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The Manufacturer's View of No-Fault

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THE MANUFACTURER'S VIEW OF "NO-FAULT"

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SHORTLY AFTER lift-off, a successful businessman and private pilot lost power in his light twin engine plane and made an emergency crash landing. The aircraft was a total loss but the pilot walked away. He sustained painful back injuries, but he recovered. As a pilot with considerable time and thoroughly familiar with his aircraft, he concluded that after taking off he had subjected the aircraft to maneuvers and attitudes which he should have avoided because he knew he was almost out of fuel in both main tanks. He consulted with his own lawyer, was advised of the applicable statute of limitations, and as he put it, "I was not interesetd in suing anyone, and as far as I was concerned, the matter was then laid to rest." Shortly after the accident the pilot purchased another aircraft of the same make and model.

The hull carrier developed a more aggressive program. Suit was filed against the airframe manufacturer for the subrogated hull loss. When payment of the amount demanded was refused, counsel for the hull carrier suggested that amended claims and pleadings might be filed seeking recovery for personal injuries and punitive damages unless the settlement demand was promptly met. At this point, any claim by the pilot had been barred by the applicable statutes of limitations and, of course, the hull carrier was a stranger to any such cause of action.

At about the same time demands were being pressed against the manufacturer for payment of the hull loss, the pilot began to receive telephone calls from a lawyer two thousands miles away offering to represent him in a personal injury suit to be brought against the manufacturer. The offer was declined several times.

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Finally, the lawyer asked for a meeting and traveled two thousand miles to see the "prospective client." He related that he and his professional colleagues were experts in suits against this manufacturer and, indeed, had recovered verdicts in the millions of dollars. When the statute of limitations point was raised, the lawyer assured the "prospective client" that there was really no problem; he had figured out a way to get around that. Statements were made that the lawsuit would cost the plaintiff not one penny. Assured of a large recovery without risk or cost, the "client" finally agreed to join in the venture on a contingent fee contract.

Suit was filed for more than ten million dollars in a jurisdiction utterly unconnected with the crash or the personal or business residence of the plaintiff. It was, however, directly connected with the professional residence of the soliciting lawyer who proved to be the same lawyer who had pressed demands for settlement of the insured hull loss by threats of an action for personal injuries and punitive damages.

The personal injury claimant was not told by the "solicitor" that he had been representing the hull carrier. When suit was filed the plaintiff was not favored with a copy of the complaint or even notice of its filing. Furthermore, plaintiff had no idea that claims for millions of dollars in punitive damages had been asserted in his name against the manufacturer. Discovery in the case brought to light enough of these facts to cause the court to dismiss the action on the ground that the statute of limitations had run.

An airframe manufacturer offered, as optional equipment for light aircraft, a landing gear safety device which automatically lowered the gear when air speed and power settings were within the regimen for approach to landing. A kit was developed and approved by FAA for installation in single engine aircraft. Adaptation of the device to an obviously more complex twin engine aircraft was limited to factory installation.

A fixed base operator modified and supplemented the single engine kit to install it on a twin engine aircraft. Later, the aircraft went out of control and crashed with only the pilot aboard. The wreckage and ground witness accounts tended to support the conclusion that the pilot lost control of the aircraft when the improperly installed landing gear safety device lowered the gear.

Suit was instituted against the fixed base operator who sold and installed the landing gear device with the manufacturer of the airplane joined as a co-defendant. The complaint, brought in the name of the widow of the deceased owner and pilot of the aircraft, claimed damages for wrongful death, loss of the aircraft, and punitive damages. The case was ultimately settled before trial. The airplane manufacturer made only a token contribution, with the fixed base operator and its carrier assuming the burden of the settlement.

When the final order was entered in the case, it became clear that, in large part, the litigation had been little more than a sham —a series of maneuvers by the hull and workmen's compensation carriers to adjust their losses and, hopefully, to compel a substantial contribution by the airframe manufacturer who was not involved with or responsible for the alleged malfunction of the gear-down device. The widow and adult heirs of the deceased did not receive one penny of the settlement proceeds. The use of the widow's name as plaintiff in claims for wrongful death and punitive damages was apparently mere window-dressing, calculated to provide local flavor and the emotional impact of sudden death.

The last document in the court file, an order approving the disbursement of the settlement proceeds, will fascinate critics of the profession in any quarter. It recites that the adult heirs of the deceased are emancipated and self-supporting. The bereaved widow and her minor son were found to have ". . . more than adequate funds accruing to them from the proceeds of life insurance, workmen's compensation and a trust fund. . . ." Clairvoyance is suggested by the finding that ". . . there is no likelihood of financial need arising [to the widow or children] from these present circumstances."

