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CHAPTER 22

No-Fault Automobile Insurance

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§22.1. Introduction. On August 13, 1970, Massachusetts Governor Francis W. Sargent signed the country’s first “no-fault” auto insurance law, to be effective January 1, 1971. The change was a significant overhaul in a 43-year-old compulsory liability system that had been a center of public controversy for a number of years. The change also marked an end — or at least a pause — in four years of sometimes bitter debate over the no-fault concepts that had first captured public attention in Massachusetts in 1967 when the Massachusetts House of Representatives passed, and the Senate rejected, the Keeton-O’Connell “Basic Protection Plan.”

For a time after enactment of the new law, there was some doubt as to whether it would be implemented and a likelihood that, if it were, a state insurance fund might be required to make it work. These concerns stemmed from provisions of two sections of the original act which led insurance companies, who had been major proponents of the basic change, to threaten withdrawal from the Massachusetts auto insurance market if they were allowed to stand. The first were provisions of Section 6 of the act ordering reductions of at least 15 percent in the rates for all types of auto insurance. The second were provisions of Section 8 calling for the automatic renewal of all auto policies “except for fraud, conviction for use of unlawful drugs or driving under the influence of liquor, or nonpayment of premiums.”

Insurance industry objections to the automatic renewal provisions were apparently overcome just 11 days after the no-fault law was signed with enactment of Chapter 744 of the Acts of 1970, which revised those provisions and added other features to the new plan. Company concern over the rate-cut provisions was ended by a decision of the Supreme Judicial Court holding the cuts ordered on property damage coverage.

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confiscatory and unconstitutional, and by a similar decision by a single Justice affecting the cuts ordered for fire, theft, comprehensive and collision coverages.

The no-fault idea will be tested in practice in Massachusetts in 1971. If the plan succeeds as its proponents suggest it will, it may set a pattern to be followed in other states. If it fails, it seems unlikely that such failure alone will quiet public concern over the liability system and its costs. Only time will prove the plan's worth. There can be no doubt, however, that in 1971 the auto tort practice will be changed materially.

It is the objective of this chapter to explain the major features of the no-fault automobile insurance law. For the most part, the new statutes will be the guide. The author has, however, consulted the new auto insurance policy and other regulations approved by the Massachusetts Insurance Department to assist in interpretation. The hope is that the explanation here will give practitioners an introduction to what in time may prove to be a sound, workable and progressive answer to the long-debated auto accident reparations problem.

A. An Over-all View

§22.2. Statutory framework. Central to a proper understanding of the new system is an appreciation of its basic framework. Two different acts bring about the reform. Of the two, Chapter 670 of the Acts of 1970 is by far the most important, and its first five sections contain the only operative revisions of immediate concern. The other act, Chapter 744, is significant to the bar only for its Section 3 which will be discussed in connection with comment on the constitutional issues raised by the plan.

There are three keys to understanding the new system: (1) A new coverage, very much like Medical Payments coverage, has been added to the previous compulsory bodily injury coverage; (2) This new coverage, called Personal Injury Protection, has been made the primary source of recovery for the elements of loss it embraces; and (3) The potential of recovering in a tort action for more than actual economic loss in the name of payments for pain and suffering has been restricted.

B. The New Coverage

§22.3. Broadened medical payments coverage. The Acts of 1970, c. 670, §2, contains the basic definition of the new Personal Injury Protection (PIP) coverage which has been added to the previous compul-


6 G.L., c. 90, §§34M-N; G.L., c. 175, §§22E-H.
sory liability coverage. Ignoring internal exclusions, the PIP coverage will:

Pay to the named insured and members of his household, authorized operators, passengers including guest occupants and any pedestrian struck by the insured vehicle;

The reasonable expenses incurred within two years of the accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral expenses;

And 75 percent of wages actually lost as a result of the injury if the injured was employed at the time of accident, or, in the case of the unemployed, “actual” loss by reason of diminution of earning power;

Plus amounts paid for ordinary and necessary services the injured person would have performed for himself or members of his household had he not been injured;

Up to an amount of $2000 per person;

As a result of bodily injury, sickness or disease, including death at any time resulting therefrom;

Caused by accident and “not suffered intentionally”;

While in or upon, entering into or alighting from, or being struck as a pedestrian by the insured vehicle;

Without regard to negligence or gross negligence or fault of any kind.

§22.4. Medical, hospital expenses, etc. Except for the wage loss provisions and an extension of the time limit to two years, the basic Personal Injury Protection coverage for hospital and medical expenses, etc., is nearly identical to Medical Payments coverage as it has been known in Massachusetts for a number of years.

