

2/5/69

First Supplement to Memorandum 69-27

Subject: Suggested Agenda Topics

Commissioner Uhler has forwarded the attached suggestion from Michael R. Coghlan that the Financial Responsibility Law be revised. In substance, the suggestion is that a person who drives without motor vehicle insurance and has an accident not be required to post security (in the form of money or a bond or the equivalent) if he clearly is not at fault in the accident.

As you are aware, California does not have a compulsory motor vehicle insurance law. The Financial Responsibility Law, however, is designed to provide--and does provide--a strong incentive to obtain motor vehicle insurance. Under the law, a person who drives without motor vehicle insurance and has an accident loses his right to drive (except for the driving of a vehicle owned by his employer in the course of his employment) unless:

- (1) His vehicle was lawfully parked at the time of the accident.
- (2) The accident did not result to damage to property in excess of \$200 or in injury or death to any person.
- (3) No injury or damage was caused in the accident to the person or property of anyone other than the driver or owner of the vehicle.
- (4) He is released from liability by all other persons injured or damaged in the accident or pays any judgments recovered by such persons.
- (5) He posts security to cover his possible liability resulting from the accident (security is not required for the benefit of any person who fails to submit evidence to the department of the extent of the injuries and/or property damage within 50 days following the accident).

Where the uninsured motorist claims he is free of fault in the accident but it resulted in property damage in excess of \$200 or injury or death to another, there is no exemption from the requirement that he file security except as noted above.

Mr. Coghlan does not indicate exactly how it would be determined in such a case that the uninsured motorist is actually fault free. A unit could be set up in the Department of Motor Vehicles and a hearing officer could hear evidence of the various witnesses and determine whether the motorist was actually fault free. Such a decision would often anticipate the personal injury action that arises out of the accident. It might involve a significant administrative expense.

Under the existing practice, there is a private system for determining whether the uninsured motorist was actually fault free. It appears that a bondsman who is requested to provide a bond covering the accident must ordinarily rely (especially if he has a continuing, good relationship with the attorney) to a considerable extent on the attorney's evaluation of whether the uninsured motorist was actually fault free. This private procedure does not, however, avoid the need for the uninsured motorist to pay the premium on the bond. At the same time, an administrative hearing to determine fault would also be expensive.

As a practical matter, the staff believes that it would be an uphill battle to attempt to weaken the basic sanction of the Financial Responsibility Law, especially if the attempt involved a significant increase in the administrative difficulties of the Department of

Motor Vehicles. The trend of thinking among some legislators (and insurance companies) seems to be towards a system of compulsory auto insurance. Nevertheless, if the Commission wishes to undertake a study of this problem, it may be possible to devise a better solution than the one that first occurs to the staff and is outlined above.

What disposition does the Commission wish to make of this suggestion?

Respectfully submitted,

John H. DeMouly
Executive Secretary

MEMO TO LEW UHLER

RE: LAW REVISION SUGGESTION (Financial Responsibility Law)

Jones is driving his uninsured car on the freeway. He notices that traffic is stopping in front of him and so he comes to a halt in a perfectly reasonable and prudent manner. He has been stopped for approximately 45 seconds when Gonzalez approaching from the rear fails to notice that traffic is stopped in front of him. Gonzalez plows into the rear end of Jones' car, causing \$450 worth of damage. In addition, Jones sustains a significant cervical injury. There is relatively moderate damage to the front end of Gonzalez' car and he is not personally injured in any way. Gonzalez does have insurance.

Jones goes to see a doctor and an attorney, in that order. It is felt that his injuries are significant enough to justify possible litigation, and so the attorney contacts the insurance carrier for Gonzalez and a personal injury action is begun.

Several months after the accident, (and well before the matter is anywhere near being resolved between Jones and Gonzalez insurance carrier) Jones receives an SR-4 form from DMV due to the fact that he has been involved in an accident at a time when he had no insurance on his automobile. Jones has got to have Gonzalez sign the form releasing any and all claims which Gonzalez may have against Jones, or DMV will lift Jones' drivers license. Of course, if Jones wants to post the necessary bond or put up the required financial security, then he will be able to save his driver's license.

Needless to say, Gonzalez is not about to sign anything and so Jones finds himself in the rather unenviable position of either having to post bond or financial security or losing his license.

There is something patently unfair about applying the financial responsibility law to Jones in a case such as this. True, he was driving without insurance, but the accident was not his fault. It seems to me that the purpose of the law is being subverted in a case of this nature.

I have had this situation arise on two separate occasions. The first time it came up, the at-fault driver who had insurance demanded payment of \$250 before he would sign the SR-4 form for my uninsured client. There was nothing I could do but advise the client that the money should be paid. Here is still another example of how unscrupulous persons can use the law to their own benefit.

I would be happy to discuss this with you at any time. I would suggest that you submit this problem to the Law Revision Commission for their consideration. I think there should be some provision in the law which applies the financial responsibility rule in a more equitable manner.

Michael R. Coghlan
January 29, 1969