1974

The Constitutionality of the New York State Comprehensive Automobile Insurance Reparations Act

Edward J. Hart
THE CONSTITUTIONALITY OF THE NEW YORK STATE COMPREHENSIVE AUTOMOBILE INSURANCE REPARATIONS ACT

EDWARD J. HART*

I. INTRODUCTION

ARTICLE 18 of the New York Insurance Law became effective on February 1, 1974.1 This new law, designated as the “Comprehensive Automobile Insurance Reparations Act,”2 establishes a so-called “no-fault” auto reparations system for the State of New York.3

In essence, the new law requires New York motorists to carry certain “first party” insurance coverage4 in addition to the liability insurance coverage that has been required of state motorists for a number of years.5 Persons insured under the new coverage are afforded protection for up to $50,000 of out-of-pocket loss resulting from motor vehicle accidents. Within that dollar limit benefits will be provided, regardless of fault,6 for the following: reasonable and necessary medical, hospital, rehabilitative and related expenses;7 loss of earnings up to $1,000 per month for not more than three years from the date of the accident;8 and, “all other reasonable and necessary expenses incurred, up to twenty-five dollars per day for not more than one year from the date of the accident . . . .”9

In addition to requiring the purchase of first party insurance protection, the new law also provides for certain restrictions upon the right

* B.A., J.D., St. John's University. During the 1972-1973 session of the New York State Legislature, Mr. Hart served as legislative counsel to the New York Bar Association's Automobile Accident Reparations Committee. He also served on the Legal Advisory Committee to the Superintendent of Insurance of the State of New York. Mr. Hart is currently a member of the firm Curtis, Hart & Zakulikiewicz in Merrick, New York.


6. The Act allows the insurer to exclude from coverage persons who: intentionally injure themselves; are injured while driving under the influence of liquor or drugs; are injured while committing a felony or resisting a lawful arrest; are injured while racing; are injured while knowingly operating a stolen vehicle. N.Y. Ins. Law § 672(2) (McKinney Supp. 1974).

7. Id. § 671(1)(a).

8. Id. § 671(1)(b).

9. Id. § 671(1)(c).
of persons injured in New York motor vehicle accidents to pursue a traditional tort remedy. Actions for pain, suffering and similar non-economic losses arising out of motor vehicle accidents occurring in the state may only be maintained in the courts of the state in cases of “serious injury.”

The purpose of this Article is to consider some of the constitutional arguments which may be raised to challenge this new law, rather than to provide a detailed analysis of the features of the law itself. However, specific provisions of the new law will be discussed for the purpose of constitutional analysis.

Although the concept of “no-fault” automobile insurance is relatively new in the State of New York, other states have been experimenting with similar systems for a longer period of time. At this writing, New York is one of twenty-three states which have adopted some form of insurance system to modify the manner in which automobile accident victims are compensated for their injuries. Insight into the various constitutional attacks to which the New York statute may be subjected, and their possible resolution, may be obtained from decisions in other jurisdictions which have considered some of the constitutional questions raised. This Article will use the “no-fault” cases

10. Id. § 673(1); see note 19 infra and accompanying text.
from other jurisdictions as well as general constitutional authority to attempt to forecast what may happen if the New York law is subjected to constitutional scrutiny.

The limited history of constitutional challenges to "no-fault" laws reveals that arguments advanced against these laws basically center on alleged violations of the due process and equal protection provisions of the federal and state constitutions. This Article will, therefore, consider the protections afforded by those provisions and their application to specific sections of the new auto reparation law in New York.

II. DUE PROCESS

The basic test employed to determine whether given legislation violates the guarantee of due process of law under the fourteenth amendment of the United States Constitution or under a state constitution is to consider whether the statute in question bears a reasonable relation to a legitimate legislative objective. \(^\text{15}\) When a court applies this test, a statute is presumed to be constitutional \(^\text{16}\) and, furthermore, if a state of facts can be found to justify the passage of the statute, such facts will be presumed to have existed at the time the legislation was enacted. \(^\text{17}\) With these general tests in mind, their application to specific provisions of the New York law may be considered.

A. Does the Limitation on Tort Rights Bear Any Reasonable Relation to a Legitimate Legislative Objective?

The New York law denies an automobile accident victim injured in that state a right to recover in a tort action for what it terms "non-economic loss," \(^\text{18}\) except in those cases in which there are specified types of personal injury or in which the injury results in a specified amount of expense for medical, hospital and related services. Those exceptions are delineated in the act to include injury:

---


18. N.Y. Ins. Law § 673(1) (McKinney Supp. 1974). "Non-economic loss" is defined as "pain and suffering and similar non-monetary detriment." Id. § 671(3).
(a) which results in death; dismemberment; significant disfigurement; a compound or comminuted fracture; or permanent loss of use of a body organ, member, function, or system; or
(b) if the reasonable and customary charges for medical, hospital, surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services necessarily performed as a result of the injury would exceed five hundred dollars. 19

This limitation on the right to a tort remedy to specific types of injury or the amount of medical and related expense generally is referred to as a “threshold provision” in the parlance of “no-fault” plans. The question to be considered is whether New York’s use of a threshold is unconstitutional on due process grounds. 20

