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# ACCIDENT CLAIM SETTLEMENT

## A PROPOSAL TO ELIMINATE UNNECESSARY DELAY

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Among the many problems facing the legal profession, overcrowded court dockets and the delay resulting therefrom is one of the most serious. This delay is measured in some cases in terms of years.[1] The major reason for this delay is the number of automobile accident cases which clog the present court dockets. It has been reliably stated that 75 percent of all cases in our civil courts deal with tort litigation and of this number the vast majority are grounded upon automobile accidents.[2] What this means to many litigants is that an unjust settlement is, for all practical purposes, compulsory as many can ill afford to wait for the slow grinding of the machinery of justice.

This alarming avalanche of accident claims and its resultant overburdening of the court dockets has brought forth varied suggestions to alleviate the situation. Justice Samuel H. Hofstadter in his recent article proposed that automobile accident claim settlement should be removed from the courts and given over to compensation committees. Basically, he claimed that present-day courts are unable to handle the great number of cases with which they are faced and further that the American public is outraged by the justice that present tort law principles dispense.[3] The State of Pennsylvania, in an effort to keep the financially speaking smaller and less important accident claims out of its courts, has established a plan whereby all cases in which the amount in controversy is $1,000 or less are submitted to a board of arbitrators. The board is composed of three members of the local bar, and after hearing the evidence, the board makes a report and an award. Should either party feel his rights were not substantiated by the board, he

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[1] Address by Justice David W. Peck, Meeting of Members of the Bar and Insurance Companies Executives, January 14, 1952, Published in 127 N.Y.L.J. 179. "20.4 months average wait from setting to hearing in counties of over 500,000 population; 10.4 months average wait from setting to hearing in counties of 200,000 to 500,000 population."

[2] Belli, *Modern Trials*, Vol. I, p. 5 (1954).

[3] Saturday Evening Post, Oct. 22, 1955, p. 112.

has the right to have the case heard de novo in the regular court system.[4]

These two plans and the many others which space does not permit listing all tacitly advance the theory that the present system is faulty because of the inability of either the lawyer or the court to properly process the claims which arise.[5]

While most whole-heartedly agreeing that something must be done if justice is to be preserved for the automobile accident victims, it is believed that more could be accomplished by improving and expanding in part the existing facilities than by a wholesale rewriting of our present day tort law.

A brief glance at the accident claim situation reveals that usually the protagonists are a lawyer on the side of the injured party and an insurance adjustor on the side of the injurer. The philosophy and nature of these two groups, the lawyer and the adjustor, are basically divergent. A lawyer as a result of his training in adversary procedures feels safer and surer of his position within the judicial processes rather than around a bargaining table. In addition, he can utilize the courts and their processes to effectively strengthen his bargaining position. Each time an attorney dockets an action, he increases the burden on the presently overcrowded calendars and thus perpetuates the problem. The adjustor in his many forms is the product of the insurance company's desire for settlement and not litigation.[6] He is usually well-trained in his specialized field of law but all too frequently not licensed by the state to pursue this occupation.[7] The adjustor realizes a court trial costs money and in too many cases the results reached in the courts do not accurately reflect the real price that should be paid for the

[4] Swartz, A. S., Jr., *Compulsory Arbitration: An Experiment in Pennsylvania,* 42 A.B.A.J. 513 (June 1956).

[5] Marx, R. S. *"Let's Compensate Not Litigate",* 30 N. Dak. L. Rev. 20 (1954); Eldredge, L. H. *"Contributory Negligence:* An Outmoded *Defense",* 43 A.B.A.J. 52 (Jan. 1957); Graubart, E. *"A Change is Inevitable",* 42 A.B.A.J. 823 (Sept. 1956).

[6] Adjustors fall into three classes: 1) Claimant adjustors representing the injured party; 2) Salaried adjustors representing insurance companies; 3) Independent insurance adjustors representing the insurance company but hired only for one assignment.

[7] As of 1939, only 15 states had legislation regulating insurance adjustors. As a result, little protection is afforded against inadequately trained adjustors.

claim. Thus, the adjustor in his training and thinking is aimed at speedier and less costly settlement of claims. Knowing this fact, the attorney utilizes the court system to delay a settlement and as a means of applying pressure to increase the amount for which the insuror will settle. If a great number of the docketed actions actually went to trial because the parties really believed that they could not by themselves reach an amicable and fair settlement, there would be little hope of alleviating the crowded dockets. However, as Justice Peck has pointed out: "[In my jurisdiction] less than ten percent of the total dispositions were by completed trial, and of the personal injury and death actions on the jury calendar only *six* percent were by completed jury trial." [Emphasis added.][8]

It is obvious, therefore, that an improvement in the means and methods of settlement would do much to solve the problem of crowded court dockets, unnecessary delay, and inequitable results occasioned by present procedures. It is believed that the following proposal would effectively solve the many problems presented above:

1) By legislation, establish a new group of recognized adjustors (settlers, or any other appropriate name), allowing them absolute freedom in dealing with the settlement of claims that are brought to them with an express recognition that such action as they must take is not to be regarded as the practice of law;

2) By legislation, establish a minimum educational requirement necessary before an applicant desiring to enter this field would be allowed to take state-administered examinations for an adjustor's license;[9]

3) By legislation, establish a maximum fee an adjustor could charge for his services; establish a procedure for dealing with those who fail to keep their charges within the fee schedules prescribed, or those who fail to properly expedite settlement, allowing for the establishment of a body similar to the lawyer's bar association to deal with these and other questions of unethical practices; and, establishment of an arbitration board, whose actions will be final save for a right to appeal to only the Supreme Court of the state, to deal with claims which honestly cannot be adequately resolved by the parties.

