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THE CONSTITUTIONALITY OF AUTOMOBILE COMPENSATION PLANS IN WYOMING

The question of the constitutionality of the various automobile compensation plans is one that has been overshadowed by the debate over the merits of the plans themselves. Since the issue is one that may ultimately affect the citizens of Wyoming, a discussion of the proposals' validity under the Wyoming Constitution is warranted. The following is a digest of four of the major automobile compensation plans (*Green*, *Columbia*, *Saskatchewan* and *Basic Protection*), an analysis of the possible barriers to these plans under the Wyoming Constitution, and a determination of their constitutionality in Wyoming.

The least revolutionary of the four is the *Green* plan (1958).¹ Under it the owner of a vehicle would be required to purchase insurance before he could register his automobile. The insurance would be an accident policy accruing to the benefit of anyone injured by the vehicle, regardless of fault. Exempted from coverage are attempted suicides and persons committing a criminal offense other than a traffic violation. Administration of the rates of insurance, classification of risks, determination of coverage and related matters would be handled by the State Insurance Commission. The handling of claims and determination of loss would be handled by the courts. The present system of common law damages would be retained for the determination of loss with the exclusion of any recovery for pain and suffering.

The *Columbia* plan (1932)² is patterned after the workmen's compensation acts. Under this plan the owner of a motor vehicle would be required to show a certificate of insurance before he would be allowed to register his automobile. The insurance, like the *Green* plan, would be accident insurance to cover all persons injured by a vehicle without reference to fault. There would be three exclusions from recovery under this plan:

1. No recovery would be allowed for willful injury. This exception would cover the two situations which would

1. GREEN, TRAFFIC VICTIMS: TORT LAW AND INSURANCE, 87-89 (1958).

2. *Compensation for Automobile Accidents: A Symposium*, 32 COLUM. L. REV. 785, 798 (1932).

be excluded from coverage under the *Green* plan—suicide and criminal offenses.

2. No recovery would be given the driver in a one party accident. In order for the driver to collect under a policy he must be injured by a collision with another motor vehicle. He would then be covered under the insurance on the other vehicle.
3. No recovery would be afforded to any party injured by an insured vehicle if that vehicle was being driven without the owner's permission at the time of the accident.

Unlike the *Green* plan which leaves the determination of damages to the present common law system, the *Columbia* plan would include a scale of benefits, similar to present workmen's compensation benefits, which the injured party would receive in place of any tort action. The scale would include medical expenses, loss of earnings (the first week of wage loss would be excluded and payments would be equal to two-thirds the weekly wage or a set minimum) and lump sum payments for disfigurement or death. No compensation would be made for pain and suffering. Property damage would not be included under the plan and is left to the common law remedy.

The *Saskatchewan* plan (1946)³ is presently in existence in Saskatchewan. All owners are required to present a certificate of insurance before they can register their automobile, but in this case the government is the insurer. All premiums paid go into a central fund from which all persons injured by the operation of a vehicle within the province (state) are compensated without regard to fault. To be compensated a person need not be covered by an insurance policy or be injured by an insured automobile. Thus, a pedestrian who is not insured and who is injured by a nonresident, uninsured vehicle recovers under the plan. Excluded from coverage under this plan are suicides, drunk drivers, and persons who are riding on parts of the vehicle not designed for the carriage of passengers. The plan includes an extensive schedule of specified benefits with lump sum payments for death. Aside from the accident coverage just described, the insurance also is

3. 12 ELIZ. 2, ch. 38 (Saskatchewan) (1964).

for property loss and liability. The reason these two types of insurance are required under the plan is that the present system of tort liability would be retained. Essentially, the victim of an accident may choose between accepting the benefits offered or pursuing his common law remedy. If an injured party elects to sue he must set off any amount received under the accident policy against the judgment. Liability is in no way limited by the schedule of benefits or the amount of the mandatory policy.

The last and currently most prominent of the automobile compensation plans is the *Keeton & O'Connell Basic Protection* plan (1964).⁴ As in the prior proposals, the purchase of insurance would be required before a motor vehicle could be registered. The policy coverage would be basically accident insurance. Payments would be made to anyone injured by the operation of an insured vehicle within the state regardless of fault. The benefits under the plan are similar to present medical insurance payments—compensation only for actual loss. Rather than make a lump sum payment, the payment of benefits is made on a monthly basis. Persons injured by the operation of an insured vehicle within the state would receive compensation for actual medical costs and out-of-pocket costs (such as loss of wages) in monthly intervals as the claims are proven. There would be no compensation for pain and suffering, no coverage for property loss, and no collateral benefits rule (all payments are for net loss). As proposed the basic protection policy would cover losses up to \$10,000 per person. Above that limit, tort liability would arise under any one of the three following situations:

1. When the injured party's claim exceeds \$10,000;
2. When death occurs; or
3. When a person's share of the single accident amount is less than \$10,000 and inadequate.

The present tort system of fault and damages (including pain and suffering) would be in effect above the \$10,000 level.

