INSURANCE—FINANCIAL RESPONSIBILITY OF MOTORISTS—TWO METHODS WITHIN THE CONCEPT OF FAULT

In *Bell v. Burson,*[1] the United States Supreme Court declared unconstitutional Georgia's Motor Vehicle Safety Responsibility Act.[2] The significance of the case transcends the constitutional issues in question: Georgia is forced to carefully re-examine her attitude toward the financial responsibility of motorists.

Petitioner Bell was involved in a traffic accident when a five-year-old child rode her bicycle into the side of his car. The child's parents filed an accident report with the Director of the Georgia Department of Public Safety alleging that their daughter had suffered substantial injuries for which they claimed damages of $5,000. In compliance with the Georgia Motor Vehicle Safety Responsibility Act,[3] petitioner was notified that unless he had a liability insurance policy in effect at the time of the accident, he must file a bond or cash deposit of $5,000 or present a notorized release from liability plus proof of future financial responsibility; he was advised that failure to comply with these requirements would result in the suspension of his driver's license and motor vehicle registration.

In a pre-suspension hearing before the Director of Public Safety, petitioner contended that the accident was unavoidable and that he was in no way liable for the child's injuries. The Director, however, refused to consider the question of fault; the petitioner was ordered to comply with the security requirements or suffer suspension. Petitioner filed an appeal *de novo* to the superior court where he was allowed to present evidence relating to liability. Although the injured child was not represented in this proceeding, the court nevertheless found petitioner to be free from fault and ordered that his driver's license was not to be suspended until suit was filed on behalf of the child. This decision was reversed by the Georgia Court of Appeals which held:

> "Fault" or "innocence" are completely irrelevant factors. The suspension requirement is mandatory and a license "may be re-instated only if the driver shows proof of financial responsibility . . . ."[4]

On appeal to the United States Supreme Court, petitioner challenged

1. ___ U.S. ___, 91 S. Ct. 1586 (1971).
2. GA. CODE ANN. ch. 92A-6 (Supp. 1970).
3. GA. CODE ANN. § 92A-605(b) (Supp. 1970).
4. 121 Ga. App. 420, 174 S.E.2d 235, 236 (1970).

the constitutional adequacy of the pre-suspension hearing provided under the Georgia Act. The Court, in an unanimous opinion, held the Georgia Act unconstitutional in that it violated procedural due process by not allowing consideration of fault before requiring suspension of one's driver's license and vehicle registration.

The Court noted that the statute in question did not impose a compulsory security requirement on all Georgia motorists; if this had been the nature of the scheme, it would have been constitutional.[5] Instead the Georgia law applied only to those motorists involved in traffic accidents. In acting to suspend one's vehicle registration and driver's license after they had been issued, the state was in the position of adjudicating important interests of the licensee; the Court pointed out that possession of a driver's license was often essential in the pursuit of one's livelihood. The Fourteenth Amendment of the United States Constitution requires that before the suspension of such a vital interest, procedural due process must be fulfilled.[6] As noted by the Court, it is insignificant whether the entitlement which the state seeks to terminate is denominated a "right" or "privilege."[7] Noting that the Georgia statutory scheme was based largely on the concept of fault,[8] the Court held that in order for the Georgia Act to meet the requirements of due process, it must provide a pre-suspension hearing which takes into consideration the fault or liability of the licensee.

In requiring an expanded pre-suspension hearing, the Court relied on a series of cases dealing with procedural due process and the termination of important individual interests.[9] In particular, the Court cited *Goldberg v. Kelly*,[10] a 1970 decision involving an analogous constitutional issue. The case concerned the termination of welfare benefits by the State of New York. The contention of the state was that it complied fully with procedural due process by providing for a pre-termination "review" and a post-termination "fair hearing." The Supreme Court, however, rejected the New York argument. In an opinion written by Mr. Justice Brennan, the Court stated:

5. *Ex parte* Presky, 290 U.S. 30 (1933); Continental Baking Co. v. Woodring, 286 U.S. 352 (1932); Hess v. Pawloski, 274 U.S. 352 (1927).

6. Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

7. Sherbert v. Verner, 374 U.S. 398 (1963); Speiser v. Randall, 357 U.S. 513 (1958); Slochower v. Board of Higher Educ., 350 U.S. 551 (1956).