A similar threshold provision21 was considered by the Massachusetts supreme court in Pinnick v. Cleary. 22 There the court held that since one of the purposes of the Massachusetts law was to reduce court congestion through elimination of minor claims for “pain and suffering” and since the threshold provision was intended to eliminate these cases from the courts, the threshold was reasonably related to the objective of the law. 23

Similarly, the Supreme Court of New Hampshire, in an advisory opinion, was asked to consider the constitutional propriety of a threshold provision in a “no-fault” bill then pending before the state’s legislature. 24 Reasoning that an injured person was not left without a remedy under the proposed law, 25 the New Hampshire court held that the bill’s threshold provision was related to the purpose of reducing court congestion by eliminating claims for minor “pain and suffering.” 26 The court found that there would be no violation of due process attendant to the threshold’s use. 27

The Florida supreme court, in Lasky v. State Farm Insurance Co., 28 also was called upon to consider a due process challenge to the threshold provision29 in that state’s “no-fault” law. The court stated:

19. Id. §§ 671(4)(a), (b).
20. For a discussion of various types of threshold requirements and the inequities which may accompany them, see Ring, The Fault With “No-Fault,” 49 Notre Dame Law. 796, 803-07 (1974).
25. Id. at —, 304 A.2d at 886.
26. Id. at —, 304 A.2d at 886.
27. Id. at —, 304 A.2d at 887.
28. 296 So. 2d 9 (Fla. 1974).
The threshold requirements, taken in connection with the provisions for first-party payment of claims for such items as medical expenses and loss of income, will obviate the necessity to bring a cause of action in many cases, thereby reducing court congestion and delay and assuring prompt reimbursement of essential losses. A reasonable relationship to permissible legislative objectives is also present here.\textsuperscript{30}

It would appear that, based upon the reasoning of other courts, the New York courts would be unlikely to find that the threshold provision in the New York "no-fault" law\textsuperscript{31} does not bear a reasonable relation to a legitimate legislative objective—reducing delay in the state courts.\textsuperscript{32} By limiting the class of automobile accident victims who will be able to pursue a tort remedy, the number of cases potentially facing the court system of the state is reduced.\textsuperscript{33} It would be difficult to present a convincing argument for the proposition that the New York legislature does not have a legitimate interest in improving the court backlog problems in the state. It could be argued that there were other means open to the New York legislature to remedy the problem of crowded courts. However, a court considering the constitutionality of the law on due process grounds is not guided by whether the best possible approach to a problem has been taken.\textsuperscript{34}

B. Does the Act Impair "Vested" Property Rights or Impinge Upon the Right to Personal Security?

Even though legislation may pass the due process test by being found to bear a reasonable relation to some permissible legislative

\begin{footnotes}
\item 30. 296 So. 2d at 17.
\item 31. See text accompanying notes 18-20 supra.
\item 32. Additional objectives are to reduce insurance premiums and to assure economic aid in meeting expenses associated with automobile related injuries. The legislative objective in Kansas was determined "to provide a means of compensating persons promptly for accidental bodily injury arising out of the ownership, operation, maintenance or use of motor vehicles in lieu of liability for damages . . . ." Manzanares v. Bell, — Kan. —, 522 P.2d 1291, 1307 (1974), quoting § 2 of Kansas Senate Bill 918. It also has been suggested that no-fault can save lives by promoting and paying for the building and operation of emergency medical facilities. Hart, National No-Fault Auto Insurance: The People Need It Now, 21 Catholic U.L. Rev. 259, 291-94 (1972).
\item 33. Several commentators, however, have argued that the no-fault plans will not substantially reduce court congestion. No-Fault Note 698-700; see Ghiardi & Kircher, Automobile Insurance: An Analysis of the Massachusetts Plan, 21 Syracuse L. Rev. 1135, 1139-40 (1970). Chief Judge Tauro, concurring in Pinnick v. Cleary, — Mass. —, 271 N.E.2d 592 (1971), felt that motor vehicle tort cases were, at best, a minor cause of court congestion and questioned the emphasis placed on this factor by the majority. Id. at —, 271 N.E.2d at 615-17 (Tauro, C. J., concurring). In Manzanares v. Bell, — Kan. —, 522 P.2d 1291 (1974), the parties had stipulated that there was no serious court congestion problem, and this was supported by the available statistics. Id. at —, 522 P.2d at 1320 (Prager, J., concurring & dissenting). Whether no-fault will prove successful in relieving any part of the burden on the courts remains to be seen. It admittedly is "experimental." Pinnick v. Cleary, — Mass. —, —, 271 N.E.2d 592, 617 (1971).
\item 34. See New York Cent. R.R. v. White, 243 U.S. 188, 201 (1917).
\end{footnotes}
objective, it may be open to due process attack on other grounds. The plaintiff in *Pinnick v. Cleary*\(^3\) claimed that the limitation on tort recovery in the Massachusetts law interfered with a "vested property right" which could not be disposed of or altered by legislative action because of due process guarantees. The court responded to the claim by stating:

[The plaintiff seems to ignore the distinction between a cause of action which has accrued and the expectation which every citizen has if a legal wrong should occur to find redress according to the rules of statutory and common law applicable at that time.\(^3\)

