



“Indemnification procedures in Motor

Insurance, social function of coverages and costs’ control”

It's a matter of fact that Motor Insurance is a compensation mechanism having a relevant impact on the free movement of persons and vehicles.

At the same time it is obvious that the correct functioning of a such mechanism depends on an efficient system of victims' indemnification.

All different indemnification systems pose worldwide problems of costs' increasing

(Paul Heaton , Stephen J. Carroll , James M. Anderson The U.S. Experience with No-Fault Automobile Insurance: A Retrospective, Rand Institute for civil justice 2010; http://www.ania.it/export/sites/default/documenti/74a64f3f-92a9-11e1-a611-f3c446ddba06_Focus_n.21.dati_31.12.2011.pdf)

The British Insurance Brokers' Association (BIBA see <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/591/591.pdf>.) puts at the top of the list of the reasons of increased cost of motor insurance: **the increase in the propensity to claim**, the increase in the amounts awarded with specific regards to physical damages not objectively assessable (like in case of whiplash claims) and to non pecuniary losses. Non pecuniary losses can be characterized as losses or harm not assessable in money on the basis of any standard financial yardstick. We can consider for example pain and suffering as a result of physical injury, or even the death of a person. Another reason of insurance increased cost could be **frauds**. Typical motor insurance frauds are: the so called *crash for cash* (for example a person causes crashes with innocent motorists to make fraudulent insurance claims) and the cases of exaggerated claims (for example a real accident may occur, but the dishonest victim may take the opportunity to ask compensation also for a whole range of previous minor damages of the vehicle).

All these factors have moreover a negative impact on the fundamental function of insurance: risk pooling.

It's well known that insurance is the payment of compensation for losses incurred against the payment of a premium. Instead of facing the possibility of a large loss (with a low but positive probability), an individual pays a premium. Insurers can offer this protection because there are other insured individuals of the pool who do not suffer a loss at the same time.

Risk pooling works well if certain conditions are met: 1) we are considering *real events* resulting in a physical loss to particular agents; 2) each loss affects only a small fraction of the pool at the same time; 3) the *probability of a loss can be calculated*; 4) the risks are not correlated across.

Till now national legislators have mainly focused their attention on indemnification system regards to motor insurance, aiming to ensure that all victims of road accidents could claim compensation from an insurance company and also to control costs' increase.

We think it should be better to consider the others above factors of costs' increase in motor insurance.

In such a perspective we would like to stimulate an observation and a debate on the following questions:

- 1- In your country, is the Government (or Insurance Market's Public Authority) monitoring motor insurance costs?
- 2- In your country, are limits to indemnification provided by law? (for instance Italian law provides limits for personal damage non objectively assessable art. 139, 2 Insurance Code – dlgs 209/2005 as modified by art. 32 Decreto Legge 24 gennaio 2012, n. 1, converted into law by the act Legge 24 marzo 2012, n. 27)
- 3- What kind of damages and compensation can accident car victim get in case of personal injury? Medical expenses? Costs of living with a disability? Lost wages? Pain and suffering? Loss of consortium ? Impairment of earnings capacity ? Cost of repair for damaged cars or vehicles ?
- 4- In your country, can a plaintiff receive punitive damages in case of car accidents? If yes, what conditions are required ? Are they insurable?

- 5- In your country are there applications and claims form to contain fraud ? (For instance according to Ohio law: <<All applications for group or individual insurance issued by an insurer and all claim forms issued by an insurer, for use by persons in applying for insurance or submitting a claim for payment pursuant to a policy or a claim for any other benefit pursuant to a policy, shall clearly contain a warning substantially as follows: “Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.”>>).
- 6- What about criminal provisions on insurance fraud? (For instance in Italian criminal code a special disposition is contained in paragraph 642. Moreover art. 33 Decree Law 1/2012, of 24 January, on liberalizations, known also as the “Grow Italy” decree, converted with amendments into Law 27/2012 of 24 March amends Article 642 of the Criminal Code on insurance fraud, increasing the minimum sentence to one year and the maximum to five years.)
- 7- In your country, does law provide claims handling procedure in order to contain motor insurance frauds ? (for instance mandatory inspections of vehicle, possibility for insurers to verify whether the vehicle has been recently involved in other accidents).
- 8- What about the coordination of different systems of compensation? (For instance in Scandinavia since they have been working with the intention to ensure compensation for the injured persons, the definition of motor accident has been extended. In some cases in rulings of the Swedish Supreme Court, motor liability has met the likewise widened workers compensation schemes and the problem with overlapping and double compensation has arisen.)

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