Most intriguing, however, is a finding which justifies the payment of 100 percent of the settlement proceeds to insurance carriers because they prosecuted the lawsuit, which the court found would have been "economically unfeasible" for the widow. At this point the imagination of those who drafted the order seems to have deserted them for the order contains no rationalization of the widow's financial inability to pay costs of litigation with the earlier conclusion that her resources and entitlements are so vast

that she, her minor son and her other children would have no present or future need for money.

Late one afternoon, a successful businessman holding a private, multi-engine license, loaded his wife, two other couples and their baggage in his firm's twin engine plane. After what must have been the briefest of pre-flight preparation, he applied takeoff power at the end of the runway. Shortly after lift off, the aircraft stalled and crashed with the engines still developing takeoff power. All occupants were killed. The pilot had made an almost inconceivable series of mistakes—tragic mistakes. The plane, with occupants, baggage, and gasoline, was over its allowable gross weight for flight and the load was distributed so as to place the center of gravity aft of the center of gravity envelope. Disregarding written checklists and at least two checks for freedom of controls before take-off, the pilot took off with the aileron and elevator gust lock pin in place in the control column. Overloaded, out of center of gravity limits, with take-off power and controls locked, the aircraft, when it stalled, was utterly uncontrollable.[1]

Litigation was brought on behalf of all decedents against the manufacturer, but neither the negligent pilot nor his employer, assuming this was a business flight, were joined as defendants. In fact, the estate and heirs of the pilot appeared as plaintiffs. The theory of the case was that the manufacturer had improperly designed the control lock because it was possible for a man with strong hands to remove the throttle hood, which held the throttle levers in full retard position, to prevent starting of the engines without disengaging the control lock pins. In short, it was contended that the manufacturer was responsible for the crash because it had not made it utterly impossible for the pilot to misuse the control lock intentionally and to disregard checklists and standard pre-flight procedures.

As the case progressed the defense came into possession of secet written agreements negotiated between the insurance carrier having exposure for the pilot's negligence and the estates of the

[1] Had the pilot shut down the power at any point in the takeoff roll or even after lift off, but before the stall, the aircraft would have settled back on what was about one-half mile of unused runway, probably without any injury to anyone aboard.

decedents. In essence, these agreements guaranteed the claimants that if they would prosecute litigation against other parties (to be precise, the manufacturer, although the target defendant was not named or described), the liability carrier would, in effect, guarantee a recovery of $100,000 per claim. Interesting variations of the "guarantee agreement" concept were that the $100,000 was to be a net recovery after expenses of litigation and attorneys' fees; the guarantor advanced $50,000 which, of course, was then available to finance the litigation; and finally, the guarantor retained effective control of the litigation by the device of requiring its consent to any settlement.

It cannot be denied that the insurance carrier which was obligated to respond for the pilot's negligence had acquired a contingent interest in the outcome of litigation by other parties against the manufacturer. If successful, the insurer escaped liability completely and even recovered its advances. The carrier was in a position to control, or at least frustrate, a settlement at any figure which could force a contribution by the guarantor. With guarantee agreements in hand, the carrier rejoiced and put the plaintiffs in touch with counsel who promptly sued the manufacturer.

"No-fault" is a term commonly used to describe a device or system by which financial responsibility for casualty losses is assessed without regard to causation or fault. From the standpoint of the manufacturer, any debate on whether no fault should be applied to aviation cases is largely academic. The incidents just described are, in the last analysis, examples of no-fault:[2] no-fault by conspiracy and ambush.

Those who question these conclusions or wish to defend guarantee agreements and similar schemes and devices to promote collusive or questionable litigation should take note of another incident in the parade of horribles attending recent aviation cases.

[2] These are by no means isolated symptoms; more have been discovered and others will be. Insurers, especially members of underwriting groups and managed pools, have met themselves coming and going in the "the jungle." In one instance, managers and agents for a pool, in which some members of an underwriting group participated, negotiated guarantee agreements which produced claims for punitive damages and eventually a large verdict against a single defendant who was insured by underwriters in the same group. To protect the appeal, underwriters purchased a supersedeas bond for which a sizable premium was paid to an affiliate of one of the companies that had guaranteed out with the plaintiff.