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[8] *Supra,* Note 1.

[9] At least a college degree or 5 years practical experience in the adjusting field. The examination should stress the applicant's knowledge of torts, contracts, insurance, evaluations, negotiations, bodily injury and adjusting ethics.

Some explanation of the above-advanced proposal is necessary in order to explain misconceptions which might naturally arise in the minds of both attorneys and adjustors presently engaged in this area of settlement under existing practices.

As envisaged, the group which this proposal contemplates will be separate and distinct from both the legal profession and the insurance industry. Its allegiance and duty will be owed to its clients. This group will be able to draw its members from those now engaged both in the practice of law and insurance adjusting. The present insurance adjustor will enter this field from the desire to be an independent contractor in his relation with his clients with the resulting opportunity for increased earning capacity. The attorney who is interested in tort law would also welcome such an opportunity to specialize in this field of endeavor.

Before a person would be allowed to enter this new profession, it would be necessary for him to prove his capability by written examination, the nature of the examination precluding of necessity all but those who intend to devote their full energy to adjusting and have shown their intention by becoming proficient in the many ramifications of adjusting. A law degree and the passage of the local bar examination would be no magic passport to entry into this field. Conversely, experience alone in adjusting would not be the 'open sesame' for the entry of present adjustors into this new area. Provision must of necessity be made in the examination to test the knowledge of the lawyer in regard to medical-legal significance of injuries and, to put it cold-bloodedly, the hypothetical replacement value of the human body and its individual components. In addition, knowledge of insurance law generally is essential to determining liability as well as a broad background of training in tort and contract law. As regards the adjustor, it will be necessary to insure that he is well-versed in the various aspects of tort, contract, and insurance law, in addition to his knowledge of the price that is put on injuries, suffering, pain, etc. Additionally, it will be necessary that both parties understand the basic problems of negotiation.

The fee which such an adjustor could charge would be set by the legislature and if such fee were in the general area of 12½ to 20 percent of the settlement, it is believed that the proper type individual will enter the field. Such a fee is much less than is presently

charged by attorneys and as a result would protect the injured party to a greater degree by gaining for him not only a faster recovery but also a proportionately greater recovery. Of necessity, a lawyer who enters this field would be barred from representing his client in the court system should settlement seem unsatisfactory, thus protecting the injured party from the possible situation of being in the hands of a party who capriciously refuses to compromise on the hope that the higher legal fee can be obtained. Thus where adjustment proves impossible, the adjustor would have the authority to engage the services of an attorney as agent of the injured party to represent him in the state supreme court. Since ninety percent of the present cases have proved amenable to settlement, it is believed that this authority would be rarely invoked. The new adjustor will be anxious to settle because it is only through reasonable settlement that his existence is justified. Since this new group is proposed not only as a means of unclogging the courts, which as has been shown it will do, but also to eliminate the time lags between injury and recovery, it is suggested that after a period of six months has elapsed without settlement, the client or the insurance company would have a right to ask the adjustor association to investigate the behavior of the adjustor to determine whether his conduct in delaying settlement is reasonable or unreasonable. At the same time, provision could be made for an arbitration board to handle such claims after the six months period has elapsed, rendering their decision within thirty days. The parties would then be able to appeal their determination to the Supreme Court by filing an appeal within a period of ten days from the date of the decision of the board. Thus in those few cases in which disagreement still existed after six months, a final settlement would be able to be reached within, probably, an additional six months.

Automobile accident claims if handled by this proposed body of specialized professionals would cease to be a source of congestion upon court dockets. This new profession operating as it will outside of courts will not be hampered in its search for adequate compensation to the injured party by tort doctrines long since outmoded or the whims and caprices of juries. Both parties will be represented by men who know insurance contracts, the medical value of injury, loss of limb, and pain and suffering, automotive capabilities and the various aspects of tort law and attendant liabilities. Therefore, both men after conducting their investigation will be able to arrive at what they consider a fair settlement figure from

which they will be able by bargaining to ascertain a final settlement award.

The future, with its ever increasing number of automobiles and the attendant increase in the number of accidents and claims arising therefrom, will make out-of-court settlement by adjustors a necessity. Unless it is the legal profession which forges ahead with the new standards for adjusting these claims, the day may well come when the legal profession is again in the back wash of an administrative agency created by a government to handle the problem.