8. The court noted in particular the statutory provisions lifting the suspension requirement where there has been either a release from liability or a final adjudication of nonliability. GA. CODE ANN. § 92A-607 (Supp. 1970).

9. Opp Cotton Mills v. Administrator, 312 U.S. 126 (1941); Londoner v. Denver, 210 U.S. 373 (1908).

10. 397 U.S. 254 (1970).

> Under all circumstances, we hold that due process requires an adequate hearing before termination of welfare benefits, and the fact that there is a later constitutionally fair proceeding does not alter the result.[11]

In *Goldberg*, as in *Bell*, the Court was careful to point out the serious economic hardships of suspension; in both cases it is clear that the Court was cognizant of the relative importance of both state and individual interests. As stated in *Bell*:

> In cases where there is no reasonable possibility of a judgment being rendered against a licensee, Georgia's interest in protecting a claimant from the possibility of an unrecoverable judgment is not, within the context of the State's fault-oriented scheme, a justification for denying the process due its citizens.[12]

The Court found that the hearing required must be held prior to suspension; and, as stated in previous decisions, it must be "meaningful"[13] and "appropriate to the nature of the case."[14] In order to meet these criteria, the necessary hearing must consider the question of fault; such consideration is demanded by the fact that liability is of critical importance in the Georgia statutory scheme.[15]

While *Bell* is a decision relating to the requirements of procedural due process, the impact and importance of the case extend far beyond the realm of constitutional law. The Court, by declaring the Motor Vehicle Safety Responsibility Act unconstitutional, has presented Georgia with both the necessity and opportunity of re-examining the role of financial responsibility legislation.

The enactment of financial responsibility laws began with the State of Connecticut in 1925,[16] and has since spread to a majority of the states.[17] The basic purpose of such acts is twofold: to assure compensation for the accident victim and to aid in accident prevention.

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11. *Id.* at 261.
12. ___ U.S. at ___, 91 S. Ct. at 1590.
13. Armstrong v. Manzo, 380 U.S. 545, 552 (1965).
14. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 309, 313 (1950).
15. *See* note 8, *supra*.
16. CONN. PUB. ACT ch. 183 (1925). For a concise history of financial responsibility legislation *see* Grad, *Recent Developments in Automobile Accident Compensation*, 50 COLUM. L. REV. 300 (1950).
17. By 1954, such legislation had been enacted in 45 out of 52 United States jurisdictions: Alabama Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. *See* Vorys, *A Short Survey of Laws Designed to Exclude The Financially Irresponsible Driver From The Highway*, 15 OHIO ST. L.J. 101, 102 (1954).

The early form of such legislation was somewhat limited in scope; it required that any driver involved in an accident must provide proof of financial responsibility only as to possible *future* accidents. The customary penalty for violation was suspension of one's driver's license or automobile registration.[18] Naturally such acts were open to the valid criticism that they offered little or no protection to the "first victim" of a negligent driver.

In 1937, New Hampshire adopted a "security-responsibility law" which added a new dimension to the financial responsibility concept.[19] This type statute, which has entirely replaced the earlier form, requires a driver to provide proof that he is capable of paying a judgment resulting from his accident. Although the amount of security required is limited by law,[20] nevertheless, such legislation does provide significant protection to those injured by careless drivers.

In 1945, Georgia adopted its first Motor Vehicle Safety Responsibility Act;[21] the statute provided for the suspension of a person's driver's license if he failed within 30 days to pay a judgment resulting from the operation of a motor vehicle. In 1951, Georgia repealed the 1945 Act and replaced it with the basic statutory scheme attacked in *Bell.*[22] The 1951 statute stated as its purpose "to provide for the giving of security by owners and operators of motor vehicles."[23] In order to accomplish this purpose, the Georgia law required any driver involved in an accident to post security in an amount determined by the Director of Public Safety; this security could be used to satisfy any liability judgment resulting from the accident. No security deposit was required if the driver had liability insurance at the time of the accident, or if he had secured a release from liability, or if there had been a final adjudication of non-liability.[24] Failure to comply with the requirements of this Act resulted in the suspension of one's driver's license, and registration certificate and plates.

