HB

336

SFIN

FILE

REPORTED OUT

MAY 0 4 2004

SENATE FINANCE COMMITEE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/3/04

FURTHER:

DATE TURNED IN TO OFFICE: 4 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 336(JUD) am

HB 336 MOTOR VEHICLE INS./ UNINSURED DRIVERS

"An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

and recommends:

[ ] be replaced with _____ CS _____ (_____)

[✓] adopt previous 5 CS CS HB 336 (JUD)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[✓] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Crt	3/29/04			✓	#1
Law	3/30/04			✓	#2

[ ] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
	✓			
			✓	
	✓			
	✓			
COCHAIR:	✓			
COCHAIR:	✓			

REPORTED OUT

MAY 0 4 2004

SENATE FINANCE COMMITEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 336(JUD)
(H) Publish Date: 4/15/04

Revision Date/Time (Note if correction):
Dept. Affected:

Title: Civil Damages for Uninsured Drivers
BRU: Alaska Court System
Component: Trial Courts

Sponsor: Representative Meyers
Requester:
Component No.:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The court system does not anticipate any fiscal impact from the passage of HB 336.

Prepared by: Doug Wooliver Administrative Attorney
Phone: 463-4750
Division: Alaska Court System
Date/Time: 3/29/04 1:17 PM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver
Date: 3/29/2004
Agency: Alaska Court System

(Revised 9/2003 OMB)

COMMITTEE COPY

REPORTED OUT

MAY 0 4 2004

SENATE FINANCE COMMITEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 336(JUD)
(H) Publish Date: 4/15/04

Revision Date/Time (Note if correction):
Dept. Affected: LAW
Title "An Act limiting recovery of civil damages by an uninsured driver; and providing for an effective date."
RDU CIVIL
Component
Sponsor Representative Meyer
Requester House Judiciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill adds a new section to AS 09.65 prohibiting recovery of noneconomic losses if injury or death occurred while the operator of the vehicle was not insured in accordance with AS 28.22.011.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhetee, Director
Phone 465-3673
Division Administrative Services
Date/Time 3/30/04 1:04 PM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date 3/30/2004
Agency Department of Law

(Revised 12/2003 OMB)

COMMITTEE COPY

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

SCS CS HB 336 (JUD)

"An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

SCS CS HB 336 (JUD) changes existing law to provide that a person who knowingly does not comply with existing motor vehicle liability laws may not recover damages for non-economic loss suffered by that person while operating a motor vehicle; provides that punitive damages are not required to be part of the mandated offers of uninsured/underinsured motorist coverage that insurance providers are required to make; and clarifies that an insurance company is not required by law to offer uninsured/underinsured motorist coverage on excess or umbrella policies.

The first provision in SCS CS HB 336 (JUD) is commonly referred to as "No Pay, No Play." Currently, 12% of drivers on Alaskan roads do not provide the minimum amount of liability protection that is required by state law. It is a matter of fairness, for those drivers who are unwilling to provide at least the minimum protection for other drivers to be prohibited from receiving such protection themselves. The limitation of recovery of non-economic damages does not apply, if the driver of the other vehicle is: operating a motor vehicle while intoxicated; intentionally caused the accident; flees from the scene of the accident; or at the time of an accident, is in furtherance of an offense that is a felony.

SCS CS HB 336 (JUD) clarifies that punitive damages do not need to be part of the mandated offers of uninsured/underinsured motorist coverage. It makes little sense for an insured to pay for the ability to recover punitive damages against a uninsured/underinsured motorist. Punitive damages are intended to punish and deter; not to compensate. It is hard to see how an uninsured motorist is punished when it is the insured that is funding the right to recovery.

The third provision under SCS CS HB 336 (JUD) clarifies that an insurance company is not required by law to offer uninsured/underinsured motorist coverage on excess or umbrella policies. This change would avoid repetitive offers of uninsured/underinsured motorist coverage which are now required in some cases under existing law.

The cost of uninsured motorists is a burden on the State of Alaska and its citizens. Uninsured motorists, those who consciously break the law, are able to sue for noneconomic damages that result in a no-fault accident. Those who follow the mandated insurance laws are then subjected to attorney fees, court fees, and time spent in court. SCS CS HB 336 (JUD) corrects the injustice of the uninsured benefiting from the insured motorists, while at the same time, reducing excessive litigation that backs up our court system.

Last Updated: May 2, 2004

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CS HB 336 (JUD)am Motor Vehicle Insurance/Uninsured Drivers
States with Similar Legislation
May 1, 2004

States That Bar Recovery of Noneconomic Damages

California: Proposition 213

Precludes an uninsured motorist from recovering in a civil action certain "noneconomic losses" to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, an other nonpecuniary damages in an action arising out of the operation or use of a motor vehicle.

The provision bars recovery, even if the uninsured motorist is without fault.

Proposition 213 was challenged as violative of the due process and equal protection provisions of the United States and California constitutions. The Court of Appeals decided that it did not violate a person's right to due process because either a driver has auto insurance, or they don't. If they do not have auto insurance and they choose to drive, the court could think of no justifiable defense that would require a hearing to determine if damages could be collected.

Addressing the issue of equal protection, the court noted that Proposition 213's legitimate purposes of restoring balance to the justice system and reducing costs of mandatory auto insurance. The court concluded that eliminating noneconomic damages for uninsured motorists was rationally related to both interests because it would lead to reduced costs of insurance and to fewer lawsuits.

Michigan:

Similar to California, in that it precludes an uninsured motorist from recovering noneconomic damages in a lawsuit arising out of automobile accident.

The Michigan Court of Appeals found that the purpose of this law was to correct the injustice of allowing drivers who do not contribute to the no-fault system to recover damages from persons that do contribute to the system, and to provide an incentive for uninsured motorists to comply with the requirement that they maintain no-fault automobile insurance. They found that it does not violate the due process clause of the Michigan Constitution.

Limitation of Amount Recoverable

Louisiana:

States that if a motorist fails to maintain liability coverage to protect others, he or she does not have the ability to recover or collect the first $10,000 of damages for bodily injuries and the first $10,000 of property damages resulting from an automobile accident.

The limitation of recovery does not apply, however, if the driver of the other vehicle (1) is cited for a violation of the state's operating a motor vehicle while intoxicated as a result of the accident and is convicted of the offense, (2) intentionally causes the accident, (3) flees

from the scene of the accident, (4) at the time of the accident, is in furtherance of an offense that is a felony.

The Louisiana law was broadly challenged on many grounds. However, the court rejected all contentions presented. The court found that the partial bar to recovery was not a punishment in violation of a state constitutional provision that prevents any person from being subjected to cruel, excessive, or unusual punishment, concluding that the provision was one with other conditions imposed on the privilege to drive.

On the question of impairment of equal protection, the court noted, the statute's classification on the basis of a person's voluntary decision to remain uninsured, or likewise to forgo purchasing insurance, does not infringe on a fundamental right or discriminate on the basis of a suspect classification such as race, alienage, or national origin.

In the legislation that was enacted, the Legislature stated that the legislation was enacted because of a concern for: (1) the lack of compliance with the Motor Vehicle Safety Responsibility Law; (2) the high incidence of motor vehicle accident claims in the state's courts; (3) reduction of the high cost of motor vehicle insurance through reformation of the civil justice system; (4) an evident imbalance in the state's motor vehicle insurance system which had engendered abuse; (5) the need for insurance cost savings to the citizens of the state through a reduction of premium rates for automobile insurance..

In summary, the court was satisfied that uninsured motorists did not comprise a suspect class, did not have a fundamental right to exercise that privilege to drive without insurance, and did not have a fundamental right to tort recovery so that equal protection considerations might apply.

Preclusion of All Recovery

New Jersey:
In 1997, New Jersey's statutes were amended to preclude any suit by the uninsured driver against a person for any element of damage (economic and noneconomic).

The trial court concluded that the amended statute, because of its total preclusion of a cause of action against a person, violated the Fourteenth Amendment of the U.S. Constitution. An intermediate appellate court agreed with the trial court judge, finding both equal protection and due process violations and providing this analysis:

> ...The uninsured injured driver is left entirely without any opportunity at all to obtain compensation for any of his losses from the person who negligently or intentionally inflicted them irrespective of the severity of the injuries, irrespective of the freedom from fault for the occurrence of the accident, irrespective of whether the tortfeasor himself was uninsured, and irrespective of whether the tortfeasor was driving while intoxicated or under some other disability.

Provided by Rep. Meyer

MONTHYLY DRIVER LICENSE STATISTICS-2002

Suspensions	January	February	March	April	May	June	July	August	September	October	November	December	Yr. End Total
Financial Responsibility	0	30	0	36	0	59	0	0	76	0	49	121	**371**
Mandatory Insurance	151	409	396	307	293	249	286	198	234	285	422	860	**4090**
Financial Repsonsibility and Mandatory Insurance Suspension	147	145	174	154	120	135	297	96	159	179	352	688	**2646**
Unsatisfied Judgements	0	29	0	0	119	0	0	102	0	174	0	0	**424**
Defaults	0	0	43	0	0	31	0	0	28	0	17	0	**119**
Late Incoming Crash Reports	0	0	0	0	0	0	0	0	0	84	139	0	**223**
Totals:	**198**	**613**	**613**	**497**	**532**	**474**	**583**	**396**	**497**	**722**	**979**	**1669**	**7873**

Information Provided by the Division of Motor Vehicles HB 336 Civil Damages for Uninsured Drivers

Statistics From California
After the Passage of Proposition 213

In the Fall of 1996, Proposition 213 passed in California. Proposition 213 is commonly known as "No Pay, No Play". With the passage of Proposition 213, drivers were required to show positive proof of insurance upon registering a vehicle. These statistic show the percentage of uninsured motorsist prior to the passage of Proposition 213, and the effect of Proposition 213 on the percentage of uninsured motorists.

1994	31.30%	1997	20.12%	2000	14.21%
1995	29.34%	1998	16.34%		
1996	28.06%	1999	14.78%		

Provided by Rep. Meyer

Mandatory Insurance Suspension

Alaska has both Mandatory Insurance and Financial Responsibility laws. The purpose of these laws is to ensure that drivers and owners of vehicles using the streets and highways are financially responsible for any damage or injury caused by motor vehicle collisions and to remove financially irresponsible drivers from the highways.

The mandatory insurance law requires the operator or owner of a motor vehicle subject to registration to have motor vehicle liability insurance **in effect** when the vehicle is driven on a highway, vehicular way or area, or other public property in the state. The owner's or driver's motor vehicle liability insurance policy must meet the minimum coverage amounts required by law. The minimum coverage amounts are $50,000.00 for injuries or death to any one person, $100,000.00 for total injuries or death per collision, and $25,000.00 for property damages.

A driver who has been involved in a collision, regardless of fault, is required to show proof of motor vehicle liability insurance if the collision resulted in personal injury or death, or damage to property exceeding $500.00. A driver may show proof by completing the Certificate of Insurance form provided by the investigating police office at the collision scene. The form is also available from any Division of Motor Vehicles Office.

The Division of Motor Vehicles must suspend the driver's license, privilege to drive or privilege to obtain a license of drivers who fail to provide proof of liability insurance. The suspension period can be 90 days to 1 year depending on prior license actions. The license suspension will occur even if the driver is not at fault in the collision.

A person may apply for a limited work purpose license during the suspension period. The application for mandatory insurance limited license may be obtained at any Division of Motor Vehicle Office. There is not a fee for this specific type of limited license due.

Drivers must reinstate their privilege to drive at the end of their suspension period.

A person's license may also be suspended for non-compliance with the Financial Responsibility law.

If you have additional questions you can call, write, e-mail or visit a DMV office.

Financial Responsibility Suspension

Alaska has both Financial Responsibility and Mandatory Insurance laws. The purpose of these laws is to ensure that drivers and owners of vehicles using the streets and highways are financially responsible for any damage or injury caused by motor vehicle collisions and to remove financially irresponsible drivers from the highways.

The Division of Motor Vehicles must suspend the driver's license, privilege to drive or obtain a driver's license of drivers who fail to comply with the Financial Responsibility law. The suspension will occur when there is a reasonable possibility that the driver involved in a collision will be held liable and did not have insurance or had insufficient insurance to cover damages. The driver can satisfy the requirements for Financial Responsibility by providing proof that the requirements have been met in one of the following ways:

- Submit evidence to the department that an automobile liability insurance policy was in effect at the time of the collision (If you submit proof of insurance **prior** to the suspension date, no further action is required.) Certificate of Insurance
- Submit releases of liability (known as a general release) with notarized signatures of all persons who received personal injury or property damages in the collision
- Submit settlement agreements (known as a promissory note) with all persons seeking damages as a result of the collision
- Deposit security in an amount specified by the department
- Submit evidence that you were not liable for the damages through determination of a civil court
- Prove that you were not liable in the collision in the Administrative Hearing process

Drivers must reinstate their privilege to drive at the end of their suspension period.

A person's license may also be suspended under the Mandatory Insurance law.

If you have additional questions you can call, write, e-mail or visit a DMV office.

IP-174

Issue Paper

RAND Institute for Civil Justice

The Effects of a No-Pay/No-Play Plan on the Costs of Auto Insurance in Texas

Stephen J. Carroll and Allan F. Abrahamse

What Is No-Pay/No-Play?

The cost of automobile insurance has been a major public policy issue for more than a decade. A variety of public and private organizations and individuals have proposed alternative, purportedly less expensive, automobile insurance plans. But to obtain those savings, states would have to limit the rights and compensation traditionally provided to people injured in auto accidents. Recently, a new concept has emerged called "no-pay/ no-play," which limits the compensation rights of people who were breaking the law when they were injured.

The Texas Senate Interim Committee on Civil Justice is studying Texas's current liability system. Senator Teel Bivins, a member of the committee, asked the Institute for Civil Justice to analyze the effects of a no-pay/no-play automobile insurance plan similar to Proposition 213 adopted in California in November 1996. We used the models we had developed to analyze Proposition 213 [1] to estimate the likely effects of a similar plan on the costs of automobile insurance in Texas. This issue paper presents our results.

The plan we examine here bars drunk drivers and uninsured motorists from compensation for any non-economic losses resulting from auto accident injuries.[2] We estimate the likely effects of this plan on the costs of private passenger auto insurance. Because of data limitations, we did not consider the effects of the plan on the costs of commercial auto insurance or on felons.

Key Findings

Our analyses suggest that the no-pay/no-play insurance plan could reduce the costs of auto insurance. If current claiming, negotiating, and insurance purchasing patterns persist, the plan would reduce auto insurers' compensation costs for personal injuries by about 6 percent from the costs under Texas's current auto insurance rules. Given the past relationship between compensation costs and auto insurance premiums in Texas, this difference would translate into a reduction of about 3 percent in the average Texas driver's auto insurance premiums. To put this estimate in perspective, if the plan had been in force in 1996, the most recent year for which we have data on total auto insurance premiums,[3] Texas drivers' auto insurance premiums would have been about $182 million lower, a reduction of roughly $23 in the average Texas driver's auto insurance costs.

Our results address relative costs; they show the difference between what will happen if the current

system is retained and what would occur if the proposal were adopted. We do not suggest that auto insurance costs will necessarily fall if Texas adopts such a plan. For example, the plan may not reverse the long-term trend toward higher auto insurance costs. Rather, it is possible that no-pay/no-play provisions will slow the rate of growth in premiums so, over time, premiums would be roughly 3 percent less, on average, than they would be if the current system is not modified.

It should also be noted that our results address the effects of the plan on the average Texas driver. Both the expected costs of insuring a driver under the current auto insurance system and the likely effects of the plan vary from one driver to another, depending on a driver's risk factors and the coverages and policy limits purchased. For example, the savings that would result from limiting compensation to uninsured drivers injured in auto accidents would be greater in those communities in which the uninsured motorist rate is higher. Similarly, because the plan does not affect the costs of collision and comprehensive coverages, the relative savings would be greater for drivers who purchase only the personal injury and property damage liability coverages.

Because adoption of no-pay/no-play could engender changes in behavior, we recalculated our estimates under different sets of assumptions incorporating such changes. We also explored the sensitivity of these results to sampling error. Although the precise estimates vary from one set of behavioral assumptions to another, the results generally suggest that the plan would cut the costs of compensating auto accident victims by 3 to 10 percent. Thus, our basic conclusion--that the plan would result in savings of about 3 percent on the average driver's auto insurance premiums--holds for all the alternatives we considered.

