At the moment, the private insurance industry is widely divided with respect to the best solution. There are those who continue to feel that Financial Responsibility Laws represent the best approach. On the other hand, increasing difficulty in securing approval of rate increases and the possibility that insurance protection may be so costly that it will make it impossible to own and operate an automobile are causing deep concern to many. It is hoped that a compensation plan would greatly reduce the cost of claims handling and would permit a larger percentage of the amount collected from the public to go to the accident victim. Almost every day some new proposal is made by one or another student of the problem searching for an acceptable solution.

In this area the United States is very interested in the approaches being attempted in European countries. Although the concentration of automobiles on our highways intensifies the problem, it is obvious that all other countries are now facing the same situation. In this area a pooling of world-wide experience can be of value to the public and the insurer alike.

Swedish Experiences regarding Compulsory Motor Third-party Insurance

By Jan Hellner

Sweden has compulsory motor third-party insurance since July 1, 1929, according to Lag 10 maj 1929 om trafikförsäkring a motorfordon. The aim of this statute is to ensure as far as possible that a person who is entitled to damages because of a motor traffic accident receives these damages. The statute does not affect the liability of a motorist - which is governed by other rules, in particular those found in Lag 30 juni 1916 ang. ansvarighet för skada i följd av automobiltrafik - only the insurance covering such liability. The insurance is attached to the car, and the owner is under an obligation of taking out the insurance. The protection of those suffering losses must be said to be very full.

The insurance consists of two parts:

(1) a "guarantee" by the insurer to indemnify anyone suffering damage due to traffic with the car if either the owner, the user, or the driver is liable according to the tort rules, and

(2) liability insurance protecting the owner, and in practice the user and the driver as well, when they are liable.

The guarantee towards the person suffering damage is compulsory and cannot be changed by contract. The only exceptions are for damage to the insured car, to property transported by the car, to the driver when the owner is not liable towards him, and further to persons riding as passengers in the car when the car to their knowledge is being used without the consent of the owner. Thus, if a thief takes a car and causes an accident while he is driving it, the compulsory insurance covers all damage to pedestrians, cyclists, other cars, etc., but not injury to passengers in the car who knew that it was stolen (and of course not to the thief himself, as he comes within the general exception for the driver of the car). Exceptions in the coverage, breach of warranties by the owner, delay in payment of the premium, etc., cannot be held against a person suffering damage. If the premium is not paid in due time, or if the owner cancels the insurance, or if the insurer is free of liability towards the owner because of a breach of contract, the insurer is still liable to a person suffering damage until one month has elapsed after the insurer has given notice to the proper authorities that his liability because of the insurance contract has terminated. The idea is that during this month the authorities shall ensure that the car is no more driven unless a new insurance has entered into force. The person suffering damage can sue the insurer directly (there is thus action directe), but in most cases he will sue the owner or the driver, and the insurer will fulfil what is formally a judgment against the owner or the driver.

The liability part of the insurance is entirely voluntary and can be changed by contract (except to the extent that the owner is protected by mandatory rules in favour of an insured in the Insurance Contracts Act of 1927). Since the insurer as just mentioned is liable towards the person suffering damage, his only means of enforcing exceptions in the liability part of the insurance, or remedies because of breach of contract by the insured, is by exercising subrogation rights against him. In practice this is rarely done, either because the rights of subrogation are limited according to the contract, or because such rights are without economic value to the insurer. Persons guilty of breach of contract towards the insurer rarely have sufficient economic resources of their own to make it worthwhile to bring action against them.

Although the rules now mentioned may seem favourable enough towards persons suffering damage, there are of course gaps in the protection. In spite of the administrative control on motor third party insurance, there may be cars running without such insurance. It may also happen that the insurer has given notice that the insurance has lapsed, but yet the authorities have not succeeded in preventing the car from being operated on the roads during the month that they have at their disposal. According to one estimate there are

20,000 uninsured cars running on Swedish roads, Finally, there are the hit-and-run cases, where the car responsible for the damage cannot be identified. As in most other European countries, there are provisions to protect the victims when damage is caused by an uninsured car or in a hit-and-run case. The technical construction is that all insurers licensed to transact motor third-party insurance in Sweden are jointly liable towards the victim in such cases, but in practice this liability is handled by the association of motor third-party insurers, which then distributes the costs among the insurers according to their holdings of motor third-party insurance.

This system operates satisfactorily on the whole. The objections that can be raised against the system refer principally to the rules regarding tort liability, not to the system of compulsory insurance. There are various cases in which a person suffering loss as the result of motor traffic accidents is not entitled to damages according to tort law, and these gaps in the protection may be hard to justify. However, it is not the purpose to discuss them now. Once liability is established, the person suffering damage is almost entirely certain to receive indemnity.