In 1956, the Act was amended; included in this revision was a new statement of the law's purpose. The amended title designated the Act as

18. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 107 (1965).

19. N.H. REV. LAWS ch. 54 §§ 3, 5 (1927).

20. In Georgia the Director of Public Safety could require a security deposit not to exceed $10,000 for the death or injury of one person; or $20,000 for the death or injury of more than one person. A deposit of $5,000 could be required for property damage. GA. CODE ANN. § 92A-610 (Supp. 1969).

21. Ga. Laws, 1945, pp. 276-78.

22. Ga. Laws, 1951, pp. 565 *et seq.*

23. Ga. Laws, 1951, p. 565.

24. Ga. Laws, 1951, pp. 565-78.

one "to eliminate the reckless and irresponsible driver of motor vehicles from the highways of the State of Georgia."[25] Also contained in the 1956 revision was an amendment reinstating the suspension requirement where a final judgment was not paid in 30 days.[26] Although the Act has been further amended in years following 1956, the basic statutory scheme of Georgia's Act has remained unchanged.[27]

In examining the history of financial responsibility legislation in the United States, it should be noted that prior to *Bell* financial responsibility acts were subjected to considerable constitutional attack. In a number of state and federal decisions, such statutes were found to be in conformity with procedural due process.[28] In upholding the acts as constitutional, the courts relied heavily on the fact that regulation of highway safety was within the recognized police power of the state.[29] In some cases the necessity of a pre-suspension hearing was not required because the operation of a motor vehicle was denominated a "privilege" rather than a "right."[30] This distinction, however, was specifically rejected in a number of federal decisions prior to *Bell*.[31]

The Georgia Motor Vehicle Safety Responsibility Act faced challenge in the state courts on numerous occasions; consistantly the Act was held constitutional.[32] In *Turmon v. State Department of Public Safety*,[33] the position of the Supreme Court of Georgia was expressed in an opinion by Chief Justice Duckworth:

> The Act authorized judicial review of all administrative actions by the department, and no violation of the requirements of due process is shown . . . .
>
> [N]o one is privileged to operate a motor vehicle upon the public roads without complying with the conditions prescribed by law. It is too late to protect innocent victims of wrecks caused by such opera-

25. Ga. Laws, 1956, p. 543.

26. *Id.*

27. GA. CODE ANN. ch. 92A-6 (Supp. 1970).

28. Reitz v. Mealey, 314 U.S. 33 (1941); Munz v. Harnett, 6 F. Supp. 158 (D.C.N.Y. 1933); Escebedo v. State Dep't of Motor Vehicles, 35 Cal.2d 870, 222 P.2d 1 (1950); Doyle v. Kahl, 342 Iowa 153, 46 N.W.2d 52 (1951).

29. Hess v. Pawloski, 274 U.S. 352 (1927); Kane v. New Jersey, 242 U.S. 160 (1916); Hendrick v. Maryland, 235 U.S. 610 (1915).

30. Hendrick v. Maryland, 235 U.S. 610 (1915); Agee v. Kansas Highway Com'r Motor Vehicle Dep't, 198 Kan. 173, 422 P.2d 949 (1967).

31. Sherbert v. Verner, 374 U.S. 398 (1963); Slochower v. Board of Higher Educ. 350 U.S. 551 (1956).

32. Burson v. Johnson, 118 Ga. App. 381, 163 S.E.2d 857 (1968); Turmon v. State Dep't of Pub. Safety, 222 Ga. 843, 152 S.E.2d 884 (1967).

33. 222 Ga. 843, 152 S.E.2d 884 (1967).

> tions after the injury has been done and the licensee is wholly unprepared to pay damages caused by him. The 1951 Act points the way to get so prepared, and it attaches the penalty of withdrawing the license when the licensee is not prepared and is involved in a wreck. The law is wise, just, and valid, and the Department of Public Safety deserves full support in its enforcement.[34]

With the decision in *Bell,* Georgia is found for the first time since 1945 without some form of financial responsibility legislation. In order to remove the financially irresponsible motorists from the state's highways, a number of statutory schemes are available. For the purposes of this writing, discussion will be limited to the two primary alternatives within the fault-oriented structure of accident compensation.[35] These alternatives are: (1) The 1951 Motor Vehicle Safety Responsibility Act may be amended so as to bring it into conformity with procedural due process, or (2) Georgia may adopt a plan of compulsory automobile liability insurance.