Probable Effects of No-Pay/No-Play in Texas

The traditional rules of the tort system govern recovery for auto accident injuries in Texas. An accident victim may seek compensation for all economic and noneconomic losses from the driver who caused the accident.[4] However, the victim is entitled to compensation only to the degree that the other driver is responsible for the accident.

The plan examined here would eliminate compensation for noneconomic losses to uninsured motorists and drunk drivers injured in auto accidents. This plan would not affect uninsured or drunk drivers' rights to compensation for economic losses. Nor would it affect the compensation rights of any other person injured in an auto accident--insured persons, sober drivers, passengers, pedestrians, bicyclists, etc.--including passengers injured while riding in cars operated by uninsured or drunk drivers.

In sum, the only accident victims who would be affected by the plan are uninsured or drunk drivers injured by an insured driver, and drunk drivers covered by uninsured motorist insurance injured by a negligent, uninsured motorist. The savings achieved by the plan would be the amount of compensation for noneconomic loss that would be paid to affected victims under the current law, plus the transactions costs--claims handling and defense costs--that insurers would have incurred in providing that compensation.

To estimate the effects of the plan, we used data derived from a representative sample of Texas auto accident injury claims closed with payment during 1992.[5] For purposes of the analysis, we assume that the distributions of accidents, losses, and claimants reported in those data are representative of the corresponding future distributions. As a result of conversations with several major insurers, we assume that the uninsured motorist rate is 20 percent, that 90 percent of insured drivers will purchase uninsured motorist coverage, that 10 percent of insured drivers purchase medical payments coverage, and that 80 percent of insured drivers purchase personal injury protection coverage.

Given these assumptions, about 7 percent of future Texas auto accident victims will be uninsured drivers injured by an insured driver. Another 2 percent of future victims will be insured drunk drivers who are either injured by another insured driver or are injured by an uninsured motorist and have uninsured motorist coverage. In all, the plan would bar about 9 percent of auto accident victims from compensation for noneconomic loss. If the costs of compensating uninsured or drunk drivers hurt in auto accidents are reduced by the average compensation for noneconomic loss paid Texas drivers hurt in auto accidents, plus the associated transactions costs, the total costs of compensating auto accident victims would fall about 6 percent.

Personal injury coverages account for about half of auto insurance premiums; property damage coverages account for the other half. Thus, a 6 percent reduction in the costs of compensating auto accident victims for personal injuries translates into a 3 percent reduction in total auto insurance premiums. In 1996, total auto insurance premiums in Texas added up to about $5.8 billion. If the plan had been in force then, the costs of auto insurance in 1996 would have been about $182 million lower:

- Drivers denied compensation for noneconomic losses because they were drunk or uninsured when they were injured would have lost about $124 million. (Because the attorneys who represent auto accident victims are typically paid on a contingency fee basis, a reduction of $124 million in accident victims' gross compensation would have been divided between the victims--in the form of lower net compensation--and their attorneys--in the form of lower fees.)

- Because insurance companies would have faced smaller claims from drunk, insured drivers injured in accidents, they would have had to pay about $21 million less in claims handling and defense costs.

- Finally, if insurance companies' other costs (general expenses, selling expenses, taxes and license fees, and dividends to policyholders) vary in proportion to compensation costs, insurance companies would have been able to cut premiums another $37 million and still earn the same rate of profit.

Possible Behavioral Responses to No-Pay/No-Play Auto Insurance

In the estimates described above, we assume that past behaviors persist. But it is possible that people will change their behavior if the plan is adopted. We identified what some of these possible behavioral changes might be, modified our model to reflect alternative behavioral assumptions, and reestimated the effects of the plan. We emphasize that we have no evidence that any of these behavioral changes will occur if the plan is approved. Our purpose is to identify the extent to which our estimates are sensitive to the behavioral assumptions that underlie the calculations.

It is possible that the *claiming behavior* of uninsured or drunk drivers might change if they could no longer obtain compensation for noneconomic loss. We have found evidence of excess claiming for medical costs in auto personal injury cases across the United States.[6] Texas's current system encourages excess claiming as a way to leverage greater compensation for noneconomic loss; by eliminating that incentive, the plan would discourage fraudulent or excessive claims. At the same time, many accident victims rely on compensation for noneconomic loss for the funds needed to pay their attorneys, eliminating this source of funds may reduce victims' ability to obtain an attorney and, consequently, discourage legitimate claims.

The civil justice policy implications of reducing the frequency of excessive claims are very different from the policy implications of reducing the frequency of legitimate claims. But from a cost perspective,

the two look the same: Fewer claims imply lower costs.

To estimate how reducing the frequency of claims--excessive claims, legitimate claims, or some combination--would affect costs, we assumed that adoption of no-pay/no-play would result in either a 25 percent or a 50 percent reduction in the frequency of claims, and we estimated the savings in both cases.

The *negotiating behavior* of accident victims, of their attorneys, or of claims adjusters might change if the plan is adopted. In principle, those involved in resolving a liability claim determine the victim's economic and noneconomic loss as well as the insured's negligence. In practice, the parties often focus on the total amount of compensation that will be paid the victim, without regard for the specifics of just how much compensation is being paid for what. It is possible that those involved in resolving a claim by an uninsured or drunk driver will agree on a compensation figure that is less than what would have been paid under the current system, but not by the full amount that our data suggest is being paid for noneconomic loss.

To estimate how a partial, rather than full, elimination of compensation for noneconomic loss to uninsured or drunk drivers would affect our estimates, we assumed that despite the formal provisions of the plan, uninsured or drunk drivers injured in auto accidents would be compensated for either 25 percent or 50 percent of their noneconomic loss, and we estimated the savings in both cases.

Adoption of the plan could also change some drivers' *insurance purchasing behavior*. The potential costs of going uninsured would be increased--uninsured drivers would not only be in violation of the law, they would not have access to compensation for noneconomic loss in the event that they were injured in an auto accident. At the same time, the plan would reduce the costs of purchasing auto insurance, relative to the current system. It is possible that some drivers who would go uninsured under the current system will choose to purchase insurance under the plan.

To estimate how an increase in the fraction of drivers who purchase insurance would affect our estimates, we assumed that either 25 percent or 50 percent of the uninsured motorist population chooses to purchase insurance, and we estimated the savings in both cases.

Our estimates are based on data obtained in a sample of claims; they are subject to *sampling error*. Some of these claims were high-dollar claims, and it is possible that these high-dollar claims had an undue influence on our results. However, high-dollar claims are a fact of life, and although they are relatively rare, they might indeed have a real influence on savings under the plan.

To examine the possible effect of sampling error on our results, we estimated the effects of the plan under three very different assumptions regarding the sample: First, we used all the cases in our sample to make nominal cost estimates. We then dropped the 10 percent of all cases with the greatest economic loss to obtain a second set of cost estimates. Finally, we doubled the economic loss of those in the top 10 percent of all cases to obtain a third set of cost estimates. It is unlikely that the effect of sampling error would be as great as the effect of discarding or doubling the top 10 percent of the sample.

In sum, we considered the sensitivity of our results to three alternative assumptions regarding the values of each of four factors: claim frequency, the fraction of noneconomic loss compensated, the percentage of uninsured drivers induced to purchase insurance, and the frequency of very large claims. We calculated relative savings under the plan under all 81 combinations of the four factors over the three levels discussed above. The table shows the results of these calculations.

Relative Savings in a Compensation Costs Provided by a No-Pay/No-Play Plan Under Alternative

Assumptions, in Texas, by Percent

Claiming Rate	Percentage of Noeconomic Loss Compensated	Percentage of Uninsured Drivers Purchasing Insurance	Compensation Cost Savings Estimates		
			Nominal	When Top 10% Dropped	When Top 10% Doubled
No reduction	None	0	5.7	6.3	5.5
		25	7.8	7.8	7.8
		50	9.9	9.4	10.2
	25	0	4.3	4.8	4.2
		25	6.7	6.7	6.8
		50	9.1	8.5	9.4
	50	0	3.0	3.3	2.9
		25	5.6	5.5	5.8
		50	8.3	7.6	8.7
25%	None	0	7.0	7.3	6.9
		25	8.8	8.7	9.0
		50	10.7	10.0	11.1
	25	0	6.0	6.2	5.9
		25	8.0	7.8	8.2
		50	10.1	9.3	10.5
	50	0	5.0	5.1	4.9
		25	7.2	6.9	7.4
		50	9.5	8.7	9.9
50%	None	0	8.3	8.4	8.3
		25	9.9	9.5	10.1
		50	11.5	10.6	11.9
	25	0	7.6	7.6	7.6
		25	9.3	8.9	9.6

	50	11.1	10.2	11.5
50	0	6.9	6.9	7.0
	25	8.8	8.3	9.0
	50	10.7	9.7	11.1

Calculations are based on a representative sample of Texas auto accident injury claims closed with payment during 1992.

The first point to be seen from the table is that *relative savings in compensation costs always exceed about 3 percent,* regardless of how we combine the various factors. It seems quite likely that no-pay/no-play will reduce compensation costs in Texas.

The second point is that *relative savings in compensation costs generally exceed 6 percent.* Savings drop below 6 percent in relatively few cases, mostly those cases where drivers negotiate high compensation for noneconomic losses. Assuming that the terms of the plan are really put into practice, it seems unlikely that such negotiations will occur frequently. Thus, it seems quite likely that no-pay/no-play will modestly reduce compensation costs.

Finally, relative savings rarely exceed 10 percent. Savings approach and exceed this level when many currently uninsured drivers decide to purchase insurance after the plan goes into effect, or if we assume that our data file underrepresents high-dollar claims.

In light of the above, we believe that relative savings in compensation costs under the plan will fall somewhere between 6 and 10 percent.

Data and Methods

We obtained detailed information on a random sample of about 4,800 Texas auto accident injury claims closed with payment during 1992 under the principal auto injury coverages.[7] The data describe each victim's accident, resulting injuries and losses, and the compensation obtained from auto insurance. We combined data from several sources to estimate insurers' transaction costs,[8] including both allocated loss-adjustment expenses (costs, primarily including legal fees and related expenses, incurred on behalf of and directly attributed to a specific claim) and unallocated, or general claim-processing costs, for each line of private-passenger auto insurance.[9]

We estimated the effects of the plan on insurance costs by comparing the costs of compensating the accident victims in the sample under the current insurance system to the costs of compensating the same victims for the same injuries and losses under a no-pay/no-play provision. We included all accident victims--insured and uninsured drivers, passengers, pedestrians, bicyclists, people injured in single-car accidents, etc.--in these calculations.

We assumed the proportions of drivers who will purchase each available type of auto insurance personal injury coverage and, by implication, the proportion of drivers who will go uninsured under Texas's current system. Given these assumptions, we computed the probability that an accident victim will have access to compensation under each coverage, multiplied by the average compensation paid to Texas accident victims under that coverage, and summed over all coverages to estimate insurers' expected compensation costs under the current system. We then estimated a break-even premium for the current

system--the amount insurers would have to charge the average insured driver to recover just what they paid out in compensating victims and the transaction costs they incurred in providing that compensation.

We assumed that drivers would make the same insurance purchasing decisions under the plan and, by implication, that the same proportion of drivers would go uninsured. We computed insurers' expected compensation costs, given those assumptions, and estimated the break-even premium under the plan--the amounts insurers would have to charge insured drivers to recover compensation costs.

Finally, we calculated relative savings under the plan as the percentage difference between the break-even premium under the current system and the one under the plan.

We focused on the effects of the proposed plan on auto insurers' compensation costs, including both the amounts they pay out in compensation and the transaction costs they incur in providing that compensation. We neglected the many other factors (e.g., insurers' overhead and profit margins and investment income) that also affect insurance premiums.

We focused on the relative costs of the two insurance systems. Because any factors that proportionately affect costs under both the current system and the proposed plan cancel out in the comparison, the results are insensitive to changes in such factors over time.

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How Big Is the Price Tag for Excess Auto Injury Claims? Santa Monica, California: RAND, RB-9023, 1995, no charge; summarizes The Costs of Excess Medical Claims for Automobile Personal Injuries, RAND DB-139-ICJ.

[1] Carroll and Abrahamse (1996) provide a description of the data and methods we used to analyze the effects of Proposition 213 in California. We drew upon the results presented there for this discussion.

[2]Proposition 213 also bars compensation for any loss incurred in auto accidents by persons committing or fleeing from their crimes. However, because of data limitations, we do not consider the effects of that provision in this analysis.

[3]National Association of Insurance Commissioners (1998).

[4]Economic losses include an accident victim's medical costs, lost wages, burial expenses, replacement service losses, and other pecuniary expenditures. Noneconomic losses include physical and emotional pain, physical impairment, mental anguish, disfigurement, loss of enjoyment, and other nonpecuniary losses.

[5]The data were collected by the Insurance Research Council (1994) from 61 insurance companies that together accounted for about 81 percent of Texas's private-passenger automobile insurance (by premium volume) in 1992.

[6]See Carroll, Abrahamse, and Vaiana (1995).

[7]Insurance Research Council (1994) provides a detailed description of the database used for this work.

[8]Carroll et al. (1991), Appendix D, describe the data and methods used to estimate insurers' transaction costs.

[9]We do not include claimants' legal costs, the value of claimants' time, or the costs the courts incur in handling litigated claims. Those costs do not affect insurers' costs and hence do not affect auto insurance premiums.

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HOT TOPICS & INSURANCE ISSUES

Compulsory Auto Insurance

THE TOPIC

FEBRUARY 2004

Most states require drivers to have auto liability insurance before they can legally drive a car. (Liability insurance pays the other driver's medical, car repair and other costs when the policyholder is at fault in an auto accident.) All states have laws that set the minimum amounts of insurance or other financial security drivers must have to pay for the harm caused by their negligence behind the wheel if an accident occurs. The public generally supports compulsory auto insurance and wants these laws enforced.

Laws in most states have proven ineffective in reducing the number of drivers who are uninsured. There are many reasons for this. Some drivers can't afford insurance and some drivers with surcharges for accidents or serious traffic violations don't want to pay the high premiums that result from a poor driving record. With the percentage of uninsured motorists as high as 30 percent in some states, it is costly to track down violators of compulsory insurance laws. And unless the odds of getting caught are high and the penalties severe, drivers will continue to flout the law.

KEY FACTS

- Liability insurance is compulsory in 47 states and the District of Columbia. Only New Hampshire, Tennessee and Wisconsin do not have compulsory auto insurance liability laws.
- About 14 percent of drivers in the United States are uninsured, despite laws that prohibit it.
- More than 20 states have considered "no pay, no play" legislation, a concept which sets limits on the amount of compensation uninsured motorists can receive in an accident.

CURRENT DEVELOPMENTS

Ineffectiveness of Compulsory Auto Insurance Laws: Over the long term, compulsory auto insurance laws have not reduced the uninsured driver population in the United States. Although the number of uninsured drivers in a state declines when a compulsory law first goes into effect, some drivers allow the coverage to expire and gradually the uninsured driver levels increase, according to the National Association of Independent Insurers, an organization representing property/casualty insurance companies now known as the Property Casualty Insurers Association of America (PCI) (see Background).

"No Pay, No Play": To encourage more drivers to purchase insurance and to respond to public concern that people who obey compulsory auto insurance laws are subsidizing those who do not, lawmakers in some states have considered the "no pay, no play" concept, which prohibits uninsured drivers from bringing lawsuits for noneconomic damages, such as pain and suffering. According to an Insurance Research Council (IRC) 1997 public opinion survey, 77 percent of respondents thought it was a good idea to limit uninsured drivers' rights to collect damages from insured drivers, more than the 70 percent who said it was a good idea in 1996. Although more than 20 states since the mid-1990s have considered "no pay, no play" legislation, only four states have enacted such laws — Michigan, California, Louisiana and New Jersey. The laws in California and New Jersey also prohibit drunk drivers from filing lawsuits (see Background).

New Jersey's "no pay, no play" statute was challenged by plaintiffs who disputed a trial court's decision to deny recovery for personal injuries on the grounds that the plaintiffs had no auto insurance. The case was brought to the State Supreme Court in December 2003. In Louisiana, a state court upheld a similar statute.