4. Keeton and O'Connell, *Basic Protection—A Proposal for Improving Automobile Claims Systems*, 78 HARV. L. REV. 329, 356-81 (1964).

Although each plan has peculiar features of its own, the three basic constitutional issues which will be discussed are the same in each plan. These issues are:

1. Does the state have the power to compel the purchase of an automobile insurance contract and to regulate the terms of that contract?
2. Do the benefits fixed by the plans as compensation in lieu of tort action violate the right to trial by jury?
3. Are the plans in conflict with the no limitation on damages clause of the Wyoming Constitution?

To enact any of the plans discussed under a constitutional law theory the legislature must rely on the police power provision of the Wyoming Constitution: "it shall be the duty of the legislature to protect . . . the public welfare."⁵ In construing the police power under the Wyoming Constitution, the Wyoming Supreme Court has declared that the determination of what measures are proper for furtherance of police power rests in the legislature so that if a statute furthers the object of the legislature by reasonable and appropriate means, the wisdom of the law is for the legislature.⁶ The court has further stated that the "courts, employing a standard of reasonableness as applied to the facts, are the final arbitrators as to whether the law is an unwarranted invasion of rights guaranteed by the Constitution."⁷ Since the legislature must rely on the courts for interpretation of what is reasonable and appropriate, a study of the possible constitutional limitations of the police power is in order.

The greatest limitation of the police power in Wyoming is the Wyoming Constitution due process clause which provides, "No person shall be deprived of life, liberty or property without due process of law."⁸ The Court exercised this limitation in declaring an act of the legislature, which required any owner or company who contracted for the construction of a ditch, canal, or reservoir to secure a bond from the contractor for the payment of suppliers and laborers or to become liable to the full extent of such debts, to be unconstitutional insofar

5. WYO. CONST. art. 7, § 20.

6. *State v. Langley*, 53 Wyo. 332, 84 P.2d 767 (1938).

7. *Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, 371 P.2d 409 (Wyo. 1962).

8. WYO. CONST. art. 1, § 6.

as the liability exceeded the amount the property was benefited. A further restriction that the bond be purchased from a surety or guaranty company authorized to do business in the state was held to be in violation of the state constitutional liberty to contract under the due process clause.⁹

In a recent decision declaring the Wyoming Fair Trade Act¹⁰ unconstitutional, the court held that the term liberty, under the due process clause, encompasses not only the liberty to contract but also the liberty not to contract. The defendant was a nonsigner of a minimum price contract which under the Fair Trade Act was to apply to all retailers in the state once a single retailer had signed. The court declared that the defendant had the liberty not to contract. While neither property nor contract rights are absolute the exercise of the police power must be reasonable and designed to accomplish the end desired.¹¹

In determining what the effect of the due process limitation might be on compulsory insurance in Wyoming, it must be recognized that the construction of the due process clause in the United States Constitution by the United States Supreme Court is persuasive. The closest analogy to compulsory insurance in existence presently is the Massachusetts compulsory liability insurance law.¹² Shortly after the law was enacted its constitutionality was challenged on the ground that it was a violation of due process. The plaintiff contended that the insurance rates were prohibitive and that since he could not pay them the state was denying him the liberty to drive without due process of law. In dismissing the case the United States Supreme Court held that no substantial federal issue was raised because, "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy."¹³ In substantiating the fact that the state has the police power necessary to enact this type of statute the court cited *Opinion of the*

9. *George Bolln Co. v. North Platte Irr. Co.*, 19 Wyo. 542, 121 P. 22 (1912).

10. WYO. STAT. §§ 40-8 to -17 (1957).

11. *Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, *supra* note 7.

12. MASS. GEN. LAWS, ch. 90 (1958).

13. *Ex Parte Poresky*, 290 U.S. 30 (1933).

Justices,¹⁴ *Hess v. Pawloski*,¹⁵ and *Hendrick v. Maryland*.¹⁶ In the *Hess* case the issue was whether the state of Massachusetts could provide by statute that the registrar of motor vehicles was the agent, for purposes of service, of any nonresident using the highways of the State. The United States Supreme Court held that, "the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and nonresidents alike, who use its highways."¹⁷ Wyoming presently has a statute very similar to the one in the *Hess* case except that the Secretary of State is the designated official who shall serve as agent and it extends to residents of the state on whom process cannot be served within the state.¹⁸ In *Hendrick* the plaintiff sought to overthrow a Maryland statute which required nonresidents who were residents of Washington, D.C., to register their automobiles and obtain a driver's license from the state of Maryland (the state also required the payment of the normal fees) before using the state highways. The United States Supreme Court held that the law was a reasonable exercise of the police power of the state to control the state highways.¹⁹

The *Opinion of the Justices* was a discussion of the validity of the act as posed by questions from the legislature to the Supreme Court of Massachusetts. The court upheld the validity of the act and stated that the state had broad policing power in the matter of highways. Since the safety of the highways is the responsibility of the state, it should have broad powers to enact safety legislation in regard to them. The court also upheld the validity of the legislature's action in fixing the rates and terms of the insurance companies policies.²⁰

The legislature's power to regulate the motor vehicle area is stronger when considered in the light of a majority of decisions which hold that driving is not a right but a privilege granted by the state: "There is no inherent or constitutional right to drive a dangerous automobile on the highway, and whether one shall be permitted to exercise the right and under

14. *Opinion of the Justices*, 251 Mass. 569, 147 N.E. 681 (1925).