In other words, the claim that a "no-fault" law's provisions adversely affected a "vested property right" to a tort remedy would have merit if the law's application were such as to bar or severely restrict causes of action which accrued prior to its effective date. However, if the law only applies to accidents and injuries occurring on or after its effective date, there would be no interference with vested property rights.\(^3\) As has been stated by the United States Supreme Court: "No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit."\(^3\)

Since the New York law's threshold provision applies only to accidents and injuries occurring after its effective date,\(^3\) it is difficult to support a claim that potential auto accident victims who, but for the law, could have brought suit for "pain and suffering" damages at common law will be denied some vested property right.\(^3\) Any rights an accident victim may have are determined by the laws existing in the state at the time of the accident, not those which existed at some time prior thereto. It is the legislature's purpose and prerogative to shape the laws to suit certain situations. If the common law is altered

\(^3\) See 55 Marq. L. Rev. 198, 200 (1972). But cf. No-Fault Note 702-03, where it is suggested that the New York Court of Appeals might be unwilling to accept the proposition that the surrender of a right to sue is not a deprivation of a vested property right.


\(^3\) An argument has been made that the limitation of actions in tort may be an abrogation of the right to trial by jury. No-Fault Note 703-04; 26 Okla. L. Rev. 73, 78 (1973); cf. 8 Gonzaga L. Rev. 146, 152 (1972). But see Comment, No-Fault Insurance in Kentucky—A Constitutional Analysis, 62 Ky. L.J. 590, 592-95 (1974), where the issue is analyzed, but no violation of the right to jury trial is found.
somewhat in the process, there is no constitutional problem as long as causes of action which have already accrued are unaffected.\footnote{41}

In relation to a threshold's application, it may be argued that every person has a fundamental right to "personal security and bodily integrity" which is constitutionally protected and cannot be limited without a clear demonstration of some compelling state interest. This argument was considered by the court in \textit{Pinnick}, where it found that even if there were such a fundamental right, it was not affected by the state's "no-fault" law because that law merely limits the common law right in the automobile accident situation to obtain money damages on account of unintentionally inflicted pain and suffering and modifies the procedure for obtaining damages according to the common law measure for all other elements of recovery.\footnote{42}

The Massachusetts court then, does not consider the limitations of a "no-fault" plan upon a tort suit as constituting a restriction upon the right to personal security or bodily integrity. Rather, it views the law as shaping the measure of recovery for those whose rights have been interfered with as a result of tortious conduct.

C. \textit{Does the New Law Establish an Adequate Substitute Remedy for the Limited Tort Right?}

There is authority for the proposition that a state may not completely abolish a cause of action for injuries without substituting another adequate remedy in its place.\footnote{43} Some doubt is raised as to the validity of this argument when one considers the Supreme Court decision upholding the constitutionality of a state guest statute.\footnote{44}


\footnote{42. Pinnick v. Cleary, --- Mass. ---, 271 N.E.2d 592, 600 (1971).}

\footnote{43. New York Cent. R.R. v. White, 243 U.S. 188, 201 (1917); Nistendirk v. McGee, 225 F. Supp. 881, 882 (W.D. Mo. 1963); Kluger v. White, 281 So. 2d 1, 4 (Fla. 1973). This has been the law with respect to contract remedies for many years. Oshkosh Waterworks Co. v. Oshkosh, 187 U.S. 437, 439 (1903). The rule has been applied to property damage causes of action. Crane v. Hahlo, 258 U.S. 142, 147 (1922); see I. Schermer, Automobile Liability Insurance § 6.02 at 6-8 (1974). There is also authority, however, for the proposition that a common law cause of action may be abolished if the legislature has sufficient reason. E.g., Hansgarn v. Mark, 274 N.Y. 22, 8 N.E.2d 47, appeal dismissed, 302 U.S. 641 (1937) (per curiam) (involving the statutory abolition of causes of action for alienation of affection, criminal conversation, seduction and breach of promise to marry); see Silver v. Silver, 280 U.S. 117, 122 (1929); cf. Kenney, No-Fault in Massachusetts—An Epilogue, 56 Mass. L.Q. 441, 444-47 (1971). An analogy has often been drawn to workmen's compensation, which also mandates that the injured party take the alternate remedy provided. 21 Catholic U.L. Rev. 421, 433-34 (1972); Note, Insurance—Constitutionality of No-Fault Insurance Statutes—The Illinois Plan, 19 Wayne L. Rev. 1277, 1279 (1973).}

\footnote{44. Silver v. Silver, 280 U.S. 117 (1929). However, it has been suggested that automobile
Nevertheless, it would appear likely that the creation of a first party auto insurance system should be considered an adequate substitute for the tort remedy limited by the New York law. In *Manzanares v. Bell*, the court, confronted with an attack on the constitutionality of the tort limitations, including a threshold, found an adequate substitute remedy in its state's "no-fault" law. The court agreed with the decision in *Pinnick* as to the ability of a legislature to alter the common law remedies as long as accrued causes of action were not affected. It considered the insurance mechanism for automobile accident reparations established by the law as an appropriate substitute remedy for the one previously available to Kansas residents.