Low-Cost Auto Policies: In an effort to help low-income drivers in urban centers in California and New Jersey where auto insurance premiums are high, low-cost policy programs have been established. California's pilot program in the California Assigned Risk Program, which began in July 2000, was not effective at first because the

- policies were still too expensive for low-income consumers, provided little value as these consumers have few assets to protect and did not provide medical care coverage. Legislation enacted in 2003 lowered eligibility requirements, cut premiums and increased coverage (see Background). By the end of 2003, there were about 5,600 low-cost policies in force, as reported by the top nine companies in California that are underwriting the policies. These nine companies make up 95 percent of the total volume of low-cost policies.

In mid-2003, New Jersey began offering "dollar a day" auto insurance. The $365 annual premium pays for the same coverage as the state's Basic Policy, but is limited to the poorest people in the state, those eligible for Medicaid. The Basic Policy offers $15,000 in personal injury protection, up to $250,000 in medical benefits for catastrophic injuries and a $10,000 death benefit. Qualified applicants are exempt from the liability coverage that is mandatory in New Jersey.

Enforcement of Compulsory Laws: Liability insurance is compulsory in 47 states and the District of Columbia (see chart). Penalties for noncompliance include fines, jail time, license or registration revocation, confiscation of license plates and, in some Florida counties, Louisiana, Connecticut and New Jersey, vehicle impounding. In April 2002, at a meeting before the Louisiana House Insurance Committee, a member of the state Towing and Recovery Association said that 60 percent of impounded vehicles, mostly in poor condition, are never reclaimed since owners can get a similar car for the price of getting the first one out of the pound. In general, although enforcement laws should be strict enough to foster awareness among motorists that there are penalties for driving without insurance, if the penalties are too punitive courts and law enforcement agencies may not be disposed to enforce them.

At least seven states confiscate license plates when vehicle owners do not purchase the minimum insurance. Twenty-two states revoke or suspend drivers licenses, and 20 revoke or suspend vehicle registration. Most states combine penalties, i.e., first offenses are punishable with fines and registration revocations, while subsequent offenses entail jail time and license plate confiscation. At least four states — Louisiana, Florida, Georgia and South Carolina — have used checkpoints to identify uninsured drivers, primarily as a tool to raise public awareness of the uninsured motorist problem and the possibility of getting caught.

Percentage of Uninsured Motorists: The IRC's 2001 Public Attitude Monitor (PAM) found that 12 percent of respondents admitted having at least one uninsured car, the same percentage as in 2000. However, the PAM report's methodology differs from the claims study mentioned above because the PAM is based on self-reporting. The IRC contends that self-reporting is not as accurate as studying insurance claims. The percentage of households reporting uninsured vehicles to the IRC fluctuated between 6 and 17 percent in the 1990s. The 2000 PAM survey reiterated what observers have long known: income influences the likelihood of buying insurance. It found that the number of uninsured vehicles decreased from the lowest to highest income groups, with fluctuations in the middle-income groups. Statistically, respondents with an annual income of less than $20,000 per year averaged 1.40 vehicles and 0.30 uninsured vehicles. In contrast, households with annual incomes of $75,000 and over averaged 2.88 cars but only 0.18 uninsured vehicles per household.

To pressure drivers to purchase insurance, about a dozen states have set up complex databases that match vehicle registrations with insurance company auto insurance records. Mismatch problems — where insurer and Department of Motor Vehicle (DMV) records mistakenly flag policyholders as flouting the law — have occurred in several states, including Colorado, Florida and Nevada. Nevada's DMV then switched from using names and policies to using vehicle identification numbers. In three Florida counties that allow license plate confiscation for lack of insurance, mismatches can have serious implications for insured motorists cited in error. In New York, insurers began issuing bar-coded insurance cards in late 2000, the first state to use them.

Georgia's database began operating in January 2004. A sample of the database of over 6.7 million vehicles in November 2003 found that about 7 percent had no insurance. In Alabama, the Revenue Department has resumed checking motorists for insurance after a two-year lapse. In fiscal 2001, 8,000 registrations were suspended for lack of insurance before budget problems closed the program down. Missouri's random sampling program resulted in the suspension of about 10,000 drivers licenses since January 2002. South Carolina's database is expected to begin operating in March 2004, along with Minnesota's random sampling program.

Uninsured Motorist Coverage: In Ohio, the State Supreme Court reversed the Scott-Pontzer decision, ruling that an employer's commercial auto insurance covers only employees who are injured in the course of their employment. The November 2003 decision overrules the court's earlier decision, which extended the coverage to family members of employees and to cases where employees were not working and possibly driving a personal vehicle outside of work hours. The reversal is expected to affect uninsured and underinsured claims that date back as far as 15 years.

BACKGROUND

In 1927, Massachusetts became the first state to require the purchase of auto liability insurance. Since then, 47 states and the District of Columbia have followed suit. Such laws usually have the support of the general public despite the fact that compliance with such laws is generally poor and enforcement activities are costly. Compulsory auto insurance laws do nothing to protect drivers involved in accidents with drivers of stolen vehicles or drivers from one of the three states where insurance is not compulsory, drivers of unregistered vehicles, the insurance dodger who cancels a policy immediately after receiving a proof-of-insurance certificate and the hit-and-run driver.

Uninsured Motorists: It is hard to assess the extent of the uninsured motorist problem and devise an effective way to deal with it. The National Association of Insurance Commissioners (NAIC) has suggested that strict enforcement of compulsory auto insurance laws, with mandatory and "significant" fines for first time offenders, may be the key to lowering the uninsured motorist population. In 1989 it identified North Carolina as having one of the highest rates of compliance at the time (96.6 percent) and one of the strictest and swiftest enforcement programs. The NAIC said the program's effectiveness relies largely upon the cooperation of the state's insurance and motor vehicle departments, insurers and state and local law enforcement agencies — following up on reports of insurance policy cancellations, for example, to make sure that new policies have been purchased or that the license plates have been turned in. Such cooperation may not be possible in states with larger metropolitan areas, where other law enforcement priorities may limit the resources devoted to enforcing compulsory auto liability insurance laws.

A study released in mid-2002 written by professors at Florida State University's College of Business also noted the positive effect of compulsory laws combined with high noncompliance fines. It noted that states that had this combination from 1995 to 1997 were able to decrease their uninsured motorist rates. While high fines were found to be an effective deterrent, jail time for noncompliance was not, probably, as the authors said, because motorists don't believe that the penalty will be enforced.

Compulsory auto liability insurance is not necessarily the most effective solution. A 1994 study by the National Association of Independent Insurers (now known as PCI) found that New Hampshire, a state that does not have compulsory insurance laws, had a smaller percentage of uninsured drivers than the nearby states of Rhode Island, Vermont and Connecticut. Only 10 other states had fewer uninsured drivers. The state had the lowest percentage of uninsured drivers — 9.5 percent — of all the states without compulsory laws.

Affordability influences decisions about whether to purchase auto insurance. Risk Information, Inc. found that the 1995 Insurance Research Council (IRC) uninsured motorist rates by state, when compared with average personal auto insurance expenditures from the NAIC, points to cost, along with enforcement and culture, as factors in decisions not to buy compulsory coverage. For instance some states such as New Jersey, New York and Louisiana have high insurance costs, especially when measured against median family income. Yet their uninsured motorist rates were 12 percent or less, compared with Alabama, which has an uninsured rate of 28 percent even though the coverage costs much less there.

Computer Databases: Insurer verification laws that mandate that all insurance companies in a state submit the entire list of their insureds to an outside vendor which matches the insureds to motor vehicle records of motor vehicle registrations was also expected to help solve the uninsured motorist problem. Such a system was thought to be a promising advance that would promote compliance with the law since it would increase the odds of being caught driving uninsured. However, a number of states have reported having problems administering this system, which in some states has had a high error rate.

Other Solutions to the Uninsured Motorist Problem: Over the years various proposals for dealing with the uninsured motorist problem have been put forward. Unsatisfied judgment funds were set up in a few states to provide a source of funds for accident victims when the at-fault party has no means of paying a judgment, but their effectiveness proved to be limited. A more effective remedy is uninsured (and underinsured) motorist coverage that provides compensation to policyholders when an at-fault motorist has no liability insurance (or insufficient amounts) or when the at-fault motorist is a hit-and-run driver. Like unsatisfied judgment funds, this program does nothing to reduce the number of uninsured motorists but it does provide a way for individual drivers to deal with the financial consequences of accidents with hit-and-run or uninsured drivers. In about 20 jurisdictions, uninsured motorist coverage is mandatory. In other states, insurers are required to offer the coverage but a driver does not have to purchase it. Only a handful of states require drivers to purchase underinsured motorist coverage.

The price of uninsured motorist coverage varies considerably from state to state, depending in part on the percentage of drivers that are uninsured. The price is also influenced by whether the amount available to pay claims can be increased by "stacking," a practice that works to the benefit of people who own more than one

insured vehicle. In states where stacking is not specifically prohibited, liability limits under the uninsured motorist coverage may be multiplied by the number of cars insured under a single policy, or may be added together where multiple vehicles are insured under different policies. Thus, in a three-car family, where uninsured motorist liability limits are $20,000, in a state that does not prohibit stacking, the amount available to pay a claim in an accident with an uninsured driver would be $60,000. Because stacking drives up the cost of auto insurance, most states now prohibit stacking. However, in challenges to laws prohibiting the practice, legislators in Missouri and the Supreme Court of Arizona have upheld stacking provisions.

No-fault insurance laws also provide some relief from the problem of uninsured motorists. Under no-fault auto insurance plans, accident victims can collect benefits from their own insurance companies, regardless of whether the other party has insurance coverage (see paper on no-fault auto insurance for more information).

Stiffer penalties for driving without insurance have been considered in many states, along with more effective ways of identifying uninsured drivers. In some states, however, judges are reluctant to impose harsher penalties on people who cannot afford insurance. A survey by the Independent Insurance Agents of Texas suggests that many people are uninsured not out of a desire to defy the law but because they lack the financial assets to comply. The study shows that uninsured drivers in Texas are likely to be young (and therefore in the highest premium bracket) and to drive cars more than 10 years old (the least expensive cars to purchase).

"No Pay, No Play": In response to public concerns that those who obey compulsory laws subsidize scofflaws, legislators in more than 20 states have proposed "no pay, no play" laws that ban uninsured drivers from suing for non economic damages such as pain and suffering. Four states — Michigan, California, Louisiana and New Jersey — have enacted such laws. In Michigan uninsured drivers who are 50 percent or more at fault cannot collect noneconomic damages in the event of an auto accident. California's plan (Proposition 213) goes further by curtailing lawsuits for drunk drivers as well as for those who are uninsured. Louisiana's law compels uninsured motorists to pay for the first $10,000 in out-of-pocket medical expenses and the first $10,000 in property damage before they can sue the other party. New Jersey's law, similar to California's Proposition 213, specifies that uninsured and drunk drivers, as well as motorists who intentionally commit other crimes may not file lawsuits for economic or noneconomic damages. A related issue was addressed in Iowa where the governor signed a bill prohibiting motorists from collecting noneconomic damages for injuries resulting from an accident if the motorist was using the vehicle while committing a felony.

Low-Cost Policies: Low-cost auto policies are designed for drivers who cannot afford regularly priced auto policies or who have little or no assets to protect. New Jersey's Basic Policy offers $15,000 in personal injury protection, up to $250,000 in medical benefits for catastrophic injuries and $5,000 property damage liability. Policyholders have the option to buy $10,000 bodily injury liability coverage but they cannot buy uninsured, under-insured or collision and comprehensive coverage.

California's plan, designed to provide low-cost liability coverage to good drivers who demonstrate financial need, mandates that every auto insurer admitted in the state take their "fair share" of applicants. Applicants must purchase bodily injury liability coverage up to $10,000 for one person involved in an accident, up to $20,000 for more than one person, and $3,000 for property damage liability. There is no collision or comprehensive coverage available. The pilot program for drivers in the California Assigned Risk Plan in Los Angeles and San Francisco will expire on January 1, 2007. Only drivers over age 19 with good driving records and low incomes (up to 250 percent of the poverty level) are eligible. Applicants must have motor vehicles valued at $12,000 or less. The rate for the mandatory coverage in Los Angeles is $347 with a 25 percent surcharge for single males 19 to 24 years old. In San Francisco, the policy costs $314 with the same surcharge. The policy also includes payment options, allowing a 15 percent deposit and six monthly installments, optional $10,000/$20,000 uninsured motorist bodily injury coverage and $1,000 medical payments coverage. Colorado has a low-cost plan for families with incomes of up to $31,000 per year that provided a maximum benefit of $25,000 for medical expenses or personal injury protection, but as of January 2004, insurers are no longer required by law to offer these policies.

Enforcement of Compulsory Auto Liability Insurance Laws: The attached chart provides a state-by-state overview of minimum auto liability limits and the measures used to enforce compulsory liability laws. For each state the insurance required by state law is listed. Coverages that may be rejected by the policyholder, either in writing or verbally (i.e., are not mandatory) have been excluded.

Increasingly, laws are being passed that expand the role of the insurer in verifying compliance with compulsory liability laws and aiding in their enforcement. Insurance companies often work in conjunction with state motor vehicle departments to verify insurance coverage. Many states now have laws that specify that insurers must notify the motor vehicle department when a policy is cancelled or not renewed. In some states, insurers are asked to verify the existence of insurance at the time that a specific accident occurred. In other states, insurers are given

lists of randomly selected auto registrations, or in some states, lists of motorists who were involved in accidents, which they are asked to match up with insurance policies that the motorists claim were in effect. Newer laws, known as computer data laws, require an insurer to submit its entire list of automobile liability policies, updated at specified intervals, to a state agency such as the motor vehicle department. The state agency can use the lists to verify registration applicants' declarations that insurance is in effect.

Penalties for driving without compulsory insurance are imposed on first offenders in only about 15 states. In other states with compulsory laws, penalties are provided for in the law but are not required to be imposed for a first offense. Penalties range from fines, which can be as high as $5,000 for a subsequent offense, to license or registration suspension or revocation. Some states can impose jail time, confiscate license plates and impound vehicles.