A perceptive and courageous federal judge in a western jurisdiction, upon discovering the existence of guarantee agreements underlying litigation brought against a manufacturer, found that the guarantee agreements "were made in bad faith for the purpose of prosecuting a collusive suit and therefore constituted maintenance, champerty, and barratry and are therefore contrary to public policy and illegal." The parties to the guarantee agreements and their agents were brought into the litigation and the agreements were held null and void.

Philosophically, aircraft manufacturers are and should be opposed to no-fault in any form. They recognize that no-fault has been applied, with poor results, in the automobile negligence sector and that those plans are not applicable in principle or in practice to aviation. The two areas have little in common except that both involve vehicles designed for the transportation of human beings.

The manufacturers are also aware that the international treaties (Warsaw and Guatemala, in force or proposed), do not provide a solution for product liability exposure. Indeed, it can be reasoned that at least the number of product claims would increase rather than diminish under any presently known system of "no fault," with changes only in the identity of the plaintiff and, perhaps, the forum for adjudication.

Historically, no-fault has always involved the laying on of the strong hand of government. Inequities are imposed and perpetuated in the cause of risk-spreading and social justice. Manufacturers are no less repulsed than other responsible citizens and segments of the social and economic community by the spectacle of a system which protects the negligent from responsibility for injury to others or requires the diligent and the careful to pay the freight for the slovenly and the careless. Regardless of general attitudes and philosophical considerations, manufacturers surely recognize that for causes presently to be discussed, they and the users of their products are the victims of no-fault by secret agreement as practiced in aviation litigation. If forced to make a choice between extra-legal no-fault and no-fault by legislative enactment, the manufacturers would be foolish not to choose the latter. Imagination and careful study may devise a legislative formula and an administrative structure for aviation no-fault which will avoid the shortcomings and pitfalls of presently defined plans. Representative Milford is ob-

viously struggling with just those problems. If he is successful, and other conditions do not improve, there will be a market for his product.

To remove any possibility that those who read or listen may not get my message, it is this: in the United States today, the bench, the bar, and the casualty insurance fraternity have countenanced or ignored conduct at ethical and moral levels which have seriously undermined the wholesome concept of fault-oriented responsibility for injury and even the adversary system itself. Without effective reforms, initiated immediately, the legal profession and eventually the insurance fraternity will be forced to give up their responsibilities in an increasing number of areas, and their professional and business incomes, as they drop from the scene, just as automobile personal injury litigation is now disappearing. In my judgment, among the first of these areas will be aviation casualty. Another may be medical malpractice. A further loss to the profession may come in the form of severe restrictions on the use of the class action device which has been subject to some similar abuses.

The symptoms cannot be ignored. The first reported judicial involvement with guarantee agreements in the modern tradition arose out of an automobile negligence case.[3] In the medical malpractice arena, guarantee agreements have been encountered and denounced.[4]

In assessing the accuracy of the prediction that, absent prompt reform, aviation cases will find their way out of the adversary system and the free insurance market, we should consider the following factors.

First, aviation cases have unusually high verdict potential. This is especially true of general aviation cases since most often the

[3] Booth v. Mary Carter Paint Co., 202 So. 2d 8 (Fla. Ct. App. 1967). *But see* Ward v. Ochoa, 284 So. 2d 385 (Fla. 1973); Maule Ind., Inc. v. Rountree, 284 So. 2d 389 (Fla. 1973); General Portland Land Dev. Co. v. Stevens, 291 So. 2d 250 (Fla. Ct. App. 1974). These cases indicate the courts of Florida are being forced to reappraise their initial reaction to the "Mary Carter Agreement."

[4] *See* Lum v. Stinnett, 87 Nev. 402, 488 P.2d 347 (1971) where the court stated:

> We deem agreements whereby insurance carriers agree to pay any consideration to foster litigation in which they are not interested, in order to avoid their own liabilities, contrary to law and public policy.

488 P.2d at 351.

occupants of the airplane are in the high income groupings and their survivors actually suffer and can demonstrate a large economic loss. Sudden death in an aircraft is also inflammatory. There are those on every jury who are not accustomed to air travel. They can become emotionally involved with vivid descriptions of an airplane streaking down, out of control, with the occupants alive and agonized at the prospect of certain death. Wrongful death awards of a million dollars per seat are not unusual. This is fertile soil in which to plant the seeds of questionable ethical conduct.