The court in *Pinnick* also had considered the "substitute remedy" approach. It reasoned that the trade-off of tort rights for immediate and sure compensation without regard to fault provided the accident victim with an adequate substitute remedy. In this regard, the language of the Supreme Court in *New York Central R.R. v. White* is persuasive:

> The statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the employer's negligence, he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of the damages.

Although the Court was there considering the constitutionality of a workmen's compensation law, the application of its logic to a "no-fault" situation is compelling. The New York law does restrict certain tort remedies. However, the compensation system it estab-

---

49. 243 U.S. 188 (1917).
50. Id. at 201.
52. See text accompanying note 10 supra.
lishes provides speed and certainty of remedy in place of the slow, uncertain and costly tort process.

D. Does the Law's Compulsory First Party Insurance Mechanism Deprive Persons of Property Without Due Process?

It may be claimed that requiring a person to carry first party insurance coverage as a condition precedent to operation of a vehicle on the roads of New York amounts to deprivation of property without due process. This particular argument would appear to have little weight in New York because of its history of compulsory automobile liability insurance. However, liability insurance laws such as New York's generally have been viewed as enactments for the benefit of persons who may be injured by an insured. “No-fault” laws, on the other hand, have been viewed as being intended to benefit the insured. The difference in the forms of insurance did not cause concern to the court in *Manzanares* when it was confronted with a “deprivation of property without due process” attack on the Kansas law:

The argument is one of policy, not law. . . . It is axiomatic that if the police power of the state may be exercised to minimize the consequences of collisions and accidents, it likewise may be exercised to require a method of compensating promptly persons who suffer accidental bodily injury arising out of a motor vehicle accident. The requirement of purchasing insurance for the protection of others has long been held not to violate the due process guarantee.

The Kansas court reasoned that compulsory “no-fault” insurance is no different from any other type of self-protecting legislation, such as that which requires motorcyclists to wear safety helmets or that which requires compulsory self-insurance under the Social Security system.

E. Does the Act Impair the Fundamental Right to Travel?

It also may be claimed that the requirement that insurance be purchased as a condition to the operation of a motor vehicle unconstitutionally impairs the fundamental right of citizens of this country to freedom of movement. This argument was raised by the plaintiff in *Manzanares*. The court agreed that the freedom to travel was a fundamental right which cannot be impaired without some showing of

53. N.Y. Ins. Law § 657(1) (McKinney Supp. 1974) provides in part: “Payments of first party benefits shall be made as the loss is incurred. Such benefits are overdue if not paid within thirty days after the claimant supplies proof of the fact and amount of loss sustained.” Id. § 675(2) provides for arbitration in the event of dispute over the insurer's liability.


56. — Kan. at —, 522 P.2d at 1301.
compelling state interest. However, it reasoned that the right to travel does not necessarily encompass the freedom to travel by car. “The right to operate a motor vehicle . . . is a privilege, not a natural right, and that privilege is subject to reasonable regulation.” The court expressed the belief that the state’s “no-fault” law merely was another regulation regarding the operation and use of motor vehicles in the state. It stated that “authorities are unanimous that under the police power the state may regulate travel upon the public highways.”

In the same regard, a recent Michigan trial court decision which considered that state’s “no-fault” law found that there was no authority to support the proposition that the fundamental right to travel encompasses the right to travel by automobile.

F. Conclusion—Due Process

From an analysis of the New York law and the due process authorities which may be considered in relation to that law, it appears that the law should not be found unconstitutional on the basis of any of the challenges discussed above. The various provisions of the law which could be challenged have a reasonable relationship to legitimate legislative objectives. The law does not deprive persons of life, liberty or property without due process of law. While it may be argued that the New York legislature could have selected some other or better means to deal with the problems which this law was intended to correct, that is not determinative. The question is whether the means chosen are reasonably related to legitimate legislative objectives. With this no one can seriously argue.

III. EQUAL PROTECTION

Disposing of possible due process attacks upon the New York law does not resolve all of its potential constitutional problems. The fourteenth amendment to the United States Constitution provides that no state may deny any person within its jurisdiction the equal protection of its laws. Since other states have found their “no-fault” laws

57. Id. at —, 522 P.2d at 1302.
58. Id. at —, 522 P.2d at 1302.
61. “Our recent decisions make plain that we do not sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare.” Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423 (1952). See also Arizona Employers’ Liab. Cases, 250 U.S. 400, 419 (1919).
challenged on equal protection grounds, it may be anticipated that the New York law will be subject to similar attacks.

The equal protection clause prohibits certain legislative classifications. Generally speaking, a legislative classification is constitutional unless it can be demonstrated that it bears no reasonable relation to the legitimate purpose of the law.\(^6\) Therefore, there are two tests which must be employed to determine whether a law runs afool of the equal protection clause. First, it must be examined to determine if there are, in fact, legislative classifications—that is, different classes of persons afforded different treatment. Second, if classification is found, a determination must be made as to whether it bears a reasonable relation to a legitimate purpose of the law.

As with the consideration of the due process arguments which may be raised against the New York law, possible equal protection attacks will be considered seriatim in relation to the various provisions of the law.

A. Because of Varying Hospital and Medical Charges, Will the Law's Threshold Provision Result in Arbitrary Discrimination?