ENFORCEMENT OF COMPULSORY AUTO LIABILITY INSURANCE LAWS

(As of February 2004)

			Proof of Insurance Required (c)				
State	Insurance Required (a)	Min[illegible] Liab Limits	At [illegible]tration	At Time of Accident	At All Times in Vehicle	Ins Verifi[illegible] of Insur (c)	[illegible]lties for [illegible]mpliance Offense)
AL	BI & PD Liab	20/40/10	Yes	Yes	Yes	None	license suspension
AK	BI & PD Liab	50/100/25	No	No (e)	Yes	2	Registration suspension/revocation (f)
AZ	BI & PD Liab	15/30/10	No (g)	Yes	Yes	1,2,4	$250 fine
AR	BI & PD Liab	25/50/25	Yes	No	No	None	$250 fine; registration suspension, confiscation of plates (f)
CA	BI & PD Liab	15/30/5 (h)	Yes	Yes	Yes	2	$100 fine; registration suspension
CO	BI & PD Liab	25/50/15	Yes	Yes	Yes	1,4	License suspension, $500 fine
CT	BI & PD Liab, UM, UIM	20/40/10	Yes	Yes	Yes	1,4	Registration/license suspension/revocation, confiscation of plates, vehicle impoundment, $110-$250 fine
DE	Bi & PD Liab, PIP	15/30/10	No	Yes	Yes	1,3	$150 fine; registration suspension, confiscation of plates (f)
DC	BI & PD Liab, UM	25/50/10	Yes	No	No	1,3	$100 fine or maximum 30 days jail
FL	PD Liab, PIP	10/20/10 (i)	Yes	Yes	Yes	1,4	60-day license revocation, vehicle impoundment for subsequent offense and confiscation of plates in Dade, Broward and Hillsborough counties (f)
GA	BI & PD Liab	25/50/25	Yes	Yes	Yes	1	60-day license suspension, registration suspension
HI	BI & PD Liab, PIP	20/40/10	No	Yes	Yes	None	$1,000 fine
ID	BI & PD Liab	25/50/15	No	Yes	Yes	1,3	$75 fine (f)
	BI & PD						60-day registration

IL	Liab, UM	20/40/15	No	Yes	Yes	1,3	suspension (f)
IN	BI & PD Liab	25/50/10	Yes	Yes	No	1,2	90 day license suspension, $150 reinstatement fee
IA	BI & PD Liab	20/40/15	No	Yes	Yes	1	$100 fine
KS	BI & PD Liab, PIP, UM	25/50/10	Yes	No	No	2	$100 fine (f)
KY	BI & PD Liab, PIP	25/50/10	Yes	Yes	Yes	1	Registration revocation, $50 fine, up to 90 days in jail (f)
LA	BI & PD Liab	10/20/10	Yes	No (e)	Yes	1,4	$25 fine, up to $500 fine, confiscation of plates (f), vehicle impoundment
ME	BI & PD Liab, UM, UIM	50/100/25 (j)	No	Yes	Yes	1	$100-$500 fine, 30-day license and registration suspension
MD	BI & PD Liab, PIP (k), UM	20/40/15	Yes	No	No	1,3	$150 fine (f)
MA	BI & PD Liab, PIP, UM	20/40/5	Yes	No	No	1	$500 fine (f)
MI	BI & PD Liab, PIP	20/40/10	Yes	No	No	1	$200 fine (f)
MN	BI & PD Liab, PIP, UM, UIM	30/60/10	No	Yes	Yes	3	License and/or registration revocation for 6 months (f)
MS	BI & PD Liab	10/20/5	No	Yes	Yes	1	$1,000 fine, license suspension
MO	BI & PD Liab, UM	25/50/10	Yes	Yes	Yes	1,3	License and registration revocation (f)
MT	BI & PD Liab	25/50/10	No	Yes	Yes	1	$250 fine or not more than 10 days in jail (f)
NE	BI & PD Liab	25/50/25	Yes	Yes	Yes	1,4*	$500 fine (f), license and registration suspension
NV	BI & PD Liab	15/30/10	No	Yes	Yes	1,4	$100 fine (f)
NH	FR only, UM	25/50/25	No	No (e)	No	None	None
NJ	BI & PD Liab, PIP, UM	15/30/5 (l)	No	Yes	Yes	4	$300 fine, community service, 1-year license suspension, vehicle impoundment
NM	BI & PD Liab	25/50/10	Yes	No	No	1,3	$100 fine (f)
NY	BI & PD Liab, PIP, UM	25/50/10 (m)	Yes	Yes	Yes	1,4	1-year license revocation
NC	BI & PD Liab	30/60/25	No	No	No	1,4	60-day registration suspension (f)
ND	BI & PD Liab, PIP, UM	25/50/25	No	No (e)	No	1	$150 fine, registration revocation, license suspension (f)
OH	BI & PD Liab	12.5/25/7.5	No	Yes	Yes	1	90-day license suspension, $75 reinstatement fee
							Less than $500 fine,

OK	BI & PD Liab	10/20/10	Yes	Yes	Yes	1	less than 6 months jail (f)
OR	BI & PD Liab, PIP, UM	25/50/10	No	Yes	Yes	1,3	License suspension and/or revocation (f)
PA	BI & PD Liab, Med	15/30/5	No	Yes	Yes	1	License and registration suspension, confiscation of plates (f)
RI	BI & PD Liab, UM	25/50/25 (n)	No	No	No	1,3	$500 fine, confiscation of plates
SC	BI & PD Liab, UM	15/30/10	Yes	Yes	Yes	1,4	Less than 30 days jail, registration suspension (f)
SD	BI & PD Liab, UM	25/50/25	No	Yes	Yes	1	1-year license suspension (f)
TN	FR only	25/50/10 (o)	No	No	Yes (p)	1	$100 fine
TX	BI & PD Liab	20/40/15	Yes	Yes	No	1	$75 fine; license and registration suspension (f)
UT	BI & PD Liab, PIP	25/50/15 (q)	No	Yes	Yes	1	$400 fine; up to $1,000, license and/or registration loss (f)
VT	BI & PD Liab, UM, UIM	25/50/10	No	Yes	Yes	1	Less than $100 fine (f)
VA	BI & PD Liab, UM	25/50/20	No	No	No	1,2,3	None
WA	BI & PD Liab	25/50/10	No	No	No	1	$480 fine
WV	BI & PD Liab, UM	20/40/10	Yes	Yes	Yes	1	90-day license suspension, registration revocation (f)
WI	FR only, UM	25/50/10	No	No	No	1	License and or registration revocation (f)
WY	BI & PD Liab	25/50/20	Yes	Yes	Yes	1	Up to $750 fine; up to six months in jail

(a) FR--Financial responsibility only. Insurance not compulsory.

Compulsory Coverages:

BI Liab--Bodily injury liability

PD Liab--Property damage liability

UM--Uninsured motorist

PD--Physical Damage

Med--First party (policyholder) medical expenses

UIM--Underinsured motorist

PIP (Personal Injury Protection)--Mandatory in No-Fault states. Includes medical, rehabilitation, loss of earnings and funeral expenses. In some states PIP includes essential services (such as child care.)

(b) The first two numbers refer to bodily injury liability limits and the third number to property liability. For example, 20/40/10 means coverage up to $40,000 for all persons injured in an accident, subject to a limit of $20,000 for one individual, and $10,000 coverage for property damage.

(c) Proof of valid insurance. The form of evidence varies by state and may take the form of an insurance policy, binder, certificate of self-insurance, surety bonds, or certificate of deposit. Many states require insurance identification cards issued by the insurer. Self-certification, where the driver is required to identify

the insurer and policy number in writing rather than in person, is not included.

(d) 1. Insurer must notify Department of Motor Vehicles or other state agency of cancellation or nonrenewal.

2. Insurer must verify financial responsibility or insurance after an accident or arrest.

3. Insurer must verify randomly selected insurance policies upon request.

4. Insurers must submit entire list of insurance in effect, which may be compared with registrations at a state agency. Also known as a computer data law.

(e) Insured must provide evidence of insurance at some point after the accident to the Department of Insurance, other state agency, or law enforcement officer. Deadlines vary among the states.

(f) Penalties are provided for in the law but may not be mandatory for first offenses.

(g) Proof of insurance must be presented within 30 days of registration.

(h) Low-cost policy limits for <?xml:namespace prefix = st1 ns = "um:schemas-microsoft-com:office:smartlags" />Los Angeles and San Francisco low-income drivers in the California Automobile Assigned Risk Plan are 10/20/3; pilot program effective January 1, 2000 until January 1, 2007.

(i) Instead of policy limits, policyholders can satisfy the requirement with $30,000 combined property damage liability and bodily injury liability.

(j) In addition, policyholders must also carry at least $1,000 for medical payments.

(k) May be waived for the policyholder but is compulsory for passengers.

(l) Basic policy (optional) limits are 10/10/5. Uninsured and underinsured motorist coverge not available.

(m) In addition, policyholders must have 50/100 for wrongful death coverage.

(n) Instead of policy limits, policyholders can satisfy the requirement with a $75,000 combined single limit policy.

(o) Instead of policy limits, policyholders can satisfy the requirement with a $60,000 single limit policy.

(p) Although legally defined as financial responsibility, Tennessee?s law is similar to a compulsory law because drivers can be fined if stopped by police or after crashes if they cannot show proof of financial responsibility.

(q) Instead of policy limits, policyholders can satisfy the requirement with a $65,000 combined single limit policy.

*Effective July 1, 2004.

Sources: Property Casualty Insurers Association of America, state departments of insurance and motor vehicles.

RAND INSTITUTE FOR CIVIL JUSTICE
RESEARCH | BRIEF

Choosing an Alternative to Tort

Escalating auto insurance premiums have been a major public policy issue at the state level for the last three decades. *No-fault* auto insurance, spawned in the 1970s, was one response, offering cost savings to motorists and speedier compensation to auto accident victims. But because it required claimants to give up rights to seek compensation through the courts unless their losses exceeded a specified threshold, many states found it an unappealing alternative.

Choice auto insurance was proposed to address this concern. Under a choice auto insurance system, drivers may choose either a traditional auto insurance plan (tort) or a no-fault plan. Those who choose tort retain traditional tort rights and liabilities. Those who choose no-fault neither recover, nor are liable to others for, noneconomic losses (typically, pain and suffering) for less-serious injuries incurred in auto accidents.

Giving motorists a choice of coverage has strong appeal. But how does the choice alternative affect the premiums motorists pay? In a series of analyses, Stephen Carroll and Allan Abrahamse estimated how a choice auto insurance plan would affect insurance premiums in each state. Their basic finding: Overall, choice auto insurance could reduce the price tag for auto insurance by about 30 percent.

Approach

To understand the cost effects of choice auto insurance, the researchers estimated how a plan that offers a choice between tort and no-fault would affect the costs of auto insurance in each state that now relies on the traditional tort system. The plan they analyzed is *absolute no-fault*, the most extreme version of choice: Motorists may never sue, or be sued, for noneconomic loss. Thus, these estimates suggest the upper bound on the savings that can be accomplished in each tort state via the choice approach.

The researchers also estimated the cost effects of a choice plan in each state that already has some form of no-fault auto insurance. These estimates suggest the upper bound on the savings that can be accomplished in current no-fault states by extending the no-fault concept to its limit.

Results for Each State

In the tort states, the costs of compensating accident victims on behalf of drivers who elect no-fault would be at least 60 percent less than they would have been if those drivers had been insured under the traditional tort system. These savings include both the compensation paid to accident victims and the transactions costs incurred in providing that compensation.

If these savings are passed on to consumers, drivers in tort states who select choice could buy personal injury coverages for about 60 percent less than they pay for those coverages under the tort system. Because coverages for personal injury and property damage each account for roughly half of total auto

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insurance compensation costs, this 60 percent reduction translates roughly into a 30 percent reduction in a driver's total auto insurance premium. Premiums are unchanged for motorists who choose to remain in the traditional tort system.

In most no-fault states, a choice plan would have a similar effect on the costs of compensating accident victims and, again assuming that insurer savings are passed on to consumers, would result in similarly lower insurance premiums. And in most no-fault states, drivers who preferred to retain their current no-fault plan would pay no more for personal injury coverage than under the current system.

The savings an individual driver will realize from a choice system do not depend on the proportion of uninsured drivers in a state's current system, the proportion of previously insured who switch to absolute no-fault, or the proportion of the previously uninsured who switch to absolute no-fault. The effects of the plan on the total costs of auto insurance do depend on how many drivers choose to switch to the absolute no-fault option.

Nationwide, the reductions in personal injury premiums resulting from choice could be enormous. For example, if every currently insured driver in the country were to choose absolute no-fault, total auto insurance premiums in 1993--the last year for which data are available--would have been $26 billion lower. The table shows the relative savings for motorists in each state.

In addition to the savings in premiums, choice has another important cost effect. Because the no-fault premium is much lower than the premium for mandatory coverage under a tort system, some motorists who chose to drive without insurance under tort will choose no-fault. These uninsured drivers who switch to no-fault could contribute $1 billion to $4 billion to the compensation system nationwide.

Automobile Insurance Savings in Each State Under Choice[1]

State	% Premium Savings for All Motorists (assumes 50% of insured motorists choose absolute no-fault)	% Premium Savings for Low-Income Motorists (assumes 50% of insured motorists choose absolute no-fault)	Total savings, $ millions (assumes all insured motorists choose absolute no-fault)
Alabama	19	38	176
Alaska	17	28	24
Arizona	37	53	533
Arkansas	28	47	195
California	35	53	3622
Colorado	31	47	462
Connecticut*	41	57	678
Delaware	34	47	93
Florida	32	44	1395
Georgia*	24	42	484
Hawaii	43	55	229
Idaho	28	46	75
Illinois	25	45	772
Indiana	27	44	450
Iowa	27	48	187
Kansas	12	23	53
Kentucky	14	21	40
Louisiana	45	64	592
Maine	31	51	114
Maryland	38	56	661
Massachusetts*	41	57	1154
Michigan	15	28	647
Minnesota	32	49	483
Mississippi	25	44	137
Missouri	26	44	405
Montana	33	57	79
Nebraska	25	45	113
Nevada	37	55	196
New Hampshire	26	42	92
New Jersey*	36	53	1496
New Mexico	33	52	173
New York	35	53	2334
North Carolina	32	47	658
North Dakota	2	3	-8
Ohio	29	47	840

Oklahoma	29	49	278
Oregon	29	43	272
Pennsylvania*	32	47	1300
Rhode Island	28	41	103
South Caroline	36	53	398
South Dakota	34	59	61
Tennessee	22	39	261
Texas	36	54	1688
Utah	29	46	145
Vermont	21	38	31
Virginia	34	50	612
Washington	37	53	621
West Virginia	37	58	222
Wisconsin	31	53	443
Wyoming	24	46	31
All states	31	49	26100

[1] The choice plan examined here is described in J. O'Connell, S. J. Carroll, M. Horowitz, and A. Abrahamse, "Consumer Choice in the Auto Insurance Market," *Maryland Law Review*, Vol. 52, 1993. Reprinted as RAND RP-254, 1994.
* Insurance system changed since January 1, 1988.

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RB-9024 (1995)

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as follows: S. J. Carroll, J. S. Kakalik, N. M. Pace, and J. L. Adams, *No-Fault Approaches to Compensating People Injured in Automobile Accidents*, R-4019-ICJ; S. J. Carroll and J. S. Kakalik, "No-Fault Approaches to Compensating Auto Accident Victims," *The Journal of Risk and Insurance*, Vol. 60, No. 2, 1993, reprinted as RP-229; J. O'Connell, S. J. Carroll, M. Horowitz, and A. Abrahamse, "Consumer Choice in the Auto Insurance Market," *Maryland Law Review*, vol. 52, 1993, reprinted as RP-254; A. Abrahamse and S. J. Carroll, *The Effects of a Choice Auto Insurance Plan on Insurance Costs*, MR-540-ICJ; J. O'Connell, S. J. Carroll, M. Horowitz, A. Abrahamse, and D. Kaiser, "The Costs of Consumer Choice for Auto Insurance in States Without No-Fault Insurance," *Maryland Law Review*, Vol. 54, No. 2, 1995; J. O'Connell, S. Carroll, M. Horowitz, A. Abrahamse, and P. Jamieson, "The Comparative Costs of Consumer Choice for Auto Insurance in All Fifty States," *Maryland Law Review*, forthcoming.

RAND's Home Page

RAND INSTITUTE FOR CIVIL JUSTICE
RESEARCH | BRIEF

July 1996

How Big Is the Price Tag for Excess Auto Injury Claims?

Although the nationwide accident rate has been falling steadily, the cost of personal injury automobile insurance has grown at a breathtaking rate over the last two decades, leaving the average driver with a bill for basic coverage in 1990 that was two and a half times higher than the bill for the same coverage in 1980. Because every state requires some form of personal injury insurance, these stiff increases are burdensome for everyone, and especially so for low-income populations. The high costs of coverage also probably swell the ranks of those who drive without coverage.

Many believe that excess claims are a major contributor to rising insurance costs, but to date there has been no comprehensive evidence to support or refute this view. A recent Institute for Civil Justice study, *The Costs of Excess Medical Claims for Automobile Personal Injuries*, takes the first rigorous look at the pattern and cost of excess automobile medical claiming across the states. Authors Steve Carroll, Allan Abrahamse, and Mary Vaiana found that about one-third of the automobile injury medical costs submitted to insurers appear to be excess.

Access to General Damages Provides Incentive to Excess Claiming

In the study, the term *excess medical claiming* includes claims based on staged or nonexistent accidents, claims by people involved in real accidents for nonexistent injuries, and buildup of claims for real injuries. To develop an estimate of how much excess claiming occurs nationwide--in contrast to individual instances of fraud identified in a sting operation--the researchers take an indirect approach.

First, they analyze the incentives to submit inflated or invented claims for various types of injuries provided by different insurance systems:

- Under the tort liability system--the set of legal rules governing compensation for automobile injuries in about three-quarters of the states--an injured individual may seek compensation for both the economic loss incurred as a result of that injury (e.g., medical costs) and for noneconomic losses or general damages--hurts such as "pain and suffering" not directly measured in dollars.