Construction of such potentially troublesome terms as reasonable expenses, incurred, necessary services and while in or upon, entering into or alighting from (shortened in the policy language, by way of a definition, to the more workable occupying) will be aided by precedents dealing with Medical Payments coverage.1 Regulations concerning the PIP deductibles made by the Massachusetts Insurance Department supply a workable definition of the act’s undefined “members of the insured’s or obligor’s household.”2 Few practical problems will be experienced in giving meaning to the expenses of this type that are recoverable on the no-fault basis.

§22.4. 1 For general survey, see 8 Appleman, Insurance Law and Practice §§4896 et seq. (1941).

2 That definition is “Those persons related by blood or marriage, who dwell as a family under one roof, domestic servants, long-term guests (e.g., a foreign exchange student) and student members of the family who are away from home attending college or school. The term 'household' does not include boarders or lodgers who are not related to the insured.”
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§22.5.  Wage loss benefit in general.  The major difference between Medical Payments coverage and the new Personal Injury Protection coverage resides in the provisions dealing with wage loss. Medical Payments coverage simply did not deal with lost earnings. PIP does, and because it breaks new ground in this area, there will probably be more coverage questions relating to the wage loss provisions than any other part of the new plan.

The coverage treats the employed and the unemployed in different ways. Analysis suggests that the draftsmen attempted to fashion a no-fault wage loss benefit for the employed that would avoid some practical problems of the traditional rule of damages expressed in Doherty v. Ruiz.1 Accordingly, a fairly clear statutory benefit for wage loss is provided for the employed to replace the traditional "diminution of earning power" with the more practical "average weekly wage" concept of the Workmen's Compensation Act. The benefit for the unemployed also modifies the "diminution of earning power" test of the cited cases.

Interestingly, both the employed and the unemployed are additionally entitled to recover on a no-fault basis under PIP "for payments in fact made to others, not members of the injured person's household and reasonably incurred in obtaining from those others ordinary and necessary services in lieu of those that, had he not been injured, the injured person would have performed not for income but for the benefit of himself and/or members of his household."2

§22.6.  Wage loss for the employed.  Personal Injury Protection entitles the injured person who is employed at the time of an accident to recover on a no-fault basis the lesser of:

(1) Amounts "actually lost" by reason of "inability to work and earn wages"; or

(2) Seventy-five percent of his "average weekly wage" for the year immediately preceding the accident during such period or an amount that together with payments received under programs for wage continuation will provide the above 75 percent of average weekly wage.

"Amounts actually lost" by reason of inability to work and earn wages is the starting test in each instance. This amount is then to be matched against "average weekly wage or salary or its equivalent for the year immediately preceding the accident." If amounts actually lost are less than the amount determined by calculating 75 percent of average weekly wage, then that lesser amount will be paid without deduction. If, however, wages have been increasing through the year immediately preceding the accident or have remained stable, then ap-

plication of the 75 percent limitation will be used to determine the no-fault benefit.

The test seems to be a practical one aimed at preventing inequities in the case of persons who have not worked for a full year immediately preceding the accident or who have had fluctuating earnings during the applicable time period. Insofar as the short-term worker is concerned, it seems likely that the principles of an early workmen compensation case\(^1\) can be applied to prevent any attempt to compute the amount due on the basis of a full year’s employment. The principle should lead to computation of the alternative to amounts actually lost by division of total earnings by the number of weeks of actual employment. Determination of what constitutes “average weekly wage” (that is, tips, commissions, fringe benefits, etc.) may also be aided by workmen’s compensation precedents.

Once average weekly wage is determined, the amount due when this test is applied will vary according to whether or not the injured person is entitled to wages “under any program for continuation of said wages . . . .”

One of the persistent myths about PIP is that none of the no-fault benefits are payable where other collateral sources, such as health insurance plans, etc., are available. This is not so. The PIP no-fault benefits for hospital and medical expenses, etc., are payable whether or not other insurance applies. The only area where the existence of other sources is significant is in the coverage for wage loss of a person employed at the time of an injury. The statutory “any program for the continuation of . . . wages” will, in such a case, be the primary source of the employed person’s wage benefit. PIP will provide only what is additionally needed to provide 75 percent of the average weekly wage during the period of disability.