An argument often raised against a “no-fault” plan with a threshold geared to the dollar amount of medical, hospital and related expenses is that varying charges for these services will result in the law’s arbitrary discrimination against certain accident victims.\(^6\) Since medical charges vary between different locations in a state (or even within the same city), two persons could sustain identical injuries and be treated differently in relation to their rights to pursue a tort action for “pain and suffering” simply because of the location of the accident or the hospital at which treatment was sought.\(^6\) It is an acknowledged fact that medical and hospital charges vary among communities and even within the same community. A trial court in Illinois used this disparity in medical treatment charges as one basis for finding that its state’s “no-fault” law, with a “pain and suffering” limitation similar to a threshold, was unconstitutional.\(^6\) The court found that the operation of the law would deny certain state residents equal protection. On

\(^6\) McGowan v. Maryland, 366 U.S. 420 (1961). A stricter test, the compelling state interest test, will be applied where a fundamental right is threatened, e.g., Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel), or where the classification used is inherently suspect. Loving v. Virginia, 388 U.S. 1, 9 (1967) (race).

\(^6\) See Note, Equal Protection: No-Fault and the Poor, 36 Albany L. Rev. 727, 728-31 (1972).

\(^6\) See No-Fault Note 709-10.

appeal, the statute was declared unconstitutional on other grounds without reaching the issue considered by the trial court. However, in Manzanares, confronted with a similar attack on the threshold in that state’s “no-fault” law, the court stated:

The Act requires the medical expense standard be calculated on the basis of “reasonable value” of the medical services, and not on the basis of out-of-pocket expenses. Actual expenditures for medical treatment are not conclusive as to their reasonable value. Evidence that the reasonable value of the medical expense was an amount different than the amount actually charged is admissible in all actions to which [the threshold] applies.

Thus the Kansas court resolved the constitutional attack on the operation of the threshold by concluding that the threshold would not lead to constitutionally impermissible disparities in treatment since the determination as to whether the amount of medical and related expenses exceeded its dollar limitation would be made on the basis of the reasonable value of the services, rather than the “bottom line” on the claimant’s medical bills. It should be noted that the New York threshold also uses the word “reasonable” in relation to the medical and related expenses which must exceed $500 before an action for “pain and suffering” may be pursued. The approach of the Kansas court is reasonable, especially in light of the principle that statutes in derogation of the common law are to be strictly construed. The application of the Kansas approach will not result in all claimants being treated with mathematical precision. However, such precision is not required by the equal protection clause.

B. Does the Operation of the Threshold Provision Discriminate Against the Poor?

A variation of the preceding equal protection argument is grounded on the claim that a dollar amount threshold discriminates against the poor. This argument again focuses on the example of two persons sustaining identical injuries in motor vehicle accidents. Here, however, one person is rich and the other is poor. The threshold discriminates because the wealthy person will be able to seek and pay for more

66. Grace v. Howlett, 51 Ill. 2d 478, 283 N.E.2d 474 (1972) (statute held violative of Illinois constitutional provision prohibiting enactment of special law when general law is applicable, violative of right to trial by jury, and violative of restriction prohibiting fee officers in the judicial system), noted in 8 Gonzaga L. Rev. 146 (1972).


70. See Note, Equal Protection: No-Fault and the Poor, 36 Albany L. Rev. 727 (1972).
expensive medical care than the poor person. It is claimed that the wealthy person will more readily exceed the threshold amount and be able to pursue a tort remedy for "pain and suffering." The court in <em>Mansanares</em> responded to this argument by stating:

Economic disparity in the market place is beyond judicial control. To equate absolute economic equality with equal protection of the law is absurd. The "reasonable value" criterion permits sufficient flexibility for the courts of this state to insure that those who are economically disadvantaged are not deprived of a right enjoyed by the more affluent. Based upon the standard of "reasonable value" it is clear the medical expense standard is non-discriminatory upon its face.\(^{71}\)

Again, the reasoning of the Kansas court should be equally sound with respect to a similar attack upon the New York threshold. A ghetto resident in New York City would be free to prove that the reasonable value of the free medical care he received was more than $500. Likewise, a liability insurer could argue that the reasonable value of the medical services received by a Park Avenue resident was less than $500 even though the actual charge for those services was higher.

The courts in Florida and New Hampshire also have looked to the language of threshold provisions referring to "reasonable" charges for medical and related services, and have followed the reasoning of the Kansas court in finding no equal protection problems in the application of the threshold to persons of different financial status.\(^{72}\)

In relation to this argument, it also should be noted that the "no-fault" law itself operates to create a fund from which the accident victim of modest means can draw to seek competent medical care without assuming the role of a "charity case."

**C. Does the Application of the Threshold Concept Itself Result in Discrimination?**

Regardless of the application of the New York threshold provision to persons from different parts of the state or persons of varying financial status, it is clear that the application of the statute will result in different treatment for two distinct classes of automobile accident victims. Those victims with medical and related expenses in excess of $500 or who sustain one of the specified types of injury set forth in the threshold provision will be entitled to pursue a tort action for "pain and suffering." All other automobile accident victims will be unable to pursue such an action. The question is whether this classification violates equal protection guarantees.\(^{73}\)

\(^{71}\) Kan. at —, 522 P.2d at 1309.