In its opinion in *Bell,* the Supreme Court was careful to note the ease with which the Georgia Act might be amended so as to achieve constitutional status; all that is required is a pre-suspension hearing which takes into consideration the question of fault. The issue of fault need not be fully adjudicated; suspension would be proper where there was a reasonable possibility of a judgment being rendered against the licensee.[36] As to at what stage in the proceeding the hearing should be held, the Court allowed Georgia wide latitude:

> Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the *de novo* judicial proceedings in the Superior Court. Georgia may decide to withhold suspension until adjudication of an action for damages brought by the injured party.[37]

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34. *Id.*

35. Although this note is limited to fault related concepts, the reader should be aware of the significant movement in favor of accident compensation without regard to fault. For an excellent study of the no-fault scheme of accident compensation *see* R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1965). *See also* W. BLUM & H. KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM (1965).

36. ___ U.S. at ___, 91 S. Ct. at 1590. In Goldberg v. Kelly, 397 U.S. 254 (1970), the Supreme Court established a number of requirements for a pre-termination hearing: (a) Timely and adequate notice must be given of the hearing, and an effective opportunity to defend by confronting adverse witnesses and presenting oral arguments must be provided, (b) counsel need not be furnished, but a party must be allowed to retain an attorney if he so desires, (c) the decision-maker must state the reasons for his determination and indicate the evidence he relied on, and (d) the decision-maker must be impartial.

37. ___ U.S. at ___, 91 S. Ct. at 1591.

In light of the Court's opinion, it appears that little difficulty would be encountered in properly amending the Georgia Act.

The real question for Georgia, however, is to determine if the concept of financial responsibility legislation really fulfills the purposes intended. If not, some other legislative approach should be adopted.

Proponents of financial responsibility legislation present a number of arguments in favor of its retention. They contend that such acts are of major significance in providing compensation for the accident victim. This purpose is accomplished by two fundamental methods: (1) The voluntary purchase of liability insurance is stimulated, and (2) those drivers without liability coverage are forced to post security when involved in an accident. It is also noted that the threat of license suspension gives an accident victim important leverage in forcing a negligent driver to reach a financial settlement.[38]

Another important contention urged on behalf of financial responsibility legislation is that such laws are of value in the promotion of highway safety. The basic premises of the argument is that the most unsafe drivers are also usually the most financially irresponsible; by suspending the license of drivers who neither carry liability insurance nor are willing to post the required security, the state will remove a significant number of dangerous drivers from its highways.

Financial responsibility laws also find support among those who oppose a compulsory insurance plan. Advocates point out that the financial responsibility concept allows the individual to make his own choice as to how best meet the security requirements; there is no legal compulsion placed on the safe driver who avoids involvement in an accident. This argument finds special support among insurance companies; the insurance community strongly opposes any compulsory scheme that would force them to insure "high risk" drivers.[39] Such opposition is based partly on statistical evidence which indicates that under a compulsory program drivers often purchase only the minimum coverage required;[40] thus the fact that every driver must be insured does not necessarily mean that an increased amount of coverage will be sold. There is also concern that any compulsory program would initiate the development of state administered insurance.

Although the arguments on behalf of financial responsibility legislation contain a certain degree of validity, nevertheless, the system does

38. McVay, *The Case Against Compulsory Automobile Insurance*, 15 OHIO ST. L.J. 150, 151 (1954).

39. R. KEETON & O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 91-102 (1965).

40. *Id.* at 100.

not provide full assurance that an accident victim will be adequately compensated. It is undoubtedly true that financial responsibility acts are responsible for the purchase of liability insurance by many drivers;[41] yet unfortunately a significant number of drivers remain uninsured. In many states which have adopted financial responsibility laws, the number of uninsured automobiles exceeds 15 per cent.[42] It is these uninsured motorists who are the real threat on our highways. In the words of Dean William L. Prosser:

> [U]ninsured drivers on the highway are those who tend on the whole to be driving unsafe vehicles, to be the most slipshod, law-violating and reckless, and to cause a disproportionately large percentage of the accidents.[43]

The inherent weakness in the financial responsibility scheme is that if such an uninsured driver is willing to accept suspension of his license, the victim is left helpless; suspension is naturally of little comfort to one who must meet the expense of his injury.