It is likely that there will be disputes as to what constitutes a wage continuation program within the meaning of the act. Gertrude Stein’s famous “a rose is a rose is a rose” may be the ultimate key to interpretation of “any program” as meaning just what it says. Just such an interpretation is bolstered by internal aids such as the limitation in Section 1 of Chapter 670 “to amounts [of wage] actually lost by reason of the accident” and by the provision of Section 4 requiring claimants to authorize insurers to determine whether or not “such [wage] loss may be reduced in whole or in part as a result of any program calling for the continuance of such wage, salary or earnings [sic] during absence from work.” Analysis may also lead to a focus of attention on the term continuation with resulting interpretations holding that some types of accident and disability insurance plans are not properly within the expressed meaning.

For practical purposes, the great majority of wage continuation plans are formal. Thus it should be easy enough to determine whether or not

\(^1\) Rice’s Case, 229 Mass. 325, 118 N.E. 674 (1918)
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wage is continued during absence from work because of an auto injury. Loss adjustment in practice will not prove as difficult as theoretical arguments may suggest. And, as is true of so many other open questions about the new system, the low limits of the no-fault benefit and the relationship of the insured to the insurer should combine to keep technical disputes at a minimum.

Finally, insofar as wage loss of the employed is concerned, the act is directly responsive to criticisms of other no-fault plans that initially ignored the possibility that reliance on wage continuation plans might result in unfair exhaustion of those benefits.

Section 2 of Chapter 670 meets this problem by providing for the application of any amounts saved by the auto insurer because of a wage continuation plan to any later injury where a wage continuation plan would have paid had its benefits not been used for the earlier auto accident. This liability of the auto insurer continues one year beyond its last payment of a PIP benefit.

§22.7. “Wage” loss for the unemployed. The traditional rule1 on “loss by reason of diminution of earning power” has also been modified in describing the Personal Injury Protection benefit due an unemployed person on a no-fault basis.

The status of the injured person on the date of the accident seems to be the test. Presumably there would be no operative wage continuation plan. The only applicable test would be amounts “actually lost by reason of the accident.” Thus the body of law2 applicable to the “diminution” concept seems not intended to apply. Instead it seems the provisions should be read as restricting the concept in cases3 holding that one who would not have worked if uninjured may nevertheless recover for his impaired earning power. Such a result will lead to paying the unemployed on a “but for” basis, that is, the amount he can show he would have earned in an available job but for the injury. This is a break with precedent,4 but a highly practical one from a claims-handling standpoint.

§22.8. Coverage extension and territorial application. The final paragraph of the Personal Injury Protection coverage section provides for payment of the plan’s no-fault benefits to the insured and members of his household in “any case” where those persons incur a covered loss while occupying or being struck as a pedestrian by a vehicle not insured by a policy or bond providing personal injury protection, unless there is a tort recovery for the loss. This provision extends coverage for the insured and members of his household to a number of situations in which coverage would not otherwise apply.

At this point, it is important to note that PIP coverage, like the compulsory liability coverage, attaches to the insured vehicle. The insured person occupying another vehicle (that is, not his own), or struck by one as a pedestrian, will look to the PIP coverage on that vehicle for his no-fault benefits. The coverage extension gives the insured and household members the benefit of their own coverage when occupying or being struck by a vehicle that does not have applicable PIP coverage. It recognizes, however, that in such a case, the injured person may have a valid tort claim. Policy language approved by the Massachusetts Insurance Department\(^1\) clarifies the timing problem by giving the insurer paying PIP benefits a right to a share in the tort recovery made subsequent to the no-fault recovery.

The policy language\(^2\) also clarifies earlier doubt as to the territorial application of PIP by making it applicable—except toward out-of-state pedestrians—throughout the United States, its territories and possessions, and Canada.

Finally, it should be noted that, unlike compulsory liability coverage, the in-state PIP coverage is not restricted to the ways of the Commonwealth and places therein to which the public has a right of access.

\(\S 22.9\). The exclusions. Two quite different classes of persons are made ineligible for the Personal Injury Protection no-fault benefits described:

1. A person entitled to payments or benefits under the provisions of the Massachusetts Workmen's Compensation Act; and

2. Persons whose conduct contributed to their injury while operating a motor vehicle in the Commonwealth:

   a. while under the influence of alcohol or a narcotic drug . . .;

   b. while committing a felony or seeking to avoid lawful apprehension or arrest by a police officer; or

   c. with the specific intent of causing injury or damage to himself or others.\(^1\)

The workmen's compensation exclusion is similar in intent to the exclusion from compulsory liability coverage of any employee of the insured entitled to workmen's compensation benefits. It helps preserve the exclusive nature of the workmen's compensation remedy and the resulting immunity of an employer from actions at law by his employees, thus satisfying the legislative intent of the Workmen's Compensation Act discussed in *King v. Viscoloid Co.*\(^2\) Though the exclusion has been subject to some criticism, it seems consistent with prior law.