- In 1988, when the data used in this study were collected, eleven states had adopted dollar threshold no-fault insurance systems, under which an automobile accident victim is allowed to seek compensation for general damages only if his or her medical costs exceed a specified amount.

- Florida, Michigan, and New York had adopted verbal no-fault systems. In these states the law contains an explicit list of injuries--usually quite serious--for which an accident victim is allowed

to seek general damages.

The availability of general damages and the fact that they are usually calculated as some multiple of economic losses provide the incentive to submit claims for nonexistent injuries and to build medical costs.

Characteristics of Injuries also Affect Ability to Exaggerate Claims

The opportunity for exaggeration is also influenced by the nature of the injuries themselves. The researchers distinguish soft injuries, such as sprains and strains, from hard or objectively verifiable injuries, such as fractures and loss of limbs. Examining the incentives embedded in the insurance systems and the ease or difficulty of exaggerating injuries, they predicted what patterns of excess claiming for injuries might occur.

Testing Analytic Predictions

The authors draw on a large database of individual closed claims developed in previous ICJ research to test these analytical predictions. Their results support the predictions about the extent of excess claiming that will occur in certain insurance environments.

Figure 1 illustrates their findings. It shows the number of soft injury claims per hard injury claim in every state. The horizontal black line indicates the average value for Michigan and New York, which is used as a baseline in the study. (Certain features of Florida's verbal no-fault system precluded its inclusion in the baseline.)

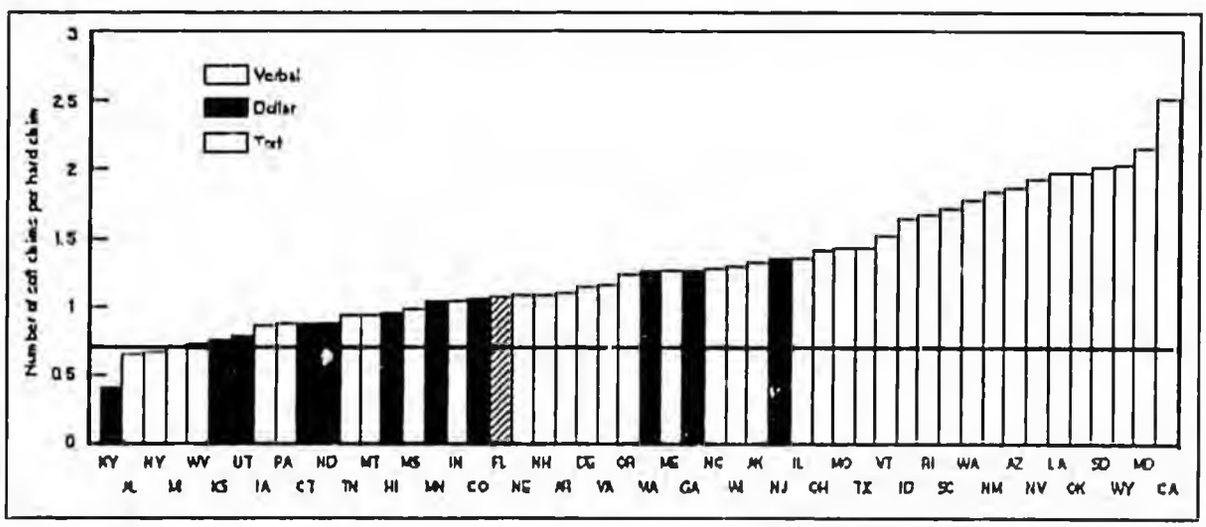

Figure 1--Claims Above Michigan/New York Baseline Suggest Extent of Claims for Nonexistent Soft Injuries

Claims for nonexistent soft injuries in the verbal threshold no-fault states should be rare because this insurance system provides no access to general damages unless the injury is one of those explicitly specified by the law. In addition, the economic barriers to an accident victim's access to medical care in these states are as low as, or lower than, in any other. Michigan and New York offer first-party auto

insurance with no deductible or coinsurance, very high benefit levels, and prohibitions on rate increases based on claiming. Thus, more than in other insurance environments, accident victims are likely to claim whatever medical care they need. Assuming that hard claims are almost always valid, the ratio of soft to hard claims in Michigan and New York suggests the relative frequency of these injuries in automobile accidents.

Soft injury claimants will obtain general damages in dollar no-fault states if the medical claim can be pushed over the threshold; thus the possibility of general damages offers an incentive to claim nonexistent soft injuries in these states. The eleven dollar no-fault states in Figure 1 are scattered, and ten have ratios above the baseline. But all cluster toward the lower end of the distribution.

Because general damages can be obtained for even a small medical claim in the tort states, the study predicted that comparatively more claims for nonexistent soft injuries would occur in these states. The result: Only one of the 36 tort states falls below the baseline. And the 35 tort states that have comparatively high ratios of soft to hard injury claims tend to cluster toward the high end of the distribution. All of the highest 18 states in Figure 1 are tort states.

The study uses the extent to which the ratio of soft claims to hard claims in each state exceeds the corresponding ratio for Michigan and New York as the measure of the degree to which claims are being submitted for nonexistent soft injuries in that state.

The study goes on to analyze the amount of medical costs claimed on either soft or hard claims, using methods similar to those described above to estimate the degree to which accident victims are building costs on real injury claims to leverage larger insurance settlements.

Figure 2 provides an example of the analysis. It shows the distributions of medical costs for soft injury claims in Hawaii, a dollar threshold state, and New York. Dollar threshold states provide strong incentives to build costs on soft injury claims because pushing the claim over the threshold allows access to general damages. The vertical line in the figure shows Hawaii's threshold. The average cost of a soft injury claim in each state is adjusted for interstate differences in medical costs and treatment patterns. The horizontal axis in the figure is a logarithmic scale so that equal intervals show equal percentage differences.

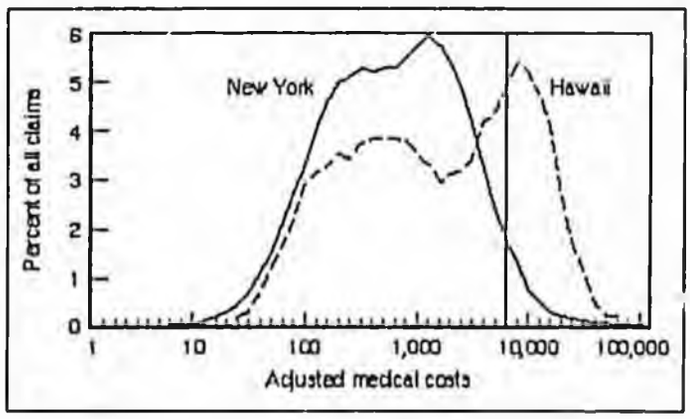

Figure 2--Hawaii's Distribution of Medical Costs for Soft Injury Claims Peaks Just Past Dollar Threshold

The distribution of medical costs in New York rises quickly, peaks, and then drops off sharply to the right. The large majority of soft injury claims are for relatively small medical costs. New York has very

few soft injury claims for medical costs that exceed Hawaii's threshold.

Hawaii's distribution also rises sharply, then flattens out. It begins to decline at a relatively low level of medical costs, then turns up again and rises sharply through the threshold. The Hawaii distribution peaks above the threshold, and finally falls off.

A substantial fraction of Hawaii's soft injury claims are for medical costs above the threshold. Compared with New York, the distribution of adjusted medical costs in Hawaii is shifted substantially to the right, as one would predict given the incentives built into the state's insurance system.

The Price Tag for Excess Claiming

The researchers use their empirical analysis of the extent of excess claiming to estimate that between 34 and 40 percent of the automobile injury medical costs submitted to insurers appear to be excess. In 1994, these questionable medical claims would have added roughly $13 to $16 billion to the nation's total automobile insurance bill, or about $100, on average, per policy. These excess claims also stimulated $4 billion in excess health care consumption.

Policy Direction

There are no easy solutions to the problem of excess claiming, but the study suggests one possible policy direction: Break the connection between medical costs and general damages. Ways to accomplish this include

- Modifying our insurance systems. (Verbal no-fault systems appear to eliminate the incentives that drive excess claiming for soft injuries, while dollar no-fault systems appear to exacerbate them.)
- Establishing a schedule for general damages based on the nature of the injury, as in disability policies.
- Changing the rule governing admissibility of medical cost information in courts. Modifying this rule could reduce the incentive to inflate that figure.

RAND research briefs summarize research that has been more fully documented elsewhere. This research brief describes work done in the Institute for Civil Justice and published as *The Costs of Excess Medical Claims for Automobile Personal Injuries*, by Stephen Carroll, Allan Abrahamse, and Mary Vaiana, RAND DB-139-ICJ, 25 pp., $6.00, ISBN: 0-8330-1649-0, which is available from National Book Network (Telephone: 800-462-6420; FAX: 301-459-2118) or from RAND on the Internet (order@rand.org). RAND is a nonprofit institution that helps improve public policy through research and analysis; its publications do not necessarily reflect the opinions or policies of its research sponsors.

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RB-9023-1 (1996)

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellant, v. STACEY LAWRENCE SR., and TOBITHA LAWRENCE,
26 P.3d 1074; 2001 Alas. LEXIS 82
Supreme Court No. S-8915, No. 5429
July 13, 2001, Decided
SUPREME COURT OF ALASKA
Before: Matthews, Chief Justice, Eastaugh, Fabe, Bryner, and Carpeneti, Justices.

Disposition State Farm has waived its arguments that the Lawrence parents do not qualify for separate policy limits because the Lawrence parents did not suffer "bodily injury" and because the Lawrences do not meet their policies' requirement of having been "in the same accident" as their son. Accordingly, we AFFIRMED the superior court's ruling that the Lawrence parents' NIED claims qualify for policy limits separate from those received by their son. Because the Lawrences' liability policies cover them for their own punitive damages, because the policies suggest that they cover the punitive damages of an underinsured tortfeasor, and because public policy does not forbid this result, we also AFFIRMED the superior court's ruling that the Lawrences' UM/UIM provisions provide coverage for the punitive damages of an underinsured tortfeasor.40

40 Because we affirm both of the superior court's rulings in favor of the Lawrences, we also affirm the superior court's award of attorneys' fees and costs to the Lawrences.

Counsel Paul W. Waggoner, Waggoner Law Office, Anchorage, and Earl M. Sutherland, Reed McClure, Seattle, for Appellant.

Jonathon A. Katcher, Pope & Katcher, Anchorage, for Appellees.

Opinion

Editorial Information: Prior History

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Brian C. Shortell, Judge. Superior Court No. 3AN-96-7929 CI.

Opinion by: CARPENETI

CARPENETI, Justice.

I. *INTRODUCTION*

Stacey Lawrence, Jr. was seriously injured in a car accident caused by an underinsured motorist. Lawrence exhausted the "Each Person" limits of the uninsured/underinsured motorist (UM/UIM) provisions of his family's State Farm Mutual Automobile Insurance Co. policies. His parents then sought to collect separate policy limits under the "Each Accident" provision of their UM/UIM provisions, for both negligent infliction of emotional distress (NIED) and punitive damages for the intentional act of the underinsured tortfeasor. On motions for summary judgment, the superior court ruled that (1) the Lawrence parents' NIED claims qualify for separate policy limits; and (2) the Lawrences' UM/UIM provisions provide coverage for punitive damages against an underinsured tortfeasor. Because State Farm has waived all of the arguments that could show that the Lawrence

parents do not qualify for separate policy limits under the terms of their UM/UIM provisions, we affirm the superior court's ruling on the separate policy limits issue. Because the Lawrences' liability policies cover them for punitive damages for which they themselves may be liable, we affirm the superior court's ruling on the punitive damages issue.

II. *FACTS AND PROCEEDINGS*

A. *Facts*

1. *The accident and its aftermath*

The underlying facts of this case are not in dispute. Stacey Lawrence, Jr. (Stacey Jr.) was involved in a car accident at an intersection in Anchorage. Tell Wohltmann, who is not a party to this action, ran a stop sign and crashed into the car that Stacey Jr. was driving. Wohltmann admitted that he was speeding as he drove through the intersection, and stated that he did not want to stop at the stop sign because he was suicidal.

Stacey Jr. was taken to the hospital in an ambulance. He suffered severe injuries as a result of the accident, including traumatic brain injury and a ruptured spleen and diaphragm.

Neither of Stacey Jr.'s parents was present at the accident scene. Tobitha Lawrence, Stacey Jr.'s mother, was at a bookstore several blocks away; his father, Stacey Lawrence, Sr. (Stacey Sr.), was also elsewhere. While Tobitha did encounter the ambulance that carried her son after she left the bookstore, she did not know at the time that her son was in the ambulance.

Soon after the accident, Tobitha received a phone call from a nurse who said that Stacey Jr. had been in an accident. Tobitha's sister then drove her to the hospital. Around the same time, Stacey Sr. was told by a friend that Stacey Jr. had been in accident; Stacey Sr. then drove to the hospital himself.

When Tobitha arrived at the hospital, she was told that Stacey Jr. was "very sick." She was not allowed to see him. After Stacey Sr. arrived at the hospital, he saw his son on a gurney. Tobitha and Stacey Sr. waited in the hospital waiting area while their son was in surgery.

After the surgery, a surgeon came into the waiting area and told the Lawrence parents that Stacey Jr. was in a coma, and that he would probably not wake up from it. Tobitha fainted upon hearing this.

As a result of her reaction to the events, Tobitha herself was admitted to the hospital. She was diagnosed as suffering post-traumatic stress disorder, anxiety, and headaches, and was prescribed sedatives. The record contains no indication that Stacey Sr. suffered any physical illness as a result of these events.

2. *The insurance policies*

State Farm was the insurer for both Wohltmann and the Lawrences. Wohltmann's liability policy provided "Each Person" policy limits of $ 100,000, plus supplemental payments of interest, costs, and attorney's fees. The Lawrences had three State Farm policies, one for each of their cars. Each policy contained identical terms and provisions, including UM/UIM "Each Person" limits of $ 50,000 and UM/UIM "Each Accident" limits of $ 100,000.

B. *Proceedings*

The Lawrences originally brought suit against Wohltmann, seeking damages in excess of $ 300,000, plus attorney's fees and costs. Stacey Jr. sought damages for his injuries; his parents sought damages for NIED. Both Stacey Jr. and his parents also sought punitive damages for Wohltmann's "reckless and outrageous" conduct. The Lawrences later amended their complaint to add State Farm as a defendant.

The Lawrences initially sought a declaration that Wohltmann's policy provided him with "Each Person" liability coverage limits for the parents' NIED claims, in addition to the "Each Person" limits for Stacey

Jr.'s bodily injury claims. As such, the Lawrences argued that Wohltmann's "Each Accident" limits applied. State Farm disputed this contention.

The parties then entered into a Stipulation and Order, pursuant to which Stacey Jr. settled his claims against Wohltmann for one "Each Person" policy limit, plus supplemental payments. In addition, Stacey Jr. recovered the "Each Person" policy limits on each of the UM/UIM provisions in the Lawrences' policies, thereby exhausting the "Each Person" policy limits of both Wohltmann's and the Lawrences' policies.

As part of the stipulation, the Lawrence parents agreed to dismiss their NIED claims against Wohltmann. The parents and State Farm agreed, however, that the parents could pursue their NIED claims against the Lawrences' own State Farm UM/UIM provisions.

The Lawrence parents then moved for declaratory judgment on two issues: (1) whether their NIED claims qualify for policy limits under their UM/UIM provisions that are separate from the policy limits received by their son; and (2) whether their UM/UIM provisions cover them for the punitive damages of an underinsured motorist. The parents argued that both questions should be answered in the affirmative. State Farm brought a cross-motion for summary judgment on both of these issues, arguing that both questions should be answered in the negative.

After oral argument, Superior Court Judge Brian C. Shortell ruled in favor of the Lawrences on both issues and awarded them attorney's fees and costs. State Farm appeals.**1**

III. *STANDARD OF REVIEW*

This appeal raises questions of contract interpretation and statutory construction. We substitute our own judgment on questions pertaining to the interpretation of a contract.**2** We resolve questions of statutory construction *de novo* by applying our independent judgment.**3** In doing so, we "adopt the rule of law that is most persuasive in light of precedent, reason, and policy."**4**

IV. *DISCUSSION*

This appeal presents two issues: (1) whether the superior court correctly ruled that the Lawrence parents' NIED claims qualify for UM/UIM policy limits that are separate from the UM/UIM policy limits that Stacey Jr. received for his injuries; and (2) whether the superior court correctly ruled that the UM/UIM provisions in the Lawrence parents' policies cover them for the punitive damages of an underinsured motorist. Both issues present us with questions of first impression.