\(^{73}\) See note 62 supra and accompanying text.
The purpose of employing a threshold provision in a "no-fault" law generally is twofold. First, it is intended to reduce the number of minor personal injury claims that crowd the courts. Secondly, it is intended to keep the overall cost of automobile insurance within reasonable bounds in view of the expanded first party coverage that is provided. While it is true that the New York legislature might have selected some other dollar amount or other types of injuries as exceptions to the threshold's prohibition against "pain and suffering" actions, that is not the issue. In *Lasky v. State Farm Insurance Co.* the Florida court, analyzing an equal protection attack against its state's $1000 threshold, stated:

Admittedly, situations can be perceived in which severe pain might be uncompensated, and other situations in which suit could still be brought for extremely minor intangible damages. But perfection is not required in classifications; "problems of government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific."  

The Florida court's analysis of the legislature's action in establishing that state's threshold is in fundamental agreement with the United States Supreme Court's view of the function of legislative demarcations:

> [W]hen it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Since reference has been made to the Florida court's analysis of the equal protection problem posed by a threshold which uses a dollar limitation, it also should be noted that the Florida court did find constitutional problems in the specific injury exceptions to the threshold's operation. In addition to the $1000 medical and related expenses provision in the Florida threshold, the law provided that an accident victim could pursue a tort action for "pain and suffering" when the injury or disease resulting from the automobile accident "consists in whole or in part of permanent disfigurement, a fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function, or death."

---

74. 296 So. 2d 9 (Fla. 1974).
75. Id. at 17, quoting Metropolis Theatre Co. v. Chicago, 228 U.S. 61, 69-70 (1913).
77. 296 So. 2d at 20-21.
In considering this exception, the court in *Lasky* reasoned that one person sustaining a simple fracture of the skull (a non-weight bearing bone) would have no cause of action for "pain and suffering," while another person sustaining a broken toe (a weight bearing bone) would be able to sue for "pain and suffering." The court also cited other instances in which persons with one of the specified injuries could seek recovery for "pain and suffering" while those incurring less than $1000 of medical expense suffering an injury, equally painful but not specified in the law, could not so recover. The court found the list of injuries irrational and held that its application violated the equal protection guarantee and was therefore unconstitutional. Because the provision was severable, the court held the remainder of the statute constitutional.

Since the court did not find fault with the "death" exception to the statute, actions for "pain and suffering" resulting from automobile accidents may be brought in Florida only if the reasonable medical expenses exceed $1000 or the accident victim dies as a result of the injuries stemming from the accident.

It is unfortunate that the Florida court, other than finding the list of injuries "irrational" and giving examples of the different results the statute's application would produce for accident victims, did not clearly explain why the application of the list violated the equal protection clause. It is especially unfortunate for the purposes of this Article since, but for the "weight-bearing bone" feature, the list of specific injuries in the New York law closely resembles the Florida law. Both the Massachusetts and Kansas laws have specific injury provisions but neither state's court was concerned with the statutes' equal protection problems. It seems strange, especially in light of the previously quoted portion of the Florida court's opinion agreeing that "perfection in classification is not required," that it found fault with

79. 296 So. 2d at 20.
80. Id.
81. Id. at 21.
82. Id. at 21-22.
83. Id. at 21.
84. See text accompanying note 19 supra.
85. Kan. Stat. Ann. § 40-3117(b) (1973) lists the following: "permanent disfigurement, a fracture to a weightbearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of a bodily function or death." Mass. Ann. Laws ch. 231, § 6D (Supp. 1974) provides for: "sickness or disease [that] (1) causes death, or (2) consists in whole or in part of loss of a body member, or (3) consists in whole or in part of permanent and serious disfigurement, or (4) results in . . . loss of sight or hearing . . . or (5) consists of a fracture."
86. 296 So. 2d at 20. "A classification having some reasonable basis does not offend against [the equal protection] clause merely because it is not made with mathematical nicety or because in practice it results in some inequality." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911).
the specific injury form of classification. Surely the purpose of the legislature should have been recognized. The specific injury exception shows legislative acknowledgement of the fact that there may be truly "serious injuries," not intended to be barred from the courts, which, in Florida's case, would result in medical expenses of less than $1000. Since the legislative purpose is only to remove cases involving minor injuries from the court system, and since a pure medical expense threshold may not be totally effective in doing so, what better means is available than to combine the medical expense approach with the specific injury approach? It is true, as the Florida court pointed out, that toe fractures may be treated differently than skull fractures. However, without the specific injury list, it is also true that a spinal disc case with over $1000 in medical expenses will be treated differently than an eye-out case with less than $1000 in medical expenses. Imperfections may arise in the application of the specific injury list, but as the Florida court also noted, equal protection turns on a classification's reasonable relation to legitimate legislative purpose, imperfect as the classification may be.