\(\S 22.8.\) 1 See Item 12 of Conditions Applicable to Part I of Approved Standard Policy subparagraph (a).

\(\S 22.9.\) 2 See Item 2 of General Conditions of Approved Standard Policy.

\(\S 22.9.\) 1 Acts of 1970, c. 670, §2. There is also a general exclusion requiring the injury to be “caused by accident and not suffered intentionally.”

\(\S 22.9.\) 2 219 Mass. 420, 106 N.E. 988 (1914).
The exclusion of the second class of persons from the PIP no-fault benefit system is optional with insurers. Policy language containing such an exclusion has, however, been approved by the Massachusetts Insurance Department and will presumably be used in all 1971 policies. It is important to note that the exclusion applies only where such persons contribute to their injury while operating an insured vehicle within the Commonwealth. It will have no effect upon passengers riding with or pedestrians struck by such an operator. Finally, although the lack of a PIP benefit may revive tort rights because of the nature of the tort exemption in the act, it is doubtful that this will have any practical effect since most such operators would be barred from recovery on a tort basis as well as on the no-fault basis.

§22.10. Deductibles. An additional feature of Personal Injury Protection coverage is the availability of optional deductibles in amounts of $250, $500, $1000 and $2000. These deductibles are authorized by the last two paragraphs of the Acts of 1970, c. 670, §4. There are two choices: (1) a deductible applicable to the policyholder alone; or (2) a deductible applicable to the policyholder and members of his household. The deductible in the chosen amount will be a straight deduction from the PIP no-fault payments that would otherwise be made. The act is clear, however, that the choice of a deductible does not revive tort rights nor affect the restriction on the right to recover for pain and suffering.

As explained above, the PIP coverage attaches to the insured vehicle. Any deductible will apply only where the purchaser is occupying his own vehicle at the time of injury. Accordingly, no other party riding with the purchaser, except household members, will be subject to the deductible.

§22.11. Compulsory liability coverage. As stressed at the outset, a proper understanding of the new no-fault auto insurance law demands an appreciation of the fact that the Personal Injury Protection coverage available on a no-fault basis is an addition to compulsory liability coverage rather than a replacement of it.

Chapter 670 of the Acts of 1970 in no way changes the requirements of previous law that motorists carry $5000/$10,000 bodily injury liability coverage as a prerequisite to registration of a vehicle in Massachusetts. Only the insured’s exposure to liability has been changed. This, of course, will have the practical effect of changing the circumstances in which the liability coverage will respond to damages, but it does not change the coverage itself. Uninsured motorist coverage is also unaffected and continues to be mandatory for all vehicles.

C. THE TORT EXEMPTION

§22.12. No-fault benefits are primary. As previously stated, a second key to understanding the new no-fault auto insurance law is that the Personal Injury Protection coverage has been made the pri-
mary source of recovery for the elements of loss it embraces. It is the tort exemption of Chapter 670 which effectuates this policy. In direct terms, the Acts of 1970, c. 670, §4, provides: (1) that the PIP no-fault benefits are granted “in lieu of damages otherwise recoverable by the injured person . . . in tort as a result of an accident occurring within this commonwealth”; and (2) that every person who would otherwise be liable in tort is exempt from such liability arising out of an auto accident “to the extent that the injured party is . . . entitled to recover . . . personal injury protection benefits . . .”

The net effect of these provisions in the usual case involving two Massachusetts registered and insured vehicles is that the operators and passengers of each vehicle will look to the insurer of the car they occupy for the previously described no-fault benefits. Only those involved whose losses exceed the $2000 no-fault limit will have a claim for additional hospital and medical expenses, wage loss benefits, etc., on a tort liability basis. The practical result will be an elimination of litigation over negligence in the great majority of cases.

Practitioners, however, must clearly understand the operation of the exemption: first, because there will be cases where it does not apply; second, because it can affect larger cases; and third, because it may bear directly on cases where there are claims for damages not available on a no-fault basis but which justify litigation.