Secondly, regrettably, but almost always, the pilot and the occupants of the aircraft, who are in the best position to know what actually happened, lose their lives in the crash. Ground witnesses rarely supply any evidence bearing directly on the cause of the crash, and only occasionally does evidence produced from radio communications materially assist the inquiry for probable cause. Aircraft casualty cases are tried almost entirely on the analysis and testimony of experts of varying degrees of qualification. The opportunities for perversion of fact or opinion, or both, are almost limitless. By comparison, the ability of jurors and even judges to test the credibility of the expert, the plausibility of his conclusions, or even the facts or assumptions he has used is severely limited because the judge and the jury lack formal training and experience in the pertinent scientific disciplines. In theory, the layman's margin for error in scientific judgments should be offset by careful adherence by the courts to sound rules of procedure and evidence and by the impeccable ethics of the legal and scientific professions. The system is in trouble simply because the conduct of some members of each group has fallen short of the mark.

Thirdly, the trial lawyer is the first indispensable part in the machine of adversary justice. A good trial, like a good painting, should be a miniature reproduction of a related segment of human experience. For best results the trial lawyer must approach his task with detached professionalism and a passion for presenting an accurate picture of the truth as best he can perceive it. Professionalism of this caliber is frustrated by the unbridled use of contingent fee contracts which, in an aviation case, can generate fees of hundreds of thousands and even millions of dollars, fees which may bear little or no relationship to professional time, quality of

service, devotion to professional ethics and the search for truth and justice which are supposed to be the touchstones of the fault and adversary systems. In cases which produce contingent fees of such magnitude, lawyers can and do become the real party in interest within the very essence of that concept.

Fourthly, the aviation defense bar cannot escape its share of responsibility for misconduct within the profession. The manipulation of litigation against others through guarantee agreements and similar devices is often initiated by someone on the defense side of the case, more often than not with the knowledge and probably the active participation of counsel. No doubt, serious minded plaintiffs' lawyers sometimes cooperate reluctantly, in the mistaken belief that they are acting in the best interest of their clients. The most disgusting single spectacle on the entire scene is the defense lawyer who has secretly guaranteed a recovery to the plaintiff but stays in the case. By subtle and deceptive moves and the cooperation of his client, who probably is called as a witness, the defense lawyer casts his lot with the plaintiff for a high verdict in order to insure that the award will be above the top limit of the guarantee, a deceitful abuse of the adversary system.

Fifthly, some insurance carriers and their managers have become sponsors of the "no-limit, high stakes game" of aviation casualty litigation. Many carriers who insure owners, pilots, and fixed base operators are exposed on policies with inadequate limits of coverage supported by inadequate premiums. The manufacturers of airframes, engines, and components have become their natural prey in a battle for the control of business. If the burden of losses can be shifted to the manufacturer, they may continue to dominate other sectors of the market with premium rates below what they should be to sustain the risk. It is reasoned that the manufacturer has unlimited resources because it is a large industrial concern and because the costs of product liability, whatever they are, can be passed along to the consumers. It is one purpose of this paper to suggest that events may prove this to be a very shortsighted view.

Sixthly, there are the second level victims of the practices described. They are the consumers: those who buy airplanes, pilot them, or use them for business or pleasure as a passenger. The cost in terms of price, quality, or availability of the airplane itself or

its use will eventually reflect the consequences of what we are now confronting. To be regretted even more, the safety, reliability, and improvement of American airplanes will lag as the technical staff of manufacturers and the FAA devote more and more of their time to the defense of bloated and unjust claims and to minute criticisms of designs (sometimes 20 or 30 years old) by an unfair comparison to the current state of the art, and as more and more legislatures, acting under pressure from those who support high stakes litigation, declare that improvements in the state of the art and the product are admissible to prove defects in earlier designs or articles. Like any malignancy, the system feeds on itself and everything at hand: less progress means more litigation; more litigation means less progress.

Lastly, if there is any enterprise in which the bench should lead the bar, it should be in the discouragement of unseemly litigation. As stewards of a system for the pursuit of truth, judges should condemn secret or oppressive agreements, whether they be for guaranteed recovery or for extravagant counsel fees which promote litigation. In most jurisdictions, courts have made little or no effort to regulate contingent fees in wrongful death and personal injury litigation. For this failure, in part, those involved in automobile negligence work are now paying a price. Unless controlled by the enforcement of carefully formulated ethical standards, the high award potential of aviation litigation, like medical malpractice cases and class actions, represents an aggravated threat to fault-orientied adversary systems of justice. It may not be true that every man has his price, but it is true that a high price has its takers. The professions are not an exception.