A. *The Superior Court Did Not Err in Ruling that the Lawrence Parents' NIED Claims Qualify for Separate Policy Limits.*

The superior court ruled that the Lawrence parents' NIED claims qualify for policy limits that are separate from the policy limits Stacey Jr. received for his bodily injuries. We agree.

The UM/UIM provision of the Lawrences' policies provide that

> The amount of coverage for *bodily injury* is shown on the declarations page under "Limits of Liability - U - Bodily Injury, Each Person, Each Accident". Under "Each Person" is the amount of coverage for all damages due to *bodily injury* to one *person*. "*Bodily injury* to one *person*" includes all injury and damages to others resulting from this bodily *injury*. Under "Bodily Injury -- Each Accident" is the total amount of coverage, subject to the amount shown under "Each Person", for all damages due to *bodily injury* to two or more *persons* in the same accident.
>
> The Lawrences' policies define "bodily injury" as "bodily injury to a *person* and sickness, disease or death which results from it."

In *Crabtree v. State Farm Insurance Co.*,**5** the Supreme Court of Louisiana interpreted State Farm policy language that is virtually identical to the language at issue here.**6** That case involved a husband

who was driving his motorcycle and his wife who followed him in her car.**7** An oncoming car crossed the center line and collided head on with the husband.**8** The wife witnessed the accident, went to help her husband, and found that one of his legs was "almost completely severed below the knee."**9** In deciding whether the wife's mental anguish claim qualified for policy limits that are separate from those that her husband received for his injuries, the *Crabtree* court held that two requirements must be met in order for separate limits to apply: (1) the wife must have suffered "bodily injury"; and (2) the wife must have suffered that bodily injury "in the same accident" as her husband.**10** We agree with this approach. Therefore, in order for the Lawrence parents to be eligible for separate policy limits, they must demonstrate that (1) they suffered "bodily injury"; and (2) they were injured "in the same accident" as Stacey Jr.

1. *State Farm has waived its arguments that the Lawrence parents do not qualify for separate policy limits because they did not suffer "bodily injury" and because they fail to meet the policies' requirement of having been "in the same accident" as their son.*

State Farm argues that the emotional distress claimed by the Lawrence parents does not constitute "bodily injury." State Farm also suggests that the Lawrence parents do not qualify for separate policy limits because they do not meet the policies' requirement of having been "in the same accident" as their son.

But State Farm has waived both of these arguments because it failed to adequately raise them below.**11** State Farm did not argue to the superior court that the emotional distress claimed by the Lawrence parents does not constitute bodily injury. Therefore, this argument has been waived for purposes of this appeal.**12**

While State Farm did assert to the superior court that the Lawrence parents were not "in the same accident" as their son, it did so in the context of arguing that the Lawrence parents' injuries "resulted from" their son's injuries. Nowhere did State Farm clearly argue to the superior court that the Lawrence parents failed to meet the "same accident" requirement of their policies. As such, this argument has also been waived for purposes of this appeal.**13**

2. *Even if the Lawrence parents' injuries "resulted from" the injury to their son, this would not compel the conclusion that the Lawrence parents fail to qualify for separate policy limits.*

State Farm argues that the Lawrence parents cannot recover separate policy limits because their injuries "resulted from" the injuries to their son. The Lawrences' policies state that under the "Each Person" limits, State Farm will pay "damages due to *bodily injury* to one *person*." Included in "*bodily injury* to one *person*" is "all injury and damages to others resulting from this *bodily injury*." State Farm argues that because the Lawrence parents' injuries "resulted from" the bodily injury to their son, single "Each Person" limits apply. We disagree.

Even if the Lawrence parents' injuries *did* result from their son's bodily injury, this would not necessarily lead to the conclusion that the parents' injuries do not qualify for policy limits separate from those that their son received. In *Crabtree*, the Supreme Court of Louisiana rejected State Farm's argument that a wife could not recover separate policy limits for the mental anguish that she claimed "resulted from" the injuries suffered by her husband.**14** The Louisiana court indicated that State Farm's interpretation, which would read the "each person" limit as preventing coverage of a second person whose bodily injury arguably "resulted from" the injuries to the first, disregards "the clear and explicit language defining the aggregate coverage for 'Each Accident' as '*all* damages due to *bodily* injury to two or more persons in the same accident.'"**15**

Given the problematic consequences of holding that single policy limits *necessarily* apply if one person's injury "results from" the bodily injury of another, the *Crabtree* court construed State Farm's policy language to mean that the "Each Person" limit applies if only one person suffered "bodily injury" in an accident.**16** On the other hand, separate limits apply to two or more persons who suffer "bodily

injury" if those persons were injured "in the same accident."**17**

We find the Louisiana Supreme Court's reasoning to be persuasive. Given the wording of State Farm's "Each Accident" provision, it is objectively reasonable for State Farm insureds to expect that two or more persons who suffer bodily injury in the same accident would be entitled to separate policy limits. Since we honor the objectively reasonable expectations of insureds regarding the terms of insurance contracts,**18** we reject State Farm's interpretation of the policy language at issue.

3. *The Lawrences are not subject to single policy limits on the grounds that the Lawrence parents' claims are akin to claims for loss of consortium.*

State Farm also argues that the individual "Each Person" limits apply because the Lawrence parents' claims are essentially claims for loss of consortium. This argument is unpersuasive.

Other courts have rejected arguments equating emotional distress and loss of consortium.**19** We agree with those courts. Unlike claims for loss of consortium, claims for emotional distress concern injuries that the claimants have suffered directly, rather than derivative injuries that resulted from an injury to another.**20**

Even if we considered the Lawrence parents' claims to be akin to claims for loss of consortium, State Farm would not necessarily prevail on the separate policy limits issue. As noted above, the dispositive questions in interpreting this aspect of the Lawrences' policies are whether the Lawrence parents suffered "bodily injury," and whether such "bodily injury" was suffered "in the same accident" that injured their son.**21** State Farm has waived its arguments pertaining to these questions. **22**

Because State Farm has waived the arguments that, if successful, would show that the Lawrence parents do not qualify for separate policy limits under the terms of the UM/UIM provisions in their policies, we affirm the superior court's ruling that the Lawrence parents' claims of NIED qualify for policy limits separate from those that their son received for his bodily injuries.**23**

B. *The Lawrences' State Farm Policies Cover Them for Punitive Damages that They Are Legally Entitled to Collect from an Underinsured Motorist.*

The superior court ruled that the UM/UIM provisions in the Lawrences' policies cover them for punitive damages that they would be legally entitled to collect from an underinsured motorist. We agree.

1. *Because the Lawrences' liability policies provide coverage for punitive damages for which the Lawrences themselves may be liable, the Lawrences' UM/UIM provisions provide coverage for punitive damages incurred by an underinsured tortfeasor.*

a. *In Alaska, automobile insurance companies must provide UM/UIM coverage that mirrors an insured's liability coverage.*

In *State Farm Mutual Automobile Insurance Co. v. Harrington*,**24** we considered AS 21.89.020(c) , which describes the UM/UIM coverage that insurance companies offering automobile liability insurance must offer to insureds.**25** We stated that "the evident purpose of section 020(c)(1) is to provide for the insured, as an injured claimant, the same benefit level as that provided by the insured to those asserting claims against the insured."**26** Therefore, automobile insurance companies must offer insureds UM/UIM coverage that mirrors the insureds' liability coverage.**27** If State Farm has failed to provide such coverage, its UM/UIM provisions will be reformed to conform with the statutory requirements.**28** Therefore, if the Lawrences' liability policies cover them for punitive damages for which they may be liable, the UM/UIM provisions in their policies must also cover them for the punitive damages that they are legally entitled to collect from an underinsured tortfeasor.**29**

b. *The Lawrences' liability policy covers them for punitive damages for which they may be liable.*

The Lawrences' liability policies do not specifically exclude coverage for punitive damages. Rather,

they provide that State Farm will "pay damages which an *insured* becomes legally liable to pay because of . . . *bodily injury* to others." Because a person may become legally liable for punitive damages if that person acts outrageously or with reckless indifference to the interests of another,**30** we hold that the Lawrences' liability policies provide coverage for the Lawrences' own punitive damages.

Our previous decision in *Providence Washington Insurance Co. of Alaska v. City of Valdez***31** lends support to this conclusion. In that case, we considered policy language providing that the insurance company would "pay . . . all sums which the insured shall become legally obligated to pay as damages."**32** Because the policy did not specifically exclude coverage for punitive damages, we held that the policy provided such coverage.**33**

At the very least, the relevant provision is ambiguous with regard to punitive damages. We interpret ambiguities in insurance contracts in favor of the insured.**34** For this additional reason, we hold that the Lawrences' liability policies cover them for punitive damages for which they themselves may be legally liable.

Because the Lawrences' liability policies include coverage for punitive damages, AS 21.89.020(c)(1) and *Harrington* require the conclusion that the UM/UIM provisions in the Lawrences' policies include coverage for punitive damages as well. We accordingly hold that the superior court correctly ruled that the UM/UIM provisions in the Lawrences' policies include coverage for punitive damages incurred by an underinsured tortfeasor.

2. *The Lawrences' UM/UIM policies suggest that they cover the Lawrences for punitive damages that they would be legally entitled to recover from an underinsured tortfeasor.*

In addition, the language of the Lawrences' UM/UIM policies also suggests that the Lawrences are covered for punitive damages that they would be legally entitled to collect from an underinsured tortfeasor.

The UM/UIM provisions of the Lawrences' policies state:

Two questions must be decided by agreement between the *insured* and us:

1. Is the *insured* legally entitled to collect damages from the owner or driver of the *uninsured motor vehicle* or *underinsured motor vehicle*; and

2. If so, in what amount?

This provision makes no distinction between compensatory and punitive damages. Because the Lawrences may be legally entitled to recover punitive damages from an underinsured motorist, this aspect of the Lawrences' UM/UIM policies suggests that it covers the Lawrences for such damages.

Furthermore, punitive damages are specifically excluded in the Medical Payments Coverage sections of the Lawrences' policies,**35** but are not specifically excluded in the UM/UIM sections. As the Lawrences correctly argue, "this exclusion of punitive damages only in the context of medical payments clearly suggests that punitive damages are covered in the [UM/UIM] . . . sections of the policy." We have held that insureds' objectively reasonable expectations regarding the terms of an insurance contract will be honored.**36** Given that punitive damages are excluded in the medical payments section, but not in the UM/UIM section of the policy, it is objectively reasonable for State Farm insureds to expect that State Farm's UM/UIM provision would cover them for punitive damages caused by an underinsured tortfeasor. This consideration also provides strong support for our conclusion that the Lawrences' UM/UIM provisions provide coverage for punitive damages.

3. *State Farm's policy arguments are unpersuasive.*

State Farm argues that policy considerations favor its position that punitive damages are not covered

by the policy. We have stated that the purpose of punitive damages is to punish and deter;**37** State Farm argues that punitive damages should not be available here because it has engaged in no wrongdoing, and an award of punitive damages would not punish the tortfeasor or deter others like him. This argument is unpersuasive.

Under the Lawrences' liability coverage, there is no question that State Farm would be liable for punitive damages awarded against the Lawrences.**38** But coverage for the Lawrences' liability for punitive damages is no different analytically from coverage for an uninsured motorist's intentional or reckless torts. Thus, State Farm's argument proves too much. Its suggestion that the Lawrences' liability policies should also not provide coverage for punitive damages is clearly wrong.

The question here ultimately turns not on policy but on what the parties contracted for. The Lawrences essentially bought liability coverage for underinsured motorists who injured them. The terms of that coverage included protection for punitive damages awards from an underinsured motorist. Since that is the coverage they contracted for, there is no reason that they should not obtain it.

In sum, the Lawrences' UM/UIM provisions provide coverage for punitive damages because the Lawrences' liability policies provide such coverage, because the Lawrences' policies suggest that they include coverage for the punitive damages of an underinsured tortfeasor, and because public policy does not forbid this result.**39**

V. *CONCLUSION*

State Farm has waived its arguments that the Lawrence parents do not qualify for separate policy limits because the Lawrence parents did not suffer "bodily injury" and because the Lawrences do not meet their policies' requirement of having been "in the same accident" as their son. Accordingly, we AFFIRM the superior court's ruling that the Lawrence parents' NIED claims qualify for policy limits separate from those received by their son. Because the Lawrences' liability policies cover them for their own punitive damages, because the policies suggest that they cover the punitive damages of an underinsured tortfeasor, and because public policy does not forbid this result, we also AFFIRM the superior court's ruling that the Lawrences' UM/UIM provisions provide coverage for the punitive damages of an underinsured tortfeasor.**40**

Footnotes

Footnotes

1 After this appeal is decided, remaining factual disputes will be referred to arbitration.

2 *See Alaska Hous. Fin. Corp. v. Salvucci*, 950 P.2d 1116, 1119 (Alaska 1997).

3 *See Progressive Ins. Co. v. Simmons*, 953 P.2d 510, 512 (Alaska 1998) (citing *Deal v. Kearney*, 851 P.2d 1353, 1356 n.4 (Alaska 1993)).

4 *Id.* (internal quotation marks omitted) (quoting *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979)).

5 632 So. 2d 736 (La. 1994).

6 *See id.* at 739 (quoting the policy language).

7 *See id.* at 738.

8 *See id.*

9 *Id.*

10 *See id.* at 745.

11 *See Chijide v. Maniilaq Ass'n*, 972 P.2d 167, 173 (Alaska 1999) (citing *Revelle v. Marston*, 898 P.2d 917, 927 (Alaska 1995)).

12 *See id.* (citing *Revelle*, 898 P.2d at 927).

13 *See id.* (citing *Revelle*, 898 P.2d at 927).

14 *See* 632 So. 2d at 740.

15 *Id.*

16 *See id.*

17 *See id.*

18 *See Jones v. Horace Mann Ins. Co.*, 937 P.2d 1360, 1362 n.3 (Alaska 1997).

19 *See, e.g., Pekin Ins. Co. v. Hugh*, 501 N.W.2d 508, 511 (Iowa 1993); *Treichel v. State Farm Mut. Auto. Ins. Co.*, 280 Mont. 443, 930 P.2d 661, 665 (Mont. 1997); *Wolfe v. State Farm Ins. Co.*, 224 N.J. Super. 348, 540 A.2d 871, 873 (N.J. Super. App. Div. 1988).

20 *See Pekin*, 501 N.W.2d at 511.

21 *See supra* Part IV.A.2.

22 *See supra* Part IV.A.1.

23 Of course, whether the Lawrences have in fact suffered compensable bodily injury is a question of fact that remains to be determined in arbitration.

24 918 P.2d 1022 (Alaska 1996).

25 AS 21.89.020 is entitled "REQUIRED MOTOR VEHICLE COVERAGE." Section (c) provides, in relevant part, that

An insurance company offering automobile liability insurance in this state for bodily injury or death shall, initially and at each renewal, offer coverage prescribed in AS 28.20.440 and 28.20.445 or AS 28.22 for the protection of the persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. The limit written may not be less than the limit in AS 28.20.440 or AS 28.22.101 . Coverage required to be offered under this section must include the following options:

(1) policy limits equal to the limits voluntarily purchased to cover the liability of the person insured for bodily injury or death . . . .

26 *Harrington*, 918 P.2d at 1026.

27 While such UM/UIM coverage may be waived in writing by the insured, *see* AS 21.89.020(e) , the Lawrences gave no such waiver in the instant case. Because such coverage was not waived, State Farm must provide it. *See Harrington*, 918 P.2d at 1025.

28 *See Harrington*, 918 P.2d at 1025.