There is some ambiguity in the key provisions of Section 4. The exemption seems to apply only “to the extent” that a no-fault benefit is available. It has been argued¹ that, as a result, items such as the 25 percent of wage loss not payable to the employed on a no-fault basis or any additional amounts of wage loss not payable because of a wage continuation program would therefore survive the exemption. On the other hand, it is possible to read the clause granting no-fault benefits “in lieu of damages otherwise recoverable in tort” as a legislative substitution of the defined no-fault benefit for all tort damages of the same type within the specified limits. Though there are obvious disadvantages to preserving the tort remedy for small elements of loss, fairness seems to dictate such continuation where no PIP replacement benefit is available.² Indeed, the act as a whole is best understood and most easily defended from constitutional attack by directing attention to the fact that the tort remedy is being eliminated only where a replacement benefit is provided.

Special elements of damage, such as unascertained future medical expenses and damages customarily alleged as being in aggravation, are not provided for on a PIP no-fault basis and, under either theory of statutory construction, no tort exemption would seem applicable where

¹ The argument is set forth by the author in a booklet prepared for the Massachusetts Association of Independent Insurance Agents and Brokers (1970).
² See Keeton and O'Connell, Basic Protection for the Traffic Victim 275, 276 (1966) for justification of this result.
they are alleged. Damages for pain and suffering are subject to special statutory exclusion.

The tort exemption does not extend to vehicles insured by a policy not containing PIP. It also does not apply to accidents occurring outside the Commonwealth. There will therefore be actions in tort against vehicles such as buses, uninsured city and town vehicles, etc., that are registered in Massachusetts but not subject to the compulsory law. Massachusetts drivers will be subject to suit by out-of-state drivers operating in Massachusetts and to extraterritorial actions as they are now. And vexatious actions without grounds will still be a part of the practice.

Furthermore, the continuation of "first dollar" compulsory liability coverage will leave the duty of defending and settling third-party claims upon insurers. Presumably, there will be no change in extraterritorial difficulties of Massachusetts drivers. Finally, under the territorial extension of coverage, Massachusetts insureds and occupants of their vehicles will have valid PIP claims, as well as potentially valid tort claims, for losses they incur outside the Commonwealth. Massachusetts insureds and members of their households in, or struck as pedestrians by, vehicles not insured for PIP will have a similar duality of remedy. The terms of the act suspend the PIP no-fault claim during the pendency of any tort actions brought as a result of such circumstances, and the approved policy language again solves the timing problem.³

D. THE PAIN AND SUFFERING RESTRICTION

§22.13. Broad restriction. The Acts of 1970, c. 670, §5, contains the restriction on an injured person's right to recover for pain and suffering which proponents of no-fault auto insurance identify as the cost-cutting part of their program. The restriction purports to apply (on and after January 1, 1971, the effective date of the act) to "any action of tort brought as a result of [injury] . . . arising out of the ownership, operation, maintenance or use of a motor vehicle within this commonwealth by the defendant . . . ."

Standing alone, the provision might be read as affecting tort actions wherein the cause of action arose before the act's effective date but which are not entered until after January 1, 1971. It also can be read as affecting tort actions arising after the effective date, in which there is no offsetting Personal Injury Protection no-fault benefit provided to a plaintiff.¹ It is submitted that the restriction plainly affects a sub-

³ See Item 12 of Conditions Applicable to Part I of Approved Standard Policy subparagraph (a).

¹ E.g., in the case of vehicles exempt from the compulsory laws, actions against auto manufacturers, etc.
stantive right and would, on precedent, most probably not be construed to have a retroactive effect.

More difficult is the question of whether the pain and suffering restriction is intended to apply where no-fault benefits will be unavailable. Certainly there is justification for the view that there has been a legislative determination that pain and suffering should not be compensable under certain conditions and that the breadth of the restriction is intentional. However, looking at the act in its entirety, in accordance with customary principles of statutory interpretation, one might reasonably support the view that the restriction is intended to accompany the availability of a no-fault benefit. There almost certainly will be court tests of this provision before there are definite answers; but, as is true with other questions raised by the act, an interpretation either way should not materially detract from the plan's success.

The direct terms of the restriction are such as to limit recovery of damages "for pain and suffering, including mental suffering associated with such injury" to cases wherein either:

1. reasonable and necessary expenses incurred in treating such injury are determined to be in excess of $500; or
2. expenses are not in excess of the $500, if the injury:
   a. causes death, or
   b. consists in whole or in part of loss of a body member or permanent and serious disfigurement, or
   c. results in defined loss of sight or hearing, or
   d. consists of a fracture.

Again, analogies to workmen's compensation precedents will assist in interpretation of what those defined injuries embrace. The most difficult term will likely prove to be "permanent and serious disfigurement," which differs significantly and apparently intentionally from the "bodily disfigurement" of the Workmen's Compensation Act.