However, there are certainly some debatable points in the present system. Is it satisfactory that damage caused by car thieves and other unauthorised persons are to the present extent carried by the individual insurer, and not by the insurers in general, acting through the association of motor third-party insurers? It is submitted that, although the present solution is not beyond dispute, still it does not matter much whether the loss is covered by the individual insurers or by the insurers in general. The effect on the general level of premiums will probably be the same. There may be a difference as far as the individual owner's right of having a no-claim discount is concerned, and for this reason it might perhaps be better to transfer more such claims to the association of insurers, on the assumption that the claim of the victim would then not affect the premium to be paid by the owner, But this is certainly a minor matter. One might also ask whether even a person suffering damage to property by the action of an uninsured or unknown car should have the same protection as the person suffering injury to person. But if there is a system of compulsory insurance, with the additional principle that the community of motorists should carry the losses due to deficiencies in the system, it seems correct that a person suffering damage to property, e.g. from an uninsured car, shall not have to bear himself a loss which should have been covered by insurance if the system was efficient to ensure that all cars were insured. Still, it might be argued that the protection goes too far when anyone who can prove that his dog was

run over and killed by an unknown car, or make it probable that his clothes were ruined by mud being spurted by an unknown car, should recover from the association of motor insurers. But these cases are on the whole trifles, which are hardly worth being considered as serious deficiencies of the system.

The main objection against the present system is probably that the administrative control of the compulsory insurance is costly. Although these costs do not fall on the motorists but rather on the taxpayers in general (since every time that an insurer files a notice of the cancellation of an insurance the authorities must make an investigation whether there is a new insurance or the car is being taken off the roads), the present system of administrative control could perhaps be improved. In lack of a thorough investigation of the issue, it is hardly possible to pursue this question further.

Satisfactory protection of the persons suffering damage requires of course that the policy limits are high enough. Under present Swedish law the limits are 25 million Swedish kronor for personal injuries at one accident, and 1 million kronor for each victim, whereas the total for damage to property is 1 million kronor. So far these amounts have proved sufficient, i.e. there is no known case where damages awarded by the courts have exceeded these amounts, although it is possible that such a case might arise any day. Yet the present limitations - which are to be explained chiefly by the fact that the insurance companies want to have some limits, for reinsurance purposes - cannot be said to constitute any serious drawback in the present system, and it can be expected that when they will prove insufficient, they will be raised.

Finally, the protection of traffic victims by motor third-party insurance requires that the insurers are solvent for their obligations. In this respect, little trouble has arisen in Sweden. As far as is known, there has been only one case since 1929 where an insurance company, dealing in motor third-party insurance, has been in financial difficulties. This case concerns a fairly small mutual company which has provided motor insurance, chiefly to taxi drivers in Stockholm, and at low premiums. It was found that the assets of the company were not sufficient to meet the obligations towards all persons entitled to indemnities from the company. The current insurances were then transferred to other insurers, and the obligation towards those entitled to indemnities from past accidents are being met by levies upon the policyholders, according to the general rules regarding deficits in mutual companies. As far as can be seen at present, the company will probably be able to meet all its obligations in this way.

The policyholders will thus have to pay afterwards amounts that should normally have been raised earlier as premiums. Still, the result is regarded as unsatisfactory, and it is fortunate that the case appears to be exceptional.

There are various rules that should ensure that an insurance company should not come into the position of being unable to meet its obligations. For the main problem, reference may be made to the Swedish report on "State Action with Respect to Property and Casualty Insurance Enterprises in Financial Difficulties", by E. Vogel, to the Hamburg congress in 1966. For the present purpose, the following survey of the various rules may suffice:

1) Various rules technically belonging to corporation law in general, rather than to insurance law in special, aim to ensure that a stock company that has lost two thirds of its capital stock should enter into winding-up proceedings, unless the loss is covered within a short time.

2) For mutual companies, the rules regarding levies upon the policyholders when a company shows a deficit, should ensure the protection of persons entitled to insurance indemnities.

3) The general powers of supervision accorded to the Insurance Inspectorate entitle this authority both to take such measures as will enable them to find out whether a company is in financial difficulties, and to prescribe measures that will either take the company out of these difficulties or force it to cease operations, before the difficulties have become serious.

4) The general power of controlling the rate-making in companies engaged in motor third-party insurance enables the Insurance Inspectorate to prescribe such rates as should be sufficient to maintain the solvency of the companies.

5) Since companies that have run into financial difficulties often are newly started ones, which have not been able to draw on reserves gathered during more favourable years, the rules regarding the establishment of new companies are important. Since there is a general principle in Swedish insurance law that no new insurance company may be licensed unless there is a need for it, and since the number of insurers dealing in motor third-party insurance is already considered to be too high, the chances for a new insurance company without sufficient initial assets to start operating in the field are very small.

6) The rules regarding the operation of foreign companies in Sweden are also sufficient to prevent any company suspect of not being entirely financially sound from beginning operations in Sweden.

Altogether, the wide powers held by the Insurance Inspectorate constitute the main protection against the public suffering from the insolvency of an insurance company. However, the Insurance Inspectorate cannot exercise these powers unless it knows that there is a need for them, and their opportunities and resources for inspecting the companies are thus vital to the operation of the control. The protection of the public is therefore perhaps less of a legal problem and more of a question of allocating enough resources to the Insurance Inspectorate.