The argument that financial responsibility acts are of major importance in highway safety is also highly debatable. The variables involved in highway accidents are numerous, and they are often complexly related; the physical condition of automobiles, highways, and drivers are but a few of the most notable factors directly related to highway safety. It seems extremely speculative to contend that the threat of having to post security or suffer license suspension is of measurable importance in encouraging safe driving. Even when suspension does serve to remove an unsafe driver from the state's highways, that fact only demonstrates that the system has failed in its purpose of compensation.

In order to provide a more adequate scheme of automobile accident compensation, Georgia should give careful consideration to the adoption of a compulsory liability insurance act. Compulsory liability insurance is not a new concept in accident compensation. Massachusetts adopted such an act in 1927,[44] New York followed in 1956,[45] and North Carolina in 1957.[46] In fact, most states have compulsory insurance laws which govern certain type vehicles such as common carriers.[47]

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41. Wagner, *Safety Responsibility Laws—A Review of Recent Developments*, 9 GA. ST. B.J. 160, 168 (1946).
42. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 65-75 (1965).
43. W. PROSSER, LAW OF TORTS 578-79 (3d ed. 1964).
44. MASS. ANN. LAWS ch. 175, § 113A-1130 (1932).
45. N.Y. VEHICLE & TRAFFIC LAWS art. 6, §§ 310-321.
46. N.C. GEN. STAT. § 20-279.21 (Supp. 1963).
47. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 76 (1965).

A basic plan of compulsory insurance would require a driver to purchase a liability insurance policy before being allowed to register his automobile or obtain his operator's license. The policy required would have to provide coverage to certain statutory minimums.[48] The insurance would be purchased through private insurers; no form of state administered insurance would be involved.[49]

In order to provide insurance for those who ordinarily could not purchase coverage because of their driving record, an assigned risk plan would be developed.[50] All companies writing compulsory insurance in the state would be assigned a certain number of "undesired risks" according to the percentage of such insurance written by each company.

The adoption of a compulsory insurance scheme as outlined would act to insure that every Georgia driver could meet minimum standards of financial responsibility. Unlike the present financial responsibility law, a compulsory liability insurance act would remove the judgment-proof driver from the state's highways *before* he became involved in an accident.

In examining compulsory liability insurance, it is well to realize that even this plan does not assure compensation to all automobile accident victims. One major "gap" in the coverage of such a scheme is that drivers from states other than Georgia could not realistically be required to purchase liability insurance in order to drive through the state; this problem, however, could be alleviated by requiring insurers to offer uninsured motorist coverage to Georgia drivers desiring such protection.[51]

Another area in which compulsory liability insurance offers no protection involves those accidents where fault is not a consideration; an example would be an accident involving only a single automobile. Under a compulsory liability scheme, compensation for these injuries would be covered by present forms of voluntary health and collision insurance.

In summation, it can safely be said that *Bell* has created a legal vacuum not only in Georgia but also in those states having similar financial responsibility acts. With the staggering number of deaths and injuries on our nation's highways,[52] it is incumbent that some method be devised to require every motorist to meet at least minimum standards

48. *Id.* at 76-77.

49. Marx, *Compensation Insurance For Automobile Accident Victims: The Case For Compulsory Automobile Compensation Insurance*, 15 OHIO ST. L.J. 134, 139-41 (1954).

50. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 77-83 (1965).

51. *Id.* at 110-13.

52. *Id.* at 11-12.

of financial responsibility. If Georgia wishes to retain a fault-oriented system of accident compensation, a compulsory liability insurance act seems to provide more extensive protection than that offered under the Motor Vehicle Safety Responsibility Act. Regardless of which course Georgia ultimately follows, the Georgia General Assembly must give its considered attention to the problem in the immediate future. The challenge of *Bell* must be met with an adequate and equitable plan for financial responsibility on Georgia highways.

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