D. Does the Classification Between Auto Torts and Other Torts Discriminate?

The argument may be raised that the New York law's limitation on the right to recover "pain and suffering" damages arbitrarily discriminates against automobile accident victims because the victims of other tortious conduct will be able to pursue a common law remedy without legislative interference. Are automobile accident victims discriminated against as a class? 87 Manzanares answered this question by stating the real issue to be whether the limitation on "pain and suffering" damages was related to the purpose of the law. 88 It avoided the issue of distinguishing between the treatment of automobile torts and other torts. The court reasoned that since one of the purposes of the "no-fault" law was the elimination of minor claims for "pain and suffering," a threshold provision which accomplished that objective was not unconstitutional. 89

The Michigan trial court in Shavers, 90 considering the constitutionality of its state's plan, met the issue more directly. In response to the

---

87. See note 40 supra, regarding the possibility of a violation of the right to trial by jury, thus discriminating against automobile accident victims.
89. Id. at —, 522 P.2d at 1308-09.
90. Civil No. 73-248-068-CZ (Wayne County Cir. Ct. May 20, 1974).
argument that automobile torts cannot be treated differently from other torts, the court stated:

The automobile tort reparations system has a long history of regulation separate from other personal injury torts. Financial responsibility laws have been enacted, guest passenger acts have been passed, and there are many other areas in which the automobile tortfeasor has been treated differently from other tortfeasors.91

The reasoning of the Kansas and Michigan courts would appear compelling in the New York situation.

E. Does the Law's Reduction of Benefits by Certain Collateral Sources Arbitrarily Discriminate?

The New York law provides that the first party benefits required to be provided by auto insurers are to be reduced by “amounts recovered or recoverable on account of such injury under state or federal laws providing social security disability benefits, or workmen's compensation benefits . . . .”92 It may be argued, on equal protection grounds, that this provision arbitrarily discriminates since it does not provide for a similar reduction with respect to benefits received from other sources, such as private accident and health insurance.

Since consideration was first given to modifying the auto accident reparation system, questions have been raised as to whether automobile insurance or other sources should be the primary source of benefits for auto-related injuries. Proponents of the primacy of auto insurance claim that motoring should pay its own way with regard to auto accident losses. The cost of auto accidents, they claim, should be borne by those who engage in motor vehicle transportation and should not be spread over the general public—motorists and non-motorists alike. Those who favor the primacy of other sources of benefits contend that, because of the widespread availability of collateral sources of benefits and the low cost/benefit ratio of those sources as compared to auto insurance, non-auto reparation systems should predominate.

New York appears to have reached some form of a compromise between those two poles by having auto insurance primacy as to all other sources except workmen’s compensation and social security benefits. This result appears to be acceptable even to those who favor the primacy of auto insurance. In this regard, it may be argued that workmen's compensation and social security are natural sources of primary benefits because they are the result of governmental expres-

91. Id. at 45.
sions of the need to protect specific classes of the general public regardless of the benefits available to those classes from other sources.

From a constitutional standpoint, the Florida Supreme Court, considering an equal protection attack raised against a reduction provision in its law, similar to the New York provision, expressed the view that the classification was constitutionally permissible,
despite the fact that benefits received from other collateral sources need not be so credited. Unlike workmen's compensation benefits, the other common collateral sources, such as insurance policies and the like, require separate payments by the individual; neither are they generally available by virtue of a statutory scheme . . . .

Thus the court found a reasonable basis for the classification to be that benefits such as workmen's compensation are established under a statutory scheme and private insurance benefits, also collateral to auto insurance, are not under such a scheme. The Michigan trial court in Shavers disagreed with the view of the Florida court, and found it was arbitrary and discriminatory to reduce the "no-fault" benefits of some auto accident victims and not others.

It appears that the Michigan court failed to see the purpose of the classification while the Florida court did. Systems providing for workmen's compensation and social security benefits are products of legislative decisions that all persons otherwise qualifying for benefits under the systems are to receive compensation as a matter of public policy. In addition, from the standpoint of an auto insurer, it is far easier to ascertain those who will be entitled to workmen's compensation and social security benefits than it is for the other various sources of benefits that may be available.

The most compelling argument in favor of the constitutionality of a set-off provision such as the one in the New York law may be found in Richardson v. Belcher. There the Supreme Court upheld the validity of the workmen's compensation set-off provisions of the Social Security Act. Nevertheless, this particular constitutional argument against the laws may be moot. The New York State Department of Insurance has already ordered Blue Cross and Blue Shield benefits to be paid only after auto insurance first party coverages have been utilized, making one of the most widespread forms of private health insurance benefits secondary to no-fault coverage.

95. Civil No. 73-248-068-CZ at 90-91 (Wayne County Cir. Ct. May 20, 1974).
96. 404 U.S. 78 (1971).
F. Does the Exclusion of Motorcycles from the Law's Insurance Requirements Arbitrarily Discriminate?

Since the New York law requires all "motor vehicles" to be insured for the requisite first party benefits, this exclusion may be attacked on equal protection grounds as giving motorcycle owners a special status not reasonably related to the purpose of the law. It generally is agreed that a high-limit, first party auto insurance coverage will be extremely expensive for motorcycle owners. The reason is obvious. Because the motorcyclist does not have a protective shield around him as does the occupant of a passenger car, even a low speed accident is likely to produce substantial injury for a motorcyclist.

The Kansas Supreme Court in Manzanares found substantial enough differences to justify a distinct classification with respect to insurance coverage. Pointing out the differences in the physical characteristics of the vehicles, the ability to sustain injury in one type of vehicle as opposed to another, and the potential high cost of first party coverage for the motorcycle owner, the court decided that the legislature's classification was both reasonable and related to the purpose of the act.