29 This conclusion is buttressed by a comparison of AS 21.89.020(c) , which *Harrington* is based upon, and the broader language of AS 28.20.440 . In *Lavender v. State Farm Mutual Auto. Ins. Co.*, 828 F.2d 1517 (11th Cir. 1987), the Eleventh Circuit distinguished between a Mississippi statute that required coverage of accidents with uninsured motorists "*for* bodily damage" (similar to AS 21.89.020(c)) and an Alabama statute requiring coverage "*because* of bodily damage" (similar to AS 28.20.440). The court said that the Alabama statute extended uninsured motorist coverage over punitive damages, but that the Mississippi statute did not. *Id.* at 1518. Without expressly adopting the analysis in *Lavender*, we recognize that no such distinction is necessary in this case because our statutes contain both the "for bodily damage" (AS 21.89.020(c)) and "because of bodily damage" (AS 28.20.440(a)(3)) formulations with regard to uninsured motorists. And where two insurance statutes partially overlap, the statute requiring broader coverage governs. *See Progressive Ins. Co. v. Simmons*, 953 P.2d 510, 522 (Alaska 1998).

30 *See* AS 09.17.020(b) .

31 684 P.2d 861 (Alaska 1984).

32 *Id.* at 862 (quoting the policy language).

33 *See id.* at 862-63.

34 *See Grace v. Insurance Co. of N. Am.*, 944 P.2d 460, 467 n.15 (Alaska 1997) (citing *U.S. Fire Ins. Co. v. Colver*, 600 P.2d 1, 3 (Alaska 1979)).

35 This section provides that if State Farm and the insured cannot agree on an amount due, the claim shall be decided by arbitration upon written request of one of the parties. It goes on to state that "the arbitrators shall not award punitive damages or other noncompensatory damages."

36 *See Jones v. Horace Mann Ins. Co.*, 937 P.2d 1360, 1362 n.3 (Alaska 1997).

37 *See Providence Wash. Ins. Co. v. City of Valdez*, 664 P.2d 861, 863 (Alaska 1984).

38 *See supra* Part IV.B.1.b.

39 State Farm advances other policy arguments against allowing an award of punitive damages in this case. For example, it argues that punitive damages should not be allowed here because this would lead to higher insurance prices for people like the Lawrences, and that allowing punitive damages here is akin to allowing them against the estate of a deceased tortfeasor. We reject these arguments.

40 Because we affirm both of the superior court's rulings in favor of the Lawrences, we also affirm the superior court's award of attorneys' fees and costs to the Lawrences.

WILLIAM SCOTT HOLDERNESS, Appellant, v. STATE FARM FIRE AND CASUALTY COMPANY and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Appellees.
24 P.3d 1235; 2001 Alas. LEXIS 77
Supreme Court No. S-8939, No. 5425
June 22, 2001, Decided
SUPREME COURT OF ALASKA
Before: Matthews, Chief Justice, Eastaugh, Fabe, Bryner, and Carpeneti, Justices.

Disposition We AFFIRMED in part and REVERSED in part the superior court's order granting partial judgment, and REMANDED for further proceedings consistent with this decision.

Counsel David Karl Gross, Law Offices of Murphy L. Clark, Anchorage, for Appellant.

James M. Powell, Kimberlee A. Colbo, and Ronald H. Bussey, Hughes Thorsness Powell Huddleston & Bauman, LLC, Anchorage, for Appellees.

Opinion

Editorial Information: Prior History

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karen L. Hunt, Judge. Superior Court No. 3AN-94-9277 CI.

Opinion by: BRYNER

BRYNER, Justice.

I. *INTRODUCTION*

Dr. William Holderness's car was struck from behind while he was driving from home to the hospital to perform surgery. He was severely injured and ultimately sued his insurers (collectively State Farm). This appeal, from an order partially dismissing Holderness's suit, raises two central questions. The first is whether Holderness's personal umbrella liability policy qualifies as automobile liability insurance under Alaska's insurance code. If so, our precedent requires that the policy's underinsured motorist coverage include prejudgment interest and attorney's fees. We conclude that the umbrella policy is automobile liability insurance. The second question is whether the accident was covered by the general liability policy of Alaska Podiatry Associates, a medical corporation of which Holderness was an executive officer. We conclude that the accident was not covered by the general liability policy because Holderness's duties as an executive officer of Alaska Podiatry Associates did not include commuting to work.

II. *FACTS AND PROCEEDINGS*

While Holderness was driving to Anchorage to perform surgery on January 20, 1994, another motorist hit his car from behind, causing him serious and permanent injuries. The driver who hit Holderness was underinsured.

At the time of the accident, Holderness held two State Farm insurance policies: a personal automobile liability policy covering the car he was driving and a personal liability umbrella policy. In addition, Holderness's medical corporation, Alaska Podiatry Associates, owned a State Farm business insurance policy that covered Holderness with respect to his duties as one of its executive officers.

Holderness filed suit against State Farm, seeking more than $ 5,000,000 in damages on a variety of claims, most sounding in insurance bad faith. State Farm paid Holderness the facial limits on his auto and umbrella policies, $ 100,000 and $ 2,000,000. Soon thereafter, this court decided *State Farm Mutual Automobile Insurance Co. v. Harrington.*1 There, we interpreted AS 21.89.020 , a provision of Alaska's insurance code, to require that, in the absence of a waiver by the insured, an automobile insurance policy must be deemed to provide equal liability and underinsured motorist coverage, including coverage for attorney's fees and prejudgment interest above the policy's facial limits.2

In response to this court's ruling in *Harrington*, State Farm paid Holderness an additional $ 28,555.52, representing prejudgment interest and attorney's fees under his auto policy's underinsured motorist coverage. State Farm did not pay interest and attorney's fees under the umbrella policy, maintaining that *Harrington* did not apply to such policies. The company also declined to pay Holderness anything under the Alaska Podiatry Associates business liability policy, claiming that it did not cover the accident.

After considering argument concerning whether *Harrington* applied to umbrella policies and whether the Alaska Podiatry Associates business liability policy covered Holderness's accident, the superior court issued a ruling that the umbrella policy did not qualify as automobile liability insurance under Alaska's insurance code and that State Farm therefore owed Holderness no prejudgment interest or attorney's fees beyond that policy's $ 2,000,000 facial limit. The court further ruled that, although the Alaska Podiatry Associates policy qualified as liability insurance under *Harrington* (and therefore would have to be construed to provide equal liability and underinsured motorist coverage), the policy did not cover Holderness's accident because he was not performing "executive duties" when the accident occurred. Based on these rulings, the superior court dismissed those portions of Holderness's suit that sought recovery under the umbrella and business liability policies.

Meanwhile, an arbitration panel found that Holderness had suffered damages totaling $ 7,308,076 in the accident. Holderness moved to confirm the panel's award and sought Alaska Civil Rule 82 attorney's fees based on that amount. State Farm opposed this motion, seeking to reduce the panel's damages finding to $ 2,128,555.52 -- the amount that State Farm had already paid Holderness, and the amount that State Farm claimed to be the total of the policy limits for his auto and umbrella insurance. The superior court confirmed the arbitration panel's award, denying Holderness's request for Rule 82 attorney's fees and declining State Farm's request to cap the award at State Farm's estimate of policy limits.

Holderness then requested entry of partial judgment under Alaska Civil Rule 54(b). In response to this request, the superior court entered a partial judgment that dismissed Holderness's "contract claims" with prejudice. Holderness appeals.

III. *DISCUSSION*

A. *Standard of Review*

We apply our independent judgment to issues of statutory construction3 and contract interpretation.4 When interpreting insurance contracts we look to four factors: (1) the language of the disputed policy provisions; (2) the language of other provisions in the policy; (3) relevant extrinsic evidence; and (4) case law interpreting similar provisions.5 We review a superior court's decision on attorney's fees for an abuse of discretion.6

B. *Harrington Reformation of the Umbrella Policy*

State Farm paid Holderness the $ 2,000,000 facial limit of his personal liability umbrella policy, but refused to pay him prejudgment interest and Civil Rule 82 attorney's fees in excess of that amount. Holderness argued below that his umbrella policy qualified as automobile insurance under AS 21.89.020 and triggered reformation of the policy to include prejudgment interest and attorney's fees under *Harrington*. The superior court disagreed, ruling that umbrella policies are not automobile insurance under AS 21.89.020 and, accordingly, that *Harrington* does not apply.

Alaska Statute 21.89.020(c) requires insurers to offer underinsured motorist coverage in amounts equal to the limits purchased for liability coverage. The statute provides, in relevant part:

An insurance company offering automobile liability insurance in this state for bodily injury or death shall, initially and at each renewal, offer coverage prescribed in AS 28.20.440 and 28.20.445 or AS 28.22 for the protection of the persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles. . . . Coverage required to be offered under this section must include the following options:

(1) policy limits equal to the limits voluntarily purchased to cover the liability of the person insured for bodily injury or death[.][7]

Our cases have interpreted this provision to mean that if an automobile liability policy fails to include equal liability and underinsured motorist coverage, the policy must be reformed to make the underinsured motorist coverage "equal to the limits voluntarily purchased" for liability.8 In *Harrington*, we specifically considered whether a policy reformed to provide such underinsured motorist coverage must also include attorney's fees and prejudgment interest in addition to the policy's facial limits, as would be required in a case involving liability coverage.9 We held that underinsured motorist coverage must include those additional amounts.10 Noting that we had interpreted "policy limits" similarly in other contexts, we found this interpretation consistent with the underlying goal of AS 21.89.020(c) : "to provide for the insured . . . the same benefit level as that provided by the insured to those asserting claims against the insured."11

Here, we must decide whether *Harrington* applies to Holderness's umbrella policy. We based our decision in *Harrington* on AS 21.89.020(c) , which, by its own terms, only applies to "automobile liability insurance." While subsection (c) of AS 21.89.020 does not define "automobile liability insurance," subsection (a) of the same provision sets forth a core definition, describing an automobile liability policy as one "that insures an owner or operator of a motor vehicle against loss resulting from liability for bodily injury or death, or for property injury or destruction, or both."12 Accordingly, we apply this definition in determining whether subsection (c)'s requirement of equal liability and underinsured motorist coverage applies to Holderness's umbrella policy.

Holderness's umbrella policy expressly covers losses arising from his liability for personal injury or property damage in excess of the limits covered by his underlying State Farm policies:

If you are legally obligated to pay damages for a **loss**, we will pay your **net loss** minus the **retained limit**. Our payment will not exceed the amount shown on the **Declarations** as Policy Limits - Coverage L - Personal Liability.[13]

> The umbrella policy defines a "loss" as "an accident that results in personal injury or property damage during the policy period." "Net loss" is the total of the damages the insured must pay for the loss and the reasonable expenses incurred in settling or trying the case. The "retained limit" is the amount the insured or the underlying insurance must pay before the umbrella policy begins to pay. The policy additionally covers "expenses we incur and costs taxed against you in suits we defend," including attorney's fees,14 as well as "prejudgment interest awarded against you on that part of the judgment we pay under Coverage L."

Although the umbrella policy might have been phrased to exclude coverage for liability stemming from

the ownership or operation of an automobile, it was not. By contrast, it specifically excludes coverage "for any loss involving your maintenance, use, handling or ownership of any aircraft." This language persuades us that the umbrella policy falls within the ambit of AS 21.89.020(a) and (c), because the policy insures Holderness as "an owner or operator of a motor vehicle against loss resulting from liability for bodily injury or death, or for property injury or destruction, or both."15

Indeed, State Farm acknowledges that Holderness's umbrella policy might qualify as "an automobile liability policy" under the literal terms of AS 21.89.020 ; but State Farm insists that this insurance codeprovision incorporates by reference a traffic code provision, AS 28.22.121(b) , that precludes umbrella policies from being treated as automobile liability insurance. State Farm's argument unfolds as follows.

Subsection (c) of AS 21.89.020 -- the insurance code provision that requires equal liability and underinsured motorist coverage -- specifically refers to, and directs insurers offering automobile liability coverage to comply with, two separate parts of the motor vehicle code, the Alaska Mandatory Automobile Insurance Act (AMAIA)16 and the Motor Vehicle Safety Responsibility Act (MVSRA):17 "An insurance company offering automobile liability insurance in this state . . . shall . . . offer coverage prescribed in AS 28.20.440 and 28.20.445 [of the MVSRA] or AS 28.22 [of the AMAIA] for the protection of the persons insured under the policy who are legally entitled to recover damages" caused by an uninsured or underinsured motorist.18

State Farm points out that one of the incorporated AMAIA provisions, AS 28.22.121(b) , expressly excludes umbrella policies from its definition of motor vehicle liability policies: "A policy is excluded from the application of this chapter if the automobile or motor vehicle liability coverage is provided only on an excess or umbrella basis."19 In State Farm's view, because this AMAIA exclusion is incorporated in AS 21.89.020(c) , this subsection necessarily excludes umbrella policies from its requirement of equal liability and underinsured motorist coverage. Thus, State Farm insists, it is impossible to apply AS 21.89.020(c) to umbrella policies without "nullifying" AS 28.22.121(b) .

The superior court found this argument persuasive, concluding "that the exclusion of umbrella policies from the requirements of AS 21.89.020 , governing what an insurer must offer in a policy, is necessary to give effect to the Legislature's intention to exclude umbrella policies from AS 28.22, governing what an insured must obtain in a policy." But closer examination of these provisions reveals no actual conflict between the insurance code's treatment of umbrella policies as automobile liability insurance and the AMAIA's exclusion of such policies from its own requirements.

The provisions of the insurance code and the AMAIA dealing with automobile insurance are counterparts, each dealing with the same subject but addressing different parties. The motor vehicle code's AMAIA requires drivers to buy certain minimum liability and underinsured motorist coverages,20 whereas the insurance code's AS 21.89.020 requires insurance companies to offer drivers certain minimum levels and combinations of these coverages. Considered from the point of view of the parties affected by each of these statutory regimes, any potential conflict between the insurance code's AS 21.89.020 and the AMAIA's AS 28.22.121(b) is more apparent than real.

Since the AMAIA's function is to set minimum levels of coverage that drivers must buy and to specify what provisions these mandatory policies must contain, the act's exemption of umbrella policies simply enables drivers to buy excess or umbrella policies that do not duplicate various provisions that the AMAIA already requires to be included in their underlying mandatory coverage.21 In keeping with the AMAIA's relatively narrow focus, that act's exemption for umbrella policies operates only within the sphere of the AMAIA itself; AS 28.22.121(b) thus provides that "[a] policy is excluded *from the application of this chapter* [that is, from the AMAIA] if the . . . coverage is provided only on an excess or umbrella basis."22 By its own terms, then, this exemption does not reach beyond the AMAIA and so cannot nullify coverage that other statutory regimes independently require insurers to offer.

The insurance code's AS 21.89.020 imposes this kind of independent coverage requirement. Apart

from prescribing general compliance with applicable provisions of the AMAIA, AS 21.89.020(c)(1) commands that underinsured motorist coverage offered under section .020 "include . . . policy limits equal to the limits voluntarily purchased to cover . . . liability." And as we have already indicated, AS 21.89.020(a) describes automobile liability broadly enough to include umbrella policies like the State Farm policy at issue here. Accordingly, the AMAIA's internal exemption for umbrella policies fails to reach these externally imposed coverage requirements of the insurance code.

We find further support for this conclusion when we consider how the insurance code and the AMAIA interact with a third statutory regime, the MVSRA. We described this interaction in *Progressive Insurance Co. v. Simmons*.**23** We noted in *Simmons* that the "AMAIA's coverage limits generally parallel those of the MVSRA;" while these two acts "coexist as components of the Alaska Uniform Vehicle Code," they "are not coextensive."**24** Thus, we observed, the AMAIA "supplements, but does not supplant, the MVSRA."**25** Concerning the insurance code, we separately noted that the original version of AS 21.89.020 "required that all policies issued in the state meet the content requirements imposed by the MVSRA" and "expressly referred to subsection 28.20.440(b)(3) of the MVSRA, which required uninsured motor vehicle coverage. "**26** We thus recognized that, "although the MVSRA has never been a mandatory insurance law, as of 1968 the act's policy content requirements became mandatory for all policies written in the state."**27**

We further observed in *Simmons* that, upon enactment of the AMAIA in 1989, AS 21.89.020 's language incorporating the content requirements of the MVSRA was amended to include a reference to the AMAIA.**28** Given that AS 21.89.020(c) now incorporates the content requirements of both the MVSRA and the AMAIA, which are generally parallel but not coextensive, we went on to ask, "How should this language be interpreted where the contents of policies required under the mandatory act differ from the content requirements of the MVSRA? "**29** Answering this question, we interpreted AS 21.89.020(c) to demand primary compliance with the MVSRA unless the AMAIA imposes broader requirements:

In our view, this language means that all policies in the state must continue to conform to the content requirements of the MVSRA, and that if the content requirements of the mandatory act are broader than those of the MVSRA, those requirements must also be complied with as to persons covered by the mandatory act.[**30**]

In the present case, the content requirements of the MVSRA and the AMAIA stand in conflict: the MVSRA contains no equivalent to the categorical exclusion of umbrella policies set out in the AMAIA's 28.22.121(b).**31** In this respect, the MVSRA provides for broader coverage than the AMAIA. Thus, under *Simmons*, even assuming that AS 21.89.020(c) did not independently mandate equal liability and underinsured motorist coverage, the subsection's incorporation of the MVSRA's comparable content requirements**32** would prevail over its incorporation of the AMAIA's umbrella policy exclusion.