15. *Hess v. Pawloski*, 274 U.S. 352 (1927).

16. *Hendrick v. Maryland*, 235 U.S. 610 (1915).

17. *Hess v. Pawloski*, *supra* note 15, at 356.

18. WYO. STAT. § 1-52 (Supp. 1969).

19. *Hendrick v. Maryland*, *supra* note 16, at 622.

20. *Opinion of the Justices*, *supra* note 14.

what conditions and restrictions is a matter for the legislature."²¹ In answer to our first question, the Supreme Court of the United States has replied in the affirmative. The state does not possess the power to compel the purchase of automobile insurance and to regulate the terms of that contract.

As to the second question which inquires whether the substitution of benefits for tort action is a violation of the right to trial by jury,²² the nearest analogy in Wyoming is the Wyoming Workmen's Compensation Act.²³ Soon after passage of Wyoming Workmen's Compensation Act, a suit was brought by an employee of the Central Coal & Coke Company for damages received as a result of on-the-job injury.²⁴ On the issue of violation of the right to trial by jury the court said that the due process clause only guarantees that the existing law will be followed—it does not say that the law cannot be changed. Once the law has been changed by the legislature through a reasonable exercise of the police power from a tort liability system to a system of benefits fixed by law, all that remained as a remedy for the employee was the fixed scale of benefits. The employee's former rights are removed and new rights substituted. Since the police power can replace the common law remedies with a new set of rights which are fixed as between the employee and employer, there is no issue for a jury to decide.²⁵ This objection could arise under three of the four plans discussed: The *Green* and *Columbia* plans which completely remove common law actions and the *Basic Protection* plan which removes common law remedies below the \$10,000 level. Using the analogy to workmen's compensation, these plans would suffer no constitutional disability under the Wyoming Constitution.

The third question is one which arises because Wyoming is one of the few states which has a constitutional prohibition against limiting damages for personal injury and death.²⁶ Do the set schedules of benefits violate this prohibition? An analogy to the workmen's compensation act is again helpful.

21. *State v. Demerritt*, 103 A.2d 106, 108 (Me. 1953).

22. WYO. CONST. art. 1, § 9.

23. WYO. STAT. §§ 27-48 to -168 (1957).

24. *Zancanelli v. Central Coal & Coke Co.*, 25 Wyo. 511, 173 P. 981 (1918).

25. *Id.*

26. WYO. CONST. art. 10, § 4.

To facilitate the passage of Wyoming's Workmen's Compensation Act, a constitutional amendment was passed in 1914 which exempted extrahazardous activities from the prohibition.²⁷ The issue of the amendment's scope was raised in *Zancanelli v. Central Coal & Coke Company*²⁸ and the Wyoming Supreme Court held that the amendment must be construed as the latest will of the people and as being in harmony with the workmen's compensation law since it was adopted solely to allow enactment of the law. Because of this rationale any conflicting portion of the constitution must give way to the amendment. However, the amendment does not embrace the area of automobile injuries.

Since the Wyoming Supreme Court has stated that the police power of the legislature is expressly limited by the Wyoming Constitution²⁹ and the remainder of the clause prohibiting the limitation of damages is still in effect, it is essential that in order to institute a program which would limit damages in the automobile injury area a constitutional amendment should be considered. Only two plans would encounter trouble with this clause—*Columbia* and *Basic Protection*. It is obvious that the set awards and set fee for death under the *Columbia* plan is a limitation on damages. The problem arises under the *Basic Protection* plan when a cause of action arises below the \$10,000 limit.

The constitutionality of all the plans, discussed in relation to the three constitutional issues raised, is (with the possible limitation of the need for an amendment to the no limitation of damages clause) apparent. However, without becoming involved in the merits of each plan it is clear that the plan which could be adopted in Wyoming with the least amount of controversy over constitutionality is the *Green* plan. Both of the major changes proposed by the plan (the instituting of compulsory insurance and the elimination of common law actions) are constitutional under Wyoming law. There is no conflict with the limitation on damages clause since the damages for each case are determined by the court.

27. *Id.*

28. *Zancanelli v. Central Coal & Coke Co.*, *supra* note 24, at 991.

29. *Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, *supra* note 7, at 417.

Since any of the plans could ultimately be adopted by the legislature and be upheld as constitutional under the Wyoming Constitution (assuming that appropriate amendments are made if necessary) the question of constitutionality has been satisfied and the debate over the merits of the plans themselves will remain relevant.

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