The potential for an extravagant verdict harbors oppression. If the financial risk in a single case is high enough, defendants and their insurers may be reluctant to spend present costs, which now can approach a quarter-million dollars in scientific research, fees of experts and lawyers, and months of formal discovery and trial, even for a successful defense. The assertion of groundless claims for punitive damages, now common practice in aviation litigation, may divide the defendant and his insurers on issues of coverage. Under these conditions, the nuisance value (settlement at or below the certain costs of defense) may be an attractive option even at six figure levels, with the result that the evils of a system prosper.

It is not unusual for aviation cases to be filed without any real evidence, and perhaps no idea at all, of the cause of the crash. It is sometimes the hope of plaintiff's counsel that in discovery he will turn up some thread of a case from which a settlement demand or a jury argument can be mounted.

Rule 11 of the Federal Rules of Civil Procedure reads in part:

> The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support; . . . For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action.

The pertinent parts of this rule have not changed since 1938. In recent years, similar rules have been adopted by most state courts. I have been unable to find a single case in which discipline under this rule has been enforced or even threatened in a products liability case or in litigation of any kind when excessive or unfounded claims for actual or punitive damages have been made.[5] In fairness, it should be pointed out that defense lawyers have not been disciplined for pleading matters in defense for which they can provide absolutely no support. Admittedly, the rule should be enforced wisely and sparingly. Neither lawyers nor their clients should be penalized for good faith allegations on which proof ultimately fails or is insufficient. When, however, it has become a matter of general knowledge within the profession, and indeed, a tactic, to charge malice, wantonness, or fraud, and to claim punitive damages merely in the hope that such claims will induce settlement, it is not reactionary to suggest that the bench has an obligation to bring Rule 11 to the attention of the bar to insure that the halls of justice do not take on the appearance of casinos in which the odds are long and the stakes are high.

From the standpoint of the manufacturer, prospects for improvement in the products picture are dim. Figures collected by one group in general aviation indicate that during the past ten years the number of liability claims has increased by a factor of ten to one. The costs of insuring, defending, and paying product liability

[5] Only when facts documented in public records have been misrepresented by a lawyer does it appear that Rule 11 has come into play. Nichols v. Alker, 126 F. Supp. 679 (E.D.N.Y. 1954); American Auto Ass'n v. Rothman, 101 F. Supp. 193 (E.D.N.Y. 1952).

claims have increased at twenty to one. The total dollar amount of claims asserted—the sum of all demands in all pending cases—would provide an interesting index of the present state of affairs. Unfortunately, such figures are not available, but an educated guess would place the number above one billion dollars. Although the number, cost, and magnitude of claims and litigations is still on the increase, it is significant that the sharpest increase occurred in the five years 1967 through 1971. This time frame coincides with the introduction of guarantee agreements and other devices for conspiratorial no-fault into the arena of aviation litigation.

Even if the filing rate for new claims and litigation should level off or decline, costs for insuring, defending, and paying claims will obviously continue to increase for several years at unacceptable rates. The size and risk of cases, the extensive use (sometimes abuse) of discovery, and the time consumed in preparation and trial in any case of serious proportions has become monumental. It is usually a labor of years. The rate of disposition, including settlements, cannot keep pace with the rate of filing and the extended case life, much less with the increase in total dollars claimed.[6]

Estimates of the efficiency of the fault-adversary system as it now functions in the aviation casualty sector are difficult to make. Much depends upon the selection of correct parameters for such variables as time, investment in the system, and the cost of money. Most calculations show that the aviation accident victims, their estates, and heirs ultimately receive no more than fifteen percent to twenty percent of the total amount spent in insuring, defending, and paying claims and litigation. No industry producing goods for sale could tolerate this kind of inefficiency. The clients of lawyers, those insured by underwriters, consumers of aviation products, and taxpayers who support our institutions of justice will not tolerate such inefficiency when they find out why it exists, what it costs, and who is picking up the tab.

Reform from within the profession, the bench, and the bar will

[6] Aviation lawyers are now beginning to be afflicted with what has plagued the automobile negligence bar for so long: polarization. In some cases, lawyers waste time simply deviling each other and, when possible, the client. A professional group thus divided may find it almost impossible to work toward a solution of ethcial problems. This may be another sign of the direction in which things are moving.

probably be slow in coming for the basic evils—irresponsibility and extravagance—have flourished in a long period of unprecedented growth and prosperity for the profession. There are, however, signs of the beginning of a turn-around: courts are beginning to realize that guarantee agreements and their equivalent do not, as originally supposed, promote settlements. They foster litigation. Some courts have seen them for exactly what they are—examples of champerty, maintenance, and barratry which are serious civil wrongs and, in some jurisdictions, crimes.[7]