The Michigan court in Shavers reached a contrary result. It pointed to the number of motorcycles in the state and the number of accidents involving those vehicles. It then reasoned that since the purpose of the state's "no-fault" law was to provide compensation to persons injured in motor vehicle accidents, the exclusion of motorcycles from the requirement of purchasing first party coverage was not related to the purpose of the act. The court stated that even though the insurance costs for motorcycle owners might be high, the avoidance of higher insurance costs is not a purpose of the act. Furthermore, the court noted that a pedestrian could be struck by a motorcycle as easily as by another type of vehicle, and non-coverage of motorcycles would result in no compensation for the pedestrian, in direct contradiction of the purpose of the act.

There are two points which the Michigan court seemed to gloss over.

99. Id. § 671(6)(b).
100. Id. § 671(6)(b).
101. Id. at , 522 P.2d at 1310-11.
102. Id. at , 522 P.2d at 1310-11.
103. Id. at 69.
104. Id. at 67-68.
and which make the Kansas approach to this issue more persuasive. First, because of the large number of motorcycles on the roads and the potentially high cost of first party coverage, compelling motorcyclists to buy the coverage may force many to seek less expensive forms of transportation or to operate their motorcycles in violation of the law. Secondly, if motorcycle owners are not required to carry the coverage, the tort liability system will still be available to them or the persons they may injure.

G. Does the Classification in Compensation Levels Arbitrarily Discriminate?

In addition to providing first party compensation for medical and related expenses, the New York law requires first party compensation for loss of earnings and compensation for services the injured person would have performed for his or her family had there been no injury. Work loss benefits are set at up to $1,000 per month for no more than three years.\(^{105}\) Substituted service benefits are set at up to $25 per day for not more than one year.\(^{106}\) It may be argued that these benefit levels, both as to dollar amounts and duration of benefits, arbitrarily benefit persons working for pay and arbitrarily discriminate against those who work without pay, such as housewives.\(^{107}\)

The court in Shavers considered this argument and found that the distinction does not of itself make that section of the law constitutionally invalid.\(^{108}\) The court relied on the Michigan legislature's recognition that those who perform services in the home should receive compensation for an economic loss even though their services originally had not been paid for in money.\(^ {109}\) The court also reasoned that the distinction between workers who receive pay for their services and those who receive no pay are natural categories able to be validly classified by the legislature.\(^ {110}\)

H. Conclusion—Equal Protection

The question of how equal must equal protection be in order to be constitutionally permissible is the heart of the issue regarding the “reasonable” medical expense monetary threshold. In New York,

\(^{105}\) N.Y. Ins. Law § 671(1)(b) (McKinney Supp. 1974).
\(^{106}\) Id. § 671(1)(c).
\(^{108}\) Civil No. 73-248-068-CZ at 78-81 (Wayne County Cir. Ct. May 20, 1974).
\(^{109}\) Mich. Comp. Laws Ann. § 500.3107(2) (Supp. 1974) provides for up to $20.00 per day for up to three years for non-income producing services performed by the injured for his dependents' benefit.
\(^{110}\) Civil No. 73-248-068-CZ at 81 (Wayne County Cir. Ct. May 20, 1974).
regional differences in medical costs undoubtedly will subject identically injured parties to a varying medical expense threshold standard.

An analogy may be drawn to the so-called "one man one vote" cases where the argument that the number of voters in each election district must be identical comes into apparent conflict with the New York State constitutional mandate that prohibits the unnecessary division of counties and towns in the drawing of legislative districts. In the landmark "one man one vote" case, Reynolds v. Sims, Chief Justice Warren, speaking for the Court with reference to mathematical exactitude in each legislative district, had the following to say concerning how equal is equal:

So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.

The Court of Appeals of the State of New York, in a "one man one vote" case involving county legislative districts, indicated that when weighed against other legitimate concerns equal protection does not mean micrometric equality, and sustained rather substantial population deviations in the following language:

Decisions dealing with apportionment of State Legislatures tend to reflect a broader scope for permissible deviations and a more tolerant attitude toward the practical justification for deviations. Similarly, and of particular relevance on this appeal, the court has indicated a willingness to allow a still broader scope for permissible deviations from strict population equality and the justification for such deviations when dealing with local, intrastate legislative bodies.

While it is impossible to predict the court of appeals' final determination in the matter, it seems that the most difficult question will be that of equal protection based on the disparity in medical costs throughout the state. Some light may be shed on the question by the reapportionment cases where there is authority for the proposition that equal protection does not necessarily mean exactly equal.

There are many areas in which a "no-fault" law such as the one in New York establishes classifications. Classifications, as has been seen, are not in themselves constitutionally prohibited under the equal protection clause. What is prohibited are arbitrary and unreasonable

111. N.Y. Const. art. III, §§ 4-5.
113. Id. at 579.
115. Id. at 315, 253 N.E.2d at 192, 305 N.Y.S.2d at 468-69 (citations omitted).
classifications. The preceding discussion has hopefully pointed out that the classifications in the New York law, imperfect though they may be, are reasonable and related to the general purpose of the law.

IV. CONCLUSION

No-fault in New York appears able to survive a constitutional attack based on due process, and, with the minor exceptions noted, appears not to violate the equal protection clause.