

pain and suffering are unfair, because they do not benefit people who minimize their misery, but only those who brood on it and dramatize it. If one could measure pain and suffering, one would probably find that injury victims *increase* their pain and suffering by recalling it, reviewing it with their lawyer, and retelling it for the purpose of collecting money.

Three principal arguments are made for pain and suffering damages. First, it is said that people who have suffered extreme shock may need special psychiatric care, or removal from a noisy location, or time off from work. But these are economic losses, which can be proved as such.

Second, it is said that the wrongdoer should suffer the extra deterrence of the extra damages. However, most pain and suffering damages, like other damages, are not paid by wrongdoers; they are paid by innocent premium payers, through insurance. To punish the wrongdoer, the proper remedy is "punitive damages," not damages for pain and suffering.

Third, it is said that damages for pain and suffering are necessary to make other damages collectable; the lawyers' fees are often paid out of the extra award for pain and suffering. There is some truth in this argument, but damages for pain and suffering are a preposterous way to value lawyers' services. A better way is to provide for payment of reasonable collection expenses—my next topic.

Collection expenses.—In order to encourage both claimants and insurance companies to settle claims fairly and economically, both sides should be given an incentive to make and to accept fair offers. This can be done by providing that the insurer should pay reasonable collection expenses when he has refused an offer to accept the amount eventually found due; similarly, the insurer should be able to deduct his costs of defense, when the claimant has refused an offer of as much as is eventually found to be due. This type of provision would greatly speed up settlements, and would eliminate one of the principal justifications of damages for pain and suffering.

A further advantage of adding collection expenses is to eliminate the sense of injustice which arises today when insurance companies refuse to pay property damage claims in spite of clear liability. They count on the claimant's giving up the chase. Some claimants give up, but others learn to pad their claims, chiefly by alleging pain and suffering. Awarding collection expense would enable them to collect just claims by just methods.

Small claims.—One of the greatest wastes in present-day liability insurance is the investigation, evaluation, and payment of small losses. It is a waste because the costs of investigation and evaluation, plus the insurance overhead, are likely to be two or three times the original loss. Since most of the beneficiaries are the same as premium payers, the effect of payment is to multiply their own costs. Since minor losses are within the capacity of automobilists to pay from their own pockets, they would be collectively benefited by paying them directly, rather than through liability insurance.

The sensible solution is to eliminate liability below a deductible limit, which might be set initially at \$100. In the light of subsequent experience, it could be raised or lowered.

For many non-litigious automobilists, this rule would merely formalize what already happens, when they bear their own small losses because it is easier than trying to collect damages. For the litigious, it would remove the impulse to spend more time and expense trying to collect a small claim than it is worth. The big gain would be to premium payers, because their insurance companies would be relieved of a substantial fraction of their case load.

VIII. A STAGED REFORM

The reforms proposed here can be done in easy stages. It is not necessary to introduce a new, untried system, nor to make the entire transformation at a single leap. Although these reforms lead toward a fundamental restructuring of the whole system of reparation for automobile injuries, it is to be done by little steps, which can be separately adopted, and separately modified in the light of subsequent experience.

Separability.—Rehabilitation insurance for motorists could be required without broadening social security, and without changing negligence liability law except to the extent of crediting the rehabilitation benefits against negligence damages. Social security could be broadened without introducing rehabilitation insurance, and without changing the tort law. Among the proposed reforms of negligence liability and liability insurance, either of the first two reforms can