

And there is hardly any question that this is the case with a great number of those who merely lose, or do not obtain, insurance. This is the beginning of the incompleteness of the present system: the large number of drivers who have no liability insurance, either because their state does not require it, or because it has been canceled.

The uncompensated accident victim had become a social problem as early as the nineteen-thirties, when probably fewer than half the cars on the road were insured and when, as one student put it, "Accident insurance [was] the privilege of those with some surplus income."

Some of the most appalling cases of incomplete coverage, however, arise not from the failure of drivers to insure themselves, but from the concept of negligence as the operative principle behind liability. As applied to traffic accidents, the concept is obviously flawed. For example, in a line of 20 cars, car No. 1 suddenly brakes. A disturbance is generated in the line of cars behind it. The disturbance grows more instable. Finally, car 14 rams into the rear of car 13. Which driver is responsible? Nonetheless, the system manages through various conventions and, fictions to point to some guilty party in most cases. But there are many instances in which clearly neither party is at fault, *and as a result neither party is liable*. A California bar report, soon to be published, recounts a number of such cases:

Two cars, properly driven, collide on a skiddy road without the fault of either. One driver loses his eyesight and the other has to have both legs amputated. Each carries heavy body injury liability insurance. Neither can recover. Reason: No recovery unless the plaintiff can prove the defendant to have caused the injury by his negligence. Here neither was negligent.

One party is traveling down a freeway at 75 miles an hour; the other at the moment decides to change lanes and does so without signaling. The resulting smashup demolishes both cars and sends one man to the hospital with a broken pelvis and the other is killed. Each carried full bodily injury and property damage insurance. Neither can recover for personal injury or damage to the car. Reason: Each party was guilty of contributory negligence.

Defendant runs his car across a sidewalk and smashes into the front room of a simple cottage, killing the grandmother and crippling for life the little children. The cause of the accident was that the driver was hit in the eye with a bullet from a B-B gun shot by someone unknown. The driver carried public liability insurance, but the injured persons cannot recover. Reason: The injuries were purely accidental; the driver wasn't to blame.

Finally, there is an increasing problem of insurance companies that go bankrupt. There is no reason to doubt the general validity of the industry claim that over the past decades they have lost something like \$1-billion. One result is that, of the 3,000-odd companies that sell some form of property and liability insurance, 73 have failed during the past five years, leaving the policyholders without protection. In consequence there is now a growing number of cases in which accident victims are left helpless. The plight of the victims, if never standard, has nonetheless a consistency to it: the promising high-school athlete, the smashed school bus, the endless operations and deformed limbs, the mortgaged farm and ruined parents. The firm that had insured the truck had gone bankrupt.

As stated earlier, the secondary effects of the present insurance system are wasteful and onerous. The most ironic—and absurd—of these secondary effects is that the liability system has worked in such a way that the influence of the insurance industry in the field of traffic safety has been almost entirely negative. The central myth of the pre-scientific stage in this field was that drivers are responsible for accidents *and can be made not to have them*.

This view harmonizes so well with the tort system of adjudicating traffic accidents on the basis of who was at fault that over the decade preceding the imposition of Federal safety regulation, the insurance industry was steadfastly in opposition to or even opposed to all serious proposals made in the field. In logic, those in the insurance industry should have been at the forefront of traffic safety research and development. In fact, with the honorable exception of the Liberty Mutual Company, their voice was indistinguishable from the chorus of Yahoos in Detroit bellowing about the "nut behind the wheel." They set up the usual trade associations, staffed with the usual incompetents, and spent much of their time conferring citations on one another.

The most serious secondary effect of the existing insurance system, however, lies in its impact on the courts. This process begins with the use of the police to enforce the traffic laws, as a result of which the incidence of arrest by armed