The engagement of expert witnesses on contingent fee contracts, although tolerated or ignored in many jurisdictions, has been condemned by a few courts which recently have begun to realize the obvious: such arrangements have a tendency for the perversion of justice and the encouragement of perjury.[8]

The best prospect for immediate and effective reform probably rests with the insurance community. The aviation insurance fraternity, as compared to other segments of the industry, is thin in numbers and not too unwieldly. A concerted effort by the dominant underwriters and pool managers to stamp out guarantee agreements, spurious subrogation claims, and sham party actions could

[7] The court in Lum v. Stinnet, 87 Nev. 402, 488 P.2d 347 (1971) stated:

> Manifestly, in view of these considerations, the champertous agreement between respondent and the insurance carriers for Green and Romeo called for improper conduct on the part of all attorneys concerned; and while we recognize they became involved only out of devotion to their clients, the agreement nonetheless contravened policy expressed in the Rules of Professional Conduct, S.C.R. 153 et seq.

488 P.2d at 352.

See also Pinder v. Cessna Aircraft Corporation, Docket No. C205-71, U.S.D.C. Utah Cent. Div. (1973). The Arizona State Bar Committee on Rules of Professional Conduct has branded as unethical participation by defense counsel in litigation when guarantee agreements actually align them with the plaintiffs.

[8] Western Cab. Co. v. Kellar, 523 P.2d 842 (Nev. 1974); Laos v. Soble, 18 Ariz. App. 502, 503 P.2d 978 (1973); Belfonte v. Miller, 212 Pa. Super. 508, 243 A.2d 150 (1968); Van Norden v. Metzer, 75 Cal. App. 2d 595, 171 P.2d 485 (1946), Wright v. Corbin, 190 Wash. 290, 67 P.2d 868 (1937). *See also In re* Imperatori, 152 App. Div. 86, 136 N.Y.S. 675 (1912) in which a lawyer was suspended from practice for engaging a realtor to testify as an expert on contingent fee. For cases approving engagement of experts to testify on contingent fee, *see* Buckelew v. State, 48 Ala. App. 411, 265 So. 2d 195, *cert. denied*, 288 Ala. 735, 265 So. 2d 202 (1972); Provident Sav. Life Assur. Soc. v. King, 216 Ill. 416, 75 N.E. 166 (1905); Lack Malleable Iron Co. v. Graham, 147 Ky. 161, 143 S.W. 1016 (1912); Reed v. Fireman's Ins. Co. of Newark, 78 N.J.L. 549, 74 A. 447 (1909); and Potomac, F. & P.R. Co. v. Chichester, 111 Va. 152, 68 S.E. 404 (1910).

significantly reduce the number and size of claims. I believe there is a growing recognition among the better managed underwriting groups and companies that the eradication of these practices is essential to the growth and prosperity and, perhaps, the survival of the industry. Some underwriters and companies have consistently refrained from engaging in these practices; some have unwittingly become involved. Hopefully, they will now bring pressure to bear on less responsible members to adopt more acceptable standards of conduct. A conscientious effort from the insurance community could accelerate reform in the legal profession, for the fault-adversary system requires the participation of both.

There are presently two groups among the aviation manufacturers who have under study projects and alternatives designed to bring some of the problem areas under control and to improve the efficiency of the system to compensate those who suffer loss by reason of an airplane crash. The concepts envision the participation of insurers and underwriters within the market structures as they exist today without resort to mandatory, government regulated no-fault. While I am not at liberty to discuss the outlines or details of these ideas, there is good cause to believe that they may contribute substantially to the solution of the problems under discussion, perhaps in rather short order.

Air travel is still on the increase. The industry and its growth rate have responded well to recession and fuel shortages. Critics of the industry may claim otherwise, but the truth is that aircraft manufacturers remain dedicated to research and product improvement for safety and reliability. The NTSB, FAA, groups of manufacturers, and manufacturers individually have vast amounts of data under study and work in progress to determine the cause of crashes and how they may be avoided. These efforts will contribute their share to the eventual solution of current problems.

The real question, I submit, is whether those dedicated to the preservation of the fault-oriented adversary system can clean it up in time to avoid the imposition of a government enforced, mandatory no-fault program for compensation of aviation casualty losses. The federal government already dominates almost every aspect of air transportation. No delay can be counted on while the advocates of expanding government solicit the cooperation of state legislatures; the "Feds" can do it all. It is later than you think!