For these reasons, we hold that the superior court erred in concluding that AS 28.22.121(b) excludes Holderness's umbrella policy from being treated as an automobile liability policy under AS 21.89.020(a) and from being reformed, under *Harrington*, to provide equal liability and underinsured motorist coverage, as prescribed by AS 21.89.020(c) .

C. *Coverage Under the Alaska Podiatry Associates Business Liability Policy*

At the time of the accident, Holderness was insured under a business liability policy held by Alaska Podiatry Associates for those acts he undertook "with respect to [his] duties as [an executive] officer[]." The liability section of the policy covers "those sums that the insured becomes legally obligated to pay as damages because of bodily injury, property damage, personal injury or advertising injury to which this insurance applies." Although the "Business Liability Exclusions" section of the policy specifically excludes coverage for injuries arising out of an insured's use of an automobile, the same section states an exception to this exclusion that results in coverage for liability arising from use of a non-company-owned auto:

Under [the liability coverage], this insurance does not apply:

. . . .

7. to bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, auto or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and loading or unloading.

This exclusion does not apply to:

. . . .

e. bodily injury or property damage arising out of the use of any non-owned auto in your business by any person other than you[.]

Like Holderness's umbrella policy, this business insurance is an "automobile liability policy" under AS 21.89.020(a) because its coverage includes circumstances in which liability arises for causing injury, death, or property damage by driving an automobile. Thus, as the superior court correctly recognized, if the provisions of the policy's liability coverage extend to Holderness's accident, then AS 21.89.020 and *Harrington* would require reformation of the policy to provide underinsured motorist coverage that parallels its liability coverage.

Accordingly, we must inquire whether the policy's liability coverage might extend to Holderness's accident. The policy defines "non-owned auto" to mean "any auto you do not own, lease, hire or borrow which is used in connection with your business." The policy also specifies that, throughout its provisions, "'you' and 'your' refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy." The Named Insured in this case was Alaska Podiatry Associates. And since the policy nowhere indicates that another person or organization would qualify as a Named Insured, it follows that Holderness's personal automobile was a "non-owned" auto under the terms of the policy -- that is, it was not an auto owned by Alaska Podiatry Associates, the only Named Insured.

The remaining question, then, is whether Holderness was an insured under the Alaska Podiatry Associates policy at the time of the accident; if he was an insured, his injuries would be covered by the policy. In describing who it insures, the policy distinguishes between the insured company's employees and its executive officers. Under the policy, the corporation's "employees, other than . . . executive officers," are insureds "only for acts within the scope of their employment." By contrast, the corporation's "executive officers . . . are insureds . . . only with respect to their duties as . . . officers." Accordingly, the executive officers of Alaska Podiatry Associates were covered for personal liability arising from their own negligence while carrying out their duties as executive officers.

It is undisputed that Holderness was an executive officer of Alaska Podiatry Associates. Holderness argues that driving from home to the hospital to perform surgery qualifies as conduct performed "with respect to" his duties as a corporate officer. Therefore, he claims, he was covered by the liability policy at the timeof the accident, and the policy, when reformed under *Harrington*, insures him for the injuries he sustained at the hands of an underinsured motorist.

State Farm responds that because Holderness was not "attending a director's meeting or a shareholder's meeting[,] . . . signing payroll checks for the corporation's employees," or the like, he was not acting with respect to his duties as a corporate officer. But the non-managerial nature of Holderness's activity does not necessarily determine whether he was acting with respect to his duties. For in the absence of a policy provision more narrowly defining the policy's reference to duties of office, Holderness's duties as an executive officer of Alaska Podiatry Associates would have encompassed not just his managerial duties, but all duties related to the corporation's business that Holderness usually performed as an executive officer. Two cases illustrate this point.

In *Martin v. United States Fidelity & Guaranty Co.*,**33** the Supreme Court of Missouri, holding that a policy's use of the term "duties as your officers" was ambiguous, resolved the ambiguity by concluding that the term could include a non-managerial duty, such as fitting a pipe flange, if that duty was one of the executive officer's actual responsibilities.**34** By contrast, in *Creel v. Louisiana Pest Control Insurance, Inc.*,35 the Court of Appeal of Louisiana construed similar policy language narrowly, to include only managerial duties; but the court based its decision on the trial testimony of Ray's Pest Control's president, who specifically described his responsibilities as president to be limited to "attending and participating in corporate meetings, the hiring and firing of personnel, handling financial dealings, and making corporate decisions."**36** Noting that Ray's president had been on his way to spray a house for pests when the accident occurred, the court concluded that he was not an insured at the time of the accident.**37**

Read together, *Martin* and *Creel* suggest that, absent a narrower definition of "duties of office," when a policy extends coverage to executive officers acting "with respect to their duties as . . . officers," the coverage should be construed to include all work-related activities performed by executive officers -- whether menial or managerial -- unless case-specific evidence establishes that an officer actually undertook to perform a narrower range of duties in that capacity.

Here, no record evidence suggests that Holderness's role as an executive officer of Alaska Podiatry Associates was actually limited to managerial or purely "executive" functions. Accordingly, we reject State Farm's contention that Holderness was necessarily acting outside the scope of his duties as an executive officer at the time of the accident merely because he was not performing managerial functions.

But this conclusion does not resolve the issue specifically presented here. The superior court's ruling did not focus on whether Holderness was performing uniquely "executive" functions at the time of the accident; instead, the ruling more broadly concluded that driving to work falls outside the scope of any kind of work-related activity: "Holderness has raised no factual issue that he was involved in anything other than a completely ordinary commute to work." As the court's ruling recognizes, Alaska follows the general rule that going to work and coming home fall outside the scope of employment.**38** Although the "going-and-coming" rule allows for exceptions on certain occasions -- as when special errands call a worker away from work**39** or force the worker to take an unusually dangerous route to work**40** -- the record presents no evidence suggesting that Holderness was responding to any unique or special demands when he left home for the hospital on the day of the accident.**41** Nor does the record contain any case-specific evidence indicating that Alaska Podiatry Associates actually considered commuting to work to be an integral aspect of Holderness's duties as an executive officer. Absent such evidence, we conclude, the superior court properly ruled that Holderness "was not performing his duties as an executive officer and was not covered by the [Alaska Podiatry Associates] policy."

D. *Dismissal of Contract Claims*

This appeal is before us on a Civil Rule 54(b) partial judgment dismissing all of Holderness's "contract claims" with prejudice. Holderness argues that this judgment was too broad because it could be interpreted to block a contractual claim that he has asserted separately -- his still pending claim that State Farm violated AS 21.89.020(e) by failing to obtain his written waiver of underinsured motorist coverage.

But the superior court's partial summary judgment dismissed Holderness's contract claims "inaccordance with" its order regarding the "Policy Limits Issues." The policy limits order did not consider or purport to decide the validity of Holderness's contract claim for violations of AS 21.89.020(e) 's waiver provision. We thus interpret the superior court's subsequent entry of partial summary judgment to be similarly limited, and we conclude that the judgment does not bar Holderness from pursuing his separate claim for violation of AS 21.89.020(e) .

E. *The Arbitration Panel Decision*

A panel of arbitrators heard Holderness's underinsured motorist claim, as mandated by his automobile policy. Under the policy, the arbitration panel was to answer two questions:

1. Is the insured legally entitled to collect damages from the owner or driver of the uninsured motor vehicle or underinsured motor vehicle; and

2. If so, in what amount?

In presenting this case to the panel, the parties stipulated that Holderness was legally entitled to damages and submitted no evidence concerning "relative fault or the like." Thus, the arbitration addressed only the amount of damages Holderness suffered, which the panel found to be $ 7,308,076.

On appeal, Holderness argues that the trial court erred by refusing to confirm the arbitration panel's decision "on both liability and damages." But because the parties stipulated that the motorist who hit Holderness was at fault, the amount of damages was the only point at issue before the arbitration panel. The arbitrators found that amount to be $ 7,308,076, and the superior court's order confirmed this finding. As the panel correctly observed, the question of whether State Farm owes Holderness any payment was not before it: "The extent of State Farm's liability, if any, for policy limits or beyond has not been presented to nor determined by this Panel. Our decision merely establishes the extent of Holderness's damages resulting from the accident." The superior court's order correctly reflected this statement. We therefore uphold the confirmation order.

F. *Arbitration Attorney's Fees*

Holderness sought, and the trial court denied, Civil Rule 82 attorney's fees based on the amount of damages the arbitration panel found that he had suffered. We have previously held that "Civil Rule 82 only applies to 'costs of the action' not attorney's fees incurred in the conduct of the prior arbitration."**42** Thus, the trial court correctly denied Holderness's motion for Rule 82 attorney's fees based on the arbitration panel's findings.

IV. *CONCLUSION*

We AFFIRM in part and REVERSE in part the superior court's order granting partial judgment, and REMAND for further proceedings consistent with this decision.

Footnotes

Footnotes

1 918 P.2d 1022 (Alaska 1996).

2 *See id.* at 1025-27.

3 *See Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912 n.1 (Alaska 1996).

4 *See Alaska Hous. Fin. Corp. v. Salvucci*, 950 P.2d 1116, 1119 (Alaska 1997).

5 *See Cox v. Progressive Cas. Ins. Co.*, 869 P.2d 467, 468 n.1 (Alaska 1994).

6 *See Osborne v. Hurst*, 947 P.2d 1356, 1358 (Alaska 1997).

7 AS 21.89.020(c) . Under subsection (e) of AS 21.89.020 , an insured may waive underinsured motorist coverage required under subsection (c), but must do so in writing.

8 AS 21.89.020(c)(1) ; *see State Farm Mut. Auto. Ins. Co. v. Harrington*, 918 P.2d 1022, 1025 (Alaska 1996); *Burton v. State Farm Fire & Cas. Co.*, 796 P.2d 1361, 1364 (Alaska 1990).

9 *See Harrington*, 918 P.2d at 1025-26.

10 *See id.*

11 *Id.* at 1026.

12 AS 21.89.020(a) provides:

An automobile liability policy that insures an owner or operator of a motor vehicle against loss resulting fromliability for bodily injury or death, or for property injury or destruction, or both, that is sold in the state, must contain limits in at least the amount prescribed for a motor vehicle liability policy in AS 28.20.440 or AS 28.22.101 .

13 The emphases in the quoted passage appear in the original policy, which emphasizes words to indicate that they are specifically defined in the policy. In the remaining references, this emphasis is omitted, except where necessary for clarity.

14 *Cf. Kenai Peninsula Borough v. Port Graham Corp.*, 871 P.2d 1135, 1141 (Alaska 1994); *Schultz v. Travelers Indem. Co.*, 754 P.2d 265, 267 (Alaska 1988).

15 AS 21.89.020(a) .

16 AS 28.22.

17 AS 28.20.

18 AS 21.89.020(c) .

19 AS 28.22.121(b) . The full text of AS 28.22.121 reads:

Excess of additional coverage. (a) A policy that grants the coverage required for a motor vehicle liability policy may also grant lawful coverage in excess of or in addition to the coverage specified for a policy and the excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy that grants excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage that is required by this chapter.

(b) A policy is excluded from the application of this chapter if the automobile or motor vehicle liability coverage is provided only on an excess or umbrella basis.

20 *See* AS 28.22.101 .

21 For instance, AS 28.22.101(d) requires that motor vehicle liability policies governed by the AMAIA "must provide coverage in the United States or Canada." Under the exclusion for umbrella policies in AS 28.22.121(b) , an insured might buy umbrella coverage for a more restricted geographical area.

22 AS 28.22.121(b) (emphasis added).

23 953 P.2d 510, 520-22 (Alaska 1998).

24 *Id.* at 520-21.

25 *Id.* at 521.

26 *Id.* at 520.

27 *Id.*

28 *See id.* at 522. Specifically, we stated:

Finally, prior to the mandatory insurance act of 1989, AS 21.89.020(c) read as follows:

An insurance company offering automobile liability insurance in this state for bodily injury or death shall offer coverage prescribed in AS 28.20.440 and 28.20.445 . . . for the protection of the persons insured under the policy who are legally entitled to recover damages for bodily injury or death from owners or operators of uninsured or underinsured motor vehicles.

The mandatory act changed this by adding the phrase "or AS 28.22" after "28.20.445."

29 *Id.*

30 *Id.*

31 *Compare* AS 28.20.440(g) (MVSRA) *with* AS 28.22.121 (AMAIA).

32 *See* AS 28.20.440(b)(3) (requiring an owner's liability insurance policy to contain underinsured motorist coverage "in not less than the amounts" set out for liability coverage).

33 996 S.W.2d 506 (Mo. 1999).

34 *Id.* at 508, 510.

35 723 So. 2d 440 (La. App. 1998), *cert. granted*, 731 So. 2d 272 (La. 1998).

36 723 So. 2d at 443.

37 *See id.* at 443-44. Unlike the policy at issue here, however, the policy in *Creel* excluded coverage for officers performing executive duties; accordingly, the court's conclusion that the president's conduct fell outside his official duties resulted in a finding that the Ray's Pest Control policy covered the Creels' injuries. *See id.* at 444.

38 *See, e.g.*, *Seville v. Holland Am. Line Westours, Inc.*, 977 P.2d 103, 106 (Alaska 1999).

39 *See e.g.*, *Witmer v. Kellen*, 884 P.2d 662, 666 (Alaska 1994).

40 *See, e.g.*, *Johnson v. Fairbanks Clinic*, 647 P.2d 592, 595 (Alaska 1982).

41 As a surgeon and executive officer of Alaska Podiatry Associates, Holderness regularly worked both at his office and at the hospital. The record fails to suggest that driving from home to the hospital exposed Holderness to any greater risk than he would have encountered had he been driving to his office. Given these circumstances, the fact that the accident occurred when Holderness was driving to the hospital rather than to his office has no special significance for purposes of applying the going-and- coming rule.

42 *Integrated Resources Equity Corp. v. Fairbanks N. Star Borough*, 799 P.2d 295, 300 (Alaska 1990) (quoting *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, 586 P.2d 1244, 1249 (Alaska 1978)).

SENATE COMMITTEE REPORT

DATE: 5/1/04

FURTHER: (Finance)

DATE TURNED IN TO OFFICE: 5/2/04

Judiciary Committee considered CS FOR HOUSE BILL NO. 336(JUD) am

HB 336 MOTOR VEHICLE INS./ UNINSURED DRIVERS

"An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

and recommends:

[✓] be **replaced** with S CS CSHB 336 (JUD)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to _____ Committee

Senate Bill:
[ ] Same Title
[ ] New Title

House Bill:
[✓] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
CRT	3/29			✓	1
LAW	3/30			✓	2

[ ] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
Therriault — Dave Therriault			X	
Ogan — Scott Ogan	X			
Seekins — CHAIR: Ralph Seekins	✓			

SENATE FINANCE COMMITTEE

S I G N - I N

HB 336-MOTOR VEHICLE INS./ UNINSURED DRIVERS

NAME: Michael Lessmeier Subject/Bill No: HB336

Co./Dept./Title: State Farm Phone: 756-4999

Address: 3000 Vintage Blvd Suite 100 Zip:
Juneau, AK 99801

Do you wish to testify? X Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? ___Yes ___No ___Respond To Questions