be able to recover on our own policy at least some of what we should have obtained from those who injure us.

VIRGINIA LAW Professor Jeffrey O'Connell has proposed an ingenious response to this dreadful situation. If an uninsured motorist is involved in an auto accident and is himself injured, he would no longer be able to sue the other driver for money damages for pain and suffering. He would still be able to sue for unreimbursed medical expenses and lost wages, and so he could recover his actual economic losses. But that is all.

This proposed restriction is analogous to the rule now applied to auto-accident victims whose own negligence contributes to their injuries. For example, if there is a crash between someone who runs a stop sign and a speeder and the speeder is hurt, then his fault is compared with the fault of the other driver and the amount of money the speeder recovers in his lawsuit is reduced proportionately. Under O'Connell's reform, the motorist who is at fault for not carrying insurance would have his legal award reduced as well by losing the pain and suffering damages he might otherwise have obtained.

In addition to making the uninsured face some real consequences for their irresponsibility, this change would also yield financial benefits to conscientious motorists. Because roughly one-half of the money paid out to those injured in auto accidents is for pain and suffering, damage awards

against insured motorists as a group would decline under the O'Connell plan. That should mean lower insurance premiums for ethical motorists.

A valuable side-effect of this reform would be weeding out some of the fraud now perpetrated on auto insurers by unscrupulous lawyers, doctors, chiropractors and the like who recruit accident victims for their "mills." They run up huge but unneeded medical bills and thereby extract larger payments for pain and suffering from the insurance companies. But under this proposal, uninsured motorists will no longer be so attractive as candidates for these scams. This would further lower auto insurance costs for honest people.

It is generally believed that a sizable share (although by no means all) of the uninsured motorist pool consists of low-income people. Many claim that these people don't buy auto insurance, not because they are immoral, but rather because they can't afford it. Auto insurance is appallingly costly in California, largely because of the wasteful lawsuit system we now have. A well-designed auto no-fault plan would be a much better solution. But it has been impossible even to bring this idea to the floor of the state Senate or the Assembly, so great is the stranglehold that the trial lawyers have on the judiciary committees in both houses.

IN COUNTRIES such as Japan, where auto insurance costs less, those who claim they can't afford it are told that they will have to go without cars. Given California's pathetic public transportation system, that would be a real hardship here. But under O'Connell's proposal, the consequences would be much less. It would merely restrict the uninsured victim to his out-of-pocket losses. If you drive with no ability to compensate your victims, it is only fair that you pay some price if you turn out to be the victim instead.

Special to The Bee

LANGUAGE: ENGLISH

LOAD-DATE: April 27, 1995