What constitutes "damages for pain and suffering" may well prove to be the most important single question. It is clear that practice will have to be altered in order to more precisely define in pleadings the elements of damages being alleged where either the dollar amount or type of injury precludes recovery for "pain and suffering." Again, it is the author's opinion that reasonable interpretations permitting recovery of more than actual economic loss will not thwart the act's purposes.

E. OTHER NEW FEATURES


\[\text{See In re Robinson, 131 Mass. 376 (1881).}\]
Protection claims that deserve the attention of the bar. Particularly pertinent are provisions on the detail required in reporting claims, on the rights given insurers to require physical examinations and to obtain information about wages and wage continuation plans, and the provision that an injured person's failure to cooperate may be a defense to an insurer. Like the Keeton-O'Connell plan, the new act also contemplates paying losses as they are incurred in installments every 30 days. And, significantly, claimants are given a statutory right to commence an action in contract in any case in which claims remain unpaid 30 days after receipt by the insurer of reasonable proof of the fact and amount of loss incurred. Any party entitled to PIP benefits is to be "deemed" a party to a contract with the insurer for purposes of enforcing this contract action, rendering the coverage a third-party beneficiary contract to that extent.

§22.15. Inter-insurer subrogation. Section 4 of the act provides that an insurer paying Personal Injury Protection no-fault benefits shall be subrogated pro tanto to the rights of any party it pays.

In the great majority of cases, the subrogation right itself would be of little aid to the insurer since the tort exemption will presumably be a defense to an action against many of those whose fault caused the payment. But the act goes further and creates a new subrogation-like right against the insurer of the negligent but exempt party. This provision will permit insurers to proceed through arbitration or agreement only against one another after settlement of losses to recover payments made, costs of processing claims, and the expenses of enforcing the new right. In practical effect, if insurers use this provision, the liability exposure of companies should remain essentially as good or bad as it was before enactment of the act.

§22.16. Assigned Claims Plan. A final new concept is the creation of an Assigned Claims Plan to provide Personal Injury Protection benefits to Massachusetts residents (with some exceptions) who are neither insured nor members of an insured's household when they are injured in such circumstances that no PIP benefits are otherwise available to them.

Such cases would seem to be limited to persons occupying, or struck as pedestrians by, uninsured vehicles (uninsured at least in the sense that they carry no PIP coverage) and those struck by hit-and-run vehicles. Claimants are to be treated as though they had a PIP policy, and the insurer is to have all PIP insurer rights. Of prime importance will be the insurer's subrogation rights against the nonexempt motorist and its rights where tort recoveries are sought by an Assigned Claims Plan claimant.¹

§22.17. Continuation of coverage provision. The Acts of 1970, c. 744, §3, provides that compulsory liability coverage, as it existed

¹See Item 12 of Conditions Applicable to Part I of Approved Standard Policy subparagraph (a).
prior to the effective date of the no-fault plan, shall continue in effect in the event that the Chapter 670 provisions for the tort exemption or the restriction on the right to recover for pain and suffering are held unconstitutional.

This is a somewhat unique "fail-safe" device that will assure Massachusetts motorists that no constitutional challenge to the key features of the new plan will expose them to unexpected liability. As a practical matter, it seems unnecessary in view of the continuance of liability coverage that is one of the act's basic features. However, it does no harm to have it clearly expressed in Chapter 744.

§22.18. Other provisions. Chapters 670 and 744 of the Acts of 1970 contain a number of additional provisions not discussed in this treatment of no-fault auto insurance. They involve merit rating, guaranteed renewability of policies, and the mandatory offer of certain basic coverages to all motorists. Though obviously important to motorists and to the insurance industry, these provisions cannot properly be considered components of the new no-fault auto insurance plan with which this chapter deals. They are instead separable reforms added to the basic reforms described.

§22.19. Constitutional questions. No discussion of the new no-fault law can ignore the fact that such a radical change raises constitutional issues relating to jury trial, due process and equal protection. The author believes that the weight of authority is clearly on the side of the new plan's constitutionality. There is, however, little doubt that the constitutional issues will be litigated during the 1971 Survey year. Definite conclusions will then be available as guides to further improvement and progress in the law's consistent effort to adapt to realities and bring itself into harmony with the facts of modern life.

§22.19. 1 An excellent summary is contained in U.S. Dept. of Transportation, Constitutional Problems in Automobile Accident Compensation Reform (USGPO No. 0-380-962, April, 1970).